



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

-AND-

**IN THE MATTER OF
KNOWLEDGE FIRST FINANCIAL INC.**

AMENDED SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. Staff of the Ontario Securities Commission (“Staff”) and counsel for Knowledge First Financial Inc. (“KFFI”) will file a joint request that the Ontario Securities Commission (the “Commission”) approve the amended settlement agreement dated February 12, 2015 (the “Amended Settlement Agreement”) as being in the public interest pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the “Act”) without the requirement for another public hearing.
2. At a public hearing on March 7, 2014, the Commission approved the settlement agreement between Staff and KFFI dated March 5, 2014 (the “Settlement Agreement”). The parties have now agreed to the Amended Settlement Agreement in which the title “Part IV – Conduct Contrary to the Public Interest” has been changed to “Part IV – Conduct to Better Serve the Public Interest”. The Agreed Facts and Terms of Settlement sections of the Amended Settlement Agreement remain essentially unchanged from the Settlement Agreement.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff agrees to recommend approval of the Amended Settlement Agreement. KFFI 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

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

Overview

5. KFFI has been the subject of four compliance field review reports since 2003 by Staff of the Compliance and Registrant Regulation Branch (“CRR Staff”). KFFI also had previous terms and conditions imposed on its registration by CRR Staff from July 9, 2004 to June 1, 2005 and from June 1, 2005 to February 21, 2006. The last compliance field review report dated June 14, 2012 (the “2012 Compliance Report”) identified numerous compliance deficiencies. In some cases, CRR Staff found KFFI to be deficient in similar areas to those previously identified as containing deficiencies.
6. On August 10, 2012, the Commission issued a temporary section 127 order (the “Temporary Order”) with KFFI’s consent which imposed terms and conditions (“Terms and Conditions”) on KFFI’s registration. The Terms and Conditions required KFFI to retain an independent consultant (the “Consultant”) to: (a) prepare and assist KFFI to implement a plan to strengthen its compliance system and (b) retain an independent monitor (the “Monitor”) to use best efforts to contact all new clients pending implementation of the Consultant’s plan to, among other things, confirm the accuracy of the client’s know your client (“KYC”) information, that the investment is suitable for the client and that the client understands the fee structure of the investment.

7. On November 16, 2012, the Consultant delivered an amended Consultant's plan (the "Consultant's Plan") which set out a plan to revise KFFI's compliance policies and procedures including amending KFFI's application form and KYC processes and to require additional organizational and policy improvements as summarized in paragraphs 27 and 28.
8. The Consultant has confirmed in its attestation letter dated October 17, 2013 that the Consultant's plan as revised by various progress reports delivered by the Consultant has been fully implemented.
9. KFFI has agreed to adhere to the revised internal controls, supervision and policies and procedures developed during the implementation of the Consultant's Plan.
10. Given KFFI's implementation of the Consultant's Plan, KFFI's co-operation to date, KFFI's agreement to adhere to the revised internal controls, supervision and policies and procedures set out in the Consultant's Plan, the parties previously agreed to settle the proceeding commenced by Notice of Hearing dated March 5, 2014 on the basis that: (a) no later than May 7, 2015, KFFI will provide the OSC Manager as defined in the Terms and Conditions with a report, based on a work plan to be agreed upon jointly by KFFI, the Consultant and the OSC Manager, which reports on whether the revised policies and procedures and internal controls set out in the Amended Consultant's Plan as well as any subsequent revisions thereto are: (i) being followed by KFFI; (ii) working appropriately; and (iii) being adequately administered and enforced by KFFI, such report to include a description of the Consultant's testing to support its conclusions for the 12 month period ending March 7, 2015; and (b) KFFI will receive a reprimand.
11. The Commission approved the Settlement Agreement at a public hearing on March 7, 2014.

