



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: The Investment House of Canada Inc.,
Sanjiv Sawh and Vlad Trkulja**

Heard: April 9, 2010 in Toronto, Ontario
Reasons for Decision: June 29, 2010

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Terrance Sweeney
Paola Cifelli
Cheryl Hamilton

Chair
Industry Representative
Industry Representative

Appearances:

H.C. Clement Wai

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For the Mutual Fund Dealers Association of
Canada

Ari B. Kulidjian

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For the Respondents

1. We were constituted a hearing panel (“the Hearing Panel”) of the Central Regional Council of the Mutual Fund Dealers Association (“MFDA”) to hear the case against the Respondents as a result of a Notice of Hearing dated November 30, 2009 (“the Notice”).

2. The Notice alleged 13 violations of MFDA Rules, By-laws or Policies, all of which are set out in full in the Notice and which are summarized hereunder:

- (a) Between October 2005 and February 2007, Sanjiv Sawh (“Sawh”) and Vlad Trkulja (“Trkulja”) recommended, sold or facilitated the sale of securities pursuant to exemptions under securities legislation (“exempt securities”) without ensuring that such exempt securities were suitable for their clients and/or that their clients qualified as accredited investors.
- (b) Between October 2005 and February 2007, The Investment House of Canada Inc. (“The Investment House”) approved and sold exempt securities without conducting some due diligence on the risk ranking of the exempt securities to ensure that they were suitable for their clients.
- (c) Between October 2005 and February 2007, The Investment House had no policies to adequately supervise the sale of exempt securities to its clients.
- (d) Between October 2005 and February 2007, The Investment House failed to maintain adequate books and records regarding those of its clients who purchased exempt securities.
- (e) Commencing in or around May 2009, The Investment House failed to produce for inspection and provide copies of documents to the MFDA for the purpose of investigating a client complaint.
- (f) Between June 2006 and September 2006, the Respondents failed to address a potential conflict between them and their clients.

- (g) In or around July 2007, The Investment House breached an Agreement and Undertaking with MFDA Staff.
- (h) Between May 1, 2006 and January 31, 2009, The Investment House had no two-tier compliance structure to adequately supervise client account activity at its branch and head office levels.
- (i) Between May 1, 2006 and January 31, 2009, The Investment House failed to ensure that trades in client accounts were suitable for such clients.
- (j) Between May 1, 2006 and January 31, 2009, The Investment House failed to collect complete New Account Application Forms and Know Your Client information for clients and permitted trading in such accounts.
- (k) Between May 1, 2006 and January 31, 2009, The Investment House did not have an adequate branch review program.
- (l) Between October 2005 and January 31, 2009, Sawh and Trkulja, as directors and officers of The Investment House, engaged in business conduct or practices that were unbecoming or contrary to the public interest.

3. The first appearance took place before the Hearing Panel, by teleconference, on January 14, 2010. The Hearing Panel, at that time, ruled that the Hearing would commence in Toronto on Monday, April 5, 2010, and continue, if necessary, for the following five days.

4. Subsequently, and on consent of the Parties, the Hearing was adjourned until Wednesday, April 7, 2010.

5. The Hearing Panel was informed that settlement discussions were taking place among the Parties and by way of a teleconference the matter was put over to April 9, 2010.

6. The Hearing Panel was told by e-mail, late in the evening of Thursday, April 8, 2010, that the Parties had settled the matter.

7. The Hearing Panel convened the Hearing on April 9, 2010.
8. The Parties asked that the proceedings go into an “in camera” session in order to consider the Settlement Agreement, copies of which had been provided to the Hearing Panel Members.
9. During the in camera session, Members of the Hearing Panel raised some questions and some concerns which led to the Settlement Agreement, as filed, being somewhat modified.
10. The Settlement Agreement was executed after commencement of the Hearing. Accordingly, no further notice of the Settlement Agreement under Rules 15.2(1) of the Rules of Procedure was required.
11. Counsel for the Parties made a number of submissions as to the merits of the Settlement Agreement.
12. The Hearing Panel retired and considered all of the submissions.
13. After due consideration, the Hearing Panel unanimously accepted the Settlement Agreement, attached as Appendix “A”, and made an Order to this effect dated April 9, 2010. Our Reasons for so doing follow.

REASONS

14. The powers of the Hearing Panel are limited by MFDA By-law No. 1, clause 24.4.3. We may accept or reject the Settlement Agreement.
15. The Hearing Panel is well aware of the proper tests to use in evaluating a Settlement Agreement. The Hearing Panel respects the settlement process and will not lightly interfere with a negotiated settlement.
16. Winkler J. (now Chief Justice of Ontario), in another context, set out the principles to be applied in considering a negotiated settlement. In *Gilbert v. Canadian Imperial Bank of*

Commerce, [2004] O.J. 4260, he said:

There is a presumption of fairness when a proposed class settlement negotiated at arms length ... is prepared to the court of approval. A court will only reject a proposed settlement when it finds that the settlement does not fall within a range of reasonableness.

