Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING**
**PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF**
**THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Mary Lorelei Lambros**

# SETTLEMENT AGREEMENT

## I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and Mary Lorelei Lambros (the "Respondent").

## II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No.1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule "A".

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule "A", will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

## III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part X herein) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

## IV. AGREED FACTS

### Registration History

6. The Respondent has been registered in Alberta, British Columbia and Ontario as a mutual fund salesperson with Equity Associates Inc. ("Equity" or the "Member") since March 7, 2003.

7. Prior to that, the Respondent was registered as a mutual fund salesperson with FundEX Investments Inc. from December 1996 to March 2003, and with Investment Centre Financial Corp. from December 1993 to December 1996.

8. Equity is a Member of the MFDA and, with the exception of Saskatchewan, is registered in all Canadian provinces as a mutual fund dealer. It is also registered as an exempt market dealer in Ontario and Newfoundland and Labrador.

**The Respondent's Dealings with Client NM**

9. The Respondent and client NM were indirectly related. Specifically, the Respondent's aunt was client NM's step-mother, however NM referred to the Respondent as her niece and the Respondent referred to NM as her aunt. The Respondent states that she was very close to NM and further states that her relationship with the client was such that NM relied heavily on the Respondent to assist NM with all personal and financial needs.

10. From December 1993 until the date of NM's death, December 20, 2007, NM had an account at the mutual fund dealer at which the Respondent was registered[1] and the Respondent was the mutual fund salesperson responsible for servicing NM's account (the "NM Account").

11. Prior to June 2005, the NM account was always held in NM's name alone.

12. On or about June 28, 2005, following client NM's request, the Respondent became a joint owner with right of survivorship of the NM Account. NM made the Respondent a joint owner of the NM Account in order for her estate to avoid paying probate fees in respect of the NM Account upon her death.

13. On July 8, 2005, the Respondent changed the mailing address on the NM Account to the Respondent's residential address.

14. Beyond submitting the necessary forms to Equity to effect the change in ownership of the NM Account as well as the change in mailing address on the NM Account, the Respondent did not otherwise disclose or bring to the attention of Equity that she had become a joint owner of the NM Account and that all account statements and other communications in respect of the NM account would thereafter be mailed to the Respondent.

[1] From December 1993 to December 1996: Investment Center Financial Corp.
From December 1996 to February 2003: FundEX Investments Inc.
From March 2003 until December 20, 2007: Equity Associates Inc.

15. By becoming a joint owner of the NM Account, the Respondent acquired trading authority over the NM Account.

16. Between October 19, 2006 and December 20, 2007, the date on which client NM died, the Respondent, while a joint owner of the NM Account, executed trades in the NM Account on at least four occasions, and on each such occasion the Respondent alone authorized the trades and determined the securities traded.

17. Equity's policies and procedures, consistent with MFDA requirements, prohibited an Approved Person from exercising trading authority over a client's account.

18. On October 4, 2005, the Respondent held a meeting with client NM and NM's daughter, KB. Among other things discussed, KB wished for the Respondent to talk to client NM in order for NM's will to be updated due to circumstances surrounding client NM's son, DM. Notes prepared by the Respondent following this meeting stated as follows:

> [KB] wanted me to talk to her about calling [AB] in regards to getting the will updated due to the fact of what's going on with [DM] right now and they really feel strongly that they don't want [DM] to take half of her money and just piss it away in a month or two. That seemed to be what the biggest concern was. Initially she had asked me to be Trustee and then [KB] called me back and said that she would prefer that that wasn't the case, but I said it would make things a little easier. As soon as Aunt [NM]'s done with these shingles, I will make a point of getting her to the lawyers and getting things in order.

19. On September 29, 2006, during a meeting with NM to review NM's last will and testament and discuss NM's estate succession, the Respondent discussed with NM the preparation of a new will and power of attorney (together, the last will and testament and power of attorney are hereinafter referred to as the "Will"). Notes prepared by the Respondent following this meeting stated as follows:

> We had a conversation about her Will and her POA and they have got to be done fresh, new and clean because I just don't want the headache when she dies. …Her big concern was giving it to [DM] [client's son] and that she really wanted it to be doled out to him at a very slow process so that money was kept in reserve. That would be my responsibility to get that going and to keep things maintained

> in that manner. I'm going to have the Will changed to make sure that paperwork is in order according to what she wants. I'm going to take her to [lawyer] [JF]…for the Will.

