



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

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Michael Brandon Johns

ORDER

WHEREAS on March 24, 2009, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 in respect of a disciplinary proceeding commenced against Michael Brandon Johns (the “Respondent”);

AND WHEREAS on September 11, 2009, the Respondent filed a Reply;

AND WHEREAS on October 22, 2009, Staff of the MFDA (“Staff”) brought a motion, in writing, for an Order granting, among other things, leave to amend the Notice of Hearing in this proceeding in the form attached as Schedule “A” to this Order in response to issues raised in the Respondent’s Reply;

AND WHEREAS the Respondent does not oppose the Order sought by Staff in respect of its motion to amend the Notice of Hearing;

AND WHEREAS on November 2, 2009, an appearance took place by teleconference before a Hearing Panel of the Central Regional Council of the MFDA (the “Hearing Panel”) during which the Hearing Panel considered Staff’s motion to amend the Notice of Hearing and addressed certain procedural matters;

AND UPON reading Staff's Notice of Motion and Motion Record, including the Affidavit of Terri Spence sworn October 22, 2009, and hearing the submissions of Staff and counsel for the Respondent;

IT IS HEREBY ORDERED THAT:

- (i) the time for service of Staff's Notice of Motion and Motion Record set out in Rule 6 is abridged, pursuant to Rules 1.3(1), 1.5(1), 2.2(1), and 6.1(2) of the MFDA Rules of Procedure;
- (ii) the Notice of Hearing shall be amended in the form attached as Schedule "A" to this Order and served upon the Respondent;
- (iii) the Respondent shall serve and file an amended Reply, should he wish to do so, by no later than December 4, 2009;
- (iv) the hearing of this matter on its merits shall be rescheduled to April 26-28, 2010, in the hearing room located at the offices of the MFDA at 121 King Street West, Suite 1000, Toronto, Ontario, commencing at 10:00 a.m. (Eastern) or as soon thereafter as the matter can be heard.

DATED this 2nd day of November, 2009.

Per: "Edward Saunders"
The Hon. Edward Saunders, Chair

Per: "Guenther Kleberg"
Guenther Kleberg, Industry Representative

Per: "Sandy Grant"
Sandy Grant, Industry Representative



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**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1
OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Michael Brandon Johns

AMENDED NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel (the "Hearing Panel") of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the "MFDA") in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario on June 16, 2009 at 10:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Michael Brandon Johns (the "Respondent").

DATED at Toronto, Ontario this 24th day of March 2009.

"Jason D. Bennett"

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
121 King Street West
Suite 1000
Toronto, Ontario
M5H 3T9
Telephone: 416-943-7431
Fax: 416-361-9781
E-mail: corporatesecretary@mfd.ca

NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between October 2003 and January 2006, the Respondent engaged in securities related business, which was not carried on for the account of the Member or conducted through the facilities of the Member, by recommending, selling, facilitating the sale, or making referrals in respect of the sale of Lighthouse Pointe Limited Partnership units (“Lighthouse LPs”) and Ashton Oaks Limited Partnership units (“Ashton LPs”) to clients, contrary to MFDA Rules 1.1.1 and 2.4.2.

Allegation #2: Between October 2003 and January 2006, the Respondent engaged in another occupation, which was not properly disclosed to and approved by the Member and not properly disclosed to clients, by recommending, selling, facilitating the sale, or making referrals in respect of the sale of Lighthouse LPs and Ashton LPs, contrary to MFDA Rules 1.2.1(d) and 2.4.2.

Allegation #3: Between October 2003 and January 2006, the Respondent recommended, sold, facilitated the sale, or made referrals in respect of the sale of Lighthouse LPs and Ashton LPs to clients without ensuring that:

- (a) the investments were suitable for the clients, and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1; and
- (b) the clients qualified as accredited investors in accordance with Ontario Securities Commission Rule 45-501 and subsequently National Instrument 45-106, contrary to MFDA Rule 2.1.1, thereby engaging the jurisdiction of the Hearing Panel to impose a penalty on the Respondent pursuant to s. 24.1.1(h) of MFDA By-law No. 1.

