



**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 William John Irwin**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the “Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, David William John Irwin.

**II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No.1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

### **III. ACKNOWLEDGEMENT**

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part X) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

### **IV. AGREED FACTS**

#### **Registration History**

6. From December 2000 to September 2005, the Respondent was registered in Ontario as a mutual fund salesperson with Manulife Securities International Limited (“Manulife”).

7. On September 9, 2005, the Respondent provided fifteen days notice of his intention to terminate his registration with Manulife as a result of a dispute with Manulife regarding the events described below. On September 12, 2005, Manulife terminated the Respondent effective immediately as a result of the events described below.

8. The Respondent is currently registered in Ontario with Becksley Capital Inc., a limited market dealer.

## **Background**

9. 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 making referrals in respect of the sale of approximately US\$805,000.00 of Lighthouse Pointe Limited Partnership units (“Lighthouse LPs”) to 24 clients, contrary to MFDA Rules 2.4.2 and 1.1.1.

10. The Respondent states that he made the referrals pursuant to an oral referral arrangement between himself and The Jaymor Group (“Jaymor”) with respect to the Lighthouse LPs. Jaymor is identified as the promoter of the Lighthouse LPs in an Offering Memorandum dated October 31, 2003 (the “Offering Memorandum”).

11. According to the Offering Memorandum, the Lighthouse LPs provide investors with an interest in a 270 unit residential apartment complex located in Palm Bay, Florida.

12. The Lighthouse LPs could have been sold by Manulife but were not investments which had been approved for sale by Manulife, nor was there any referral agreement (written or oral) between Manulife and Jaymor.

13. The Respondent did not disclose to Manulife that he had made referrals in respect of the sale of the Lighthouse LPs to clients, and had received compensation of at least US\$161,100.00 in respect of these activities.

### **Allegation #1 – Securities Related Business Outside the Member and Improper Referral Arrangements**

14. In the process of making referrals with respect to the Lighthouse LPs, the Respondent:

- (a) identified clients who could be potential investors in the Lighthouse LPs;
- (b) delivered copies of the Offering Memorandum to clients;

- (c) met with clients and recommended the purchase of the Lighthouse LPs;
- (d) delivered and arranged for clients to execute Subscription Agreements, Power of Attorney and Accredited Investor Certificates (collectively, the “Sales Documentation”); and
- (e) collected the Sales Documentation executed by clients, as well as client cheques payable to the Lighthouse LP for the purchase of the investment, and delivered these items to Jaymor.

15. The Respondent states that, at the time, he did not believe that his acts constituted “securities related business” as defined in his Account Representative Agreement with Manulife or MFDA Rule 1.1.1.

16. The Respondent further states that, at the time, he believed he was permitted to enter into a referral arrangement with Jaymor pertaining to the sale of securities not offered by Manulife under the terms of his Account Representative Agreement with Manulife.

17. The Respondent now acknowledges that MFDA Rule 2.4.2 did not permit his referral arrangement with Jaymor for the following reasons:

- (a) the referral arrangement was not between Manulife and another Member or between Manulife and an entity prescribed in MFDA Rule 2.4.2(b)(i);
- (b) there was no written agreement governing the referral arrangement;
- (c) all fees or other form of compensation paid as part of the referral arrangement was not recorded on the books and records of Manulife; and
- (d) written disclosure of the referral arrangement was not provided to clients.

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

18. 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 participate in activities involving limited partnerships “without specific applicable licensing/registration or company approval”. The policy further stated that registration as a mutual fund salesperson does not authorize activities involving limited partnerships.

19. The Respondent did not request or obtain approval from Manulife with respect to his referral arrangement with Jaymor pertaining to the Lighthouse LPs.

20. 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.

21. The Respondent states that he entered into the referral arrangement with Jaymor with respect to the Lighthouse LPs prior to receiving the email from Manulife entitled “Protect Your License” in February 2004. However, the Respondent continued to make referrals with respect to the Lighthouse LPs, after he had received the email from Manulife.

22. On or about April 30, 2004, Manulife conducted an audit of the Respondent’s business practices, during which the Respondent advised Manulife that he did not have any referral arrangements.

23. The Respondent states that, at the time, he believed there was no obligation on him to disclose any such referrals arrangements pertaining to the Lighthouse LPs to Manulife under the terms of Account Representative Agreement with Manulife. The

Respondent now acknowledges that he was required to disclose his activities pertaining to the Lighthouse LPs and obtain approval from Manulife.

### **Additional Factors**

24. Following his termination as an Approved Person at Manulife, the Ontario Securities Commission approved the Respondent's registration with Becksley Capital Inc. on or about August 31, 2006. As a result of the events described above, this approval was granted subject to the condition that the Respondent be placed under close supervision for a period of one year.

