



**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: Sun Life Financial Investment Services (Canada) Inc.**

Heard: July 24, 2015, in Toronto, Ontario  
Reasons for Decision: October 1, 2015

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

W.A. Derry Millar	Chair
Guenther W. K. Kleberg	Industry Representative
Selwyn Kossuth	Industry Representative

Appearances:

David Halasz	)	For the Mutual Fund Dealers Association of
	)	Canada
	)	
David Di Paolo	)	For the Respondent
	)	
Nicholas DiRenzo	)	President of the Respondent
	)	
Grant Spears	)	Chief Compliance Officer of the Respondent

## INTRODUCTION

1. This Hearing Panel of the Central Regional Council (“Panel”) was convened pursuant to a Notice of Settlement Hearing dated July 6, 2015,<sup>1</sup> to consider whether, pursuant to section 24.4 of By-law No. 1 of the MFDA, the Hearing Panel should accept the settlement agreement dated July 16, 2015, (“Settlement Agreement”), entered into between Staff of the MFDA (“Staff”) and the Respondent, Sun Life Financial Investment Services (Canada) Inc. (“Respondent”).

2. At the commencement of the Hearing, the Panel granted a joint request by Staff and counsel for the Respondent to move the proceedings “*in camera*”. In accordance with Rule 15.2(3), upon acceptance of the Settlement Agreement, the Panel “shall provide reasons for its decision which, along with the record of the settlement hearing, shall be made available to the public.”

3. Prior to the commencement of the Settlement Hearing, the Panel reviewed the Settlement Agreement, the Submissions of Staff of the MFDA and Staff’s Book of Authorities. After considering the submissions of counsel, the Panel announced that it accepted the Settlement Agreement and signed the Order agreed to by the parties. These are the Panel’s reasons for accepting the Settlement Agreement. Accordingly, our reasons and the record of the settlement hearing shall be made available to the public. Attached to these reasons as Schedule ‘1’ is the Settlement Agreement<sup>2</sup> and as Schedule ‘2’ is the Order.

## CONTRAVENTIONS

4. As set out in the Settlement Agreement, “the Respondent admits that between July 24, 2006 and June 2014, the Respondent did not conduct an on-site compliance review of every sub-branch location at least once every three years, contrary to MFDA Policy No. 5 and MFDA Rule 2.5.1.”

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 2.

## **AGREED STATEMENT OF FACTS - TERMS OF SETTLEMENT**

5. The parties have agreed on the facts for the purposes of this proceeding. The agreed statement of facts is set out in the Settlement Agreement. Set out below are extracts from the Settlement Agreement:

### **III. ACKNOWLEDGEMENT**

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 XII) 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**

#### **The Respondent's Registration history and branch structure**

6. The Respondent is registered as a mutual fund dealer, and has been a Member of the MFDA since January 11, 2002.

7. The Respondent's head office is located in Waterloo, Ontario.

8. Between July 2006 and approximately June 2014, the Respondent operated approximately 150 branches each containing four or more Approved Persons, including on-site branch managers. Of its branches, the Respondent operates approximately 90 which it describes as Financial Centres. The Financial Centres are regional offices from which Approved Persons operate and employees of the Respondent oversee other branches and sub-branches in a certain geographical area.

9. In addition, the Respondent operated approximately 800 sub-branches, which are locations that contain three or less Approved Persons and do not have a branch manager on site. The supervision of Approved Persons at sub-branches is conducted by a branch manager operating from a corresponding Financial Centre.

## **Failure to conduct adequate review of the Respondent's sub-branches**

10. On July 24, 2006, MFDA Policy No. 5 came into effect, which requires each MFDA Member to establish a branch<sup>3</sup> review program to effectively assess and monitor compliance with regulatory requirements. Branch reviews are required to be conducted by qualified individuals who are independent from the branch and the branch manager. An MFDA Member is generally expected to perform an on-site review of its branches and sub-branches no less than once every three years, unless the Member can demonstrate the branches that have not been subject to an on-site review are low risk and have been subject to alternative compliance review procedures performed by head office, such as an off-site desk review. Under no circumstances, should a Member never perform an on-site review of a branch.