The test to be applied is whether the settlement is fair and reasonable ... This allows for a range of possible results and there is not perfect settlement. Settlement is a product of compromise, which by definition, necessitates give and take...

17. Similar phraseology was used in *Re Milewski*, [1999] I.D.A.C.D. No. 17, at page 9:

... 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.

FACTORS CONSIDERED

18. The primary goal of securities regulation is the protection of the public. See *Pezim v. British Columbia* (Superintendent of Brokers), [1994] 2 S.C.R. 557 at para. 59.

19. The Respondents admitted eleven of the thirteen allegations made against them, all of which we considered serious ones.

20. The centerpiece of the Settlement Agreement is the immediate suspension of the membership of The Investment House in the MFDA until such time as its resignation is accepted. This may be the first time in Canadian securities history that a going concern is wound down as a result of breaches of securities legislation.

21. We believe that this will enhance investor protection and strengthen public confidence in the MFDA.

22. Sawh and Trkulja accepted responsibility for their actions and will pay the fines imposed. More importantly, their reputations have been seriously damaged by the opprobrium they have

attracted through the notoriety of the MFDA investigation and this Hearing.

23. We did consider some mitigating factors.

24. The Respondents agreed to the Settlement Agreement, thus saving the MFDA Staff some costs and the risk of further litigation. This is somewhat tempered, however, in that the Respondents did not settle until the eleventh hours which meant that MFDA Staff had to do all the necessary preparation for a potentially long hearing.

25. The Respondent admitted that they did not do sufficient due diligence in respect of the exempt securities, and more specifically the Golden Gate Funds. MFDA Staff, however, conceded that, even if the Respondents had conducted sufficient due diligence in respect of the Golden Gate Funds, they could not have been expected to detect the fraud associated with Golden Gate Funds, and therefore only a moderate apportionment of blame should be attached to the Respondents for the losses suffered by their clients in relation to the Golden Gate Funds.

26. The Hearing Panel viewed as significant that the Respondents agreed to an orderly wind down of their business and the transfer of client files and accounts to another MFDA Member. This is clearly in the best interests of the Respondents' clients.

PENALTIES

27. The MFDA Penalty Guidelines suggest "suspension or termination in egregious cases". Thus, the suspension of The Investment House as an MFDA Member is the most severe penalty we can impose. The Investment House will not harm the public anymore.

28. The fines imposed on Sawh and Trkulja are the minimum suggested in cases of this kind. However, and as noted above, their reputations have suffered by the public condemnation of their actions. Moreover, for the next three years, if they work in the securities industry it will only be as employees and subject to the review and control of others.

29. In summary, therefore, we believe that the Settlement Agreement and the penalties imposed on the Respondents are reasonable and proportionate and will communicate to others

that this kind of conduct will not be tolerated and will bring severe sanctions against those who might engage in such activity. Thus, confidence in the MFDA will be maintained.

CONFLICT

30. On May 5, 2010, Ms. Hamilton informed Mr. Jason Bennett, Corporate Secretary and Director of Regional Councils of the MFDA, that she had just become aware of a situation that could raise a perception of a conflict of interest between her and the Respondents. Mr. Bennett immediately informed the Chair. Ms. Hamilton recused herself from any further participation in the matter.

31. These Reasons were then drafted by the Chair and Ms. Cifelli.

32. The MFDA By-laws contemplate such a case and allow the Chair and the remaining Industry Member to constitute a two-member Hearing Panel to complete the case. Accordingly, only the Chair and Ms. Cifelli have signed these Reasons. See: MFDA By-law No. 19.9(b).

DATED this 29th day of June, 2010.

“Terrance Sweeney”

Terrance Sweeney,
Chair

“Paola Cifelli”

Paola Cifelli,
Industry Representative



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**Re: The Investment House of Canada Inc.,
Sanjiv Sawh and Vlad Trkulja**

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing dated November 30, 2009, the Mutual Fund Dealers Association of Canada (the "MFDA") announced that it proposed to hold a hearing concerning a disciplinary proceeding commenced by the MFDA against The Investment House of Canada Inc., Sanjiv Sawh and Vlad Trkulja (collectively the "Respondents"). Staff of the MFDA ("Staff") and counsel for the Respondents propose to make a request to the hearing panel of the MFDA Central Regional Council (the "Hearing Panel") to consider whether, pursuant to section 24.4 of By-law No. 1, the Hearing Panel should accept the settlement agreement (the "Settlement Agreement") entered into between Staff and the Respondents.

II. JOINT SETTLEMENT RECOMMENDATION

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

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

4. Staff and the Respondents 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. ACKNOWLEDGEMENT

5. Staff and the Respondents 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 Respondents 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 X) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is approved by the MFDA.