20. On October 30, 2006, NM signed a new Will wherein her daughter, KB, was appointed as the executrix of her estate and the Respondent was appointed as an executrix in the event that KB was unwilling or unable to perform her duties. The Respondent was present when NM executed the new Will and was provided with a copy by NM for her client file.

21. Under the terms of the Will, NM's estate was to be divided equally between her two children, daughter KB and son DM.[2] Due to concerns that NM had about DM's ability to manage his financial affairs, the Will provided that DM's share of the estate was to be held in trust and that 10% of such trust was to be paid to him annually. The Respondent was appointed as the trustee for this trust.

22. The Respondent states that she was aware of KB's appointment as executrix in the Will, of her appointment as an executrix in the event that KB was unable or unwilling to perform her duties, and was further aware that she was named trustee in respect of funds to be paid to DM.

23. At all material times, section 3.2.2.7 of Equity's Policies and Procedures Manual ("PPM")[3], entitled "Executor or Co-Executor on Clients Estates, required an Approved Person named as executor for a client's estate to renounce such appointment or, where they did not renounce it, to inform Equity of the appointment so that the client account could be re-assigned to another Approved Person. As stated in Equity's PPM, the purpose of such requirement was as follows: "If an Approved Person is also the named executor of a living client's estate, any investment recommendations made by the Approved Person may be influenced by potential personal gains and therefore creates a conflict of interest."

24. At no time after being appointed in the Will as an executrix of NM's estate in the event that KB was unwilling or unable to perform her duties did the Respondent renounce the appointment or, alternatively, inform Equity of the appointment so that Equity could reassign the

[2] Neither KB or DM were clients of Equity.
[3] As was effective between 2005 to April 2009.

NM Account to a different Approved Person. The Respondent states that she did not do so given that Equity's PPM addressed the situation of an appointment as executor or co-executor of a client's estates, but did not address the situation where an Approved Person was appointed as an executor in the event that the named executor could not or was unwilling to perform his/her duties.

25. The Respondent also did not disclose or otherwise bring to Equity's attention that she had been appointed by NM as trustee of the trust established for DM.

26. In May 2007, Equity conducted a routine field review of the Respondent (the "May 2007 Field Review"). As part of this review, Equity required the Respondent to answer questions relating to her activities as an Approved Person, including whether or not she had "been named as an executor/executrix for any mutual fund clients". The Respondent states that, because she had been appointed in the Will (dated October 30, 2006) as an executrix only in the event that the named executrix could not or was unwilling to perform her duties, and not the executor of NM's estate, the Respondent answered that she had not been named as executor/executrix "to the best of her knowledge" and continued to service the NM Account.

27. On December 13, 2007 client NM was moved into a hospice facility due to her declining health. The Respondent states that until the date of her death, on December 20, 2007, she visited client NM on a daily basis.

28. On December 19, 2007, the Respondent was told by staff of the hospice that NM was expected to pass away before the coming weekend.

29. Notwithstanding that the Will provided that KB was to act as the executrix of NM's estate upon NM's death, the Respondent proceeded to start dealing with the NM Account without informing KB, to the extent and in the manner described below:

1) On December 20, 2007, the day after the Respondent's visit to the assisted living facility, the Respondent redeemed all of the investments in the NM Account, the proceeds of which totaled $347,161.87 (the "Redemption Proceeds"). Later that

day, NM died and the Respondent became the sole owner of record of the NM Account; and

2) On January 2, 2008, the Respondent withdrew the Redemption Proceeds from the NM Account and deposited them in her personal bank account, held jointly with her husband.

30. The Respondent did not inform KB that she had redeemed all of the investments in the NM Account and transferred the proceeds to her personal bank account until January 21, 2008.

31. Beyond submitting the necessary forms to Equity to effect the withdrawal of the monies from the NM Account, the Respondent did not disclose or otherwise bring to the attention of Equity that she withdrew the Redemption Proceeds from the NM Account and transferred them to her personal bank account.

32. On February 3, 2008, NM's son, DM, died in a car accident. Shortly thereafter, at some point between February 3 and February 7, 2008, the Respondent paid herself $15,000 from the Redemption Proceeds. The Respondent did not disclose to KB or to Equity that she had paid herself this fee, nor did she seek their permission for same.

