

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE SHAUGHNESSY

) *WEDNESDAY*, THE *21<sup>ST</sup>* DAY  
)  
) OF NOVEMBER, 2012

BETWEEN:

GEORGE FRENCH

Plaintiff

- and -

INVESTIA FINANCIAL SERVICES INCORPORATED, MONEY CONCEPTS  
(BARRIE), DIAMOND TREE CAPITAL INC., DAVID KARAS AND  
FINANCIAL VICTORY ASSOCIATES INC.

Defendants

**Proceeding under the *Class Proceedings Act*, 1992**

**ORDER**

**THIS MOTION**, made by the parties for directions and for other relief in relation to this action which was certified as a Class Proceeding by Order of this Court on February 17, 2012, was heard by conference call on November 5, 2012.

**ON HEARING** the submissions of the parties and on being advised of a settlement of this class action and the related class action bearing Ontario Court File No. 11-0234 (also certified as a Class Proceeding by Order of this Court on February 17, 2012), and the parties intention to bring a combined Motion, on consent, for Settlement Approval of both class actions,

1. **THIS COURT ORDERS** that Crawford Class Action Services (the "Administrator") is hereby appointed, on consent of all parties, as the Class Action Administrator for the purposes of:

- (a) providing Notice to the Class as set out below;
- (b) receiving and reviewing all Claim Forms as set out below;
- (c) making any and all determinations regarding Class inclusion; and,
- (d) making any and all determinations relating to a Class Member's compensation, if any, including determinations regarding the amount of qualifying loans and financial losses.

2. **THIS COURT FURTHER ORDERS** that the Defendants shall forthwith provide information to be agreed upon between counsel for the Plaintiffs and counsel for the Defendant, Investia Financial Services Incorporated, from their Univeris database to the Administrator in relation to any of the determinations outlined above, including providing the Administrator by November 23, 2012, with a list of eligible claimants along with their last known addresses.

3. **THIS COURT ORDERS** that the Notice of Certification and Motion for Settlement Approval shall be given as follows (the "Notice Plan"):

- (a) The Administrator shall publish an Abbreviated Notice, as set out in Schedule "A" to this Order (the "Abbreviated Notice"), as follows:
  - (i) Twice in the *Barrie Examiner*—to be published in two separate editions prior to December 15, 2012; and,
  - (ii) Once in the *Toronto Star* (Ontario edition)—to be published prior to December 8, 2012;
- (b) The Administrator shall, by December 8, 2012, send a Notice, as set out in Schedule "B" to this Order (the "Notice"), by regular mail to all eligible claimants using the list and last known addresses to be provided by the Defendants to the Administrator;
- (c) Thomson, Rogers and Doucet McBride (the "Class Counsel") will send the Notice by regular mail to all putative class members listed in Class Counsel's database on or before December 8, 2012; and,
- (d) Class Counsel shall post the Notice on their websites on or before December 8, 2012.

4. **THIS COURT ORDERS** that the costs of the Class Action Administrator, including the costs of the Notice Plan (up to a total maximum amount of \$200,000), shall be paid by Class Counsel out of the Settlement Funds, with the balance of the Settlement Funds otherwise being held in Trust, until such further Order of this Court following the approval hearing.

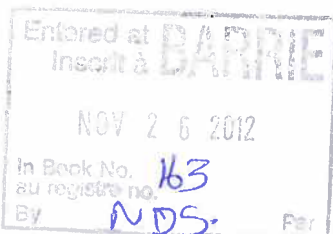
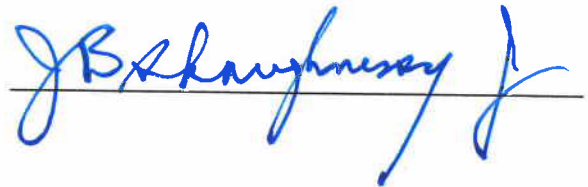
5. **THIS COURT ORDERS AND DECLARES** that no action or proceeding shall be brought against the Administrator or its employees, agents, partners, associates, representatives, successors or assigns for any matter in

any way relating to the Administrator's mandate under the Settlement Agreement, save and except for any willful misconduct or gross negligence on the part of the Administrator, and except with leave of this Court.

6. **THIS COURT ORDERS AND DECLARES** that any member of the Class seeking compensation must complete and submit a Claim Form, as set out in Schedule "C" to this Order, to the Administrator in accordance with the Notice on or before February 28, 2013.

7. **THIS COURT ORDERS AND DECLARES** that no member of the Class may opt out of these class proceedings unless they provide a written election to do so to the Administrator in accordance with the Notice on or before January 31, 2013.