The Respondent

12. KFFI distributes three distinct savings plans (the “Plans”), which are Registered Education Savings Plans (“RESPs”) under the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.), as amended.
13. KFFI was incorporated federally on December 18, 1996. KFFI was formerly known as USC Education Savings Plans Inc. and before that known as Scholarship Consultants of North America Ltd. KFFI is a wholly owned subsidiary of the Knowledge First Foundation (the “Foundation”), a not-for-profit Canadian corporation. The Foundation sponsors and promotes the Plans. The Foundation had approximately \$3.36 billion in assets under administration as at April 30, 2013.
14. KFFI is registered with the Commission as both an investment fund manager and as a dealer in the category of scholarship plan dealer.

Previous Compliance Reviews and Previous Terms and Conditions

15. KFFI has been the subject of three previous compliance reviews conducted by CRR Staff. Terms and conditions were previously imposed on its registration as a result of those reviews.
16. A compliance field review report by CRR Staff dated August 27, 2003 identified a number of compliance deficiencies including: (i) failing to collect essential Know Your Client (“KYC”) information; (ii) inadequate supervision of dealing representatives (“DRs”); (iii) misleading information in marketing materials; (iv) lack of processes to monitor when DRs or branch managers (“BMs”) should transmit enrolment applications to head office; (v) inadequacies in compliance structure resulting in a number of instances where KFFI’s compliance officer did not ensure that KFFI had discharged its obligations under Ontario securities law; (vi) ineffective complaint handling procedures; and (vii) enrolment representative agreements which set up DRs as independent contractors without reference to KFFI’s supervisory obligation.

17. A compliance field review report dated June 23, 2004 by CRR Staff identified some of the same deficiencies identified in the compliance field review report dated August 27, 2003 and that a number of the initiatives proposed to rectify the deficiencies were incomplete.
18. On July 9, 2004, terms and conditions were imposed on KFFI's registration which included filing progress reports with the Manager, Compliance to address the identified deficiencies.
19. A third compliance field review report by CRR Staff dated June 17, 2005 identified further compliance deficiencies.
20. On June 1, 2005, terms and conditions were imposed on KFFI's registration which included a term requiring KFFI to file progress reports with the Manager, Compliance to address all identified deficiencies for the period of August 26, 2003 up to August 31, 2004.

2012 Compliance Report

21. From October 2011 to January 2012, CRR Staff conducted a compliance review at KFFI's head office in Mississauga, 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) KFFI lacked an adequate system of compliance controls and supervision; (ii) KFFI failed to meet its suitability and KYC obligations; (iii) some KFFI DRs did not have a sufficient understanding of the structure and key features, including risks of the Plans; (iv) some KFFI DRs did not disclose the nature and the extent of their potential material conflicts of interest; (v) inadequate written referral agreements and inadequate disclosure of written referral agreements; and (vi) written policies and procedures manual which inadequately addressed suitability, marketing and account activity.

Temporary Order dated August 10, 2012

22. On August 10, 2012, the Commission issued the Temporary Order with KFFI's consent which imposed Terms and Conditions on KFFI's registration. The Terms and Conditions required KFFI to retain an independent consultant (the "Consultant") to: (a) prepare and assist KFFI 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"); (b) make recommendations to rectify all identified compliance deficiencies raised in the 2012 Compliance Report; and (c) retain an independent monitor (the "Monitor") to use best efforts to contact all new clients for the purpose of confirming: (i) the accuracy of the clients' KYC information; (ii) the investment is suitable for the client and (iii) that the clients understand the fee structure of the investment.
23. The OSC Manager, as referred to in the Terms and Conditions, approved Deloitte & Touche LLP as the Monitor and approved Sanford Eprile & Company as the Consultant.

Amended Consultant's Plan dated November 16, 2012

24. On October 10, 2012, the Consultant provided Staff with its initial Consultant's plan to strengthen KFFI's compliance systems. After Staff's request for further details on the specific actions that KFFI would engage in to strengthen its compliance system and rectify the deficiencies identified in the 2012 Compliance Report, KFFI delivered the Consultant's Plan on November 16, 2012.
25. The Consultant's Plan was a 33 page document which listed specific action steps to address the deficiencies set out in the 2012 Compliance Report. The Consultant's Plan set out action steps, the responsible person and due dates for each of the following areas of KFFI's compliance system:
 - (a) overall compliance systems;

- (b) KYC and suitability information;
- (c) sales practices and marketing;
- (d) financial condition and custody;
- (e) conflicts of interest;
- (f) referral arrangements; and
- (g) books and records.

