



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: James Andrew Phillips**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, a hearing panel of the Atlantic Regional Council (the “Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and James Andrew Phillips (“the Respondent”).

**II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

### **III. ACKNOWLEDGMENT**

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part IX) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

### **IV. AGREED FACTS**

#### **Registration**

6. The Respondent was registered in Manitoba from July 1, 1994 to January 3, 2008, in Nova Scotia from July 20, 2005 to March 4, 2014, and in Ontario from May 25, 2007 to January 3, 2008 as a mutual fund salesperson (now known as a dealing representative)<sup>1</sup> with Sun Life Financial Investment Services (Canada) Inc. (“Sun Life”). On January 11, 2002, the Respondent became an Approved Person of Sun Life when Sun Life became a Member of the MFDA.

7. From May 30, 2014 to October 21, 2015, the Respondent was registered in Nova Scotia as a dealing representative with Investia Financial Services Inc. (“Investia”), a Member of the MFDA.

8. At all material times, the Respondent conducted business from a branch office located in Windsor, Nova Scotia. The Respondent now resides in Winnipeg, Manitoba.

#### **Investia’s Policies And Procedures**

9. At all material times, the policies and procedures of Investia:

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<sup>1</sup> In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

- (a) required its Approved Persons to:
  - (i) disclose any conflict of interest to their designated Branch Manager and to Head Office, Compliance in order to enable Investia to ensure that the conflict is addressed in the best interests of the client(s); and
  - (ii) provide written disclosure about the conflict of interest to all individuals (including clients) affected by the conflict; and
- (b) prohibited its Approved Persons from borrowing money from clients.

### **The Respondent's Personal Financial Dealings With Client RB**

10. In March 2014, the Respondent and a business partner, TH, incorporated Presidio Financial Planning Group Inc. ("Presidio"). The Respondent was the President and a Director of Presidio. The Respondent informed Investia that Presidio had been incorporated and obtained approval to operate his insurance business through Presidio.

11. Between March and May 2014 (before the Respondent became an Approved Person with Investia), the Respondent's business partner referred client RB to the Respondent for investment advice. Client RB's employment had recently been terminated and the client was seeking advice about how to deal with his existing savings, his pension entitlements from his former employer and any severance compensation that he received from his former employer. At the time, client RB was 59 years old.

12. The Respondent introduced client RB to MC who was the branch manager of the Investia branch where the Respondent intended to work at when his application for registration with Investia was processed.

13. On or about May 22, 2014, client RB met with MC and the Respondent, explained his financial circumstances and opened investment accounts at Investia into which client RB subsequently arranged to transfer his existing investments and his commuted pension.

14. MC was identified as the Approved Person of record responsible for servicing client RB's accounts. However, the Respondent expected that he would become the Approved Person of record responsible for servicing client RB's account once he became registered with Investia.

15. MC arranged to pay to the Respondent 50% of the commissions earned from trades processed in client RB's new investment accounts at Investia.
16. On May 30, 2014, the Respondent became registered as a dealing representative with Investia.
17. After the Respondent became registered with Investia, the Respondent received a payment of \$9,000 from MC in respect of client RB's investment accounts at Investia, which MC had promised to pay the Respondent.
18. In January 2015, the Respondent arranged for a loan from client RB to finance the business operations of Presidio. In addition, the Respondent offered client RB employment with Presidio as a Logistics Manager.
19. Client RB signed an employment contract with Presidio agreeing to work at the company for a period of 5 years. It was contemplated that client RB would be paid a salary of approximately \$1,000 per month.
20. On January 16, 2015, the Respondent provided client RB with a promissory note which stated that Presidio had borrowed \$50,000 from client RB and agreed to pay client RB principal and 7% interest per year, through monthly instalments of \$990.80, over a 5 year term. The Respondent signed the promissory note on behalf of Presidio.
21. On January 19, 2015, client RB cashed in an insurance policy and delivered the proceeds to the Respondent by obtaining a bank draft in the amount of \$47,935.78 payable to Presidio.
22. The Respondent states that he did not recommend that Client RB cash in an insurance policy to generate the monies for the loan.
23. Client RB was not repaid the principal and interest on the loan as required under the terms of the loan agreement.
24. Client RB was not paid full compensation in respect of the client's employment with Presidio.

25. The Respondent did not disclose to his branch manager or to Investia's Head Office, Compliance that he had arranged for a loan from client RB to fund the operations of Presidio. He also did not disclose to his branch manager or to Investia's Head Office, Compliance that Presidio had entered into an employment contract with client RB.

26. At no time did the Respondent disclose to client RB in writing that the loan agreement and the employment contract with Presidio gave rise to a conflict or potential conflict of interest.