8. **THIS COURT FURTHER ORDERS** that a Motion for Settlement Approval will be held on June 7<sup>th</sup>, 2013, at which time any objections to the settlement submitted in accordance with the Notice will be considered.



## **SCHEDULE "A"**

### **NOTICE TO MONEY CONCEPT (BARRIE) CLIENTS OF EITHER DAVID KARAS OR JAMES STEPHENSON INVOLVED IN LEVERAGED INVESTMENTS**

#### ***ABBREVIATED NOTICE OF CERTIFICATION AND MOTION FOR SETTLEMENT APPROVAL***

*This is a court authorized notice. This is not a solicitation from a lawyer.*

#### **BASIC INFORMATION**

This abbreviated notice is directed to all clients of either David Karas or James Stephenson who borrowed money to invest in mutual funds or segregated funds through Money Concepts (Barrie) and held leveraged investments at Money Concepts (Barrie) prior to the branch closing on or about March, 2010 (the "Class").

**The full notice is available at [www.thomsonrogers.com/money-concepts-settlement](http://www.thomsonrogers.com/money-concepts-settlement) or can be obtained by contacting the Class Action Administrator at 1-877-739-8936.**

#### **THE CERTIFICATION ORDERS**

On February 17<sup>th</sup>, 2012, the Honourable Mr. Justice Shaughnessy of the Ontario Superior Court of Justice (the "Court") certified the actions *French v. Investia et al*, Ontario Court File No. 10-0690 and *Smith v. Investia et al*, Ontario Court File No. 11-0234 (the "Class Actions").

#### **THE MOTION FOR SETTLEMENT APPROVAL**

On June 7<sup>th</sup>, 2013, a Motion for Settlement Approval will proceed before the Court at 150 Bond Street East, Oshawa, Ontario, Courtroom #206. The Court will be asked to approve a proposed settlement of the Class Actions.

#### **WHAT ARE THE LAWSUITS ABOUT?**

The Plaintiff alleges that the Defendants wrongfully recommended and encouraged leveraged investments to their clients without due regard for the client's individual circumstances, resulting in financial losses to many of their clients.

#### **WHO IS AND ISN'T COVERED BY THE SETTLEMENT?**

You are a Class Member if you were a client of either David Karas or James Stephenson who borrowed money to invest in mutual funds or segregated funds through Money Concepts (Barrie) and

held leveraged investments at Money Concepts (Barrie) prior to the branch closing on or about March, 2010, unless you exclude yourself or unless you are ineligible.

However, only those Class Members who complete and submit a Claim Form as set out below and who have validated financial losses from their leveraged investments, as determined by the Administrator, will receive Compensation from the Settlement.

### **CHOICES OF CLAIMANTS**

Those who believe they are Class Members and who are seeking Compensation have the following choices:

1. Submit a Claim Form – to be eligible for compensation, all Class Members must submit a Claim Form to the Administrator at the address below **by February 28, 2013**. Class Members who do not submit a Claim Form will not be eligible for compensation under the Settlement and will have lost your right to pursue any legal action against any of the defendants relating to these claims.
2. Opt Out – if you are a Class Member and do not wish to have your claim resolved in the Class Actions then you may choose to exclude yourself from the Class Actions. Once you opt out, you will not be able to obtain Compensation from this Settlement. Any Class Member who wishes to opt out of the Class Actions must do so **by January 31, 2013** by sending a signed written election to the Administrator at the address below stating that you wish to opt out of the Class Actions.

### **THE ADMINISTRATOR, CLASS COUNSEL & GETTING MORE INFORMATION**

This abbreviated notice summarizes the proposed settlement. The full notice and more details of the settlement are available at [www.thomsonrogers.com/money-concepts-settlement](http://www.thomsonrogers.com/money-concepts-settlement)

The Claim Forms are available from the Class Action Administrator as set out below (you may download them online or request one by phone, fax or email):

Crawford Class Action Services  
3-505, 133 Weber St. N.  
Waterloo, ON, N2J 3G9  
Tel: 1-877-739-8936  
Fax: 1-888-842-1332

Questions for class counsel should be directed by email, fax or telephone to:

**Darcy R. Merkur**  
**Thomson, Rogers**  
Barristers and Solicitors  
390 Bay Street, Suite 3100  
Toronto, Ontario, M5H 1W2  
Toll free: 1-888-223-0448  
Fax: 416-868-3134  
[dmerkur@thomsonrogers.com](mailto:dmerkur@thomsonrogers.com)

## **SCHEDULE "B"**

### **NOTICE TO MONEY CONCEPT (BARRIE) CLIENTS OF EITHER DAVID KARAS OR JAMES STEPHENSON INVOLVED IN LEVERAGED INVESTMENTS**

#### ***NOTICE OF CERTIFICATION AND MOTION FOR SETTLEMENT APPROVAL***

*This is a court authorized notice. This is not a solicitation from a lawyer.*

#### **BASIC INFORMATION**

This notice is directed to all clients of either David Karas or James Stephenson who borrowed money to invest in mutual funds or segregated funds through Money Concepts (Barrie) and held leveraged investments at Money Concepts (Barrie) prior to the branch closing on or about March, 2010 (the "Class").