25. The MFDA's investigation into the matters described herein has not revealed any client complaints or losses.

26. The Respondent has not been the subject of previous MFDA disciplinary proceedings.

### **V. CONTRAVENTIONS**

27. The Respondent admits the following contraventions of the By-laws, Rules or Policies of the MFDA:

(a) 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 making referrals in respect of the sale of Lighthouse LPs to 24 clients, contrary to MFDA Rules 2.4.2 and 1.1.1; and

(b) 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 and 2.5.1.

## **VI. TERMS OF SETTLEMENT**

28. The Respondent agrees to the following terms of settlement:

- (a) the Respondent shall for a period of 5 years be prohibited from conducting securities related business while in the employ of or associated with any MFDA Member, which prohibition does not extend to any securities related business which the Respondent may engage in with Becksley Capital Inc. or any entity which is not an MFDA Member;
- (b) the Respondent shall pay a fine in the amount of \$40,000.00 pursuant to s. 24.1.1(b) of MFDA By-law No. 1, payable as follows:
  - (i.) \$10,000.00 payable upon approval of the settlement;
  - (ii.) \$10,000.00 payable on or before October 14, 2010; and
  - (iii.) \$20,000.00 payable on or before January 14, 2011.
- (c) the Respondent shall pay costs in the amount of \$1,000.00 pursuant to s. 24.2 of MFDA By-law No. 1, on or before January 14, 2011; and
- (d) if the Respondent fails to comply with subparagraphs (b) or (c), then without further notice to the Respondent, the Respondent shall summarily be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, which prohibition does not extend to any securities related business which the Respondent may engage in with Becksley Capital Inc. or any entity which is not an MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.

## **VII. STAFF COMMITMENT**

29. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts or allegations described in the Notice of Hearing dated May 20, 2009

(as amended), or the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of facts or allegations not described in the Notice of Hearing dated May 20, 2009 (as amended), or any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

### **VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT**

30. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

31. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

32. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

33. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to



restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

#### **IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

34. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

#### **X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT**

35. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

36. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

#### **XI. DISCLOSURE OF AGREEMENT**

37. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason

whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

38. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

## **XII. EXECUTION OF SETTLEMENT AGREEMENT**

39. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

40. A facsimile copy of any signature shall be effective as an original signature.

Dated: April 14, 2010

“Kate Kavanaugh”

Witness - Signature

“David Irwin”

David William John Irwin

Kate Kavanaugh

Witness - Print name

“Shaun Devlin”

Staff of the MFDA  
Per: Shaun Devlin  
Vice-President, Enforcement



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**ORDER**

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**WHEREAS** on May 20, 2009, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to section 20.1 of By-law No. 1 in respect of David William John Irwin (the "Respondent");

**AND WHEREAS** on April 14, 2010, the Notice of Hearing was amended, on consent, in the attached form;

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA (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 contravened the By-laws, Rules or Policies of the MFDA as follows:

- (a) 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 making referrals in respect of the sale of Lighthouse LPs to 24 clients, contrary to MFDA Rules 2.4.2 and 1.1.1; and
- (b) 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 and 2.5.1.

**IT IS HEREBY ORDERED THAT** the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent shall for a period of 5 years be prohibited from conducting securities related business while in the employ of or associated with any MFDA Member, which prohibition does not extend to any securities related business which the Respondent may engage in with Becksley Capital Inc. or any entity which is not an MFDA Member.
2. The Respondent shall pay a fine in the amount of \$40,000.00 pursuant to s. 24.1.1(b) of MFDA By-law No. 1, payable as follows:
  - (a) \$10,000.00 payable upon approval of the settlement;
  - (b) \$10,000.00 payable on or before October 14, 2010; and
  - (c) \$20,000.00 payable on or before January 14, 2011.
3. The Respondent shall pay costs in the amount of \$1,000.00 pursuant to s. 24.2 of MFDA By-law No. 1, on or before January 14, 2011.
4. If the Respondent fails to comply with subparagraphs (b) or (c), then without further notice to the Respondent, the Respondent shall summarily be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, which prohibition does not extend to any securities related business which

the Respondent may engage in with Becksley Capital Inc. or any entity which is not an MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.

5. If at any time a non-party to this proceeding requests production of or access to exhibits in this proceeding that contain intimate financial or personal information, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits 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    day of April, 2010.

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The Hon. John B. Webber, Q.C.,  
Chair

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Christopher Marrese,  
Industry Representative

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Cheryl Hamilton,  
Industry Representative