33. At some point between April and August 2008, KB learned that the Respondent had paid herself a $15,000 fee out of the Redemption Proceeds.

34. On August 14, 2008, following correspondence between KB's lawyer and the Respondent's lawyer, KB filed a complaint with both Equity and the MFDA with respect to the Respondent's handling of the NM Account and her payment to herself of the $15,000 fee.

35. In response to MFDA Staff's inquiries as to the nature of the fee, the Respondent initially stated that it represented fees, in the nature of trustee fees, for services related to funeral arrangements for both client NM and her son, DM. Subsequently, during an interview with MFDA Staff on August 13, 2009, the Respondent stated that the $15,000 fee was not a trustee fee but reimbursement of expenses incurred by the Respondent to care for both client NM prior to her death, and for DM following NM's death.

36. On or about February 7, 2008, the Respondent released DM's portion of the Redemption Proceeds to his heirs. That same date, NM's lawyer, JF, acting pursuant to the Respondent's instructions and direction, presented to, and requested that, KB execute a Full and Final Release discharging the Respondent as "Trustee" of the NM estate. KB refused to do so at that time and requested a full accounting of the NM estate from the Respondent. Given KB's refusal to execute a Full and Final Release, the Respondent transferred KB's share of the Redemption Proceeds to an account held by her (the Respondent's) solicitor in trust for KB. The Respondent did not, however, provide KB with a full accounting, as requested, and insisted to KB that she would only release her share of the Redemption Proceeds if KB agreed to execute a Full and Final Release discharging the Respondent as "Trustee" of the NM estate.

37. On or about April 16, 2010, KB received her share of the Redemption Proceeds without having executed the Full and Final release that had been requested by the Respondent. KB maintains a civil claim against the Respondent and Equity requesting, among other things, a full accounting of the Redemption Proceeds and a return of the $15,000 fee the Respondent paid herself.

**The Respondent Engaged In Personal Financial Dealings With Clients And Operated Undisclosed Outside Securities Businesses**

38. EW and TW were clients of Equity. The Respondent was the mutual fund salesperson responsible for servicing clients EW and TW's accounts.

39. In or about January 2006, client EW met the Respondent to obtain advice on her and her husband's purchase of a property in the Bahamas. At or about that time, client EW also informed the Respondent of an investment opportunity she, client TW and their son, TWJ, were considering: the purchase and development of 28.484 acres of ocean front land in the Bahamas (the "Crossing Rocks Property") from a Bahamian corporation known as Crossing Rocks Beach and Tennis Club Limited. In particular, EW informed the Respondent that she and her family wished to use an existing plan of subdivision to develop the Crossing Rocks Property and then sell lots quickly to recover their expenses. Client EW requested the Respondent's advice on this

investment idea and further asked the Respondent if she knew of individuals anyone who would be interested in participating in the Crossing Rocks Property development.

40. In February 2006, the Respondent's husband, AL, travelled to the Bahamas with EW's husband, client TW, to inspect the Crossing Rocks Property. During that trip, TW also introduced AL to the owner of a house available for purchase which was close to the property that EW and TW had already purchased, and which was adjacent to the Crossing Rocks Property. On their return, the Respondent informed clients EW and TW that she and her family wished to invest in the Crossing Rocks Property development project. The Respondent and her husband did not, however, purchase the house close to the property that EW and TW had purchased.

41. In June 2006, EW's son, TWJ, as purchaser, entered into an agreement of purchase and sale with Crossing Rocks Beach and Tennis Club Limited, as vendor, for the purchase of the Crossing Rocks Property at a price of US$2,800,000, plus applicable taxes and legal fees (the "Purchase Agreement"). The sum of US$280,000 was to be paid to the vendors for an initial deposit as follows: US$160,000 by the Respondent and her family and US$120,000 by EW and TW. The deposit funds were delivered to a Bahamian lawyer on or about November 28, 2006 and were deposited in separate trust accounts in the names of the Respondent and her husband, on the one hand, and EW and TW, on the other hand.

42. In furtherance of the Respondent's and her family's stated intention to participate in the development of the Crossing Rocks Property, the Respondent and her family, along with EW, TW and TWJ, retained a Bahamian lawyer for advice regarding the group's purchase of the Crossing Rocks Property.