Allegation #4: Between October 2003 and January 2006, the Respondent failed to comply with the Member’s policies and procedures with respect to the disclosure and approval of outside business activities, contrary to MFDA Rule 2.1.1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. From December 1996 to December 1997, the Respondent was registered in Ontario as a mutual fund salesperson with Alexis Capital Advisors. Commencing January 1998, the Respondent transferred his registration to Capital Management Group (“CMG”). CMG subsequently merged with Worldsource Financial Services Inc. and became CMG-Worldsource Financial Services Inc. (“CMG-Worldsource”). CMG-Worldsource became a member of the MFDA on May 10, 2002. CMG-Worldsource changed its name to Worldsource Financial Management Inc. (“Worldsource”) on July 7, 2003.
2. The Respondent resigned from Worldsource on January 23, 2006.
3. The Respondent is currently registered in Ontario with Becksley Capital Inc., a limited market dealer.

Background

4. Between October 2003 and January 2006, the Respondent recommended, sold, facilitated the sale, or making referrals in respect of the sale of approximately \$490,500.00 U.S. of Lighthouse LPs to 11 clients. According to an Offering Memorandum dated October 31, 2003, the Lighthouse LPs provide investors with an interest in a 270 unit residential apartment complex located in Palm Bay, Florida.
5. Between December 2005 and January 2006, the Respondent recommended, sold, facilitated the sale, or making referrals in respect of the sale of approximately \$580,000.00 U.S. of Ashton LPs to 14 clients. The Respondent personally purchased an additional \$40,000.00 U.S. of Ashton LPs. According to an Offering Memorandum dated December 28, 2005, the Ashton LPs provide investors with an interest in a 288 unit residential apartment complex located in Winston-Salem, North Carolina.

6. The Lighthouse LPs and Ashton LPs are high risk investments.
7. Both investments were sold to clients in reliance on the “accredited investor” exemption set out in s. 2.3 of Ontario Securities Commission Rule 45-501 and subsequently National Instrument 45-106.
8. The Lighthouse LPs and Ashton LPs were not investments which were approved for sale by Worldsource. In addition, the Respondent did not disclose to Worldsource that he recommended, sold or facilitated the sale of the Lighthouse LPs and Ashton LPs to clients, and received commissions of at least \$238,500 U.S. in respect of these activities.

Securities Related Business and Outside Business Activity

9. Contrary to MFDA Rules 1.1.1(a), (b) and 2.4.2, the Respondent engaged in securities related business by recommending, selling, facilitating the sale, or made referrals in respect of the sale of the Lighthouse LPs and Ashton LPs to clients, without ensuring that:

- (a) the sales were carried on for the account of Worldsource;
- (b) the sales were conducted through the facilities of Worldsource;
- (c) the sales were recorded in the books and records of Worldsource; and
- (d) the commissions generated as a result of the sales were paid or credited to Worldsource; and
- (e) in the event the Respondent made referrals in respect of the sales of the Lighthouse LPs and Ashton LPs:
 - i. all referrals were made pursuant to a referral arrangement between Worldsource and another entity licensed or registered pursuant to applicable securities legislation;
 - ii. there was a written agreement governing the referral arrangement prior to implementation;

- iii. all fees or other form of compensation paid as part of the referral arrangement were recorded on the books and records of Worldsource; and
- iv. written disclosure of the referral arrangement was made prior to any transaction taking place.

