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: Investia Financial Services Inc.

Heard: October 17, 2017 in Toronto, Ontario
Decision: October 17, 2017
Reasons for Decision: October 30, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC	Chair
Brigitte J. Geisler	Industry Representative
Selwyn Kossuth	Industry Representative

Appearances:

Francis Roy	)	Counsel for the Mutual Fund Dealers Association of Canada
David Di Paolo Caitlin Sainsbury	)	Counsel for the Respondent

Background

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada ("MFDA"). The hearing was held on Tuesday, October 17, 2017. The full Settlement Agreement, dated October 11, 2017, entered into between Staff of the MFDA and Investia Financial Services Inc. ("Investia" or the "Respondent") is available on the MFDA website and will not be set out in detail here. Investia was represented by counsel.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the October 17, 2017 hearing, with reasons to follow. These are our reasons for the decision.

3. The Respondent is registered as a mutual fund dealer and an exempt market dealer in all jurisdictions in Canada (except Nunavut) and has been a Member of the MFDA since June 7, 2002.

4. There had been an earlier disciplinary hearing against the Respondent in 2012 involving serious conduct, which also resulted in a Settlement Agreement. See *Re: Investia Financial Services Inc. & FundEX Investments Inc.* File No. 200932 & 201031. In that earlier Settlement Agreement, the Respondent admitted that, among other things, between August 2003 and July 2010, it failed to adequately supervise the outside business activities of certain Approved Persons, contrary to MFDA Rules 1.2.1(d) (now MFDA Rule 1.3), 2.4.2, 2.5, and 2.9. In that hearing the Panel ordered Investia to pay a fine of $100,000, costs of $15,000, and to take certain remedial actions.

Alleged Conduct

5. The present proceeding, as stated in paragraph 8 of the Settlement Agreement, "relates to the Respondent's failure to effectively discharge its supervisory obligations under the Rules, Policies and By-law of the MFDA, including: (a) its duty to adequately review outside business activities conducted by its Approved Persons prior to approving such activities; and (b) its duty

to conduct reasonable supervisory investigations regarding the activities of its Approved Persons."

6. The Respondent admitted in the Settlement Agreement to six contraventions, the first four relating to the adequacy of supervision by the Respondent of outside business activities by four Approved Persons (Bemelekot Tewahade, Russell Chang, Charles Albert Martin, and ST) and the last two involving the supervision of the activities of another Approved Person (DM).

7. The Respondent admitted to the following six contraventions, as set out in paragraph 49 of the Settlement Agreement:

a) between August 2011 and June 2012, [the Respondent] failed to adequately supervise, and establish and maintain adequate internal controls pertaining to, the outside business activities of Tewahade, by failing to conduct a supervisory review of Tewahade after the Member had become aware that he was engaged in undisclosed outside business activities, contrary to MFDA Rules 1.2.1(c) (now MFDA Rule 1.3), 2.5.1 and 2.9;

b) between June 14, 2012 and July 23, 2012, [the Respondent] failed to adequately supervise, and establish and maintain adequate internal controls pertaining to, the outside business activities of Chang, contrary to MFDA Rules 1.1.1., 1.2.1(c) (now MFDA Rule 1.3), 2.5.1 and 2.9;

c) between November 2003 and September 2013, [the Respondent] failed to adequately supervise, and establish and maintain adequate internal controls pertaining to, the outside business activities of Martin, by failing to conduct any follow up or supervisory review of Martin's outside business activities already disclosed to the Respondent by Martin, contrary to MFDA Rules 1.2.1(c) (now MFDA Rule 1.3), 2.5.1 and 2.9;

d) between 2006 and June 2014, [the Respondent] failed to adequately supervise, and establish and maintain adequate internal controls pertaining to, the outside business activities of ST, by failing to conduct any follow up or supervisory

review of ST's outside business activities already disclosed to the Respondent by ST, contrary to MFDA Rules 1.2.1(c) (now MFDA Rule 1.3), 2.5.1 and 2.9;

e) between March 2011 and October 2016, [the Respondent] failed to adequately supervise, and establish and maintain adequate internal controls pertaining to, the activities of DM after becoming aware that DM had altered KYC [know-your-client] information in at least 2 client accounts without the affected clients' knowledge or authorization, contrary to MFDA Rules 2.2.1, 2.2.4, 2.5.1 and 2.9; and

f) between March 2011 and October 2016, [the Respondent] failed to inform and report to at least 2 clients and the MFDA that DM had altered KYC information in the clients' accounts without the clients' knowledge or authorization, contrary to MFDA Rule 1.2.2 (now MFDA Rule 1.4) and MFDA Policy No. 6.

