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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 FIRMINVEST ASSET MANAGEMENT CANADA INC.,  
DAVID RATCLIFFE, and ULYSSE TRAUB**

**DECISION OF THE DIRECTOR**

Having reviewed and considered the agreed statement of facts, the admissions by Firminvest Asset Management Canada Inc. (**Firminvest Canada**) and David Ratcliffe (**Ratcliffe**, and collectively with Firminvest Canada, the **Settling Registrants**) and the joint recommendation to the Director by the Settling Registrants and staff of the Ontario Securities Commission (**Staff**) contained in the settlement agreement signed by the Settling Registrants on February 9, 2022, and by Staff on February 3, 2022 (the **Settlement Agreement**), a copy of which is attached as Appendix “A” to this Decision, and on the basis of those agreed facts and admissions, I, Debra Foubert, in my capacity as Director under the *Securities Act*, R.S.O. 1990, c. S.5 (the **Act**), accept the joint recommendation of the parties, and make the following decision:

1. The registration of Firminvest Canada under the Act shall be suspended and immediately thereafter revoked pursuant to s. 28 of the Act. To permit an orderly transfer of clients to a different registered firm, this suspension and revocation shall be effective 60 days from the date of this Decision, unless I have notified Firminvest Canada in writing that the effective date of the suspension and revocation is extended.

2. Effective immediately, the following term and condition shall be imposed on the registration of Firminvest Canada, pursuant to s. 28 of the Act: “Firminvest Asset Management Canada Inc. shall not open any new client accounts.”
3. The registration of Ratcliffe as an ultimate designated person and chief compliance office shall be suspended for a period of four years. This suspension shall be effective at the same time as the suspension of Firminvest Canada takes effect.
4. Pursuant to s. 29(2) of the Act, the suspension of Firminvest Canada will result in the suspension of Ratcliffe as an advising representative, however if Ratcliffe applies to be registered as an advising representative with another registered portfolio manager, Staff will not recommend to the Director that his application be refused unless Staff becomes aware after the date of this Settlement Agreement of conduct impugning Ratcliffe’s suitability for registration or rendering his registration otherwise objectionable, provided Ratcliffe meets all other applicable criteria for registration at the time he applies for registration.
5. Ratcliffe must provide current clients of Firminvest Canada with a clear and accurate written notice explaining that Firminvest Canada’s registration has been suspended and revoked, and the reason for that suspension and revocation, in a form acceptable to Staff.

February 25, 2022

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Date

*“Debra Foubert”*

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Debra Foubert

**Appendix “A”**

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

**- and -**

**IN THE MATTER OF FIRMINVEST ASSET MANAGEMENT CANADA INC.,  
DAVID RATCLIFFE, and ULYSSE TRAUB**

**SETTLEMENT AGREEMENT**

1. Registration is a cornerstone of the investor protection regime established by the *Securities Act*, R.S.O. 1990, c. S.5 (the **Act**). The privilege of registration is granted to firms and individuals who have satisfied the regulator that they meet the requirements prescribed by Ontario securities law. Accordingly, a registered firm must take reasonable steps to ensure that only duly registered individuals perform activities on the firm’s behalf that require registration, and that such individuals act only within the scope of their registration.

2. This settlement agreement (the **Settlement Agreement**) between staff of the Ontario Securities Commission (**Staff**) and Firminvest Asset Management Canada Inc. (**Firminvest Canada**) and David Ratcliffe (**Ratcliffe**) (Firminvest Canada and Ratcliffe being collectively referred to as the **Settling Registrants**) relates to an opportunity to be heard requested by the Settling Registrants regarding Staff’s recommendation to the Director that their registration be suspended pursuant to s. 28 of the Act.

**I. AGREED STATEMENT OF FACTS**

3. Staff and the Settling Registrants agree as to the following facts.

## **A. Firminvest Canada**

4. Firminvest Canada is registered under the Act as a portfolio manager and exempt market dealer, and offers discretionary portfolio management services to its clients.
5. Firminvest Canada was formerly known as Hottinger Asset Management Canada Inc. (**Hottinger**) The firm became registered in August 2002, and changed its name to Firminvest Canada in February 2018.
6. Firminvest Canada is located in Toronto, Ontario.
7. Prior to the events described herein, neither Hottinger nor Firminvest Canada had any regulatory discipline history.