IV. AGREED FACTS

6. The Investment House of Canada Inc. (“The Investment House”) is registered in Ontario as a Mutual Fund Dealer and Limited Market Dealer. The Investment House became a Member of the MFDA on September 12, 2003. The Investment House’s head office is located in Toronto and it has branch offices in Havelock, Ontario and Scarborough, Ontario and a sub-branch office in Peterborough, Ontario.

7. Sanjiv Sawh (“Sawh”) is currently registered as an Officer and Director of The Investment House. Sawh has been the Chief Compliance Officer, Executive Vice President and Managing Director for The Investment House since September 12, 2003.

8. Vlad Trkulja (“Trkulja”) is currently registered as an Officer and Director of The Investment House. Trkulja has been the President and Chief Executive Officer of The Investment House since September 12, 2003.

9. Sawh and Trkulja collectively hold all of the shares of The Investment House.

Sale of Exempt Products

10. Golden Gate Holdings Inc. is an Ontario corporation and is related to GP Golden Gate Ltd., Golden Gate Financial Services and Golden Gate Funds Limited Partnership (“Golden Gate Funds”).

11. At the material time, Golden Gate Funds was a limited partnership which represented that it carried on business investing in premium quality residential and commercial mortgages with the intention of providing its unit holders with steady interest income and preservation of capital.

12. Alterra Asset Management Inc. and Alterra Capital Inc. are related Ontario corporations.

13. Alterra Preferred Equity Real Estate Limited Partnership (“Alterra Equity”) is an Ontario limited partnership which carries on business investing in real estate development projects in Florida and Arizona.

14. Alterra Preferred Equity Fund Real Estate Limited Partnership (“Alterra Fund”) is an Ontario limited partnership which provides its unit holders with exposure to the returns of Alterra Equity.

15. Capmor Leasing Income Fund Limited Partnership invests in secured leasing products and is actively managed by Capmor Financial Services Corporation, an Ontario corporation.

Alterra Equity and Alterra Fund

16. On October 1, 2005, The Investment House entered into an agreement with Alterra Asset Management Inc. to distribute units of Alterra Equity.

17. Between October 2005 and May 2006, Trkulja sold units in Alterra Equity in the approximate amount of \$950,000 to 10 clients.

18. Between October 2006 and February 2007, Trkulja sold units in Alterra Fund in the approximate amount of \$590,000 to 10 clients.

19. In total, The Investment House sold \$1,635,000 of units in Alterra Equity and Alterra Fund to clients.

Golden Gate Funds

20. On December 20, 2005, The Investment House signed a distribution agreement with GP Golden Gate Ltd. to distribute units of the Golden Gate Funds.

21. Between February 1, 2006 and January 20, 2007, Trkulja and Sawh sold units in Golden Gate Funds in the approximate amount of \$1,572,000 to 16 clients.

22. In September 2007, Golden Gate Funds suspended interest payments and redemptions to its unit holders.¹

23. In total, The Investment House sold units in the approximate amount of \$2,960,000 in Golden Gate Funds to clients.

Capmor

24. Between October 26, 2006 and November 29, 2006, Trkulja sold units in Capmor Leasing Income Fund Limited Partnership (“Capmor”) in the approximate amount of \$400,000 to 4 clients.² The Investment House did not charge any sales commissions, with one exception for a solicited purchase.

Sale of exempt products to clients

¹ On October 2, 2009, the Ontario Securities Commission (“OSC”) approved a Settlement Agreement between Staff of the OSC and the respondents Ernest Anderson, Golden Gate Funds LP, et al.

² Trkulja’s sales represented the total sales of Capmor by The Investment House to clients.

25. Between October 2005 to February 2007, Trkulja and Sawh sold one or more of the following investment products to clients:

- (a) Alterra Equity;
- (b) Alterra Fund;
- (c) Golden Gate Funds; and
- (d) Capmor. (collectively the “Exempt Products”)

26. The Exempt Products were offered to clients in reliance on the “accredited investor” and “minimum amount” exemptions set out in sections 2.3 and 2.10 of National Instrument 45-106.

27. The Investment House initially rated the Exempt Products as medium risk investments.

28. On June 19, 2006, MFDA Compliance Staff commenced a compliance examination of The Investment House (the “2006 Examination”), during which Staff advised The Investment House that Staff considered exempt products to be high risk investments. Following the 2006 Examination, based on statements made by MFDA staff, The Investment House changed its risk rating of the Exempt Products to high risk and advised its Approved Persons of the change.

29. Between October 2005 and the 2006 Examination in June 2006, Trkulja and Sawh sold one or more of the Exempt Products to clients without ensuring that the Exempt Products were suitable for some clients and in keeping with the clients’ investment objectives.

30. Following the 2006 Examination, between June 2006 to February 2007, despite The Investment House’s change in the risk rating of the Exempt Products to “high”, Trkulja and Sawh continued to sell one or more of the Exempt Products to clients.