11. Between July 24, 2006 and June 2014, the Respondent conducted on-site compliance visits of its Financial Centres every 12 to 18 months, at which time it may have also visited one or more of the branches and sub-branches that correspond to a certain Financial Centre. It was the Respondent's policy to interview 10% of all of its Approved Persons at its branches and sub-branches every 12 to 18 months.

12. The Respondent did not adequately track which sub-branches it may have visited.

13. The Respondent's sub-branches were not low-risk. Between July 24, 2006 and June 2014, the Respondent did not conduct an on-site compliance review of every sub-branch location at least once every three years, in accordance with MFDA Policy No. 5. In particular, the Respondent did not visit all of its sub-branches, interview a selection of advisors from each sub-branch, or review client files at each sub-branch.

## **Failure to Adequately Supervise Thomas Bulloch**

### **i) Background**

14. Thomas Bulloch ("Bulloch") is a former Approved Person who was registered as a mutual fund salesperson (now a Dealing Representative) with the Respondent or its predecessors from December 1, 1987 until February 1, 2011. Bulloch retired at the end of April 2010, and his Advisor Agreement with the Respondent ended effective May 1, 2010.

15. Bulloch remained registered and held the title of Associate Advisor to oversee the transition of clients to new advisors at the Respondent, which was completed in early 2011.

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<sup>3</sup> Policy No. 5 provides that references to "branches" include sub-branches.

16. On September 15, 2014, MFDA Staff and Bulloch entered into a settlement agreement (the “Settlement Agreement”), wherein Bulloch admitted, among other things, that:

- a) in 2006, Bulloch was contacted by DH, a representative of Harris Brown & Partners Inc. (“Harris Brown”) which was an entity that promoted investment products offered by, among others, Seaquest Corporation (“Seaquest”) and Seaquest Capital Corporation (“Seaquest Capital”);
- b) Bulloch referred 5 clients and 11 other individuals to DH and Seaquest or Seaquest Capital to purchase investments between December 2007 and September 2011. Based on the results of the MFDA’s investigation the 5 clients made net investments of approximately \$2,055,000 in investment products offered by Seaquest or Seaquest Capital. Seaquest and Seaquest Capital were assigned in bankruptcy, and there is no reasonable prospect of investors in Seaquest or Seaquest Capital recovering all or substantially all of the principal amount of their investments; and
- c) all of the sales or referrals of these products by Bulloch to clients and other individuals were not approved by the Respondent, nor was the Respondent aware of the sales or referrals as they were not processed for its account or through its facilities.

17. On October 30, 2014, a Settlement Hearing was held before a MFDA Hearing Panel, at which time the Hearing Panel ordered that Bulloch be permanently prohibited from acting or being registered as a mutual fund salesperson, pay a fine of \$25,000, and pay costs of \$5,000.

**ii) Failure to conduct on-site review of Thomas Bulloch’s sub-branch**

18. Between July 24, 2006 and October 5, 2010<sup>4</sup>, the Respondent did not conduct an interview of Bulloch, or an on-site review of the sub-branch from which Bulloch operated. Office visits as described in paragraph 23 below were conducted of Bulloch’s sub-branch annually between 2010 and 2012 and a sub-branch audit by compliance was conducted on October 5, 2010.

19. After Bulloch’s referral activities came to the Respondent’s attention in March 2012, the Respondent conducted a post-detection supervisory investigation of files of clients whose accounts were previously serviced by Bulloch.

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<sup>4</sup> On or about October 5, 2010, the Respondent conducted a review of a sub-branch located in Mono, Ontario from which Bulloch had previously operated his business. The Respondent did not interview Bulloch, who although formally registered as an Approved Person with the Respondent until February 2, 2011, had already retired and was no longer party to an Advisor Agreement with the Respondent that had already ended as of May 1, 2010.

20. During its supervisory review, the Respondent identified references to Bulloch's unapproved referral activity located in the Respondent's electronic note recording system maintained by Bulloch, as follows:

- a) reference to DH in a note dated August 12, 2008 pertaining to client DM;
- b) reference to Harris Brown in a note dated September 9, 2008, pertaining to client DM; and
- c) reference to Seaquest in a note dated September 19, 2008 pertaining to client LB.

21. In addition, the Respondent also identified a reference to Seaquest in a handwritten note located in the file of client MM maintained by Bulloch

22. Had the Respondent conducted an on-site compliance review of Bulloch's sub-branch between July 24, 2006 and October 4, 2010 in accordance with MFDA Policy No. 5, including visiting the sub-branch location to interview Bulloch and other Approved Persons and to examine client files, it would have increased the likelihood that the references referred to in paragraph 20 and 21 above would have been discovered.

