



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue queen ouest  
Toronto ON M5H 3S8

---

**IN THE MATTER OF THE *SECURITIES ACT*  
R.S.O. 1990, c. S.5, AS AMENDED**

**-AND-**

**IN THE MATTER OF  
HERITAGE EDUCATION FUNDS INC.**

**SETTLEMENT AGREEMENT**

**PART I – INTRODUCTION**

1. The Ontario Securities Commission (the “Commission”) will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), it is in the public interest for the Commission to make certain orders in respect of Heritage Education Funds Inc. (“HEFI”).

**PART II – JOINT SETTLEMENT RECOMMENDATION**

2. Staff of the Commission (“Staff”) agrees to recommend settlement of the proceeding commenced by Notice of Hearing dated January 6, 2015 (the “Proceeding”) against HEFI according to the terms and conditions set out below in this agreement (the “Settlement Agreement”). HEFI agrees to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

**PART III – AGREED FACTS**

3. For the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, HEFI agrees with the facts as set out in Part III of this Settlement Agreement.

**Overview**

4. HEFI has been the subject of three compliance field review reports since 2000 by Staff of the Compliance and Registrant Regulation Branch (“CRR Staff”). HEFI also had previous terms and conditions imposed on its registration by CRR Staff from April 16, 2003 to October 28, 2003 and from July 9, 2004 to March 28, 2005. The last compliance field review report dated June 14, 2012 (the “2012 Compliance Report”) identified numerous compliance deficiencies. In some cases, CRR Staff found HEFI to be deficient in similar areas to those previously identified as containing deficiencies.
5. On August 13, 2012, the Commission issued a temporary section 127 order (the “Temporary Order”) with HEFI’s consent, which imposed terms and conditions (“Terms and Conditions”) on HEFI’s registration. The Terms and Conditions required HEFI to: (a) retain an independent consultant (the “Consultant”) to prepare and assist HEFI to implement a plan to strengthen its compliance system; (b) retain an independent monitor (the “Monitor”) to use best efforts to review new client applications for the purpose of ensuring adequate know your client (“KYC”) information in order to determine suitability of the investment and to use best efforts to contact certain new clients to confirm: (i) the accuracy of the client’s KYC information; (ii) the investment is suitable for the client; and (iii) the client understands the fee structure of the investment.
6. From time to time, the Temporary Order was extended and amended with HEFI’s consent.
7. On October 12, 2012, the Consultant delivered a Consultant’s plan (the “Consultant’s Plan”) which set out a plan to revise HEFI’s compliance policies and procedures including amending HEFI’s application form and KYC processes and to require additional organizational and policy improvements as summarized below in paragraphs 26 and 28.
8. On December 17, 2012, January 22, 2013, and October 1, 2013, the Consultant delivered addendums to the Consultant’s Plan (the “Addendums”).
9. The Consultant has confirmed in its attestation letter dated April 21, 2014 that HEFI has implemented the procedures and controls recommended by the Consultant that address each

of the deficiencies identified in the 2012 Compliance Report and that strengthen the compliance system. The Consultant specifically attests that HEFI has implemented an adequate compliance and supervisory structure tailored to its business, and that HEFI is complying with the new procedures and controls, which appear to be working effectively and are being enforced.

10. HEFI has agreed to adhere to the revised internal controls, supervision and policies and procedures developed during the implementation of the Consultant's Plan and the Addendums.
11. Given HEFI's implementation of the Consultant's Plan and the Addendums, HEFI's cooperation to date and HEFI's agreement to adhere to the revised internal controls, supervision and policies and procedures set out in the Consultant's Plan and the Addendums, the parties agree to settle the Proceeding on the basis that: (a) HEFI will provide the OSC Manager as defined in the Terms and Conditions with a report by the Consultant by no later than March 12, 2016. The report by the Consultant will be based on a work plan to be agreed upon jointly by HEFI, the Consultant and the OSC Manager by no later than February 23, 2015 and will report on whether the revised policies and procedures and internal controls set out in the Consultant's Plan and the Addendums, as well as any subsequent revisions thereto are: (i) being followed by HEFI; (ii) working appropriately; and (iii) being adequately administered and enforced by HEFI, such report to include a description of the Consultant's testing to support its conclusions for the 12 month period ending January 12, 2016; and (b) HEFI will receive a reprimand from the Commission.