This notice was authorized by the Court because you have a right to know about a proposed settlement of the Class Actions. You have a right to know about your options before the Court decides whether to approve the proposed settlement. This notice explains the lawsuits, the settlement, and your legal rights and options.

#### **THE CERTIFICATION ORDERS**

On February 17<sup>th</sup>, 2012, the Honourable Mr. Justice Shaughnessy of the Ontario Superior Court of Justice (the "Court") certified the actions *French v. Investia et al*, Ontario Court File No. 10-0690 and *Smith v. Investia et al*, Ontario Court File No. 11-0234 (the "Class Actions").

A settlement of the Class Actions was reached between the parties while the Defendants in the Class Actions were seeking permission of the Divisional Court to appeal those decisions. That appeal process remains in progress in the event that the Settlement is not approved.

#### **THE MOTION FOR SETTLEMENT APPROVAL**

On June 7<sup>th</sup>, 2013, a Motion for Settlement Approval will proceed before the Court at 150 Bond Street East, Oshawa, Ontario, Courtroom #206. The Court will be asked to approve a proposed settlement of the Class Actions.

You may attend and, if you have submitted a written objection (as set out below), may ask to speak, but you do not have to. At the Motion, the Court will consider whether the proposed settlement is fair, reasonable and adequate, and in the best interests of the Class. If there are objections, the Court will consider them at the Motion. The court may reserve judgment and announce its decision after the Motion.



You should note that the settlement is subject to the condition that the settlement may be voided by the Defendants depending on the number of Class Members who opt out and exclude themselves from the Class Actions and the Settlement.

**Unless the Court orders otherwise, there will not be a further Notice published or sent out about the outcome of the Motion (although a copy of the Court's decision along with additional information will be available at [www.thomsonrogers.com/money-concepts-settlement](http://www.thomsonrogers.com/money-concepts-settlement))**

### **WHO IS INVOLVED IN THE LAWSUITS?**

In a class action, a person called a “representative plaintiff” sues on behalf of people who have similar claims. All of these people comprise a “class”. The Court resolves the issues for everyone affected; except for those who choose to remove themselves (opt out) from the class.

In these Class Actions, George French and Irene Smith are the representative plaintiffs. They are suing on behalf of Money Concept (Barrie) clients of either David Karas or James Stephenson who borrowed money to invest in mutual funds or segregated funds, and who suffered financial losses as a result.

The Defendants are the investment advisors, David Karas and James Stephenson, along with their associated corporations and their employers.

### **WHAT ARE THE LAWSUITS ABOUT?**

The Plaintiff alleges that the Defendants wrongfully recommended and encouraged leveraged investments to their clients without due regard for the client's individual circumstances, resulting in financial losses to many of their clients.

### **WHY IS THERE A PROPOSED SETTLEMENT?**

A settlement is not an admission of any wrongdoing by the Defendants. A court or jury did not make any decision in favor of the Plaintiffs or the Defendants. Instead, both sides have mutually agreed to settle the claims. Both sides agreed to a settlement to avoid the delays, costs, and risks associated with a trial and possible appeals. The opinion of the lawyers representing the Class is that the proposed settlement is fair and reasonable for Class Members. To be effective, the settlement must be approved by the Court.

### **WHO IS AND ISN'T COVERED BY THE SETTLEMENT?**

You are a Class Member if you were a client of either David Karas or James Stephenson who borrowed money to invest in mutual funds or segregated funds through Money Concepts (Barrie) and held leveraged investments at Money Concepts (Barrie) prior to the branch closing on or about March, 2010, unless you exclude yourself or unless you are ineligible.



However, only those Class Members who complete and submit a Claim Form as set out below and who have validated financial losses from their leveraged investments, as determined by the Administrator, will receive Compensation from the Settlement.

Certain persons who are related to the Defendants are ineligible for the Settlement.

### THE SETTLEMENT – WHAT YOU GIVE UP

If you are a Class Member who does not opt out of the class proceeding and the settlement is approved by the Court and is not voided, the Class Member will give up the right to pursue any legal action against the Defendants and all related people and entities concerning the claims that this proposed settlement resolves.