Implementation of the Amended Consultant's Plan

- 26. The Terms and Conditions required the Consultant to provide monthly (bi-monthly as of June 21, 2013) progress reports detailing KFFI's progress with respect to the implementation of the Consultant's Plan for each recommendation. The Consultant delivered progress reports to Staff on December 10, 2012 and January 9, February 8, March 11, April 10, May 10, June 10, August 10 and October 4, 2013 which reported on the implementation of the Consultant's Plan.
- 27. The Consultant's Plan together with the subsequent progress reports noted in paragraph 26 required the following action steps to improve the collection of KYC and suitability information:
 - (a) amending KYC application form to include items such as client's risk tolerance, investment time horizon, occupation and disposable income, etc., for all new subscribers;
 - (b) implementing a KYC update process to upgrade the increased KYC information when subscribers contact KFFI to make changes to contribution levels or make any other changes such as a switch in plans;

- (c) adding a message to the annual subscriber's account statements which advises subscribers to contact KFFI with updated KYC information when a material change in their circumstances has occurred;
- (d) establishing a tracking mechanism to ensure the completeness of any update process;
- (e) revising KFFI's internal affordability guidelines so as to reflect "disposable income" as well as comparisons to authoritative guidance (e.g. Statistic Canada's Annual Analytical Reports on Economic Well-Being of Canadians") relating to affordability;
- (f) enhancing compliance training materials to help ensure consistency of information on the enrolment application form and to ensure that factors relevant to determining product suitability are documented in the notes section to KFFI's KYC forms;
- (g) developing formal procedures for trade review and for the monitoring of suitability of client trades;
- (h) analysing cancellation rates over multiple time horizons to highlight high risk branches and DRs for further internal compliance review; and
- (i) establishing parameters for unsuitable investments, including imposing restrictions on:
 - selling to subscribers whose sole source of income is temporary or fluctuating government benefits;
 - selling to subscribers with annual income of less than \$25,000;

- selling to subscribers with seasonal or variable income that cannot be expected to support a plan's committed contribution; and
- selling to subscribers beyond a certain age threshold.

28. The Consultant's Plan required the following additional organizational and policy improvements to ensure an improved compliance system for KFFI:

- (a) developing a separate compliance training program for DRs and relevant employees;
- (b) establishing a compliance committee of senior management including KFFI's ultimate designated person ("UDP"), CCO, Vice President Compliance Operations, National Director of Compliance and business unit heads;
- (c) ensuring that job descriptions are updated to reflect detailed accountabilities for executing daily, weekly, monthly and periodic compliance activities and timely reporting of results and tracking of actions to be taken;
- (d) establishing a senior management committee including compliance representatives to review and approve new products; and
- (e) reviewing and enhancing the reporting of compliance issues to the Governance Committee of the Board.

29. By progress report dated October 4, 2013, the Consultant confirmed that the above changes and the other improvements in the Consultant's Plan had been fully implemented.

Role of Monitor

30. From August 21, 2012 to April 6, 2013, the Monitor reviewed 9,479 New Client applications, called 3,500 New Clients and KFFI unwound 88 new client applications based on the KYC information being gathered under KFFI's former KYC process. In these 88 cases, the Monitor determined based on the new client's KYC Information and KFFI suitability policies, that the investment was not suitable.
31. On March 21, 2013, KFFI advised the Commission that KFFI intended to roll out its new KYC and suitability policies on April 5, 2013 and the Commission ordered the Monitor requirement suspended from the Terms and Conditions effective April 5, 2013.