## **V. THE RESPONDENT'S REPRESENTATIONS**

23. As of 2008, the Respondent had procedures that required its Financial Centre Managers ("FCM") or a member of the financial centre management team to visit each sub-branch location once per year as a minimum requirement in addition to *ad hoc* visits. As part of these visits, interviews were required to be conducted and an inspection performed using a checklist to review for potential off book activities and suspicious transactions. Client file audits were also required to be conducted. During the Respondent's audit of Financial Centre Managers, the adequacy of the branch manager visits was required to be tested by compliance to ensure that the Financial Centre Managers were appropriately executing their responsibilities during these visits. The Respondent acknowledges that any such visits were not sufficient for the purposes of MFDA Policy No. 5 as they were not conducted by compliance staff of the Respondent independent of the sub-branches and, among other things, were not adequate to:

- a) address all significant aspects of the member's policies and procedures manual and MFDA by-laws, rules and policies;
- b) properly assess the supervisory procedures and practices in place at sub-branches, as well as the quality of execution of those procedures; and

- c) ensure that branch supervisors and a selection of other approved persons were interviewed or that the information provided was substantively tested to verify the accuracy of information.

## **VI. CURRENT PRACTICES**

24. Commencing in May 2013, MFDA Staff conducted a compliance examination to assess the Respondent's compliance with MFDA By-laws, Rules and Polices during the period May 1, 2010 to March 31, 2013. Staff identified the Respondent's failure to perform a review of all of its sub-branch locations as required by MFDA Policy No. 5.

25. In or about June 2014, Staff determined that Sun Life had provided an adequate action plan to address the deficiency, including enacting enhanced policies and procedures regarding its branch review program; utilizing a risk based program to ensure that all branch and sub-branch locations are visited within a three year cycle; and tracking and reporting on-site visits.

26. The Respondent represents that it has implemented those revised policies and procedures.

27. The Respondent hereby undertakes to comply with those policies and procedures in the future.

## **VII. MITIGATING FACTORS**

28. The Respondent has at all times cooperated with the MFDA's investigation of the issues that form the subject matter of this Settlement Agreement.

## **IX. TERMS OF SETTLEMENT**

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

- a) the Respondent shall pay a fine of \$50,000 pursuant to s. 24.1.2(b) of MFDA By law No. 1;
- b) the Respondent shall pay costs of \$20,000 pursuant to s. 24.2 of MFDA By law No. 1;
- c) the Respondent shall in the future comply with MFDA Rule 2.5.1 and MFDA Policy No. 5; and
- d) a senior officer of the Member will attend in person, on the date set for the Settlement Hearing.

## ANALYSIS AND DECISION

6. Staff of the MFDA submit that the acceptance of the Settlement Agreement would advance the public interest as the Respondent has admitted to its misconduct and the proposed penalties are reasonable and proportionate having regard to the nature and extent of the Respondent's misconduct and all of the circumstances.

7. Prior to accepting a Settlement Agreement, we must be satisfied that:

- a) the facts admitted to by the Respondent constitute misconduct in contravention of the By-law, MFDA Rules or Policies or provincial securities legislation; and
- b) the penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness bearing in mind the nature and extent of the misconduct and all of the circumstances.

8. We agree with the submissions of Staff as set out in their submissions as follows:

13. Courts and MFDA Hearing Panels have and acknowledge that settlements advance the objective of protecting the public by proscribing activities that are harmful to the public and enabling the parties to reach a flexible remedy that is tailored to address the interests of both the regulator and the Respondent.

*British Columbia Securities Commission v. Seifert*, [2006] B.C. J. No. 225 at pp. 16-17, Staff's Book of Authorities, Tab 5.

14. Hearing Panels have acknowledged in previous decisions that the role of a Hearing Panel at a Settlement Hearing differs from the role of a Hearing Panel at a contested Hearing. As one Hearing Panel stated:

In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, **a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a**

**Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.** As has been said: “The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made.” *Re Clark (Re)*, [1999] I.D.A.C.D. No. 40 at page 3. (Emphasis added.)