31. Between October 2005 and February 2007, Trkulja and Sawh:

- (a) sold Exempt Products to some clients without ensuring the Exempt Products were suitable for the clients and in keeping with their investment objectives; and
- (b) sold Exempt Products to some clients without ensuring that the clients qualified as accredited investors in accordance with National Instrument 45-106.

32. The Investment House failed to perform a reasonable level of due diligence on the Exempt Products prior to approving them for sale by Approved Persons to clients. The Investment House's failure included but was not limited to:

- (a) not having written policies and procedures in place that described in detail the steps to be followed in the due diligence process; and
- (b) not having adequately assessed the existence and nature of the underlying residential and commercial mortgages in which Golden Gate Funds invested

33. Instead of conducting a fully independent, objective and comprehensive review of the Exempt Products prior to approving them for sale by its Approved Persons, The Investment House relied on and accepted the representations of the issuers of the Exempt Products, including the issuers' compliance officers.

34. Between October 2005 to February 2007, The Investment House approved and allowed the sale of the Exempt Products to some clients without having conducted reasonable due diligence on the nature and appropriate risk ranking of the Exempt Products and without having made reasonable inquiries to determine whether the Exempt Products were suitable for sale to the clients.

Failure to supervise sale of exempt products

35. Between October 2005 and February 2007, The Investment House did not establish, implement and maintain policies and procedures to adequately and effectively supervise the sale of the Exempt Products to its clients. In this regard, The Investment House did not have policies and procedures in place with respect to the information to be provided to clients, to help ensure that clients fully understood the Exempt Products.

Failure to maintain books and records

36. As part of its investigation, MFDA Enforcement Staff requested from The Investment House copies of client files and documents related to the purchase of Golden Gate Funds

37. On January 7, 2009, The Investment House advised that some such documents had been

forwarded to Golden Gate Funds and copies had not been retained by or returned to The Investment House. The Investment House did not maintain adequate notes, records or other documents pertaining to the clients' purchases of the Golden Gate Funds.

38. MFDA Members are required to retain copies of all records and documentation related to client transactions for a period of 7 years, in accordance with MFDA Rule 5.6.

39. Between October 2005 and February 2007, The Investment House did not maintain adequate books, records, documentation and other information regarding clients of The Investment House who had purchased Golden Gate Funds.

Failure to address conflicts of interest

Proposed acquisition of an interest in The Investment House by Alterra Capital

40. The Investment House sold Alterra Equity and Alterra Fund to its clients between October 2005 and February 2007. In February 2006, The Investment House provided notice to the MFDA that it proposed to sell a significant equity interest in The Investment House to Alterra Capital Inc.

41. The proposed transaction with Alterra Capital Inc. did not close.

42. The Investment House did not disclose to its clients who purchased Alterra Equity or Alterra Fund that The Investment House proposed to sell a significant equity interest in Alterra Capital Inc.

Proposed acquisition of an interest in The Investment House by Golden Gate

43. On June 5, 2006, MFDA Staff received a letter from The Investment House requesting permission to sell 51% of The Investment House to Golden Gate Holdings Inc.

44. On June 23, 2006, MFDA Staff approved the proposed acquisition of 51% of The Investment House by Golden Gate Holdings Inc. However, the proposed acquisition did not close.

45. On April 16, 2007, The Investment House and senior management of Golden Gate Holdings Inc. met with MFDA Staff to again request approval for the share purchase of The Investment House by Golden Gate Capital Holdings Inc.

46. By letter dated November 19, 2007, MFDA Staff approved the proposed acquisition of 51% of The Investment House by Golden Gate Capital Holdings Inc., subject to terms and conditions relating to The Investment House's financial institution bond and the Ontario Securities Commission's approval of the transaction being fulfilled on or before December 17, 2007.

47. The proposed transaction did not close and on January 11, 2008, MFDA Staff advised The Investment House that it had failed to fulfill the terms and conditions set out in the letter of November 19, 2007 and as such, the approval for the transaction was withdrawn.

48. As described above, in June 2006 The Investment House requested permission from the MFDA to sell a controlling interest in The Investment House to Golden Gate Holdings Inc. Between June 2006 and January 2007, when permission for the transaction was withdrawn, The Investment House did not disclose to clients who purchased Golden Gate Funds that The Investment House was in negotiations to be acquired by Golden Gate Holdings Inc. and that the proposed acquisition had been approved.

49. In the case of both the Golden Gate and Alterra Capital transactions, the proposed sale of an equity stake in The Investment House to the issuers may have constituted material potential or actual conflicts of interest as The Investment House would have a significant direct or indirect interest in the securities or other products of the issuers being sold to clients.

50. Between February 2006 and February 2007, The Investment House, Trkulja and Sawh did not ensure that actual or potential conflicts between their interests and those of The Investment House's clients were addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4.