**Heritage Education Funds Inc. (“HEFI”)**

12. HEFI offers two types of education savings plans (the “Plans”). The Plans are administered by the Heritage Educational Foundation (the “Foundation”).
13. HEFI distributes the Plans which are registered as registered education savings plans under the *Income Tax Act*, R.S.C. 1985, c.1 (5<sup>th</sup> Supp.), as amended.
14. HEFI, formerly known as Canadian American Financial Corporation (Canada) Limited and Allianz Education Funds Inc., was incorporated in or about 1965.
15. HEFI became registered with the Commission as a dealer in the category of scholarship plan dealer (“SPD”) in or about 1988. HEFI became registered as an investment fund manager on or about February 15, 2011.

**Previous Compliance Reviews and Previous Terms and Conditions**

16. HEFI has been the subject of three previous compliance reviews conducted by CRR Staff.
17. On April 16, 2003, terms and conditions were imposed on HEFI’s registration which included filing year-to-date unaudited financial statements and monthly reports calculating excess working capital.
18. A compliance field review report by CRR Staff dated August 26, 2003 identified a number of compliance deficiencies including: (i) inadequate supervision of sales representatives; (ii) inadequate collection and documentation of KYC information; (iii) inadequate training and testing of dealing representatives (“DRs”); (iv) branch managers (“BMs”) not involved in reviewing suitability; (v) inadequate systems to monitor leveraging; (vi) inadequate review of branch trading reports; (vii) use of misleading marketing materials and business cards; and (viii) improper third party business arrangements.

19. A compliance field review report by CRR Staff dated June 23, 2004 identified a number of compliance deficiencies, including some of the same deficiencies identified in the compliance field review report dated August 26, 2003.
20. On July 9, 2004, terms and conditions were imposed on HEFI's registration which included filing monthly progress reports with the OSC Manager, detailing the actions taken to resolve the identified deficiencies.

### **2012 Compliance Report**

21. From approximately November 30, 2011 to January 13, 2012, CRR Staff conducted a compliance review at HEFI's head office in Toronto, Ontario and at various branch locations in the Greater Toronto Area. On June 14, 2012, CRR Staff issued the 2012 Compliance Report which identified the following deficiencies: (i) HEFI lacked an adequate system of compliance controls and supervision; (ii) HEFI's head office did not adequately discharge its obligations as a registered firm to supervise DRs; (iii) ineffective branch audits; (iv) failure to respond to control weakness over non-financial changes in respect to KYC information; (v) failure to adequately monitor the restricted terms and conditions imposed on certain DRs; (vi) commissions paid to non-registered companies; (vii) failure to monitor terms and conditions on DRs; (viii) inadequate collection and documentation of KYC information for each of HEFI's clients for the purpose of assessing suitability; (ix) inadequate suitability assessment, including concerns over the affordability guidelines used to assess trade suitability; (x) ineffective trade review process; (xi) unsuitable investments; (xii) high pressure sales tactics; (xiii) insufficient or inadequate knowledge by certain DRs of HEFI's Plans; and (xiv) misleading, inaccurate or unsubstantiated claims in marketing materials.

### **Temporary Order dated August 13, 2012**

22. On August 13, 2012, the Commission issued the Temporary Order with HEFI's consent which imposed Terms and Conditions on HEFI's registration. The Terms and Conditions required HEFI to retain the Consultant to: (a) prepare, and assist HEFI to implement, a plan to strengthen its compliance system within the meaning of section 11.1 of National

Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”); and (b) make recommendations to rectify all identified compliance deficiencies raised in the 2012 Compliance Report. The Terms and Conditions also required HEFI to retain the Monitor to use best efforts to review new client applications for the purpose of ensuring adequate KYC information in order to determine suitability of the investment and to use best efforts to contact certain new clients to confirm: (i) the accuracy of the client’s KYC information; (ii) the investment is suitable for the client; and (iii) the client understands the fee structure of the investment.