*Professional Investments (Kingston) Inc. (Re)*, 2009 LNCMFDA 9 (“*PI Kingston*”) at paras. 12-13, Staff’s Book of Authorities, Tab 6.

15. In past cases, when determining whether it would be appropriate to accept a proposed settlement, MFDA Hearing Panels have taken into account the following considerations:

- a) whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;
- b) whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- c) whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- d) whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- e) whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- f) whether the Settlement Agreement will foster confidence in the integrity of the MFDA; and
- g) whether the Settlement Agreement will foster confidence in the regulatory process itself.

*PI Kingston* at para 14, Staff’s Book of Authorities, Tab 6.

*Cunningham (Re)*, MFDA File No 200906 – Reasons for decision dated February 24, 2010 (“*Cunningham*”) at para 21, Staff’s Book of Authorities, Tab 7.

16. In previous cases, Hearing Panels have also taken into account the following factors when evaluating whether the penalties proposed in a settlement agreement should be accepted:

- a) The seriousness of the contraventions admitted to by the Respondent;
- b) The Respondent's past conduct, experience in the capital markets and disciplinary history;
- c) Whether the Respondent recognizes that the conduct was improper and has demonstrated remorse;
- d) The harm suffered by investors as a result of the Respondent's conduct;
- e) Whether the settlement agreement addresses both specific and general deterrence and will tend to prevent both the Respondent and others who participate in the capital markets from engaging in similar improper activity in the future;
- f) Whether acceptance of the settlement agreement would be in the public interest as the penalties agreed upon will protect investors and are reasonable and proportionate having regard to the conduct of the Respondent;
- g) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets, the MFDA and the regulatory process; and
- h) Previous decisions in similar circumstances.

*Cunningham*, p. 14, Staff's Book of Authorities, Tab 7.

9. In considering the applicable criteria, Staff submit that:

- a) the contravention that the Respondent has admitted to is serious.
- b) the Respondent has accepted responsibility for its misconduct. The Respondent has cooperated with Staff in their investigation; revised its policies and procedures to address deficiencies identified in them; and entered into the Settlement Agreement which substantially reduced the length and complexity of the disciplinary proceeding that might have otherwise been necessary.

- c) the Respondent has undertaken to comply with the revised policies and procedures in the future;
- d) the proposed penalty will accomplish the goals of specific and general deterrence by sending a clear message to the Respondent and to other Members of the MFDA that the contravention that arose in this case is serious and the disciplinary consequences of such contraventions are significant;
- e) it would be in the public interest to accept the Settlement Agreement, which is a result of significant negotiations between the parties and conveys clearly that the Respondent's misconduct constituted a serious regulatory contravention that has resulted in significant penalties;
- f) the penalties agreed upon in the Settlement Agreement are consistent with the range of penalties ordered by Hearing Panels in previous settlement hearings involving contraventions by Members related to compliance deficiencies; and
- g) the penalties agreed to by the Respondent are consistent with the MDFA penalty guidelines. The fine agreed to by the Respondent of \$50,000 exceeds the minimum recommended fine of \$25,000 which supports Staff's view that the penalties proposed in the Settlement Agreement fall within the reasonable range of appropriateness for the misconduct that the Respondent has admitted.

10. The Respondent agreed with the submissions of Staff and submitted that:

- a) the Respondent recognizes the seriousness of the issue. The Respondent settled, cooperated at all times with Staff, and the two most senior individuals responsible for compliance at the Respondent attended the hearing;
- b) this was not an issue of complete neglect. As noted at page 6 of the Settlement Agreement in paragraph 23 under the heading "The Respondent's Representations", there is a summary of the steps that the Respondent did take to visit the sub- branches which, while not compliant with Policy No. 5, demonstrated that there were visits to the sub- branches, interviews were taking place and reviews of files were taking place;

- c) this is a historical issue as the underlying issue has been corrected and rectified; and
- d) the penalty agreed to is proportional, in the public interest and consistent with the penalties imposed in settlement hearings.