Prior Commission Approval of Settlement Agreement

32. On March 7, 2014, the Commission ordered: (a) the Settlement Agreement be approved; (b) pursuant to clause 4 of subsection 127(1) of the Act, no later than May 7, 2015, KFFI will provide the OSC Manager as defined in the Terms and Conditions with a report, based on a work plan to be agreed upon jointly by KFFI, the Consultant and the OSC Manager, which reports on whether the revised policies and procedures and internal controls set out in the Amended Consultant's Plan as well as any subsequent revisions thereto are: (i) being followed by KFFI; (ii) working appropriately and (iii) being adequately administered and enforced by KFFI, such report to include a description of the Consultant's testing to support its conclusions for the 12 month period ending March 7, 2015; and (c) pursuant to clause 6 of subsection 127(1) of the Act, KFFI be reprimanded.

Prior Commission Dismissal of KFFI's Motion to Vary Settlement Agreement

33. On June 13, 2014, the Commission dismissed KFFI's motion to vary the Settlement Agreement to delete the title "Part IV – Conduct Contrary to the Public Interest" and replace it with "Part IV – Conduct to Better Serve the Public Interest" (the "Variation Motion") as the Commission concluded that it did not

have the authority to vary the Settlement Agreement. In dismissing the Variation Motion, the Commission requested that Staff, in fairness to KFFI, reconsider whether to amend the Settlement Agreement as requested by KFFI.

KFFI'S POSITION

34. KFFI acknowledges that changes were required to strengthen its compliance system so as to better serve the public interest.
35. With the introduction of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") and its principles based approach to compliance, KFFI engaged a third party audit firm to assess its sales supervision framework. The auditor firm's work was completed in two phases. KFFI advises that Phase I declared the design effectiveness to be satisfactory and Phase II identified deficiencies that were promptly addressed by KFFI.
36. In addition, KFFI invested considerable time, resources and dollars and worked closely with the OSC staff in the Investment Funds Branch prior to the 2012 Compliance Report, in the development of a new type of scholarship plan. The Flex First Plan was designed to address many suitability concerns raised in the 2012 Compliance Report. The new product was launched in November 2012.
37. Upon receipt of the 2012 Compliance Report, KFFI 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 Consultants being retained or their plan being reviewed or approved by Staff.
38. KFFI has worked with the Consultant and the Monitor to ensure that the Terms and Conditions imposed by the Commission on August 10, 2012 were fully implemented.

39. As at November 30, 2013, KFFI had incurred \$4,291,325 in Consultant, Monitor and other consultant costs as a result of the implementation of the Terms and Conditions.
40. KFFI 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.
41. KFFI has agreed to adhere to the revised internal controls, supervision and policies and procedures in all provincial and territorial jurisdictions in Canada in which KFFI is registered and as referenced in the Consultant's Plan and the progress reports.

PART IV - CONDUCT TO BETTER SERVE THE PUBLIC INTEREST

42. By engaging in the conduct described above, KFFI 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

43. KFFI agrees to the terms of the Amended Settlement listed below:
 - (a) The Commission will make an order in the form attached as Schedule "A" that the Amended Settlement Agreement is approved pursuant to subsection 127(1) of the Act.

PART VI – STAFF COMMITMENT

44. If the Commission approves the Amended Settlement Agreement, Staff will not commence any proceeding under Ontario securities law against KFFI in relation to the facts set out in Part III of the Amended Settlement Agreement, subject to the provisions of paragraph 45 below.

45. If the Commission approves the Amended Settlement Agreement and, at any subsequent time, KFFI fails to comply with any of the terms of the Amended Settlement Agreement, Staff may bring proceedings under Ontario securities law against KFFI. These proceedings may be based on, but are not limited to, the facts set out in Part III of the Amended Settlement Agreement as well as the breach of the Amended Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF AMENDED SETTLEMENT