## **B. Ratcliffe**

8. Ratcliffe holds a Bachelor of Science (obtained in 1985), a Masters of Business Administration (obtained in 1999), and a Chartered Financial Analyst designation (obtained in 1993) and has worked in the investment management industry since 1990.
9. Ratcliffe is Firminvest Canada's sole shareholder.
10. Ratcliffe is the president of Firminvest Canada, and is also registered under the Act as its ultimate designated person, chief compliance officer, and sole advising representative.
11. Prior to the events described herein, Ratcliffe had no regulatory discipline history.

### **C. The Memorandum of Understanding**

12. In September 2017, Firminvest Canada – then known as Hottinger – entered into a memorandum of understanding with Firminvest AG, a portfolio management firm located in Zurich, Switzerland (the **MOU**).

13. Firminvest AG is not registered under the Act.

14. The stated purpose of the MOU was to set out the terms of an arrangement whereby Firminvest AG would introduce its Canadian-resident clients to Hottinger for domestic portfolio management services (the **Introduced Canadian Clients**).

15. Among other things, the MOU provided for the following:

- (a) Hottinger Asset Management Canada Inc. would change its name to Firminvest Canada.
- (b) The Introduced Canadian Clients would maintain an advisory relationship with Firminvest AG.
- (c) Firminvest Canada would charge the Introduced Canadian Clients a management fee and would remit the majority of that fee to Firminvest AG as an advisory fee for certain services to be provided by Firminvest AG.

### **D. Implementation of the MOU**

16. In February 2018, in accordance with the MOU, Ratcliffe changed the name of Hottinger to Firminvest Canada. Firminvest Canada and Firminvest AG have no common ownership and are not affiliates.

17. In accordance with the MOU, the Introduced Canadian Clients were introduced by Firminvest AG to Firminvest Canada, and opened accounts with Firminvest Canada. In 2018, the first full year of the MOU, Firminvest Canada's revenue from management fees significantly increased from the year before. As of December 31, 2019, approximately 130 Introduced Canadian Clients had joined Firminvest Canada. By comparison, prior to the MOU, Firminvest Canada had approximately 40 clients.

18. Ulysse Traub (**Traub**) is a resident of Switzerland and a partner in Firminvest AG. Some or all of the Introduced Canadian Clients had pre-existing investment advisory relationships with Traub.

19. In November 2018, Traub became registered with Firminvest Canada as an associate advising representative. At no time did Traub receive any compensation from Firminvest Canada. Traub was compensated only by Firminvest AG.

20. As an associate advising representative with Firminvest Canada, Traub was subject to s. 4.2(1) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), which requires the advice of an associate advising representative to be preapproved by a designated advising representative before that advice is given to the client. As the ultimate designated person and chief compliance officer of Firminvest Canada, it was Ratcliffe's obligation under s. 5.1 and 5.2 of NI 31-103 to, among other things, implement policies and procedures at Firminvest Canada to ensure Traub's advice to clients was preapproved, and to promote compliance with that system.

21. Traub provided investment advice to the Introduced Canadian Clients without his advice being preapproved by Ratcliffe. In this regard:

- (a) A standard process was established within Firminvest Canada whereby Traub would email Ratcliffe with specific trades that he wanted executed for specific Introduced Canadian Clients. Ratcliffe would forward those trades to a registered investment dealer for execution without performing an assessment of whether the trade was suitable for the client.
- (b) From time to time, Traub would receive emails from certain of the Introduced Canadian Clients with questions about whether they should invest in specific securities, and he would respond to those emails with his investment advice. Other times, Traub would initiate this contact himself. In general, the advice Traub provided in these emails with the Introduced Canadian Clients had not been preapproved by Ratcliffe.
- (c) Firminvest Canada had no policies and procedures in place to ensure that Traub's advice was preapproved by Ratcliffe, nor did it have adequate records to demonstrate that any such preapproval had taken place.

22. The result of the arrangement described in paragraph 21 was that Ratcliffe did not take reasonable steps to ensure that the trades he and his firm made for the Introduced Canadian Clients were suitable for them, contrary to s. 13.3(1) of NI 31-103. However, Staff does not allege that any of the trades made for any of the Introduced Canadian Clients were in fact unsuitable for them.