23. The OSC Manager, as referred to in the Terms and Conditions, approved Deloitte and Touche (“Deloitte”) as the Consultant and Monitor. On June 12, 2013, the OSC Manager approved Compliance Support Services Inc. to replace Deloitte as the Consultant, to continue and complete implementation of the Consultant’s Plan.

**Consultant’s Plan dated October 12, 2012, as Amended December 17, 2012, January 22, 2013 and October 1, 2013**

24. On October 12, 2012, the Consultant provided Staff with the Consultant’s Plan to strengthen HEFI’s compliance systems.
25. The Consultant’s Plan listed specific recommendations to address the deficiencies set out in the 2012 Compliance Report.
26. After a request from Staff for the Consultant’s Plan to include more details about the roles and responsibilities of the head office compliance staff in enhancing the compliance structure, including but not limited to trade reviews, review and approval of marketing materials, and monitoring terms and conditions on dealing representatives, the Consultant delivered a 44 page amended Consultant’s Plan on January 22, 2013. The Consultant’s Plan and the Addendums set out recommendations, action items, responsible persons and targeted completion dates for reviews of and/or improvements to:
  - (a) compliance policies and systems;
  - (b) the suitability assessment process including the collection of further KYC and suitability information;

- (c) training for HEFI's DRs;
- (d) the enhancement of compliance human resources;
- (e) client statements;
- (f) website and marketing material;
- (g) insurance requirements; and
- (h) registration processes.

### **Implementation of the Consultant's Plan and Addendums**

27. The Terms and Conditions required the Consultant to provide monthly progress reports detailing HEFI's progress with respect to the implementation of the Consultant's Plan for each recommendation. The Consultant delivered progress reports to Staff on February 27, March 27, April 26, May 27, July 22, September 3, October 3, November 4, December 9, 2013, February 3, and March 31, 2014 which reported on the implementation of the Consultant's Plan and Addendums.
28. The Consultant's Plan and the Addendums together with the subsequent progress reports noted in paragraph 27 required the following action steps to improve the collection of KYC and suitability information:
- (a) develop new affordability guidelines focusing on cash flow and the debt/contractual investment servicing ratio;
  - (b) develop new supplemental KYC information form capturing information needed for affordability guidelines, including net worth inclusive of liquid assets, fixed assets, total liabilities, and net disposable income in specified circumstances;
  - (c) enhance the suitability assessment process to include the amendments recommended in the draft RESP Dealers Association of Canada Guideline on KYC and Suitability (September 14, 2012), along with certain additional items of mandatory information;
  - (d) conduct KYC form and plan disclosure training for DRs, BMs, head office staff, Provincial Compliance Officers ("PCOs"), and other staff;
  - (e) review training material and replace any high pressure sales tactics with

material focusing on know your product (“KYP”) information outlining risks and benefits of each plan type;

- (f) develop new trade review assessment and approval processes including those for BMs, Provincial Trading Officers (“PTOs”) and head office staff;
  - (g) develop new KYC update and enrolment application review and approval processes;
  - (h) redesign enrolment application and KYC form in order to have all KYC information on the KYC form; and
  - (i) conduct training for revised forms, new trade review procedures, new KYC update procedures and new enrolment application review procedures for DRs, BMs, PCOs, head office staff, and other staff.
29. By progress report dated March 31, 2014, the Consultant confirmed that HEFI’s compliance systems have been fully remediated and every deficiency raised in the 2012 Compliance Report has been addressed and corrected.
30. In the Consultant’s attestation letter dated April 21, 2014, the Consultant stated that: (i) to the best of its knowledge and belief, HEFI has implemented the procedures and controls recommended by the Consultant to address each of the deficiencies identified in the 2012 Compliance Report and that strengthen HEFI’s compliance system, including that the firm has implemented an adequate compliance and supervisory structure tailored to its business; (ii) to the best of its knowledge and belief and based on the Consultant’s design and review of the system and structures and its verification of the system and structures, HEFI is complying with the new procedures and controls; and (iii) the Consultant reviewed and verified the procedures and they appear to be working effectively and appear to be being enforced.