### HOW TO MAKE A CLAIM

Persons who believe they are Class Members must submit a Claim Form.

Only persons that submit a Claim Form will be considered for Compensation pursuant to the Settlement.

All Claim Forms must be submitted to the Class Action Administrator (the “Administrator”) by **February 28, 2013**. If you do not submit a Claim Form by this date you cannot receive compensation under the settlement and will have lost your right to pursue any legal action against any of the defendants relating to these claims.

The Claim Forms are available from the Class Action Administrator as set out below (you may download them online or request one by phone, fax or email):

### INSERT CLASS ACTION ADMINISTRATOR AND WEBSITE

The Administrator will review all Claim Forms to determine whether the person is a Class Member and whether the Class Member is entitled to Compensation under the Settlement. Decisions by the Administrator are final and binding.

### THE SETTLEMENT

The Settlement provides that Class Members who have submitted Claim Forms and who the Administrator has determined suffered financial losses as a result of their participation in leveraged investments will be entitled to a partial reimbursement of the financial losses, as determined by the Administrator. The partial reimbursement is expected to be a fraction of the claimant’s calculated financial losses determined as of a crystallization date (being the earlier of the date the Class Members’ funds were transferred out of Investia’s control and the date the branch closed). The extent of the partial reimbursement will vary depending on a number of factors including the number of valid claims made. In addition, Class Members receiving compensation should speak with their accountants about the tax implications, if any, upon receipt of the compensation.

Class Members who have been determined by the Administrator not to have suffered financial losses as a result of the leveraged investments will not receive any compensation.

### **IF THE SETTLEMENT IS APPROVED**

If the settlement is approved, then Class Members who have submitted Claims Forms to the Administrator as set out below, and who have been determined to be eligible for Compensation by the Administrator will receive Compensation as calculated by the Administrator.

Compensation will only be sent out to eligible Class Members approximately two months following the date the Court approves the Settlement.

### **CHOICES OF CLAIMANTS**

Those who believe they are Class Members and who are seeking Compensation have the following choices:

1. Submit a Claim Form – to be eligible for compensation, all Class Members must submit a Claim Form to the Administrator **by February 28, 2013**. Class Members who do not submit a Claim Form will not be eligible for compensation under the Settlement. Note that submitting a Claim Form does not automatically entitle a Class Member to compensation as only those with losses as determined by the Administrator will qualify for Compensation.
2. Opt Out – if you are a Class Member and do not wish to have your claim resolved in the Class Actions then you may choose to exclude yourself from the Class Actions by sending a signed written election to the Administrator stating that you wish to opt out of the Class Actions **by January 31, 2013**. Once you opt out, you will not be able to obtain Compensation from this Settlement (see “Excluding Yourself from the Settlement”, below).

Your legal rights are affected whether you act or not. These rights and options – **and the deadlines to exercise them** – are explained further in this notice.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

**Class Members who wish to make a claim under the Settlement must submit a Claim Form.**

Class Members who want to formally opt out of the Settlement so that they can reserve their right to pursue legal recourse against any person who may be liable in relation to these claims involving the sale of leveraged investments by David Karas or James Stephenson, may opt out of the Settlement. It should be noted that the Defendants may challenge any claims brought by those that opt out on the basis of legal limitation periods that may have expired before the Class Actions were commenced along with any other legal defences.

Any Class Member who wishes to opt out of the Class Actions must do so **by January 31, 2013** by sending a signed written election to the Administrator stating that you wish to opt out of the Class Actions.

No Class Member will be permitted to opt out of the Class Actions after January 31, 2013.

No person may opt out a minor or a mentally incapable person without permission of the Court after notice to The Children's Lawyer or the Public Guardian and Trustee, as appropriate.

### **HOW TO OBJECT TO THE SETTLEMENT**

Any interested person, including Class Members and those that have filed a Claims Form, may object to the proposed settlement, or some aspect of it, and you can tell the Court about your concerns by submitting a written objection.

You may only request to speak at the Motion if you have submitted a written objection.

If you wish to make an objection, to do so you must by May 7, 2013, write to:

**Attn: Darcy R. Merkur**  
Thomson, Rogers  
Barristers and Solicitors  
390 Bay Street, Suite 3100  
Toronto, Ontario, M5H 1W2  
Fax: 416-868-3176  
Email: [dmerkur@thomsonrogers.com](mailto:dmerkur@thomsonrogers.com)

Be sure to explain why you object to the proposed settlement and include your name, the amount of your loans, your address, and telephone number. Indicate whether you are requesting to come and speak at the hearing.

