



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: M. Hershberg Capital Limited

ORDER

WHEREAS on September 30, 2011, the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Settlement Hearing pursuant to s. 24.4 of MFDA By-law No. 1 in respect of M. Hershberg Capital Limited (“Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated September 18, 2011 (“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:

- i. From July 2004 to October 2008, the Respondent failed to ensure that trades in the accounts of clients were consistent with the clients’ documented KYC information in that purchase transactions of “medium/high” and “high” risk investments were made in accounts of clients who had a risk tolerance of “medium” recorded on their KYC forms, contrary to MFDA Rules 2.2.1 and 2.5.1;

ii. From July 2004 to May 2009, the Respondent engaged in discretionary trading in that trades were executed in client accounts:

- a. pursuant to limited trading authorizations but absent evidence of specific client instructions; and
- b. several days after receiving client instructions for trades,

iii. From July 2004 to May 2009, the Respondent conducted trades for multiple family members' accounts when the Respondent had received trade instructions from only one person in the family who did not have trading authority over the other accounts, contrary to 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 \$10,000, pursuant to s. 24.1.2(b) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$2,500, pursuant to s. 24.2 of MFDA By-law No. 1; and
3. 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 17th day of October, 2011.

“Edward Saunders”

The Hon. Edward Saunders, Q.C.,
Chair

“Anne Traczuk”

Anne Traczuk,
Industry Representative

“Nick Pallotta”

Nick Pallotta,
Industry Representative

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