

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

BRUCE SMITH and EDITH IRENE SMITH

Plaintiffs

- and -

**INVESTIA FINANCIAL SERVICES INCORPORATED,
and JAMES STEPHENSON**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by The Plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence of Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff(s) lawyer(s) or, where the Plaintiff(s) do(es) not have a lawyer, serve it on the Plaintiff(s), and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

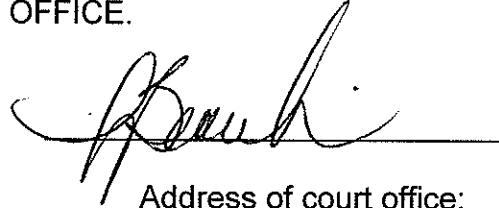
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: *March 9/11*

Issued by:



Address of court office:

75 Mulcaster
~~144 Worsley Street~~
Barrie, ON L4M 4M4 *3P2*

TO: Investia Financial Services Incorporated
522 University Avenue, 4th Floor
Toronto, ON M5G 1Y7

AND TO: James Stephenson
c/o Investia
522 University Avenue, 4th Floor
Toronto, ON M5G 1Y7

CLAIM

1. The Plaintiffs, Bruce Smith and Edith Irene Smith, claim on behalf of themselves and on behalf of each member of the class in Ontario:

- (a) special damages in the amount of \$2,000,000.00 for each;
- (b) general damages in the amount of \$350,000.00 for each;
- (c) reimbursement of all commissions and/or fees paid, together with prejudgement interest thereon;
- (d) an accounting for all compensation paid to any of the Defendants by members of the class and, in the alternative to the claim for damages, restitution in an amount to be determined by such accounting pursuant to the principles of waiver of tort;
- (e) punitive and/or exemplary damages in the aggregate sum of \$50,000,000.00;
- (f) interest on all amounts claimed at the rate of interest charged by lenders (described hereafter) to class members in connection with loans arranged by the Defendants and/or prejudgment interest in accordance with the *Courts of Justice Act*;
- (g) the costs of this action on a substantial indemnity basis together with applicable Harmonized Sales Tax; and,
- (h) such further and other relief as this Honourable Court may deem just.

Overview

2. This claim is brought by the proposed representative plaintiffs, Bruce Smith and Edith Irene Smith, who sought to build and prepare for their retirement by relying on the advice of their financial advisor. Bruce Smith and Edith Irene Smith and the other class members fell victim to an investment

strategy designed to generate compensation for the advisor (hereinafter described) and his Firm (hereinafter described) and associates at the expense of the advisor's clients. This one-size-fits-all investment strategy involved borrowing to invest in mutual funds, and is referred to herein as "Leveraging" or the "Leveraging Scheme."

3. The advisor and his Firm advised and implemented the Leveraging Scheme in contravention to the Firm's policies and regulatory standards governing Leveraging. They failed to obtain the informed consent of class members with respect to transactions and risks undertaken. The Leveraging Scheme was unsuitable for all class members, including Bruce Smith and Edith Irene Smith.

4. The interests of the advisor and his Firm conflicted with those of class members in that the Leveraging Scheme increased revenue to the advisor and his Firm without benefit, and at unsuitable and undisclosed risk, to their clients.

The Parties

5. The Representative Plaintiffs, Bruce Smith and Edith Irene Smith (herein together referred to as "Bruce and Edith"), are physically disabled and were born in 1955 and 1952, respectively. They reside in the City of Barrie, in the Province of Ontario. Bruce and Edith represent a class of persons ("the Class

Members”) all of whom were clients of the Defendant, James Stephenson. All Class Members purchased financial products from one or more of the Defendants through the Leveraging Scheme. The Class Members are hereinafter also referred to as either the “Clients” or the “Plaintiffs” and may be further defined in the motion for certification. The Plaintiffs plead and rely upon the provisions of the *Class Proceedings Act, 1992, S.O. 1992, c. 6*.