46. Given that the Settlement Agreement has been approved at a public hearing on March 7, 2014, the parties will seek approval of the Amended Settlement Agreement in writing by submitting a copy of the Amended Settlement Agreement and draft consent order to the Commission without the requirement for another public hearing.
47. Staff and KFFI agree that the Amended Settlement Agreement will form all of the agreed facts that will be submitted to the Commission.
48. If the Commission approves the Amended Settlement Agreement, KFFI agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
49. If the Commission approves the Amended Settlement Agreement, neither party will make any public statement that is inconsistent with the Amended Settlement Agreement.
50. Whether or not the Commission approves the Amended Settlement Agreement, KFFI will not use, in any proceeding, the Amended Settlement Agreement or the negotiation or process of approval of the Amended 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 AMENDED SETTLEMENT AGREEMENT

- 51. If the Commission does not approve the Amended Settlement Agreement or does not make the order attached as Schedule “A” to the Amended Settlement Agreement, all discussions and negotiations between Staff and KFFI will be without prejudice to Staff and KFFI.

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

PART IX – EXECUTION OF AMENDED SETTLEMENT AGREEMENT

- 53. All parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

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

Dated this 12th day of February, 2015.

Knowledge First Financial Inc.

“R. George Hopkinson”

Per: “R. George Hopkinson”

“Darrell Bartlett”

Per: “Darrell Bartlett”

“Tom Atkinson”

Tom Atkinson
Director, Enforcement Branch

Schedule "A"



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

- AND -

**IN THE MATTER OF
KNOWLEDGE FIRST FINANCIAL INC.**

ORDER

WHEREAS on March 6, 2014, 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 March 5, 2014 with respect to Knowledge First Financial Inc. ("KFFI");

AND WHEREAS KFFI entered into a Settlement Agreement dated March 5, 2014 (the "Settlement Agreement") in relation to certain of the matters set out in the Statement of Allegations;

AND WHEREAS the Settlement Agreement acknowledged KFFI's co-operation with Staff and set out the costs incurred by KFFI in retaining an independent consultant (the "Consultant") to prepare and assist KFFI in implementing a plan to strengthen KFFI'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 set out that a manager in the Compliance and Registrant Regulation Branch of the Commission (the "OSC Manager")

approved the amended Consultant's plan dated November 16, 2012 and that Staff reviewed the progress reports detailing KFFI's progress with respect to the implementation of the amended Consultant's plan as revised by various progress reports (the "Amended Consultant's Plan");

AND WHEREAS the Settlement Agreement set out that the Consultant confirmed by letter dated October 17, 2013 that the Amended Consultant's Plan had been fully implemented;

AND WHEREAS on March 7, 2014, the Commission ordered: (a) the Settlement Agreement be approved; (b) by no later than May 7, 2015, KFFI will provide the OSC Manager as defined in the Terms and Conditions with a report on whether the revised policies and procedures and internal controls set out in the Amended Consultant's Plan are: (i) being followed by KFFI; (ii) working appropriately and (iii) being adequately administered and enforced by KFFI; and (c) KFFI be reprimanded;

AND WHEREAS on June 6, 2014, KFFI made a motion to the Commission to vary the KFFI Settlement Agreement to delete the heading that read "PART IV – CONDUCT CONTRARY TO THE PUBLIC INTEREST" and replace it with "PART IV – CONDUCT TO BETTER SERVE THE PUBLIC INTEREST" (the "Variation Motion");

AND WHEREAS on June 13, 2014, the Commission ordered the Variation Motion be dismissed and requested that Staff, in fairness to KFFI, reconsider whether to amend the Settlement Agreement as requested by KFFI;

AND WHEREAS the parties have signed an Amended Settlement Agreement dated February 12, 2015 (the "Amended Settlement Agreement") which sets out the same facts and terms of settlement as the Settlement Agreement but replaces the heading that read "PART IV – CONDUCT CONTRARY TO THE PUBLIC INTEREST" with "PART IV – CONDUCT TO BETTER SERVE THE PUBLIC INTEREST";

AND WHEREAS the parties consent to the terms of this Order approving the Amended Settlement Agreement and agree that the sanctions provided for in the Order dated March 7, 2014 remain in full force and effect;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order without the requirement of another public hearing;

IT IS HEREBY ORDERED THAT:

- (a) the Amended Settlement Agreement is approved.

DATED at Toronto, Ontario this day of February, 2015