43. Pursuant to the lawyer's recommendation that the property be purchased through a Bahamian corporation, on October 30, 2006, Crossing Bay Limited ("Crossing Corp.") was incorporated by the Respondent, along with her family's and EW's family, pursuant to the Bahamas Corporations Act, 1992. The following individuals became shareholders and directors in Crossing Corp.:

| Shareholder | Shares Held | Interest |
|---|---|---|
| EW | 825 | 16.5% |
| TW (EW's husband) | 825 | 16.5% |
| TWJ (EW's son) | 1,650 | 33% |
| The Respondent | 825 | 16.5% |
| AL (the Respondent's husband) | 825 | 16.5% |
| AEL (the Respondent's daughter) | 50 | 1% |

Therefore, the W family owned 66% and the Respondent's family owned 34% of Crossing Corp.

44. The rights to the Purchase Agreement were subsequently assigned by TWJ to Crossing Corp. As such, upon completion of the Purchase Agreement's terms, Crossing Corp. would become owner of the Crossing Rocks Property.

45. Commencing in June 2006, the Respondent began working with her husband, EW, TW, and TWJ on the development plans for the Crossing Rocks Property. Among other steps taken, they retained lawyers and accountants in both Canada and the Bahamas, and set up, or took steps to establish, bank accounts and lines of credits to finance the project.

46. In the spring of 2007, EW and TW advised the Respondent that the additional funds they had hoped to contribute on their own behalf to the Crossing Rocks Property development project would not be forthcoming. A decision was thus made by Crossing Corp. to raise additional capital as investments in the Crossing Rocks Property project from other interested individuals.

47. In or about May 2007, the Respondent retained PricewaterhouseCoopers ("PWC") in respect of how to structure the proposed purchase and development of the Crossing Rocks Property.

48. Since investments by non Bahamian residents in Crossing Corp. would be subject to disadvantageous Bahamian tax treatment, including withholding taxes, the Respondent and her husband incorporated Abaco Investments Inc. ("Abaco") in Ontario on June 7, 2007, to facilitate investments by Canadian investors in the Crossing Rocks Property development project. The

Respondent and her husband were named the sole directors of Abaco and were the company's sole shareholders. The Respondent also became Abaco's president.

49. Abaco was to be used as a vehicle to raise funds from Canadian investors which would be flowed through to Crossing Corp. as loans for tax purposes (the "Abaco Investment").

50. Following Abaco's incorporation, the Respondent facilitated investments by a number of Canadian individuals, including clients of Equity for which she was the mutual fund salesperson responsible for servicing their accounts. Abaco represented to prospective investors that the Abaco Investment would work as follows:

1) An investment of US $100,000 would be equivalent to one share of Abaco, worth 1% of the company and equivalent to a 1% shareholding in Crossing Corp.;
2) Initial investments in Abaco would be subject to an initial administration fee of $1,000 (CAD), which all investors would make, including the Respondent;
3) The Abaco Investment would then be loaned to Crossing Corp. in the Bahamas, which loan would earn the Abaco shareholders interest at 5% per annum (the "Loans");
4) The Loans would have to be maintained in Crossing Corp. for a minimum of two years, following which Crossing Corp. intended to fully repay them to Abaco;
5) Initial investors in Abaco would be entitled to an annual complimentary week stay in a unit of the Crossing Rocks Property once the development project was completed; and
6) A collateral mortgage would be registered against the Crossing Rocks Property while Loans to Crossing Bay were outstanding in order to secure the Loans (and thus investments in Abaco / the Crossing Rocks Property development project).

51. The Abaco Investment was not a security sold pursuant to a prospectus or an exemption from the prospectus requirement, nor was it an investment known to or approved for sale by Equity. Investors were not provided with an offering memorandum, a subscription agreement or any other form of written disclosure in respect of the Abaco Investment.

52. The Respondent now states that the Abaco Investment was a security sold pursuant to National Instrument 45-106, section 2.4(2)(e) ("NI 45-106")[4], however there is no evidence establishing that it was sold on that basis, nor that it complied with the provisions of NI 45-106.