11. The Panel posed a question to the Respondent with respect to the size of the penalty in relation to the size of the Respondent and the fact that the cases appeared to assess relatively larger penalties for what appeared to be smaller organizations. The Panel's concern being that "the pain for a smaller organization is greater than the pain for a larger organization"; whether, when you take that into account, the penalty being proposed is proportional. The Respondent submitted that the breach before us was a single breach whereas the precedents provided to us by Staff, *Queensbury Strategies Inc.(Re)*<sup>5</sup>, *Portfolio Strategies Corporation (Re)*<sup>6</sup>, *Professional Investment Services (Canada) Inc. (Re)*<sup>7</sup>, *Monarch Wealth Corporation (Re)*<sup>8</sup>, *FundEX Investments Inc. (Re)*<sup>9</sup> and *Investia Financial Services Inc. (Re)*<sup>10</sup>, all involved multiple widespread compliance breaches. The Respondent submitted that while *Queensbury*, *Portfolio Strategies*, *Professional Investment*, and *Monarch Wealth* involved smaller companies, *FundEX* and *Investia* are both subsidiaries of Industrial Alliance and are similarly situated to the Respondent.

12. The penalty in the *FundEX* proceeding for multiple breaches was a \$100,000 fine and \$15,000 in costs. The penalty in the *Investia* proceeding for multiple breaches was also a \$100,000 fine and \$15,000 in costs. Here, there was one breach and the fine being proposed is \$50,000 and \$20,000 in costs. We agree with the Respondent that in relation to the *FundEX* and *Investia* proceedings, the penalty being proposed for the Respondent is proportional.

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<sup>5</sup> (2011), MFDA File No. 201033, Reasons for Decision dated September 1, 2011, and Settlement Agreement dated June 29, 2011.

<sup>6</sup> (2013), MFDA File No. 201122, Reasons for Decision dated February 13, 2013.

<sup>7</sup> (2009), MFDA File No. 200928, Reasons for Decision dated October 29, 2009, and Settlement Agreement dated October 6, 2009.

<sup>8</sup> (2011), MFDA File No. 201019, Reasons for Decision dated February 6, 2012, and Settlement Agreement dated December 12, 2011.

<sup>9</sup> (2012), MFDA File No. 200932, Reasons for Decision dated March 26, 2012, and Settlement Agreement dated December 16, 2011.

<sup>10</sup> (2012), MFDA File No. 2001031, Reasons for Decision dated March 26, 2012, and Settlement Agreement dated December 15, 2011.

13. We agree and find that the facts admitted to by the Respondent constitute misconduct in contravention of MDFA Policy No. 5 and MFDA Rule 2.5.1. We also agree with the submissions of Staff and the Respondent as summarized in paragraphs 9 and 10 above that the Settlement Agreement meets the objectives of the MFDA By-laws, Rules and Policies, and is in the public interest.

14. The President and the Chief Compliance Officer of the Respondent both attended the Settlement Hearing in compliance with the Settlement Agreement which provided “a senior officer of the Member will attend in person, on the date set for the Settlement Hearing.”

15. Accordingly, we accepted the Settlement Agreement and signed the Order presented to us at the hearing which provided for the following penalty<sup>11</sup>:

- a) the Respondent shall pay a fine of \$50,000 pursuant to s. 24.1.2(b) of MFDA By law No. 1;
- b) the Respondent shall pay costs of \$20,000 pursuant to s. 24.2 of MFDA By law No. 1; and
- c) the Respondent shall in the future comply with MFDA Rule 2.5.1 and MFDA Policy No. 5.

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<sup>11</sup> The Order also provided “if at any time a non-party to this proceeding requests production of, or access to, any materials filed in, but the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.”

**DATED** this 1<sup>st</sup> day of October, 2015.

“W.A. Derry Millar”

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W.A. Derry Millar  
Chair

“Guenther W. K. Kleberg”

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Guenther W. K. Kleberg  
Industry Representative

“Selwyn Kossuth”

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## Schedule '1'

## Settlement Agreement

File No. 201520



**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: Sun Life Financial Investment Services (Canada) Inc.**

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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 By-law No. 1, a hearing panel of the Central 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 the Respondent, Jarnail S. Kahlon.

### **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 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. ACKNOWLEDGEMENT**

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 XII) 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**

#### **The Respondent’s Registration history and branch structure**

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7. The Respondent’s head office is located in Waterloo, Ontario.

8. Between July 2006 and approximately June 2014, the Respondent operated approximately 150 branches each containing four or more Approved Persons, including on-site branch managers. Of its branches, the Respondent operates approximately 90 which it describes as Financial Centres. The Financial Centres are regional offices from which Approved Persons

operate and employees of the Respondent oversee other branches and sub-branches in a certain geographical area.

