



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: David MacIver Potter

ORDER

WHEREAS on June 30, 2011, 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 David MacIver Potter (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated July 4, 2011 (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 the Respondent:

- (a) between May 2006 and May 7, 2009, accepted remuneration directly from 36 clients in the amount of approximately \$61,330 in respect of a fee-for-service business he engaged in providing investment advice to clients, contrary to MFDA Rules 2.4.1(a) and 2.1.1;
- (b) between May 2006 and May 7, 2009, engaged in securities related business beyond the terms of his registration as a mutual fund salesperson by providing investment

- advice to certain of these 36 clients in respect of publicly traded equity securities, contrary to MFDA Rules 1.1.2, 1.1.5(a) and 2.1.1;
- (c) between May 2006 and May 7, 2009, engaged in securities related business that was not carried on for the account and through the facilities of the Member by carrying on a fee-for-service business that provided investment advice to certain of these 36 clients in respect of publicly traded equity securities, contrary to MFDA Rules 1.1.1(a) and 2.1.1;
 - (d) in communications with the Member leading up to and including November 19, 2007, misled the Member by representing to the Member, among other things, that he did not “generally” charge a fee-for-service to clients when he knew that to be a misleading or untrue statement at the time and in the circumstances he made it, in that he omitted material facts from his statement which were required to make his statements to the Member not true or misleading, thereby interfering with the ability of the Member to conduct a reasonable supervisory investigation of his activities and failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1; and
 - (e) Between September 1, 2006 and May 7, 2009, failed to comply with the policies and procedures of the Member prohibiting fee-for-service arrangements, contrary to MFDA Rules 1.1.2 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 be permanently prohibited from conducting securities related business while in the employ of, or associated with, any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- 2) the Respondent shall pay a fine in the amount of \$12,500, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- 3) the Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1; and

- 4) if at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

DATED this 20th of September, 2011.

“Kathleen Kelly”

Kathleen J. Kelly,
Chair

“Paul Moore”

Paul M. Moore, Q.C.,
Industry Representative

“Hugh McNabney”

Hugh McNabney,
Industry Representative

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