53. The following individuals invested in Abaco (the "Abaco Investors"):

| **Investors** | **Date of Investment** | **Amount** | **Admin. Fee** | **Client of Equity serviced by the Respondent** |
|---|---|---|---|---|
| Respondent | July 10, 2007 | $600,000 | $5,000 | N/A |
| DM and KM | July 13, 2007 | $100,000 | $1,000 | Yes |
| TN and DN | July 13, 2007 | $300,000 | $1,000 | Yes |
| BP and BP | July 13, 2007 | $100,000 | $1,000 | No |
| EB | July 31, 2007 | $600,000 | $1,000 | Yes |
| DP | August 3, 2007 | $50,000 | $1,000 | No |
| TG and MG | August 3, 2007 | $100,000 | $1,000 | Yes |
| WD and SD | August 13, 2007 | $100,000 | $1,000 | Yes |
| **Total** | | **$1,950,000** | **$12,000** | |

Though there is no evidence of such, the Respondent states that these individuals were her close friends and wealthy individuals.

54. A portion of the funds invested in Abaco by each of clients DM, KM, EB, WD and SD was obtained from redemptions made in their Equity accounts. In each case, the Respondent processed the redemption:

[4] The Private issuer exemption, as it is defined in NI 45-106. This exemption permits trades in a security of a company that has fifty or fewer shareholders and is not a reporting issuer. Trades of a private issuer's securities may only be made to individuals listed in NI 45-106, s. 2.4(2) and only where the private issuer's articles, shareholders' agreement or other security holders' agreement contains restrictions on the transfer of its securities.

| Investors | Redemption Date | Redemption Amount | Surrender Fees Incurred |
|---|---|---|---|
| DM and KM | July 5, 2007 | $100,000 | $0 |
| EB | June 29 to July 4, 2007 | $495,668.96 | $3,862.88 |
| WD and SD | August 3, 2007 | $90,000 | $0 |

55. On September 20, 2007, the Respondent sent letters to the Abaco Investors on Abaco letterhead acknowledging their investments and advising that share certificates would be issued in their names. The letters also acknowledged receipt of an administration fee in the amount of $1,000.00.

56. While the Abaco Investors may have known that the Respondent and her husband were investing in Abaco, the Respondent did not disclose to the Abaco Investors, either orally or in writing, that her interests posed a potential or actual conflict of interest between her and the Equity clients who invested in Abaco.

57. At no time did the Respondent disclose to EW and TW, either orally or in writing, that her interests posed a potential or actual conflict of interest between her and EW and TW in relation to the investments in the Crossing Rocks Property and Crossing Corp. Further, the Respondent did not disclose to Equity her involvement in Crossing Corp., Abaco, or the Abaco Investments.

58. In the fall of 2007, the Respondent realized that the costs of developing the Crossing Rocks Property were significantly higher than initially thought. As a consequence, in December 2007, the Respondent advised EW, TW and TWJ of her intention to withdraw Crossing Corp.'s offer to purchase the Crossing Rocks Property and provided TWJ with the necessary directions to do so. At that time, the Respondent, via Abaco, returned the funds invested by the Abaco Investors, including their $1,000 administration fee. The Respondent states that she assumed

responsibility for payment of lawyers, accountants, valuators and other professionals engaged in the planning of the Crossing Rocks Property development project for the sum of $78,000.

59. Pursuant to section 2.3 of Equity's Policies and Procedures Manual, Equity requires its registered mutual fund salesperson to inform them of:

a) business activities that are not carried on for the account of Equity; and
b) shareholdings in any business, whether related to the conduct of a securities business or not, that is not carried on for the account of Equity.

60. As part of its May 2007 Field Review of the Respondent, Equity inquired as to whether the Respondent was a "shareholder in any other business, securities-related or non-securities-related." The Respondent responded "No".

61. The Respondent never disclosed to Equity that she was a shareholder in Crossing Corp. or Abaco, nor did she disclose the nature of her investments relating to the development of the Crossing Rocks Property. In addition, the Respondent never disclosed to the Member that Equity clients for which she was the representative salesperson had invested in Abaco or Crossing Corp.

## V. CONTRAVENTIONS

62. The Respondent admits that:

a) From June 28, 2005 to December 20, 2007, she was a joint owner with right of survivorship of client NM's account, thereby giving rise to an actual or potential conflict of interest between the Respondent and client NM which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of client NM, contrary to MFDA Rules 2.1.4[5] and 2.1.1;

[5] MFDA Rule 2.1.4 was amended on February 27, 2006. It is alleged that the Respondent's conduct contravened MFDA Rule 2.1.4 both pre- and post-amendment.