6. Money Concepts Canada (“MCC”) was a financial advisory firm with offices across Canada. In 2001, AEGON Dealer Services Canada Inc. (“AEGON”) purchased the assets and trade name and continued the business of MCC. The Defendant, Investia Financial Services Incorporated (“Investia”) is a mutual fund dealer with offices across Canada, including in Barrie. It is registered with and regulated by the Ontario Securities Commission (“OSC”) and the Mutual Fund Dealers Association (“MFDA”). Investia merged with and is the successor company of AEGON effective September 30, 2008. For the purpose of this pleading, all references to a “Firm” shall mean Investia, AEGON and MCC, as the case may be. Investia is liable in law for the conduct of its predecessors, AEGON and MCC.

7. MCC’s Barrie branch was the Firm’s top Canadian branch by sales performance from 1988 to 2009 and its top international branch from 1993 to 2009.

8. The Defendant James Stephenson ("Stephenson") was, at all material times, employed with the Firm. He was formerly registered as a mutual fund salesperson. Stephenson represented to Clients that he held the designations of CFP, RFP and RFC. He was therefore obliged to adhere to the standards of the organizations that grant and regulate such designations.

The Leveraging Scheme

9. The Firm and Stephenson recommended to Class Members the Leveraging Scheme (which is further defined in the paragraphs below), without regard to the suitability of the Leveraging for any individual client, without consideration of any individual client's investment objectives, and in breach of both the Firm's policies and the MFDA regulatory standards.

10. The Defendants implemented the Leveraging Scheme to increase the commissions and other compensation generated for their own benefit, without regard to the suitability of such strategy for their Clients and in breach of both the Firm's policies and the MFDA regulatory standards.

11. The Leveraging Scheme was based on arranging for all Clients to borrow as much money as they could with a view to raising money to buy mutual funds, increasing the Clients' assets under management (or "AUM") with the Firm and/or Stephenson.

12. The more Clients borrowed for investment, the more compensation was paid to Stephenson and the Firm.

13. Contrary to Stephenson's advice and representations, the most significant impact of the Leveraging Scheme on Clients was that greater debt caused greater debt carrying charges and a greater risk exposure, in the event that underlying investments failed to attain the higher returns required to carry the debt or in the event the underlying investments declined in value. The Firm's internal policies stressed the existence of the risk exposure, cautioned against the use of Leveraging and mandated specific supervisory steps to be taken in every case where Leveraging was recommended or implemented.

14. When Stephenson presented the Leveraging Scheme to Clients, he represented that Leveraging would reduce Clients' investment risk, and that the carrying charges in respect of the loans would be paid through the profits earned by the investments. Stephenson also represented that the value of the investments would increase over each and every 12 month period. These representations were false and were made for the purpose of enticing Clients to increase their investments for the benefit of Stephenson and the Firm.

15. Neither Stephenson nor the Firm disclosed to Clients the actual risks associated with the Leveraging Scheme, either properly or at all. Both Defendants ignored the policies of the Firm and the regulatory standards with respect to recommending and implementing the Leveraging Scheme.

16. The Leveraging Scheme was a one-size-fits-all solution for Clients. Stephenson failed in his regulatory duty to tailor the investment recommendations to specific Clients, simply recommending the maximum possible loans for every client.

17. The Firm knew of Stephenson's implementation of the Leveraging Scheme as a general strategy to increase AUM and thereby increase compensation for Stephenson and the Firm and are liable to the Class for the acts and omissions of Stephenson in relation to the Leveraging Scheme. It failed to comply with its own policies in respect of compliance and supervision.

The Dealings between Bruce & Edith and Stephenson

18. Bruce worked as a sales representative for a cooling mechanical company prior to the onset of his disability. Edith was employed at a hospital as a food supervisor. At the time of their initial involvement with Stephenson, Bruce and Edith were both disabled from working. While Edith was receiving a pension of modest proportion, Bruce had not yet been approved for pension payments. In addition, they had virtually no savings prior to seeking financial advice from the

Firm. Their needs were modest, as was their income. Both Stephenson and the Firm were at all material times aware of this information.

19. In or about 2006, Bruce and Edith sought financial advice from the Barrie branch of MCC. Neither Bruce nor Edith had investment experience or expertise.