### **Role of Monitor**

31. From September 11, 2012 to September 13, 2013, the Monitor reviewed 8,472 New Client applications, called 3,594 New Clients and HEFI unwound 172 new client applications based on the KYC information gathered by HEFI. In the 172 cases, the



Monitor determined based on the new client's KYC Information and HEFI suitability policies, that the 172 investments were not suitable.

32. On September 6, 2013, the Commission ordered the role of the Monitor suspended effective September 16, 2013 after reviewing a letter from the Consultant dated September 3, 2013 stating that the monitoring of HEFI's new client applications was no longer necessary.

### **HEFI'S POSITION**

33. HEFI acknowledges that changes were required to strengthen its compliance system so as to better serve the public interest.
34. Upon receipt of the 2012 Compliance Report, HEFI immediately set out to address the compliance deficiencies highlighted in the report, particularly the KYC and suitability deficiencies. Initial changes were implemented prior to the Consultant being retained or their plan being reviewed or approved by Staff.
35. HEFI has worked with the Consultant and the Monitor to ensure that the Terms and Conditions imposed by the Commission on August 13, 2012 were fully implemented.
36. As at November 20, 2014, HEFI had incurred \$4,910,143.79 inclusive of HST in Consultant and Monitor costs as a result of the implementation of the Terms and Conditions.
37. HEFI has co-operated with Staff and consented to the Temporary Order which imposed the Terms and Conditions and consented to other Commission orders which extended the Temporary Order and varied the Terms and Conditions.
38. HEFI has agreed to adhere to the revised internal controls, supervision and policies and procedures in all provincial and territorial jurisdictions in Canada in which HEFI is

registered and as referenced in the Consultant's Plan and the progress reports.

#### **PART IV – CONDUCT TO BETTER SERVE THE PUBLIC INTEREST**

39. By engaging in the conduct described above, HEFI admits and acknowledges that its compliance system did not meet reasonable compliance practices and that changes were required to strengthen its compliance system so as to better serve the public interest.

#### **PART V – TERMS OF SETTLEMENT**

40. HEFI agrees to the terms of settlement listed below.
41. The Commission will make an order pursuant to subsection 127(1) of the Act that:
- (a) this Settlement Agreement is approved;
  - (b) pursuant to clause 4 of subsection 127(1) of the Act, no later than March 12, 2016, HEFI will provide the OSC Manager as defined in the Terms and Conditions with a report by the Consultant, based on a work plan to be agreed upon jointly by HEFI, the Consultant and the OSC Manager, which reports on whether the revised policies and procedures and internal controls set out in the Consultant's Plan and the Addendums as well as any subsequent revisions thereto are: (i) being followed by HEFI; (ii) working appropriately; and (iii) being adequately administered and enforced by HEFI, such report to include a description of the Consultant's testing to support its conclusions for the 12 month period ending January 12, 2016; and
  - (c) pursuant to clause 6 of subsection 127(1) of the Act, HEFI is reprimanded.

#### **PART VI – STAFF COMMITMENT**

42. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law against HEFI in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 43 below.
43. If the Commission approves this Settlement Agreement and, at any subsequent time,

HEFI fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against HEFI. These proceedings may be based on, but not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

#### **PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT**

44. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for January 12, 2015, or on another date agreed to by Staff and HEFI, according to the procedures set out in this Settlement Agreement and the Commission's *Rules of Procedure*.
45. Staff and HEFI agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on HEFI's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
46. If the Commission approves this Settlement Agreement, HEFI agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
47. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
48. Whether or not the Commission approves this Settlement Agreement, HEFI will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

#### **PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT**

49. If the Commission does not approve this Settlement Agreement or does not make the

order attached as Schedule “A” to this Settlement Agreement:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and HEFI before the settlement hearing takes place will be without prejudice to Staff and HEFI; and
- (b) Staff and HEFI will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

50. Both parties shall keep the terms of this Settlement Agreement confidential until the Commission approves this Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve this Settlement Agreement, both parties shall continue to keep the terms of this Settlement Agreement confidential, unless they agree in writing not to do so or unless otherwise required by law.

