



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: Ricardo John Cavalli

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Prairie Regional Council (the “Hearing Panel”) of the Mutual Fund Dealers Association of Canada (the “MFDA”) in the hearing room located at 800 - 6th Avenue S.W., Suite 850, Calgary, Alberta on April 18, 2013 at 10:00 a.m. (Mountain), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Ricardo John Cavalli (the “Respondent”). The Hearing on the Merits will take place in Edmonton, Alberta and time and venue to be announced.

DATED this 1st day of March, 2013.

“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
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Email: corporatesecretary@mfda.ca

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

Allegation #1: From January 2006 to July 2009, the Respondent engaged in securities related business that was not carried on for the account of and through the facilities of the Member by selling, recommending, facilitating the sale, or making referrals in respect of the sale of three different exempt securities to clients and other individuals outside the Member, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1.

Allegation #2: From January 2006 to July 2009, the Respondent had and continued in other gainful occupations which were not disclosed to and approved by the Member by selling, recommending, facilitating the sale, making referrals of exempt securities to clients and other individuals outside the Member, contrary to MFDA Rules 1.2.1(d)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 March 30, 1995 to May 14, 2010, the Respondent was registered as a mutual fund salesperson and branch manager in Alberta and British Columbia for PFSL Investments Canada Ltd. (“PFSL”). At the material time, the Respondent resided in Spruce Grove, Alberta.
2. On May 14, 2010, the Respondent was terminated by PFSL as a result of the activities described herein.
3. PFSL has been an MFDA Member since January 11, 2002.

Allegation #1 – Securities Related Business Outside the Member

¹ On December 3, 2010, MFDA Rule 1.2.1(d) was renumbered as MFDA Rule 1.2.1(c).

4. On or about April 7, 2010, Staff of the MFDA (“Staff”) received a complaint from a PFSL client alleging that the Respondent was engaging in outside business activities with clients by selling, recommending, facilitating the sale, or making referrals in respect of the sale of exempt securities² that were not being sold through the facilities or for the account of his Member. Staff forwarded a copy of the complaint to PFSL.

5. In response to the complaint, Staff and PFSL commenced investigations into the Respondent’s activities. The investigations revealed that the Respondent had been selling, recommending, facilitating the sale or making referrals in respect of the sale of the following exempt securities:

- (a) FRPL Finance Ltd. (“FRPL”)³;
- (b) Prodo Energy Inc. (“Prodo”); and
- (c) Focused Money Solutions Inc. (“Focused Money”).

6. None of the exempt securities had been approved by PFSL for sale by its Approved Persons, including the Respondent.

(a) FRPL Finance Ltd. (“FRPL”)

7. FRPL carries on business as a real estate investment trust (“REIT”). FRPL describes its primary business as developing, acquiring and operating resort-based real estate for ultimate disposition in a timeshare format and related activities. FRPL cites its secondary business as acquiring, holding and disposing of property of all kinds and ownership interests in other assets.

8. The offering memorandum prepared in connection with the FRPL offering described the securities offered as Series 1 and Series 2 First Mortgage Bonds secured by resort property or property that would be developed into a resort.

9. During the course of the investigation, Staff determined that between January 2006 and

² Exempt securities are securities that are sold in reliance on exemptions from the prospectus and registration requirements under local securities law that would otherwise apply before a security is distributed to the public.

³ Since the material time outlined above, FRPL has changed its name and is now carrying on business as Northwynd Properties Ltd. (“Northwynd Properties”).

June 2007, the Respondent received a total of \$185,760 in commissions relating to the distribution of FRPL securities. The Respondent personally invested in excess of \$100,000 in FRPL securities on March 7, 2007.

10. On or about March 8, 2010, and in connection with a restructuring process, FRPL proposed and subsequently appointed the Respondent as one of three Trustees for FRPL subject to approval by the FRPL Board of Directors. As a Trustee of FRPL, the Respondent's powers and authorities included, but were not limited to, the following: acting for, voting on behalf of and representing the Trust as a holder of the limited partnership units and other securities of the Trust; maintaining records and providing reports to unit holders; supervising the activities and managing the investments and affairs of the Trust and effecting payments of distributions from the Trust to unit holders. The Respondent did not disclose his appointment as Trustee to PFSL.