20. They began dealing with Stephenson. Bruce and Edith owned a home valued at approximately \$195,000.00, which had a substantial mortgage. Bruce had received disability insurance payments from the date of his heart attack in 2002 until payments ceased in 2005.

21. Stephenson immediately recommended the Leveraging Scheme to Bruce and Edith, who relied on and followed this advice to their detriment. Stephenson recommended and arranged for Bruce and Edith to borrow \$100,000 from B2B Trust, for the purpose of investing in mutual funds with Stephenson and the Firm.

22. Stephenson knew that Bruce and Edith had very little means and that both were physically disabled with substantial medical expenses. As a licensed professional, he should have known that their risk tolerance was low. Nevertheless, he encouraged them to obtain a Leveraged loan that was well

beyond their capacity to carry based on their limited income (which consisted only of her disability payments), and ultimately, Bruce's pension income.

23. In 2006, while Bruce and Edith had investment loans, and the mutual funds purchased with such loans, of \$100,000.00, they owned no other investments.

24. Bruce commuted his pension in 2007, creating a locked-in retirement account ("LIRA") of approximately \$70,000, which he transferred to Stephenson and MCB to invest.

25. In May 2008, Bruce had to withdraw funds from his LIRA to cover medical expenses, as he lacked the funds to meet these.

26. At all material times, Stephenson was aware that severely declining market conditions would likely occur within the foreseeable future and that when such a market decline occurred, Clients were at a significant risk of losing all, or more than all, of their capital. In Bruce and Edith's case, Stephenson and the Firm knew that when a market decline occurred, Bruce and Edith would be facing substantial net loans and carrying charges, without the ability to repay them. Stephenson and the Firm failed to advise Bruce and Edith that this was a foreseeable and cyclically likely risk.

Market Decline in 2008-2009

27. From August 2008 to February 2009, Bruce and Edith's portfolio was decimated by market conditions and the loan carrying charges. Bruce and Edith's losses exceeded those of the equity markets generally because:

- (a) Their portfolio asset allocation was overwhelmingly in equities;
- (b) Much of their portfolio was allocated to unsuitably high risk investments, including smaller companies, companies in emerging markets, and companies in narrow economic sectors;
- (c) Much of their portfolio was allocated to assets in foreign currency at a time when the Canadian dollar appreciated in value;
- (d) Their portfolio contained no cash;
- (e) Because all of their non-registered portfolio represented borrowed money, their ownership value disappeared and they owed far more than the value of their holdings; and,
- (f) The borrowing costs and investment losses depleted the value of the portfolio.

Bruce and Edith's Account

28. By the end of 2010, Bruce and Edith owed approximately \$32,000.00 more than their portfolio value.

29. At periodic meetings between Bruce and Edith and Stephenson, Stephenson used terms Bruce and Edith did not, and could not be expected to, understand. At the conclusion of each meeting, Stephenson produced several documents for Bruce and Edith to sign without offering them the opportunity to read or understand them or to ask questions. Stephenson advised Bruce and Edith at such meetings:

- (a) not to review the paperwork;
- (b) that the documents were routine and insignificant;
- (c) to rely on Stephenson's summary as complete and sufficient;
- (d) to sign incomplete forms; and,
- (e) to sign blank forms.

Conflict of Interest

30. At all material times, Stephenson knew that the interests of Stephenson and the Firm conflicted with the interests of Bruce and Edith in that Stephenson and the Firm benefited without any risk to them when Bruce and Edith borrowed money from others to invest through the Firm (by which they earned compensation), while Bruce and Edith's risk and costs materially increased by Leveraging.