Terms of Settlement

8. The Respondent agreed to the following terms of settlement (paragraph 50 of the Settlement Agreement):

a) the Respondent shall in the future comply with MFDA Rules 1.3, 1.4, 2.2.1, 2.2.4, 2.5.1 and 2.9 and MFDA Policy No. 6;

b) a senior officer of the Respondent will attend in person, on the date set for the Settlement Hearing;

c) the Respondent shall pay a fine in the amount of $200,00, pursuant to section 24.1.2(b) of By-law No. 1, upon the acceptance of this Settlement Agreement, and

d) the Respondent shall pay the costs of this proceeding and investigation in the amount of $20,000, pursuant to section 24.2 of By-law No. 1, upon the acceptance of this Settlement Agreement.

The Facts and the Law

9. The detailed facts are set out in the Settlement Agreement on the MFDA website and will not be detailed here.

10. The law prohibiting the conduct is clear and, again, need not be set out in detail here. See, in particular, MFDA Rules 2.5 and 2.9 which require Members to establish, implement and maintain policies and procedures, internal controls, and supervisory practices to ensure that their business is handled in accordance with the By-laws, Rules and Policies of the MFDA and all applicable securities legislation.

11. Outside business activities require the knowledge and approval of the Member and the Member is required to establish, implement and maintain policies and procedures, internal controls, and supervisory practices to ensure that their business is handled in accordance with the by-laws, Rules and Policies of the MFDA and all applicable securities legislation.

12. With respect to the last two allegations involving DM it is also clear that a client's forms cannot be altered without the client's knowledge and consent, that Approved Persons should not possess pre-signed forms, and that Members should report contraventions to the MFDA.

Acceptance of Settlement Agreement

13. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

14. The conduct in this case was serious, particularly because there had previously been serious misconduct by the Respondent that was the subject of an earlier hearing.

15. There was, however, no allegation in the Settlement Agreement that any client was directly harmed.

16. Further, by entering into a Settlement Agreement the Respondent has accepted responsibility for its misconduct, recognizes its seriousness, and has exhibited remorse.

17. By entering into the Agreement, the Respondent saved the MFDA the time, resources and expense associated with conducting a full hearing of the allegations.

18. The penalty imposed is in line with cases cited by both counsel and is consistent with the MFDA Penalty Guidelines.

19. We found that the proposed penalty was reasonable and proportionate in the circumstances of this case. It provides specific deterrence to the Respondent and general deterrence to others in the industry. Two hundred thousand dollars is a substantial penalty. It is double the penalty imposed in the earlier 2012 hearing.

20. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

> "Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation."

21. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. We were told by counsel for the MFDA in the present case that the Settlement was the product of extensive negotiation. The Notice of Hearing was issued in December 2016 and was adjourned from time to time in order to try to work out a settlement. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel.

22. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: "It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness." There are many similar statements by MFDA Panels stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated: "A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness." This is particularly so, we should add, when experienced counsel have been the negotiators.

23. The Panel which heard the earlier Investia case took the same approach, citing *Re Milewski* and the quote set out in the previous paragraph.

24. The penalty agreed to in this case clearly falls within "a reasonable range of appropriateness." Moreover, the costs against the Respondent permit the MFDA to recover a portion of the costs attributable to conducting the investigation and the hearing.

25. For the above reasons we accepted the Settlement Agreement.

DATED this 30th day of October, 2017.

"Martin L. Friedland"

Martin L. Friedland, CC, QC
Chair

"Brigitte J. Geisler"

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Industry Representative

"Selwyn Kossuth"

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Industry Representative

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