10. In the event the Respondent did not engage in securities related business, then the Respondent had and continued in a dual occupation by recommending, selling, facilitating the sale, or making referrals in respect of the sale of Lighthouse LPs and Ashton LPs to clients, contrary to MFDA Rules 1.2.1(d)(iii), (vi), 2.4.2 and 2.1.1. In particular:

- (a) the Respondent's activities were not disclosed to and approved by Worldsource;
- (b) the Respondent did not abide by Worldsource's procedures with respect to outside business activities; and
- (c) the Respondent did not provide clear disclosure to clients that any activities relating to the Lighthouse LPs and Ashton LPs were not the business of Worldsource and were not the responsibility of Worldsource; and
- (d) in the event the Respondent made referrals in respect of the sales of the Lighthouse LPs and Ashton LPs, the Respondent failed to ensure that:
 - i. all referrals were made pursuant to a referral arrangement between Worldsource and another entity licensed or registered pursuant to applicable securities legislation;
 - ii. there was a written agreement governing the referral arrangement prior to implementation;

- iii. all fees or other form of compensation paid as part of the referral arrangement were recorded on the books and records of Worldsource; and
- iv. written disclosure of the referral arrangement was made prior to any transaction taking place.

Failure to Ensure Suitability and Clients Qualified as Accredited Investors

11. At the time the investments were sold, the Respondent arranged for clients to execute a Subscription and Power of Attorney, and an Accredited Investor Certificate (collectively, the “Sales Documentation”). The Respondent delivered the Sales Documentation to Jaymor Group Inc. (“Jaymor”) which is identified as the promoter of the Lighthouse LPs and Ashton LPs in the offering memoranda.

12. At no time prior to the execution of the Sales Documentation, or at any time thereafter, did the Respondent conduct sufficient due diligence to ensure that: (1) the Lighthouse LPs and Ashton LPs were suitable for the clients and in keeping with their investment objectives; and (2) the clients purchasing the Lighthouse LPs and Ashton LPs qualified for the accredited investor exemption.

13. Based upon the most up-to-date client information retained by the Respondent¹, the Lighthouse LPs were unsuitable for all 11 clients who purchased them. Specifically, the Know Your Client (“KYC”) information collected by the Respondent indicates that 7 clients had a risk tolerance of less than “High”, while the Respondent did not have any KYC or risk tolerance information for the remaining 4 clients who purchased the Lighthouse LPs. In addition, the net worth and income information collected by the Respondent indicates that at least 9 of the 11 purchasers of the Lighthouse LPs did not qualify as accredited investors or the Respondent did not have sufficient information to determine whether the clients qualified.

14. Similarly, the Ashton LPs were unsuitable for at least 13 of the 15 clients who purchased them. The KYC information held by the Respondent indicates that 9 clients

¹ The Respondent did not retain copies of the Sales Documentation.

had a risk tolerance of less than “High”. The Respondent did not have any KYC or risk tolerance information for an additional 4 clients. Furthermore, none of the 15 purchasers of the Ashton LPs qualified as accredited investors or the Respondent lacked sufficient information to determine whether the clients qualified for the exemption.

Failure to Comply with Worldsource’s Policies and Procedures

15. The Respondent did not abide by ~~the~~ Worldsource’s policies and procedures with respect to outside business activities, which include refraining from selling products which are not listed on Worldsource’s Approved Product List and obtaining prior written approval from Worldsource before engaging in any outside business activities, contrary to MFDA Rule 2.1.1.

The Respondent Declined to Explain his Conduct

16. MFDA investigators gave the Respondent numerous opportunities to attend an interview and explain his conduct pertaining to the sale of the Lighthouse LPs and Ashton LPs. The Respondent declined to do this.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;

- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- (c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- (d) revocation of the authority of such person to conduct securities related business;
- (e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- (f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel;

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve** a **Reply** on Enforcement Counsel and **file** a **Reply** with the Corporate Secretary within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Charles A. Toth
Fax: 416-361-9073
Email: ctoth@mfdca.ca

A **Reply** shall be **filed** by:

- (a) providing 4 copies of the **Reply** to the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Office of the Corporate Secretary ; or

- (b) transmitting 1 copy of the **Reply** to the Corporate Secretary by fax to fax number 416-361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Corporate Secretary permits otherwise; or
- (c) transmitting 1 electronic copy of the **Reply** to the Corporate Secretary by e-mail at CorporateSecretary@mfdca.ca.

A **Reply** may either:

- (a) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or

- (b) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

- (a) to **serve** and **file** a **Reply**; or
- (b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

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