31. Stephenson owed an obligation to Bruce and Edith and to all the clients of the Firm to avoid conflicts of interest. He breached this obligation with Bruce and Edith and with his other clients in that:

- (a) He had discretion in selecting lenders, product issuers, product types and product amounts, and he chose to recommend lenders and issuers, types, and amounts of products that were calculated by him to generate the most revenue for the Defendants, without considering whether these recommendations were the most suitable for his clients, or even whether they were suitable for his clients at all;
- (b) He had discretion in recommending investment strategies and he chose to recommend the strategy that was calculated by him to generate the most revenue for the Defendants without considering whether it was the most suitable for his clients, or even whether it was suitable for his clients at all;
- (c) With respect to the documents that he provided his clients for signature, he had a discretion in informing his clients as to which documents, and which portions of such documents, they should read before they undertook commitments, and he chose not to identify those documents and/or portions of documents that explained to his clients their actual or potential risks and obligations. Further, he accepted the signatures of his clients with the knowledge that they had assumed obligations and undertaken risks without understanding the nature thereof; and,
- (d) He had discretion in providing advice to his clients with respect to the potential risks and rewards arising from decisions made by his clients and clients of the Firm, and he chose to provide such advice in a manner that was calculated by him to generate the most revenue for the Defendants, without explaining the risks (as to likelihood of loss, the extent of that loss and the volatility of the strategies) and the rewards (both as to likelihood of rewards and the extent of that reward).

Class Experience

32. The Plaintiffs plead that Bruce and Edith's experience with Stephenson and the Firm as described above was typical of the experience of Class Members. The Plaintiffs further plead that the Leveraging Scheme was misrepresented to all Class Members in a similar manner and that each of them

was, as the result of the Defendants' breach of duty, similarly exposed by reason of the Leveraging Scheme.

Involvement by the Firm

33. Stephenson provided the Firm with full details of the Leveraging Scheme and the Firm accepted this scheme as compliant with its duties and obligations to its Clients. The Firm supervised Stephenson in his dealings with Clients.

34. In August 2008, Investia conducted an audit of the activities of both MCC as a whole and in particular as part of its purchase of AEGON. Investia discovered significant breaches of process and standards, including breaches of MFDA regulations. Investia was required by the MFDA and the OSC to report these breaches but failed to do so. Investia failed to warn the Clients of the breaches related to their investments and the investment advice they received from Stephenson and the Firm.

The MFDA and OSC Rules

35. The MFDA regulates registered mutual fund dealers and their financial advisors across Canada, including the Firm.

36. The OSC is the regulatory body responsible for overseeing companies and individuals dealing in and advising on securities in Ontario. The OSC's oversight includes the development and enforcement of rules to safeguard investors and to deter misconduct by licensed dealers and financial advisors, including the Defendants.

37. The MFDA was established by the Canadian Securities Administrators including the OSC, as a self-regulating organization responsible for the operations, standards of practice and business conduct of mutual fund dealers and their representatives, including the Defendants. The MFDA's mandate includes enhancement of investor protections.

38. MFDA Rule 2.2.1 requires that every new account application must include Know Your Client information ("KYC" information) before an account can be opened. The KYC information requires each MFDA member and financial advisor acting on their behalf to learn the essential facts relative to each client and to each account accepted and to ensure that each order accepted or recommendation made for any account of a client is suitable and in keeping with the client's investment objectives.

39. Pursuant to the OSC's Rule 31-505 Section 1.5(1)(b), registrants under the Ontario Securities Act are required to determine whether a proposed purchase, sale or holding of a security for a client is suitable by considering the general investment needs and objectives of the individual client and the attributes and associated risks of the products they are recommending to clients.

40. In April of 2008, The MFDA provided guidance to its members in Member Regulation Notice ("MR") 0069 with respect to suitability guidelines. In particular, MR-0069 reminded members of their duties when assessing leveraging.

41. MR-0069 states as follows:

"Leverage is not suitable for all investors and the appropriateness of a recommendation to use leverage must be assessed on a client-by-client basis, having regard to the client's age, financial circumstances, investment objectives, risk tolerance, time horizon, the manner in which they intend to secure and repay their loan and any other factors that are known at the time or reasonably ascertainable and may be relevant in the circumstances. Members must have policies and procedures in place with respect to leveraging, including criteria that would indicate when it is an unsuitable strategy and the approval process."

42. MR-0069 also states that advisors should ensure that their clients should not rely on the growth of mutual funds in the account or make withdrawals from registered investments to make payments on borrowed funds used for leveraging.