The 2006 Compliance Examination

51. In June 2006, the MFDA completed a second round compliance examination of The Investment House which included an assessment of compliance by The Investment House with MFDA By-laws, Rules and Policies for the period from September 1, 2004 to April 30, 2006. The findings of the 2006 Examination were reported to The Investment House in the MFDA Compliance Examination Report dated October 2, 2006 (the “2006 MFDA Report”).

52. The 2006 MFDA Report identified, among other things, deficiencies in the following areas:

- (a) Approval of new accounts;
- (b) Timeliness of branch trade supervision;
- (c) Suitability of investments;
- (d) Adequacy of KYC and suitability information;
- (e) Branch review program; and
- (f) Review for excessive trading

53. During each subsequent negotiation for each proposed acquisition by The Investment House, the Respondents advised MFDA staff that new policies and procedures, as well as the hiring of additional staff, would be implemented following the completion of such transaction(s).

54. On April 10, 2009, the MFDA completed a third round compliance examination of The Investment House (the “2009 Examination”) which included an assessment of compliance by The Investment House with MFDA By-laws, Rules and Policies for the period from May 1, 2006 to January 31, 2009. The 2009 Examination included a review of The Investment House’s head office and the Scarborough and Havelock branches. The findings of the 2009 Examination were reported to The Investment House in the MFDA Compliance Examination Report dated June 25, 2009 (the “2009 MFDA Report”).

55. Prior to being notified of the 2009 Examination, the Respondents had retained Whycrest Consulting to develop and implement new compliance policies and review The Investment House’s business structure. The Respondents advised MFDA staff of this fact prior to the 2009 Examination. Whycrest Consulting was in attendance at the 2009 Examination.

56. The 2009 MFDA Report identified, among other things, that the deficiencies identified in the 2006 MFDA Report described above had not been addressed and remained outstanding. Those repeat deficiencies are reflected in whole or in part, below.

Inadequate head office supervision

57. In the 2009 Examination, Staff of the MFDA determined that The Investment House did not maintain evidence of a two-tier supervision structure consisting of adequate supervision at the head office level in so far as The Investment House

- (a) Did not to maintain evidence of daily head office review of trading activity by Approved Persons at the Havelock and Scarborough branches; and
- (b) Did not to maintain evidence of trade inquiries made, responses received and resolutions achieved where it ought to have appeared to head office compliance staff at The Investment House that a trade may be unsuitable or where a questionable trading pattern ought to have been indentified.

58. Between May 1, 2006 and January 31, 2009, The Investment House did not maintain evidence of adequate supervision at the head office level, contrary to MFDA Rule 2.5 and MFDA Policy No. 2.

59. In the 2009 Examination, Staff of the MFDA determined that The Investment House did not maintain evidence of adequate trade supervision at the branch office level in so far as The Investment House:

- (a) Did not maintain evidence of branch office review of trades by Approved Persons at the Scarborough and Havelock branches; and
- (b) Did not maintain evidence of trade inquiries made, responses received and resolutions achieved where it ought to have appeared to the branch office compliance staff that a trade may be unsuitable.

60. Between May 1, 2006 and January 31, 2009, The Investment House did not maintain evidence of adequate trade supervision at the branch office level, contrary to MFDA Rule 2.5 and MFDA Policy No. 2.

Suitability of trades

61. The 2009 Examination also determined, that between May 1, 2006 and January 31, 2009, The Investment House did not ensure that trades in some client accounts in mutual funds and other securities were suitable for the clients and consistent with the clients' documented investment objectives and KYC information, contrary to MFDA Rule 2.2.1.

62. It is the Respondents' position that in certain instances, the mutual funds and other securities in client accounts became unsuitable due to fluctuations in the values of the securities resulting from then prevailing volatile market conditions.

Failure to maintain complete KYC and NAAF information

63. The Branch Managers and Compliance Officer of The Investment House rely, in part, on the KYC information inputted and stored on its back office system to conduct trade supervision.

64. In the 2009 Examination, Staff of the MFDA identified numerous client accounts where the KYC information maintained in the client file did not match the KYC information recorded on its back office system. In each of these cases, trading occurred in the client accounts.

65. Following the 2006 Examination, The Investment House undertook a change to its back office systems. It is the Respondent's position that this change resulted in some of the inconsistencies in the clients' KYC information.

66. In an email dated April 30, 2007, responding to the 2006 Compliance Examination Report, Sawh, in his capacity as the Chief Compliance Officer of The Investment House, stated that "accounts with missing KYC information will be restricted from trading until updated."

67. The 2009 Examination also identified client files in which:

- (a) There was incomplete or missing NAAF's or KYC information and The Investment House had permitted numerous trades in these accounts during the review period (May 1, 2006 to January 31, 2009); and

(b) In approximately 10% of the client accounts sampled during the 2009 Examination, the NAAF was completed after the initial trade in the account had occurred;

68. The 2009 Examination also identified the following deficiencies with respect to the review and approval of new client accounts:

(a) Accounts without evidence of written approval of the account opening by the Compliance Officer or Branch Manager; and

(b) Accounts where the review and approval of the account opening was not completed in a timely manner.