11. On April 7, 2010, a PFSL client advised Staff that the Respondent was a Trustee of FRPL and that the Respondent was recommending investments in FRPL to clients. On May 14, 2010, PFSL terminated the Respondent.

(b) Prodo Energy Inc. ("Prodo")

12. During the course of PFSL's investigation of the Respondent's activities, PFSL identified Prodo as an exempt security which the Respondent had recommended to client ST. The Respondent also had personal investments in Prodo.

13. In April 2007, shortly after client ST had retired and had received a financial package from her employer, the Respondent presented client ST with an opportunity to invest in Prodo. The Respondent described Prodo as an energy company which sought out older and no longer productive oil and gas wells and attempted to obtain any residual oil and gas. As the wells were already in existence, Prodo did not need to fund the drilling and exploration of the wells, which resulted in substantial savings for the company.

14. On August 17, 2007, the Respondent brought a subscription agreement for Prodo to client ST's home for completion. Client ST signed the subscription agreement in order to facilitate her

investment of approximately \$52,000 in Prodo. The Respondent is identified on the subscription agreement as the person who witnessed client ST's signature of the subscription agreement.

15. The subscription agreement and the Private Issuer Eligibility Certificate identified client ST as a "close business associate of a director, executive officer, founder or control person of the Issuer". During an interview with Staff, client ST stated that she was not a close business associate of anyone at Prodo and believed this description applied to the Respondent's relationship with Prodo.

16. On August 23, 2007, client ST redeemed a total of \$50,000 from her PFSL client account. The redemption was made by way of seven small transactions for a total amount of \$50,000.

17. On September 21, 2007, client ST used the redemption proceeds to purchase 50 shares of Prodo.

18. During the course of Staff's investigation, the Respondent denied receiving any referral or finder's fees from Prodo for directing investors to them.

19. Subsequently, Prodo advised Staff that the Respondent had been paid approximately \$25,000 in referral fees for directing approximately 15 investors to Prodo and assisting Prodo in raising \$500,000 in the early part of 2007.

20. On June 8, 2011, Prodo provided an updated list of investors who were referred to them by the Respondent and, where available, copies of commission cheques paid to him. According to Prodo's records, the Respondent referred 27 investors to Prodo and received a total of \$78,468 in referral fees.

(c) Focused Money Solutions Inc. ("Focused Money")

21. On May 8, 2011, the Alberta Securities Commission ("ASC") received a complaint against the Respondent from client VJ. The complaint alleged that the Respondent had facilitated an investment by client VJ in an investment product offered by Focused Money. The ASC referred client VJ's complaint to the MFDA.

22. On November 16, 2011, Staff interviewed client VJ. Client VJ advised that in December 2005 her husband had passed away and that shortly thereafter, in March 2006, the Respondent attended at her home with the proceeds of her husband's life insurance policy. The Respondent advised client VJ that the life insurance proceeds could be re-invested.

23. Sometime later, at another meeting between client VJ and the Respondent, client VJ advised the Respondent that she was thinking of investing in real estate and the Respondent recommended that she invest in Focused Money.

24. Client VJ further advised Staff that the Respondent explained Focused Money as a low-risk investment into American life insurance products and that it would generate simple interest at a rate of 10% per annum.

25. On March 11, 2009, client VJ invested \$125,125 into the Focused Money Life Settlements No. 2 limited partnership. The Private Placement Subscription Agreement lists the Respondent as the agent responsible for the sale of the product to client VJ.

26. Client VJ's investment had a maturity date of January 4, 2029 and would purportedly generate a monthly income of \$1,041.67 starting on January 5, 2009. In fact, client VJ received interest payments for approximately one year until they stopped arriving in April 2010.

27. On April 1, 2010, client VJ received a letter from Focused Money advising that they would be discontinuing payments. The letter advised that the discontinuance of payments was a result of the receivership of one of Focused Money's American service providers and that, in the interim, Focused Money was investigating the possible sale of some assets to obtain the capital required to continue to make payments and to minimize losses.