## **E. Recommendation to Suspend**

23. The conduct described herein was first identified by Staff during a compliance review undertaken pursuant to s. 20 of the Act, and was then further investigated by the Registrant Conduct Team of the Compliance and Registrant Regulation Branch.

24. Following its review and investigation, Staff notified Ratcliffe, Traub, and Firminvest Canada that it had recommended to the Director that their registration be suspended pursuant to s. 28 of the Act. All three registrants requested an opportunity to be heard by the Director regarding this recommendation, in accordance with s. 31 of the Act.

## **II. ADMISSIONS BY SETTLING REGISTRANTS**

25. The Settling Registrants admit that by engaging in the conduct described herein, they failed to comply with the following provisions of Ontario securities law:

- (a) by Ratcliffe: s. 5.1, s. 5.2, and s. 13.3 of NI 31-103; and
- (b) by Firminvest Canada: s. 11.1 and s. 11.5 of NI 31-103.

## **III. JOINT RECOMMENDATION**

26. To settle the opportunity to be heard, Staff and the Settling Registrants make the following joint recommendation to the Director:

- (a) The registration of Firminvest Canada under the Act shall be suspended and immediately thereafter revoked pursuant to s. 28 of the Act. To permit an orderly transfer of clients to a different registered firm, this suspension and revocation shall be effective 60 days from the date this Settlement Agreement is approved by the



Director, unless the Director has notified Firminvest Canada in writing that the effective date of the suspension and revocation is extended.

- (b) Effective immediately, the following term and condition shall be imposed on the registration of Firminvest Canada, pursuant to s. 28 of the Act: “Firminvest Asset Management Canada Inc. shall not open any new client accounts.”
- (c) The registration of Ratcliffe as an ultimate designated person and chief compliance officer shall be suspended for a period of four years. This suspension shall be effective at the same time as the suspension of Firminvest Canada takes effect.
- (d) Pursuant to s. 29(2) of the Act, the suspension of Firminvest Canada will result in the suspension of Ratcliffe as an advising representative, however if Ratcliffe applies to be registered as an advising representative with another registered portfolio manager, Staff will not recommend to the Director that his application be refused unless Staff becomes aware after the date of this Settlement Agreement of conduct impugning Ratcliffe’s suitability for registration or rendering his registration otherwise objectionable, provided Ratcliffe meets all other applicable criteria for registration at the time he applies for registration.
- (e) Ratcliffe must provide current clients of Firminvest Canada with a clear and accurate written notice explaining that Firminvest Canada’s registration has been suspended and revoked, and the reason for that suspension and revocation, in a form acceptable to Staff.

27. The parties submit that their joint recommendation is reasonable, having regard to the following factors:

- (a) Ratcliffe has an approximately 30-year history in the investment management industry, and prior to the events described herein, he has not been the subject of any regulatory discipline.
- (b) Staff has not alleged that Firminvest Canada made unsuitable investments for clients or that clients suffered investment loss as a result of the conduct described herein.
- (c) Although Traub was not appropriately supervised by Ratcliffe, he has over 30 years of experience in the investment management industry in his native Switzerland.
- (d) The Settling Registrants have admitted to their non-compliance with Ontario securities law, as described herein.

28. The parties acknowledge that if the Director does not accept this joint recommendation:

- (a) This joint recommendation and all discussions and negotiations between Staff and the Settling Registrants in relation to this matter shall be without prejudice to the parties.
- (b) The Settling Registrants will be entitled to an opportunity to be heard in accordance with s. 31 of the Act in respect of Staff’s recommendation that their registration be suspended.

*“Elizabeth A. King”*

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Elizabeth A. King  
Deputy Director, Registrant Conduct  
Compliance and Registrant Regulation

February 3, 2022

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Date

*“David Ratcliffe”*

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David Ratcliffe, in his personal  
capacity and on behalf of Firminvest  
Asset Management Canada Inc.

February 9, 2022

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Date

*“Janice Wright”*

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Janice Wright  
Wright Temelini LLP  
Counsel to Firminvest Asset  
Management Canada Inc. and  
David Ratcliffe

February 9, 2022

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Date