All objections sent by May 7, 2013 will be provided to the Court at the Motion.

If you want to be represented by your own lawyer, you may hire one at your own expense.

If you object, but the settlement is approved, you will still be able to receive compensation, as long as you didn't exclude yourself (see "Opting Out from the Class Action and the Settlement").

### **LEGAL FEES AND DISBURSEMENTS**

Counsel entered into an agreement with the representative plaintiffs with respect to legal fees and disbursements. The agreement provided that Class Counsel would not receive payment for their work unless the Class Action was successful or costs were received from the Defendants. The agreement had provided for either a multiplier on Class Counsel's legal time, as approved by the Court, or a fee of 33%, plus H.S.T., of the total amounts recovered by the Class in the Class Actions. The amount of fees requested by Class Counsel is expected to be a multiplier on Class Counsel's

legal time, but is expected to be no more than 20% (plus H.S.T) of the amount recovered in damages in the Class Actions, in addition to the contribution by the Defendants toward the plaintiff's legal costs, taxes and disbursements.

At the Motion, Class Counsel will be asking the Court to approve the fees to be paid to Class Counsel. Members of the Class will **not** be personally liable to pay counsel any legal fees or disbursements over and above the amounts approved by the Court.

### GETTING MORE INFORMATION

This notice summarizes the proposed settlement. More details are available at [www.thomsonrogers.com/money-concepts-settlement](http://www.thomsonrogers.com/money-concepts-settlement)

Questions for class counsel should be directed by email, fax or telephone to:

**Darcy R. Merkur**

**Thomson, Rogers**

Barristers and Solicitors

390 Bay Street, Suite 3100

Toronto, Ontario, M5H 1W2

Toll free: 1-888-223-0448

Fax: 416-868-3134

[dmerkur@thomsonrogers.com](mailto:dmerkur@thomsonrogers.com)

# CLAIM FORM

(re Class Actions against David Karas and James Stephenson)

I/We hereby had accounts with the following agent (check one):

David Karas: \_\_\_\_\_ or James Stephenson: \_\_\_\_\_

I/We confirm that we participated in leveraged investments and that I/we believe we lost money as a result (check yes or no): Yes: \_\_\_\_\_ No: \_\_\_\_\_

### Questions regarding Unidentified Loans

Because the loan information available within the defendants' records may not include information regarding loans in relation to segregated funds (often loans from Manulife) or loans from Home Equity Lines of Credit, please answer the following if you believe you lost money as a result of these loans (check yes or no):

a) I/we believe I/we had loans to purchase segregated investments: Yes: \_\_\_ No: \_\_\_

b) I/we believe I/we accessed funds through a Home Equity Line of Credit: Yes: \_\_\_ No: \_\_\_

**IF YOU ANSWERED YES TO EITHER (a) OR (b) YOU MUST ATTACH PROOF OF THESE LOANS TO THIS CLAIM FORM SO THAT THE ADMINISTRATOR CAN VALIDATE THEM.**

### Applicants Information

Insert the name and contact information of all account holders as requested below:

*Note that by signing this form you are authorizing the Defendants to release to the Administrator their Univeris database information for consideration of your claim and are declaring that you believe the above information to be true.*

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Telephone #s: \_\_\_\_\_ Email address (if any): \_\_\_\_\_

**BY SENDING IN THIS CLAIM FORM YOU ARE APPLYING TO BE PART OF THE SETTLEMENT IN THE CLASS ACTIONS. YOUR CLAIM WILL BE REVIEWED BY THE CLASS ACTION ADMINISTRATOR AND YOU WILL BE NOTIFIED. ONLY VALIDATED CLASS MEMBERS WITH VALIDATED FINANCIAL LOSSES, AS DETERMINED BY THE ADMINISTRATOR, WILL QUALIFY FOR COMPENSATION.**

**TO MAKE A CLAIM THIS FORM MUST BE COMPLETED AND RETURNED TO THE ADMINISTRATOR: Crawford Class Action services, 3-505, 133 Weber St. N., Waterloo, Ontario, N2J3G9 (fax 1-888-842-1332 or tel: 1-877-739-8936) BY FEBRUARY 28, 2013.**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Barrie

**ORDER**

**THOMSON, ROGERS**  
Barristers and Solicitors  
Suite 3100  
390 Bay Street  
Toronto, Ontario  
M5H 1W2

**DARCY R. MERKUR**  
L.S.U.C. No. 42899S  
416-868-3176  
Fax No. 416-868-3134

Solicitors for the Plaintiffs  
(096983 /drm)