28. Exempt distribution reports filed with the British Columbia Securities Commission ("BCSC") by Focused Money identified 1439818 Alberta Inc. as having received commissions totaling approximately \$36,817 in relation to the distribution of Focused Money securities.

29. A corporate profile report for 14398180 Alberta Inc. lists the Respondent's spouse as a Director and the Respondent's home address as the company's registered office. The report also lists Alternative Money Solutions ("AMS") as an associated registration to 14398180 Alberta Inc. under the *Partnership Act* (Alberta). During the course of Staff's investigation, the Respondent admitted that he was the President of AMS.

30. On December 23, 2009, the ASC issued a Notice of Hearing against Focused Money for allegedly making misleading or untrue statements to Alberta investors and for behavior contrary to the public interest. On that same date, the ASC also issued an Interim Cease Trade Order ("ICTO") against securities of Focused Money. The ICTO was extended on January 6, 2010. On February 22, 2010, the ASC, considering it to be in the public interest, further extended the ICTO until submissions have been provided to the Hearing Panel and the opportunity to consider them and rule on any further disposition could be made.

PFSL's Policies and Procedures

31. From 2005 to 2008, the Respondent signed PFSL's annual Branch Manager Certification Form indicating that he had read and was familiar and in compliance with the policies and procedures of the Member regarding outside business activities.

32. On March 19, 2009, the Respondent also completed an online form with attestations regarding his compliance with the policies and procedures of the Member, including outside business activities and referral or finder's fees.

33. PFSL's policies and procedures prohibited its Approved Persons from, among other things, selling any investments other than "mutual fund products specifically authorized for sale by PFSL".

The Respondent's conduct during the investigation

34. In August 2010, Staff commenced its investigation of the Respondent's activities.

35. On February 11, 2011, during the course of an interview with Staff, the Respondent was

questioned as to whether he had received referral fees or other forms of compensation for directing investors to Prodo. The Respondent denied selling or making referrals in respect of Prodo and denied receiving any compensation in respect of such sales or referrals.

36. On May 18, 2011, Staff advised the Respondent that it had received information from Prodo confirming that the Respondent had referred investors to Prodo. Staff wrote to the Respondent requesting that he disclose the number of investors he had referred to Prodo, the amounts of their investments, and the commissions or fees he had received for making such referrals. Staff also requested that the Respondent disclose the same information in respect of any other companies to which he may have referred investors.

37. Contrary to the Respondent's statements during his interview with Staff, the Respondent now acknowledged by email dated May 30, 2011 that he was aware of six individuals⁴ who had invested in Prodo and stated that he did not "have records that indicate what they [Prodo] sent to me". The Respondent denied making referrals in respect of any investments other than Prodo.

38. As set out above, by the time the Respondent made this statement, Prodo had paid the Respondent approximately \$78,468 in referral fees for directing 27 investors to Prodo.

39. Additionally, by the time the Respondent made this statement, the Respondent had been paid a total of \$185,760 in commissions relating to the distribution of FRPL's securities and had facilitated client VJ's investment in Focused Money. By this time, Focused Money had also paid 1439818 Alberta Inc., the company owned by the Respondent's spouse, \$36,817 in relation to the distribution of Focused Money securities.

Summary of Allegation #1

40. In total, the Respondent received \$301,045 in compensation in relation to his involvement in sales or referrals of the FRPL, Prodo and Focused Money exempt securities to clients and other individuals.

41. By engaging in the conduct described above, the Respondent engaged in securities related

⁴ Individuals DM, DR, GM, HP, CL and LT.

business that was not carried on for the account or through the facilities of PFSL, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1.

Allegation #2 – Undisclosed dual occupations

42. In the event that the activities described in Allegation #1 above do not constitute securities related business, then from January 2006 to July 2009, the Respondent had and continued in other gainful occupations in relation to his involvement with FRPL, Prodo and Focused Money that was not disclosed to and approved by PFSL, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

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:

- (a) has failed to carry out any agreement with the MFDA;
- (b) 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;
- (c) has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- (d) has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- (e) 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: Maria L. Abate
Fax: 416-361-9073
Email: mabate@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:

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@mfd.ca.

A **Reply** may either:

- i.) 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
- ii.) 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.

End.

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