9. In addition, the Respondent operated approximately 800 sub-branches, which are locations that contain three or less Approved Persons and do not have a branch manager on site. The supervision of Approved Persons at sub-branches is conducted by a branch manager operating from a corresponding Financial Centre.

### **Failure to conduct adequate review of the Respondent's sub-branches**

10. On July 24, 2006, MFDA Policy No. 5 came into effect, which requires each MFDA Member to establish a branch<sup>12</sup> review program to effectively assess and monitor compliance with regulatory requirements. Branch reviews are required to be conducted by qualified individuals who are independent from the branch and the branch manager. An MFDA Member is generally expected to perform an on-site review of its branches and sub-branches no less than once every three years, unless the Member can demonstrate the branches that have not been subject to an on-site review are low risk and have been subject to alternative compliance review procedures performed by head office, such as an off-site desk review. Under no circumstances, should a Member never perform an on-site review of a branch.

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at least once every three years, in accordance with MFDA Policy No. 5. In particular, the Respondent did not visit all of its sub-branches, interview a selection of advisors from each sub-branch, or review client files at each sub-branch.

## **Failure to Adequately Supervise Thomas Bulloch**

### **i) Background**

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- (a) in 2006, Bulloch was contacted by DH, a representative of Harris Brown & Partners Inc. (“Harris Brown”) which was an entity that promoted investment products offered by, among others, Sequest Corporation (“Sequest”) and Sequest Capital Corporation (“Sequest Capital”);
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- (c) all of the sales or referrals of these products by Bulloch to clients and other individuals were not approved by the Respondent, nor was the Respondent aware of the sales or referrals as they were not processed for its account or through its facilities.

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20. During its supervisory review, the Respondent identified references to Bulloch's unapproved referral activity located in the Respondent's electronic note recording system maintained by Bulloch, as follows:

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<sup>2</sup> On or about October 5, 2010, the Respondent conducted a review of a sub-branch located in Mono, Ontario from which Bulloch had previously operated his business. The Respondent did not interview Bulloch, who although formally registered as an Approved Person with the Respondent until February 2, 2011, had already retired and was no longer party to an Advisor Agreement with the Respondent that had already ended as of May 1, 2010.

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21. In addition, the Respondent also identified a reference to Seaquest in a handwritten note located in the file of client MM maintained by Bulloch

22. Had the Respondent conducted an on-site compliance review of Bulloch's sub-branch between July 24, 2006 and October 4, 2010 in accordance with MFDA Policy No. 5, including visiting the sub-branch location to interview Bulloch and other Approved Persons and to examine client files, it would have increased the likelihood that the references referred to in paragraph 20 and 21 above would have been discovered.

## **V. THE RESPONDENT'S REPRESENTATION**

23. As of 2008, the Respondent had procedures that required its Financial Centre Managers ("FCM") or a member of the financial centre management team to visit each sub-branch location once per year as a minimum requirement in addition to *ad hoc* visits. As part of these visits, interviews were required to be conducted and an inspection performed using a checklist to review for potential off book activities and suspicious transactions. Client file audits were also required to be conducted. During the Respondent's audit of Financial Centre Managers, the adequacy of the branch manager visits was required to be tested by compliance to ensure that the Financial Centre Managers were appropriately executing their responsibilities during these visits. The Respondent acknowledges that any such visits were not sufficient for the purposes of MFDA Policy No. 5 as they were not conducted by compliance staff of the Respondent independent of the sub-branches and, among other things, were not adequate to:

- a) address all significant aspects of the member's policies and procedures manual and MFDA by-laws, rules and policies;
- b) properly assess the supervisory procedures and practices in place at sub-branches, as well as the quality of execution of those procedures; and

- c) ensure that branch supervisors and a selection of other approved persons were interviewed or that the information provided was substantively tested to verify the accuracy of information.

## **VI. CURRENT PRACTICES**

24. Commencing in May 2013, MFDA Staff conducted a compliance examination to assess the Respondent's compliance with MFDA By-laws, Rules and Polices during the period May 1, 2010 to March 31, 2013. Staff identified the Respondent's failure to perform a review of all of its sub-branch locations as required by MFDA Policy No. 5.