43. MR-0069 further states that "leveraging is likely unsuitable for unemployed, low income, self-employed (i.e. those with unstable income) or retired individuals." So, too, clients relying on growth or distribution of from the mutual funds are unsuitable clients for leveraged investing.

Duty of Care

44. The Defendants at all material times owed a duty of care to the Class Members:

- (a) To use due diligence to determine each client's investment needs and objectives, and to use due diligence to keep such information current;
- (b) To ensure that all KYC records were current, accurate, complete and sufficient and to make only suitable recommendations to buy, hold and sell as appropriate for each client's true KYC circumstances;
- (c) To ensure the suitability of all financial advice to each client;
- (d) To explain to clients the risks of each of the securities considered for their account and to procure their informed consent with respect to each transaction before making commitments to acquire or sell such securities;
- (e) To provide each client with a balanced presentation of available investment options and clear disclosure of the risks associated with the use of investment options such as Leveraging;
- (f) To fully inform each client with respect to the cost, potential for both risk and reward, arising from the use of borrowed money to finance the purchase of mutual or segregated funds;
- (g) To ensure that the Leveraging Scheme only be used by clients that are financially capable of dealing with the loss should the risks associated with leveraging become realized;

- (h) To advise each client that the value of the leveraged portfolio may fall below the value of the loan and that there is a magnification of risk where a leverage strategy is used;
- (i) To advise each client that even where returns on investments are positive, interest costs may exceed the returns received;
- (j) To advise each client that whether investment returns are positive or negative, the client must still pay back the loan plus the agreed interest, which may cause the client hardship;
- (k) To advise each client that the client should not be relying on the growth of mutual funds in the account to make payments on the leveraged loan;
- (l) To advise each client that the client should not have to make withdrawals from registered investments to make payments on the leveraged loan;
- (m) To advise each client that any loans secured against the client's home can put the client's equity interest in the home at risk;
- (n) To advise each client that a client should not rely on investment returns to cover the cost of borrowing;
- (o) To make full disclosure to each client of the expenses incurred by the client with respect to each of the transactions (including purchases, sales, switches, loans and insurance transactions) considered for their accounts, including potential expenses that may be incurred from a future sale or transaction;
- (p) To make full disclosure to each client of all of the compensation to be received by the Defendants with respect to each of the transactions considered for the client's accounts, including potential transaction and referral fees, commissions and expenses that may be incurred from the transaction or from the continued holding of the security or from a future sale or transaction;

- (q) To ensure that all advice provided to each client was comprehensible to the client considering the client's education, experience and training and to take such steps as necessary to ensure all contracts, forms and documents were understood by the Clients at the time of delivery or execution thereof;
- (r) To disclose all conflicts of interests and to ensure that client interests were paramount in all circumstances of conflict; and,
- (s) To completely understand and implement the MFDA and OSC Rules described in paragraphs 35 to 43 above for the benefit of their Clients.

45. The Firm owed a duty of care to the Class Members:

- (a) To establish, implement and maintain adequate policies and procedures to ensure that Branch Managers or other supervisory staff in the Branches (including MCB) assessed the suitability of leveraging strategies having regard to relevant criteria such as the risk tolerance, age, investment knowledge and investment objectives of the client to whom a leveraging strategy was recommended;
- (b) To establish policies and procedures to create and maintain leveraging thresholds for clients of the Firm;
- (c) To detect and query leveraging recommendations that conflicted with such policies and procedures;
- (d) To create and maintain evidence that documentation relating to a leveraging decision was reviewed by Branch Managers or other supervisory staff in the Branches (including MCB) prior to the implementation of a leveraging strategy;
- (e) To establish policies and procedures requiring compliance staff to document evidence of the supervisory review of leveraging recommendations that was conducted, including records of suitability queries made, responses received and resolutions achieved as a result of supervisory inquiries;

- (f) To maintain evidence of any steps taken to query proposed trades or follow-up with Approved Persons, Branch Managers or other supervisory staff in the Branches (including MCB) in circumstances where leveraging thresholds established by the Firm's policies and procedures were exceeded; and,
- (g) Generally to adequately train, monitor, supervise and control its employees and associates, including Stephenson, at all times.