27. The Respondent failed to ensure that any conflict or potential conflict of interest arising from client RB's involvement with Presidio was addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

28. On October 20, 2015, the Respondent resigned from Investia.

29. On November 18, 2015, the Respondent made a voluntary assignment in bankruptcy. Client RB was listed as a creditor in the bankruptcy and the outstanding loan of \$50,000 was listed as a liability in the bankruptcy proceeding.

### **Additional Factors**

30. Following the events described above, the Respondent's business partner, TH, was charged under the Criminal Code (R.S.C., 1985, c. C-46) with three counts of theft over \$5,000 relating to his dealings with client RB and other unrelated parties. TH received a conditional discharge relating to the charges and a restitution order was made requiring TH to repay the \$47,935.78 that had been loaned from client RB to Presidio. To date, client RB has received partial payment of the amount ordered. Additional repayment dates under the restitution order will occur on June 30, 2019, December 30, 2019 and June 30, 2020.

31. The Respondent states that he was unaware that TH was engaging in any criminal conduct.

32. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

33. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing on the allegations.

**V. CONTRAVENTIONS**

34. The Respondent admits that commencing in January 2015, the Respondent engaged in personal financial dealings with client RB that gave rise to an actual or potential conflict of interest by borrowing approximately \$50,000 from a client and the Respondent failed to disclose the conflict of interest to the Member or otherwise ensure that the conflict was addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member’s policies and procedures and MFDA Rules 2.1.4, 2.5.1, 1.1.2, and 2.1.1.

**VI. TERMS OF SETTLEMENT**

35. The Respondent agrees to the following terms of settlement:

- a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 5 years commencing from the date of the final Order herein, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$10,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 which shall be payable in instalments as follows:
  - (i) \$2,500 in certified funds, payable on the date that the Settlement Agreement is accepted by the Hearing Panel; and
  - (ii) \$1,250 payable on the first day of each month commencing on September 1, 2019 and ending on February 1, 2020;
- c) the Respondent shall pay costs in the amount of \$5,000 in certified funds payable on the date that the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 24.2 of MFDA By-law No. 1; and
- d) the Respondent will attend the Settlement Hearing by teleconference, on the date set for the Settlement Hearing.

**VII. STAFF COMMITMENT**

36. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out

in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

### **VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT**

37. Acceptance of this Settlement Agreement shall be sought at a hearing of the Atlantic Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at [www.mfda.ca](http://www.mfda.ca).

38. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

39. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.1 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

40. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with

this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

#### **IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

41. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

#### **X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT**

42. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

43. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

#### **XI. DISCLOSURE OF AGREEMENT**

44. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

45. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

**XII. EXECUTION OF SETTLEMENT AGREEMENT**

46. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

47. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 17<sup>th</sup> day of June, 2019.

“James Andrew Phillips”

James Andrew Phillips

“KP”

Witness – Signature

KP

Witness – Print Name

“Shaun Devlin”

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement

**Schedule “A”**

**Order**

**File No. 2018117**



**Mutual Fund Dealers Association of Canada**  
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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
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**ORDER**

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**WHEREAS** on December 14, 2018, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 in respect of allegations of misconduct against James Andrew Phillips (the “Respondent”);

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated June 17, 2019 (the “Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

**AND WHEREAS** on the basis of the admissions made by the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that commencing in January 2015, the Respondent engaged in personal financial dealings with client RB that gave rise to an actual or potential conflict of interest by borrowing approximately \$50,000 from a client and the Respondent failed to disclose the conflict of interest to the Member or otherwise ensure that the conflict was addressed by the exercise of responsible business judgment influenced only by the best interests

of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.5.1, 1.1.2, and 2.1.1.

**IT IS HEREBY ORDERED THAT** the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA for a period of 5 years commencing from the date of the this Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

2. The Respondent shall pay a fine in the amount of \$10,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 which shall be payable in instalments as follows:

- a) \$2,500 payable in certified funds on the date of this Order;
- b) \$1,250 payable on the first day of each month from September 1, 2019 to February 1, 2020;

3. The Respondent shall pay costs in the amount of \$5,000 in certified funds on the date of this Order, pursuant to s. 24.2 of MFDA By-law No. 1;

4. The Respondent will attend by teleconference, on the date set for the Settlement Hearing; and

5. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

**DATED** this [day] day of [month], 20[ ].

Per: \_\_\_\_\_

[Name of Public Representative], Chair

Per: \_\_\_\_\_

[Name of Industry Representative]

Per: \_\_\_\_\_

[Name of Industry Representative]

DM 689573