25. In or about June 2014, Staff determined that Sun Life had provided an adequate action plan to address the deficiency, including enacting enhanced policies and procedures regarding its branch review program; utilizing a risk based program to ensure that all branch and sub-branch locations are visited within a three year cycle; and tracking and reporting on-site visits.

26. The Respondent represents that it has implemented those revised policies and procedures.

27. The Respondent hereby undertakes to comply with those policies and procedures in the future.

## **VII. MITIGATING FACTORS**

28. The Respondent has at all times cooperated with the MFDA's investigation of the issues that form the subject matter of this Settlement Agreement.

## **VIII. CONTRAVENTIONS**

29. The Respondent admits that between July 24, 2006 and June 2014, the Respondent did not conduct an on-site compliance review of every sub-branch location at least once every three years, contrary to MFDA Policy No. 5 and MFDA Rule 2.5.1.

## **IX. TERMS OF SETTLEMENT**

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

- a) the Respondent shall pay a fine of \$50,000 pursuant to s. 24.1.2(b) of MFDA By law No. 1;
- b) the Respondent shall pay costs of \$20,000 pursuant to s. 24.2 of MFDA By law No. 1;
- c) the Respondent shall in the future comply with MFDA Rule 2.5.1 and MFDA Policy No. 5; and
- d) a senior officer of the Member will attend in person, on the date set for the Settlement Hearing.

## **X. STAFF COMMITMENT**

31. 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 contraventions described in Part VIII of this Settlement Agreement, subject to the provisions of Part XII below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in Parts IV and VIII 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 VIII, 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.

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

32. 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 Respondent.

33. 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 its 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.

34. 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. 24.1.2 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.

35. 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 it.

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

36. 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.

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

37. 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.

38. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it 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.

### **XIV. DISCLOSURE OF AGREEMENT**

39. 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.

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

### **XV. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 16<sup>th</sup> day of July, 2015.

“Vicken Kazazian”

\_\_\_\_\_  
Name: Vicken Kazazian  
Title: Chairman of the Board and  
Director

“Brigitte Parent”

\_\_\_\_\_  
Name: Brigitte Parent  
Title: Director

“David J. McKee”

\_\_\_\_\_  
Witness – Signature

David J. McKee

\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”

\_\_\_\_\_  
Staff of the MFDA  
Per: Shaun Devlin  
Senior Vice-President,  
Member Regulation – Enforcement

**Schedule “A”**

**Order**

**File No. 201520**



**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: Sun Life Financial Investment Services (Canada) Inc.**

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**ORDER**

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of [Respondent] (the “Respondent”);

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (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** the Hearing Panel is of the opinion that between July 24, 2006 and June 2014, the Respondent did not conduct a review of every sub-branch location at least once every three years, contrary to MFDA Policy No. 5 and MFDA Rule 2.5.1;

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

1. The Respondent shall pay a fine of \$50,000 pursuant to s. 24.1.2(b) of MFDA By law No. 1;
2. The Respondent shall pay costs of \$20,000 pursuant to s. 24.2 of MFDA By law No. 1;
3. The Respondent shall in the future comply with MFDA Rule 2.5.1, and MFDA Policy No. 5; and
4. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or 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]



**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: Sun Life Financial Investment Services (Canada) Inc.**

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**ORDER**

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**WHEREAS** on July 6, 2015, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Sun Life Financial Investment Services (Canada) Inc. (the “Respondent”);

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated July 16, 2015 (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** the Hearing Panel is of the opinion that between July 24, 2006 and June 2014, the Respondent did not conduct a review of every sub-branch location at least once every three years, contrary to MFDA Policy No. 5 and MFDA Rule 2.5.1.

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

5. The Respondent shall pay a fine of \$50,000 pursuant to s. 24.1.2(b) of MFDA By law No. 1;
6. The Respondent shall pay costs of \$20,000 pursuant to s. 24.2 of MFDA By law No. 1;
7. The Respondent shall in the future comply with MFDA Rule 2.5.1, and MFDA Policy No. 5; and
8. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

**DATED** this 29<sup>th</sup> day of July, 2015.

“W.A. Derry Millar”

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W.A. Derry Millar  
Chair

“Guenther Kleberg”

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Guenther Kleberg  
Industry Representative

“Selwyn Kossuth”

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Selwyn Kossuth  
Industry Representative