



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: David William John Irwin

AMENDED NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the “Hearing Panel”) 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 September 2, 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 David William John Irwin (the “Respondent”).

DATED: May 20th, 2009.

“Jason D. Bennett”

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
121 King St. 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: In or about June 2004, the Respondent engaged in securities related business that was not carried on for the account of the Member and 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”) to 24 clients, contrary to MFDA Rules 1.1.1 and 2.4.2.

Allegation #2: In or about June 2004, the Respondent engaged in another gainful occupation, which was not properly disclosed to and approved by the Member, by recommending, selling, facilitating the sale, or making referrals in respect of the sale of Lighthouse LPs to 24 clients, contrary to MFDA Rules 1.2.1(d) and 2.4.2.

Allegation #3: In or about June 2004, the Respondent recommended, sold, facilitated the sale, or made referrals in respect of the sale of Lighthouse LPs to 24 clients without ensuring that:

(a) the clients qualified as accredited investors in accordance with Ontario Securities Commission Rule 45-501 and subsequently National Instrument 45-106, 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; and

(b) the investments were suitable for the clients and in keeping with their investment objectives, contrary to MFDA Rule 2.2.1.

Allegation #4: Between June 2004 and September 2005, the Respondent failed to comply with the Member’s policies and procedures with respect to securities related business, referral arrangements and the disclosure and approval of outside business activities, contrary to MFDA Rules 1.1.2, 2.5.1, and 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 2000 to September 2005, the Respondent was registered in Ontario as a mutual fund salesperson with Manulife Securities International Limited (“Manulife”).
2. The Respondent was terminated by Manulife on September 12, 2005 as a result of the events described below.
3. The Respondent is currently registered in Ontario with Becksley Capital Inc., a limited market dealer.
4. Manulife became a member of the MFDA on April 12, 2002. Manulife amalgamated with Berkshire Investment Group Inc. and changed its name to Manulife Securities Investment Services on July 2, 2008.

Background

5. Between May 2001 and June 2004, Manulife notified its mutual fund salespersons, including the Respondent, on several occasions that they were not permitted to recommend, sell or facilitate the sale of any investment products that had not been approved for sale by Manulife.
6. In or about June 2004, the Respondent recommended, sold, facilitated the sale, or made referrals in respect of the sale of approximately US\$805,000.00 of Lighthouse LPs to 24 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.

7. The Lighthouse LPs were not investments which were approved for sale by Manulife.

8. The Lighthouse LPs are high risk investments.

9. The 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.

10. The Respondent did not disclose to Manulife that he had recommended, sold, facilitated the sale, or made referrals in respect of the sale of the Lighthouse LPs to clients and had received commissions of at least US\$161,100 in respect of these activities.

Allegation #1 – Securities Related Business Outside the Member

11. By engaging in the conduct described above, the Respondent engaged in securities related business that was not carried on for the account of Manulife and through the facilities of Manulife, contrary to MFDA Rules 1.1.1, 2.1.1 and 2.4.2.

Allegation #2 – Undisclosed Dual Occupation

12. In the event that the Respondent’s involvement in the sale of the Lighthouse LPs to the clients did not constitute securities related business that was not carried on for the account of and through the facilities of Manulife, then the Respondent had and continued in another gainful occupation that was not disclosed to and approved by Manulife, contrary to MFDA Rules 1.2.1(d), 2.1.1 and 2.4.2.

Allegation #3 – Failure to Ensure Clients Qualified as Accredited Investors and Suitability

13. At the time the investments were sold, the Respondent arranged for clients to execute a Subscription Agreement, Power of Attorney and an Accredited Investor Certificate (collectively, the “Sales Documentation”) in respect of their purchase of the Lighthouse LPs. The Respondent delivered the Sales Documentation to Jaymor Group Inc. (“Jaymor”), which was identified as the promoter of the Lighthouse LPs in the Offering Memorandum.

14. 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 clients purchasing the Lighthouse LPs qualified as accredited investors; and (2) the Lighthouse LPs were suitable for the clients and in keeping with their investment objectives.

15. Based upon the Know-Your-Client (“KYC”) information maintained by Manulife in respect of the clients, the Respondent knew or ought to have known that at least 20 of the 24 purchasers of the Lighthouse LPs did not qualify as accredited investors or there was insufficient information available for the Respondent to be able to determine whether the clients qualified as accredited investors. In addition, the KYC information maintained by Manulife in respect of the clients indicated that the Lighthouse LPs were unsuitable for at least 5 of the 24 clients who purchased them because the clients had a risk tolerance of less than “High”.

Allegation #4 – Failure to Comply with Manulife’s Policies and Procedures

16. In or about May 2001, Manulife distributed a policy on high risk investment products to its mutual fund salespersons, including the Respondent, stating that mutual fund salespersons were not permitted to sell limited partnerships “unless you have

specific applicable licensing/registration”. The policy further stated that registration as a mutual fund salesperson does not authorize the sale of limited partnerships.

17. In or about February 2004, Manulife sent an email entitled “Protect Your License” to its mutual fund salespersons, including the Respondent, which stated:

- (a) all securities related business, including activities involving limited partnerships, must be conducted through Manulife;
- (b) mutual fund salespersons are not permitted to enter into referral arrangements with respect to the sale of securities, including limited partnerships, except through Manulife; and
- (c) all referral fees must flow through Manulife.

18. By participating in the sale of the Lighthouse LPs to the clients as described above, the Respondent failed to comply with Manulife’s policies and procedures with respect to outside business activities and referral arrangements, contrary to MFDA Rules 1.1.2, 2.5.1 and 2.1.1.

The Respondent Declined to Explain his Conduct

19. MFDA investigators provided the Respondent with reasonable opportunities to attend an interview and explain his conduct pertaining to the sale of the Lighthouse LPs. The Respondent declined to do so.

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 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, ON M5H 3T9
Attention: Charles A. Toth
Fax: 416-361-9073
Email: ctoth@mfd.ca

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

- (a) providing four (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, ON M5H 3T9
Attention: Office of the Corporate Secretary; or

- (b) transmitting one (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 one (1) electronic copy of the **Reply** to the Corporate Secretary by e-mail at CorporateSecretary@mfd.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.