b) From October 19, 2006 to December 20, 2007, while a joint owner of client NM's account, she carried out trades in client NM's account on at least four occasions in respect of which she alone authorized the trades and determined the securities traded, contrary to MFDA Rule 2.3.1(a) and 2.1.1;

c) By failing to renounce her appointment in the will of client NM as an executrix of NM's estate in the event that KB was unwilling or unable to perform her duties, her actions gave rise to an actual or potential conflict of interest between herself and client NM (and later the estate of client NM) which she failed to address by the exercise of responsible business judgment influenced only by the best interests of client NM (and later the estate of client NM), contrary to MFDA Rules 2.1.4 and 2.1.1;

d) By accepting her appointment as trustee of the trust established for DM, the son of client NM, she engaged in personal financial dealings with client NM, thereby giving rise to an actual or potential conflict of interest between herself and client NM (and later the estate of client NM) which she failed to address by the exercise of responsible business judgment influenced only by the best interests of client NM (and later the estate of client NM), contrary to MFDA Rules 2.1.4 and 2.1.1;

e) By transferring all of the monies in client NM's account to her personal bank account following the death of client NM she engaged in conduct unbecoming an Approved Person, contrary to MFDA Rules 2.1.4 and 2.1.1;

f) Between February 2006 and December 2007, she engaged in personal financial dealings;

    a. with clients EW and TW by participating in the purchase of the Crossing Rocks Property, incorporating Crossing Corp. with clients EW and TW, and participating in the Crossing Rocks Property development project; and

    b. with clients DM, KM, TN, DN, EB, TG, MG, WD and SD by facilitating and obtaining their investments in Abaco, a corporation for which she was a shareholder, director and officer;

thereby giving rise to an actual or potential conflict of interest with each client which she failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1;

g) Between February 2006 and December 2007, she engaged in outside business activities which she failed to disclose to the Member or on the National Registration Database ("NRD"), as required, by participating in the purchase and development project of a Bahamian property, and in the process incorporating, and being a shareholder, director and officer of, a Bahamian corporation known as Crossing Corp. as well as an Ontario corporation known as Abaco, thereby acting contrary to MFDA Rules 1.2.1(d), 2.1.1(c);

h) Between October 31, 2006 and December 2007, she engaged in securities related business that was not carried out for the account and through the facilities of the Member by selling investments in Abaco to clients and other individuals, contrary to MFDA Rules 1.1.1(a) and 2.1.1; and

i) Between June 2006 and December 2007, she failed to disclose to the Member her participation in a Bahamian property development project, including her shareholdings and directorships in Crossing Corp. and Abaco, thereby acting contrary to the Member's policies and procedures and interfering with the ability of the Member to supervise her conduct and comply with its obligations under MFDA Rule 2.1.4, contrary to MFDA Rules 1.1.2, 1.1.5 and 2.5.1, and MFDA Rule 2.1.1.

## VI. TERMS OF SETTLEMENT

63. The Respondent agrees to the following terms of settlement:

a) the Respondent shall pay a fine in the amount of $40,000, pursuant to section 24.1(b) of By-law No. 1, upon the acceptance of this Settlement Agreement;

b) a suspension from acting as a mutual fund salesperson for a period of 3 months;

c) the Respondent shall pay the costs of this proceeding in the amount of $5,000, pursuant to section 24.2 of By-law No. 1, upon the acceptance of this Settlement Agreement; and

d) the Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations.

## VII. STAFF COMMITMENT

64. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in Part IV this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

## VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

65. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

66. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive its her rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

67. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

68. Staff and the Respondent agree that if this Settlement Agreement is accepted by the

Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against it her.

## IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

69. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

## X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

70. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

71. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it she will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

## XI. DISCLOSURE OF AGREEMENT

72. The terms of this Settlement Agreement will be treated as confidential by the parties

hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

73. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

## XII. EXECUTION OF SETTLEMENT AGREEMENT

74. This Settlement Agreement may be signed in one or more counterparts, which together, shall constitute a binding agreement.