69. In summary, between May 1, 2006 and January 31, 2009, The Investment House did not collect complete NAAF and KYC information for some client accounts, and permitted trading in such accounts, contrary to MFDA Rules 2.2.1, 2.2.2 and 2.2.3.

Branch Review Program

70. Effective July 24, 2006, MFDA Policy No. 5 (Branch Review Requirements) was approved and came into force. MFDA Policy No. 5 established minimum standards for the development and implementation of branch and sub-branch review procedures by Members with the objective that Members would maximize their ability to detect potential compliance issues and take corrective action before serious problems occur.

71. By letter dated December 21, 2006, The Investment House responded to the 2006 MFDA Report and stated that its branch review program should be completed within a few months.

72. By letter dated January 24, 2007, The Investment House stated to Staff of the MFDA that the content of its branch review program would comply with MFDA Policy No. 5 and all branches and sub-branches would be reviewed within the timeframes setout in MFDA Policy No. 5.

73. The 2009 MFDA Report noted that The Investment House did not, and has not developed a branch review program in accordance with MFDA Policy No. 5 and as a result, has not

conducted any, or adequate, reviews of its branch and sub-branch locations.

74. It is the Respondents' position that branch reviews were conducted but the Respondent admits that it did not maintain evidence of the branch reviews and that the branch reviews did not meet the requirements of MFDA Policy No. 5.

75. Between May 1, 2006 and January 31, 2009, The Investment House did not establish, implement and maintain an adequate branch review program, contrary to MFDA Rule 2.5 and MFDA Policy No. 5 and as a result, did not conduct an adequate review of its branch and sub-branch locations.

Sawh and Trkulja

76. The board of directors of a Member is responsible for ensuring that the Member maintains a compliance program that identifies and addresses material risks of noncompliance.

77. Between October 2005 to January 31, 2009, Trkulja and Sawh, as directors and officers of The Investment House, did not ensure that The Investment House maintained a compliance program that identified and addressed material risks of non-compliance and that appropriate supervision and compliance procedures to manage those risks had been implemented, and more specifically caused The Investment House to breach MFDA By-laws, Rules and Policies, as described above in this Settlement Agreement, contrary to MFDA Rules 2.1.1(c) and 2.5.1 and MFDA Policy 2.

V. CONTRAVENTIONS

78. The Respondents admit:

(a) Between October 2005 and February 2007, Sawh and Trkulja:

- 1) sold Exempt Products to some clients without ensuring the Exempt Products were suitable for the clients and in keeping with their investment objectives; contrary to MFDA Rules 2.2.1 and 2.1.1; and/or
- 2) sold Exempt Products to some clients without ensuring that the clients qualified as accredited investors in accordance with National Instrument 45-106, contrary to MFDA Rule 2.1.1, thereby engaging the jurisdiction

of the Hearing Panel to impose a penalty pursuant to s. 24.1.1(h) of MFDA By-law No. 1.

- (b) Between October 2005 and February 2007, The Investment House approved and allowed the sale of Exempt Products to some clients without having conducted reasonable due diligence on the nature and the appropriate risk ranking of the Exempt Products and without having made reasonable inquiries to determine whether the Exempt Products were suitable for sale to the clients, contrary to MFDA Rule 2.2.1 and 2.1.1.
- (c) Between October 2005 and February 2007, The Investment House did not establish, implement and maintain policies and procedures to adequately and effectively supervise the sale of the Exempt Products to its clients, contrary to MFDA Rules 2.5.1 and 2.1.1 and MFDA Policy No. 2.
- (d) Between October 2005 and February 2007, The Investment House did not maintain adequate books, records, documentation and other information regarding clients of The Investment House who purchased Golden Gate Funds, contrary to MFDA Rule 5.6.
- (e) Between February 2006 and February 2007, The Investment House, Trkulja and Sawh did not ensure that actual or potential conflicts between their interests and those of The Investment House's clients were addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4
- (f) Between May 1, 2006 and January 31, 2009, The Investment House did not maintain evidence of adequate supervision at the head office level, contrary to MFDA Rule 2.5 and MFDA Policy No. 2.
- (g) Between May 1, 2006 and January 31, 2009, The Investment House did not maintain evidence of adequate trade supervision at the branch office level, contrary to MFDA Rule 2.5 and MFDA Policy No. 2.