46. Stephenson recommended the Leveraging Scheme as an appropriate investment strategy for all of his Clients and, because the Firm knew of the practice and profited from it, the Firm owed a heightened duty to supervise Stephenson to ensure that he strictly complied with the Firm's policies and industry regulations, to ensure that his strategies were suitable for its Clients, to ensure that Clients appreciated the risks they undertook and to warn Clients of the risks of the Leveraging Scheme. In all respects, the Firm failed.

47. The duty of care owed by the Defendants to the Class Members was in all cases fiduciary in nature.

48. Investia is liable vicariously, by OSC and MFDA regulation and at common law, for the conduct, acts and omissions of Stephenson.

Breach of Duty

49. The Defendants breached each and every duty of care described in paragraphs 44 and 45 above. Further, they failed to comply with the rules and regulations of the MFDA and OSC as set above.

50. Stephenson failed to adhere to the standards of the voluntary licensing organizations to which he belonged and to which he was committed to adhere.

51. In the case of the Firm:

- (a) It failed to supervise the services provided by Stephenson to the Clients; and,
- (b) It provided incentives to Stephenson to increase the risk taken by Clients by rewarding Stephenson on the basis of AUM without regard to the associated risk to its Clients.

52. As a result of the Firm's failure to establish, implement and maintain adequate policies and procedures for the supervision of leveraging by individuals responsible for supervision at the Firm's head office and branch offices (including MCB) as described above, leveraged loan and trade recommendations based thereon that were unsuitable were processed by the Firm without first being subject to adequate supervisory scrutiny.

53. These failures were systemic in nature and establish that all leveraged loan recommendations and trade recommendations based thereon lacked the informed consent of the Clients.

Damages

54. The Class Members' damages, which were caused by the Defendants' misconduct and breaches of duties described above, include:

- (a) The loss of the value of money invested through the Leveraging Scheme;
- (b) Liability for debts incurred in furtherance of the Leveraging Scheme;
- (c) The cost of debt servicing and debt penalties resulting from the Leveraging Scheme; and,
- (d) Deferred sales charges both actually incurred or to be incurred to wind up unsuitable holdings.

55. As a result of the Defendants' said misconduct, the Plaintiffs have suffered and continue to suffer serious general damages, including pain and suffering, loss of reputation and loss of credit rating.

56. As a result of the Defendants' misconduct the Plaintiffs have suffered and continue to suffer expenses and special damages, including extensive financial and other pecuniary losses, of a nature and amount to be particularized prior to trial.

57. The Defendants earned undisclosed compensation (together, the "Revenues") at the expense of the Plaintiffs, including:

- (a) Fees for the sale of mutual and segregated funds;
- (b) Fees for arranging the various loans; and,
- (c) Fees, called "trailers", paid by mutual and segregated fund managers to advisors on a quarterly basis.

58. The earning and receipt of the Revenues occurred by reason of breach of duty, and the Defendants' earning of such Revenues was made at the expense of Plaintiffs, either directly as paid by the Plaintiffs, or indirectly as paid by lenders

59. The Plaintiffs have suffered a detriment as set out above and the Defendants have obtained a benefit without juristic reason.

60. The conduct of Investia merits aggravated damages in that its encouragement of Stephenson and MCB to continue use of the Leveraging Scheme constituted a direction to breach regulatory obligations, which they permitted to persist despite actual knowledge that such breach would lead to widespread loss on the part of Clients. Further, Investia permitted Stephenson to police himself despite Investia's being charged with such responsibility to safeguard the interests of Clients and being aware of Stephenson' conflict of interest, as described above.

61. In the alternative, the conduct of Investia as described herein merits punitive damages in that it constituted high-handed, malicious, arbitrary, and highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour on the part of financial intermediaries.

62. The Plaintiffs propose that the trial of this action take place in Barrie, Ontario.

DATE OF ISSUE: The 9 day of March, 2011.

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Court File No. 11-02324

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

STATEMENT OF CLAIM

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