75. A facsimile copy of any signature shall be effective as an original signature.

Dated: November 16, 2010.

| | |
|---|---|
| "R. Ieraci" | "Mary Lambros" |
| Witness - Signature | Mary Lorelei Lambros |
| R. Ieraci | |
| Witness - Print name | |
| | "Shaun Devlin" |
| | Staff of the MFDA<br>Per: Shaun Devlin<br>Vice-President Enforcement |

Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING**
**PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF**
**THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Mary Lorelei Lambros**

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# ORDER

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**WHEREAS** on [**DATE**], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Mary Lorelei Lambros (the "Respondent");

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated November 16, 2010 (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

**AND WHEREAS** the Hearing Panel is of the opinion that:

1) From June 28, 2005 to December 20, 2007, the Respondent was a joint owner with right of survivorship of client NM's account, thereby giving rise to an actual or potential conflict of interest between the Respondent and client NM which the Respondent failed

to address by the exercise of responsible business judgment influenced only by the best interests of client NM, contrary to MFDA Rules 2.1.4[6] and 2.1.1;

2) From October 19, 2006 to December 20, 2007, while a joint owner of client NM's account, the Respondent carried out trades in client NM's account on at least four occasions in respect of which she alone authorized the trades and determined the securities traded, contrary to MFDA Rule 2.3.1(a) and 2.1.1;

3) By failing to renounce her appointment in the will of client NM as an executrix of NM's estate in the event that KB was unwilling or unable to perform her duties, the Respondent's actions gave rise to an actual or potential conflict of interest between herself and client NM (and later the estate of client NM) which she failed to address by the exercise of responsible business judgment influenced only by the best interests of client NM (and later the estate of client NM), contrary to MFDA Rules 2.1.4 and 2.1.1;

4) By accepting her appointment as trustee of the trust established for DM, the son of client NM, the Respondent engaged in personal financial dealings with client NM, thereby giving rise to an actual or potential conflict of interest between herself and client NM (and later the estate of client NM) which she failed to address by the exercise of responsible business judgment influenced only by the best interests of client NM (and later the estate of client NM), contrary to MFDA Rules 2.1.4 and 2.1.1;

5) By transferring all of the monies in client NM's account to her personal bank account following the death of client NM the Respondent engaged in conduct unbecoming an Approved Person, contrary to MFDA Rules 2.1.4 and 2.1.1;

6) Between February 2006 and December 2007, the Respondent engaged in personal financial dealings:

[6] MFDA Rule 2.1.4 was amended on February 27, 2006. It is alleged that the Respondent's conduct contravened MFDA Rule 2.1.4 both pre- and post-amendment.

a. with clients EW and TW by participating in the purchase of a Bahamian property (the "Property"), incorporating a Bahamian company known as Crossing Bay Limited (the "Crossing Corp.") with clients EW and TW, and participating in a development project of the Property (the "Bahamian Property Development Project"); and
b. with clients DM, KM, TN, DN, EB, TG, MG, WD and SD by facilitating and obtaining their investments in Abaco Investments Inc. ("Abaco"), a corporation for which she was a shareholder, director and officer;

thereby giving rise to an actual or potential conflict of interest with each client which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1;

7) Between February 2006 and December 2007, the Respondent engaged in outside business activities which she failed to disclose to the Member or on the National Registration Database ("NRD"), as required, by participating in the purchase and development project of the Property, and in the process incorporating, and being a shareholder, director and officer of, a Bahamian corporation known as Crossing Corp. as well as an Ontario corporation known as Abaco, thereby acting contrary to MFDA Rules 1.2.1(d), 2.1.1(c);

8) Between October 31, 2006 and December 2007, the Respondent engaged in securities related business that was not carried out for the account and through the facilities of the Member by selling investments in Abaco to clients and other individuals, contrary to MFDA Rules 1.1.1(a) and 2.1.1; and

9) Between June 2006 and December 2007, the Respondent failed to disclose to the Member her participation in the Bahamian Property Development Project, including her shareholdings and directorships in Crossing Corp. and Abaco, thereby acting contrary to the Member's policies and procedures and interfering with the ability of the Member to supervise her conduct and comply with its obligations under MFDA Rule 2.1.4, contrary to MFDA Rules 1.1.2, 1.1.5 and 2.5.1, and MFDA Rule 2.1.1.

**IT IS HEREBY ORDERED THAT** the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent shall pay a fine in the amount of $40,000, pursuant to section 24.1(b) of By-law No. 1;

2. The Respondent is a suspended from acting as a mutual fund salesperson for a period of 3 months;

3. The Respondent shall pay the costs of this proceeding in the amount of $5,000, pursuant to section24.2 of By-law No. 1; and

4. The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations.

**DATED** this [day] day of [month], 20[ ].

Per: _____

Terrance A. Sweeney, Chair

Per: _____

Guenther Kleberg

Per: _____

Brian Nowak

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