**PART IX – EXECUTION OF SETTLEMENT AGREEMENT**

51. Both parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

52. A fax copy of any signature will be treated as an original signature.

Dated this 6<sup>TH</sup> day of January, 2015

Heritage Education Funds Inc.

Per: *“Onofrio Loduca”*

\_\_\_\_\_  
ONOFRIO LODUCA, CHIEF EXECUTIVE OFFICER

Per: *“Joe Ladeira”*

\_\_\_\_\_  
JOE LADEIRA, CHIEF COMPLIANCE OFFICER

*“Tom Atkinson”*

\_\_\_\_\_  
Tom Atkinson  
Director, Enforcement Branch

## Schedule "A"



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue queen ouest  
Toronto ON M5H 3S8

**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, c. S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF  
HERITAGE EDUCATION FUNDS INC.**

**ORDER**

**WHEREAS** on January , 2015, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in relation to the Statement of Allegations filed by Staff of the Commission ("Staff") on January\_, 2015 with respect to Heritage Education Funds Inc. ("HEFI");

**AND WHEREAS** HEFI entered into a Settlement Agreement dated January\_, 2015 (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

**AND WHEREAS** the Settlement Agreement acknowledges HEFI's co-operation with Staff and sets out the costs incurred by HEFI in retaining an independent consultant (the "Consultant") to prepare and assist HEFI in implementing a plan to strengthen HEFI's "compliance system" within the meaning of section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

**AND WHEREAS** the Settlement Agreement sets out that a manager in the Compliance and Registrant Regulation Branch of the Commission (the "OSC Manager") approved the Consultant's plan dated October 12, 2012 (the "Consultant's Plan") and the addendums to the

Consultant's plan dated December 17, 2012, January 22, 2013, and October 1, 2013 (the "Addendums") and that the OSC Manager reviewed the progress reports detailing HEFI's progress with respect to the implementation of the Consultant's Plan and the Addendums as revised by various progress reports;

**AND WHEREAS** the Settlement Agreement sets out that the Consultant confirmed by letter dated April 21, 2014 that HEFI has implemented the procedures and controls recommended by the Consultant to address each of the deficiencies identified in the compliance review report dated June 14, 2012 and to strengthen HEFI's compliance system and that the Consultant has tested the implementation of the recommendations in the Amended Consultant's Plan and it is working effectively;

**AND WHEREAS** the Commission issued a Notice of Hearing dated January \_\_\_\_, 2015, setting out that it proposed to consider the Settlement Agreement;

**AND UPON** reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations and upon considering submissions from HEFI's counsel and from Staff of the Commission;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order;

**IT IS HEREBY ORDERED THAT:**

- (a) this Settlement Agreement is approved;
- (b) pursuant to clause 4 of subsection 127(1) of the Act, no later than March 12, 2016, HEFI will provide the OSC Manager as defined in the Terms and Conditions with a report by the Consultant, based on a work plan to be agreed upon jointly by HEFI, the Consultant and the OSC Manager, which reports on whether the revised policies and procedures and internal controls set out in the Consultant's Plan and the Addendums as well as any subsequent revisions thereto are: (i) being followed by HEFI; (ii) working appropriately; and (iii) being adequately administered and enforced by HEFI, such report to include a description of the Consultant's testing to support its conclusions for the 12 month period ending January 12, 2016; and
- (c) pursuant to clause 6 of subsection 127(1) of the Act, HEFI is reprimanded.

**DATED** at Toronto, Ontario this\_\_day of January, 2015

---