- (h) Between May 1, 2006 and January 31, 2009, The Investment House did not ensure that trades in some client accounts in mutual funds and other securities were suitable for the clients and consistent with the clients' documented investment objectives and KYC information, contrary to MFDA Rule 2.2.1.
- (i) Between May 1, 2006 and January 31, 2009, The Investment House did not collect complete NAAF and KYC information for some client accounts, and permitted trading in such accounts, contrary to MFDA Rules 2.2.1, 2.2.2 and 2.2.3.
- (j) Between May 1, 2006 and January 31, 2009, The Investment House did not establish, implement and maintain an adequate branch review program, contrary to MFDA Rule 2.5 and MFDA Policy No. 5.
- (k) Between October 2005 to January 31, 2009, Trkulja and Sawh, as directors and officers of The Investment House, did not ensure that The Investment House maintained a compliance program that identified and addressed material risks of non-compliance and that appropriate supervision and compliance procedures to manage those risks had been implemented, and more specifically caused The Investment House to breach MFDA By-laws, Rules and Policies, as described above in this Settlement Agreement contrary to MFDA Rules 2.1.1(c) and 2.5.1 and MFDA Policy 2.

VI. TERMS OF SETTLEMENT

79. The Respondents agree to the following terms of settlement:

- (a) The Investment House's membership in the MFDA shall be subject to the following terms and conditions commencing on the seventh (7th) day after the date of the acceptance of this Settlement Agreement, pursuant to section 24.1.2(f) of MFDA By-law No. 1:

- 1) The Investment House is prohibited from accepting any new clients;
 - 2) The Investment House is prohibited from selling any securities pursuant to any exemptions under applicable securities legislation; and
 - 3) The Investment House is prohibited from recommending or facilitating any leveraged investing strategies.
- (b) The rights and privileges of membership of The Investment House in the MFDA shall be suspended on the thirtieth (30th) day after the date of acceptance of this Settlement Agreement. The Investment House shall immediately tender its resignation and shall remain suspended until such time as its resignation is approved by the MFDA or its rights and privileges of membership are otherwise terminated by the MFDA or a Hearing Panel pursuant to section 24.1.2(c) of MFDA By-law No. 1.
- (c) Sawh and Trkulja agree with the MFDA to provide their full cooperation in the orderly resignation of The Investment House;
- (d) Sawh shall pay a fine in the amount of \$10,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- (e) Trkulja shall pay a fine in the amount of \$10,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- (f) Sawh is prohibited for a period of three (3) years from acting in the capacity of a branch manager, compliance officer or UDP;
- (g) Trkulja is prohibited for a period of three (3) years from acting in the capacity of a branch manager, compliance officer or UDP
- (h) In the event Trkulja or Sawh seeks to become registered as a partner, director or officer of a Member of the MFDA, then Trkulja or Sawh, or both as the case may be, shall successfully complete the Partners Directors and Senior Officers course [or other course acceptable to the MFDA] prior to becoming so registered;

- (i) The Respondents shall together pay costs in the amount of \$10,000, attributable to conducting the investigation and settlement of this matter, pursuant to section 24.2 of MFDA By-law No. 1;
- (j) Sawh and Trkulja shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder; and
- (k) The Respondents shall attend in person at the Settlement Hearing..

VII. STAFF COMMITMENT

80. 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 Respondents or any of its officers or directors 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 X 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 Respondents from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

81. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondents.

82. Staff and the Respondents may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondents 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 Respondents in this matter, and the Respondents agree to waive their 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.

83. Staff and the Respondents agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondents shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.1 and 24.1.2 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.

84. Staff and the Respondents agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondents will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondents from making full answer and defence to any civil or other proceedings against them.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

85. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondents fail to comply with any of the terms of the Settlement Agreement, Staff reserves the right to bring proceedings under the By-laws of the MFDA against the Respondents and any of its officers or directors 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 Respondents agree 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

86. 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 Respondents 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.

87. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondents agree that they 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

88. 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 Respondents and Staff or as may be required by law.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: April 8, 2010

“Samara Mazin”

Witness-signature

“Sanjiv Sawh”

The Investment House of Canada Inc.
[Per: Sanjiv Sawh or Vlad Trkulja]

Samara Mazin

Witness-Print name

“Sanjiv Sawh”

Sanjiv Sawh

Samara Mazin

Witness-Print name

“Vlad Trkulja”

Vlad Trkulja

“Mark Gordon”
Staff of the MFDA
Per: Mark T. Gordon
Executive Vice-President



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: The Investment House of Canada Inc.,
Sanjiv Sawh and Vlad Trkulja**

ORDER

WHEREAS on November 30, 2009, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to sections 20 and 24 of By-law No. 1 in respect of The Investment House of Canada Inc., Sanjiv Sawh ("Sawh") and Vlad Trkulja ("Trkulja", collectively the "Respondents");

AND WHEREAS the Respondents entered into a settlement agreement with Staff of the MFDA, dated April 8, 2010 (the "Settlement Agreement"), in which the Respondents agreed to a proposed settlement of matters for which the Respondents could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that:

- (a) Between October 2005 and February 2007, Sawh and Trkulja sold securities pursuant to exemptions under applicable securities legislation ("exempt securities") to some clients without ensuring that:
- I. the exempt securities were suitable for the clients, and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1; and/or

- II. the clients qualified as accredited investors in accordance with National Instrument 45-106, contrary to MFDA Rule 2.1.1, thereby engaging the jurisdiction of the Hearing Panel to impose a penalty pursuant to s. 24.1.1(h) of MFDA By-law No. 1.
- (b) Between October 2005 and February 2007, The Investment House approved and allowed the sale of exempt securities to some clients without having conducted reasonable due diligence on the nature and the appropriate risk ranking of the exempt securities and without having made reasonable inquiries to determine whether the exempt securities were suitable for sale to the clients, contrary to MFDA Rule 2.2.1 and 2.1.1.
- (c) Between October 2005 and February 2007, The Investment House did not establish, implement and maintain policies and procedures to adequately and effectively supervise the sale of exempt securities to its clients, contrary to MFDA Rules 2.5.1 and 2.1.1 and MFDA Policy No. 2.
- (d) Between October 2005 and February 2007, The Investment House did not maintain adequate books, records, documentation and other information regarding clients of The Investment House who purchased exempt securities, contrary to MFDA Rule 5.6.
- (e) Between February 2006 and February 2007, The Investment House, Trkulja and Sawh did not ensure that actual or potential conflicts between their interests and those of The Investment House's clients were addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4.
- (f) Between May 1, 2006 and January 31, 2009, The Investment House did not maintain evidence of adequate supervision at the head office level, contrary to MFDA Rule 2.5 and MFDA Policy No. 2.
- (g) Between May 1, 2006 and January 31, 2009, The Investment House did not maintain evidence of adequate trade supervision at the branch office level, contrary to MFDA Rule 2.5 and MFDA Policy No. 2.

- (h) Between May 1, 2006 and January 31, 2009, The Investment House did not ensure that trades in some client accounts in mutual funds and other securities were suitable for the clients and consistent with the clients' documented investment objectives and KYC information, contrary to MFDA Rule 2.2.1.
- (i) Between May 1, 2006 and January 31, 2009, The Investment House did not collect complete New Account Application Form and Know-Your-Client information for some client accounts, and permitted trading in such accounts, contrary to MFDA Rules 2.2.1, 2.2.2 and 2.2.3.
- (j) Between May 1, 2006 and January 31, 2009, The Investment House did not establish, implement and maintain an adequate branch review program, contrary to MFDA Rule 2.5 and MFDA Policy No. 5.
- (k) Between October 2005 to January 31, 2009, Trkulja and Sawh, as directors and officers of The Investment House, did not ensure that The Investment House maintained a compliance program that identified and addressed material risks of non-compliance and that appropriate supervision and compliance procedures to manage those risks had been implemented, and more specifically caused The Investment House to breach MFDA By-laws, Rules and Policies, as described in the Settlement Agreement, contrary to MFDA Rules 2.1.1(c) and 2.5.1 and MFDA Policy 2.

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

1. The Investment House's membership in the MFDA shall be subject to the following terms and conditions commencing on the seventh (7th) day after the date of this Order, pursuant to section 24.1.2(f) of MFDA By-law No. 1:
 - (a) The Investment House is prohibited from accepting any new clients;
 - (b) The Investment House is prohibited from selling any securities pursuant to any exemptions under applicable securities legislation; and
 - (c) The Investment House is prohibited from recommending or facilitating any leveraged investing strategies.

2. The rights and privileges of membership of The Investment House in the MFDA shall be suspended on the thirtieth (30th) day after the date of this Order. The Investment House shall immediately tender its resignation and shall remain suspended until such time as its resignation is approved by the MFDA or its rights and privileges of membership are otherwise terminated by the MFDA or a Hearing Panel pursuant to section 24.1.2(c) of MFDA By-law No. 1;
3. Sawh and Trkulja agree with the MFDA to provide their full cooperation in the orderly resignation of The Investment House;
4. Sawh shall pay a fine in the amount of \$10,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
5. Trkulja shall pay a fine in the amount of \$10,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
6. Sawh is prohibited for a period of three (3) years from acting in the capacity of a branch manager, compliance officer or UDP;
7. Trkulja is prohibited for a period of three (3) years from acting in the capacity of a branch manager, compliance officer or UDP;
8. In the event Trkulja or Sawh seeks to become registered as a partner, director or officer of a Member of the MFDA, then Trkulja or Sawh, or both as the case may be, shall successfully complete the Partners Directors and Senior Officers course [or other course acceptable to the MFDA] prior to becoming so registered;
9. The Respondents shall together pay costs in the amount of \$10,000, attributable to conducting the investigation and settlement of this matter, pursuant to section 24.2 of MFDA By-law No. 1;

10. Sawh and Trkulja shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder.

DATED this [day] day of [month], 200[].

Per: _____
Terrance A. Sweeney, Chair

Per: _____
Cheryl Hamilton, Industry Representative

Per: _____
Paola Cifelli, Industry Representative