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: Al Wei Loong Thong

SETTLEMENT AGREEMENT

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 Prairie 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, Al Wei Loong Thong.

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 XI) 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 August 8, 2008 to June 1, 2011, the Respondent was registered in Alberta as a mutual fund salesperson (now known as a mutual fund dealing representative) with Partners in Planning Financial Services ("PIP"), a former Member of the MFDA.

7. On June 1, 2011, PIP amalgamated with IPC Investment Corporation ("IPC"), a Member of the MFDA. From June 1, 2011 to December 4, 2014, the Respondent was registered in Alberta as a mutual fund salesperson with IPC.

8. From November 5, 2010 to December 2, 2014 the Respondent was also registered in Alberta as an exempt market dealing representative.

9. The Respondent is not currently registered in the securities industry in any capacity.

10. At all material times, the Respondent conducted his mutual fund business in Edmonton, Alberta.

Background - Proforma Capital Profit Notes

11. Proforma Capital Profit Notes ("PCPN") were term notes sold under an Offering Memorandum ("OM") with a minimum investment of $150,000. The PCPNs were issued by Proforma Capital Bond Corporation ("PCBC") and sold by Proforma Capital Inc. (collectively referred to as the "Proforma Group"). According to the PCPN marketing materials, the notes were to "pay a regular monthly income stream and offer a fixed and known rate of return with optional credit default insurance coverage".

12. The Proforma Group loaned the funds raised by the sale of PCPNs to New Solutions Financial Corporation ("New Solutions"), an exempt market dealer. Between 2009 and 2011, New Solutions received approximately $212 million from PCPN investors, allegedly to fund an accounts receivable financing facility. Funds raised from the sale of the PCPNs were ostensibly used by New Solutions to lend money to established companies against "A" rated or better accounts receivable owed to borrowing merchants.

13. In February 2012, PCPN investors received a letter from the Proforma Group notifying them that interest payments were being suspended as payment had not been received from New Solutions.

14. On April 11, 2012, New Solutions filed for creditor protection in Ontario under the *Companies' Creditors Protection Act*, R.S.C., 1985, c. C-36 and MNP Ltd. was appointed as the Monitor of the Companies. Of the two credit default insurance policy coverages offered on the

PCPNs, the first was determined to be voided by the actions of New Solutions, and the other was determined to have been fraudulent. The Proforma Group claims to have only learned of the related problems with the credit default insurance policies once New Solutions defaulted on its regular interest payment to PCPN investors.

15. New Solutions misrepresented the quality of the loans it made using the funds raised by the sale of PCPNs. On March 28, 2013, in a settlement agreement with Staff of the Ontario Securities Commission ("OSC"), New Solutions admitted that it had misled investors, and that the New Solution funds had been loaned to companies owned or controlled by Ronald Ovenden, the controlling mind of New Solutions, and to Ovenden's associates, friends, and family members, or companies controlled by the same.

16. On April 10, 2013, New Solutions was permanently barred from trading in securities and derivatives, acquiring securities, using exemptions, and becoming a registrant. On April 2, 2014 the OSC barred Ovenden from trading in securities, acquiring securities or using exemptions in Ontario for a period of 15 years, and permanently banned him from becoming or acting as a director or officer of any issuer, registrant or investment fund manager.

17. As of March 31, 2015, the Ontario Superior Court of Justice has authorized a single distribution of $5.7 million in respect of $220 million of proven secured claims (which includes the claims of PCPN investors) against New Solutions.

Undisclosed Referrals

18. Beginning in late 2007, the Respondent entered into an unwritten referral arrangement, wherein if he referred clients to the Proforma Group to purchase PCPNs, he would receive a commission of up to 1% of the total funds that clients invested in PCPNs.

19. The Respondent referred TC to the Proforma Group prior to being registered with the MFDA. TC invested with the Proforma Group after the Respondent became registered. The Respondent received referral fees with respect to this investment while he was registered.

20. After becoming registered, the Respondent referred HE and JE to the Proforma Group. HE and JE were not mutual fund clients of the Respondent and never did become mutual fund clients of the Respondent. The respondent did not receive referral fees with respect to the investments made by HE and JE[1]. The Respondent stopped receiving referrals fees sometime in early 2010. As described below, these clients invested approximately $1,017,900 in PCPNs.

21. On or about October 19, 2009, client TC invested $200,000 in PCPNs.

22. On or about July 5, 2010, client HE invested $391,300 in PCPNs.

23. On or about July 5, 2010, client JE invested $187,200 in PCPNs.

24. On or about July 22, 2010, client HE invested $108,700 in PCPNs.

25. On or about July 22, 2010, client JE invested $112,600 in PCPNs.

26. On or about October 5, 2011, client HE invested $10,700 in PCPNs.

27. On or about October 5, 2011, client JE invested $7,400 in PCPNs.

28. All of the clients lost their investments when New Solutions filed for creditor protection.

29. In the course of referring the clients to the Proforma Group to purchase the PCPNs, the Respondent:

(a) advised the clients of the opportunity to purchase PCPNs;

(b) explained some of the details of the PCPNs, including describing the product as having a guaranteed rate of return and being backed by credit default insurance in order to ensure capital preservation; and

[1] HE and JE are spouses.

(c) directed the clients to speak with representatives of the Proforma Group to purchase the PCPNs.

30. The Respondent states that he did not recommend the PCPNs to the clients and was not involved in the transactions beyond referring the clients to the Proforma Group.

31. Between August 2008 and January 2010, the Respondent received, through a numbered company, a total of $4,505.08 in referral fees from the Proforma Group in relation to having referred the clients.

32. The PCPNs were not an investment that was approved by IPC for sale by its Approved Persons, including the Respondent. The transactions involving PCPNs were not processed for the account or through the facilities of IPC.

33. During the material time, IPC had written policies and procedures prohibiting its Approved Persons from, among other things, entering into a referral arrangement unless IPC approved of the arrangement and was a party to it. IPC did not have a referral agreement with the Proforma Group, and the Respondent did not disclose to IPC that he was making referrals in respect of the PCPNs.

Additional Factors

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

35. The Respondent was terminated by the Member on December 4, 2014 as a result of the misconduct.

36. IPC fined the Respondent $50,000 as a result of the conduct described above. To date, the Respondent has not paid any portion of the fine levied by IPC. The Respondent states that no part of this fine was paid as there was a dispute with IPC as to the process followed and the

amount imposed, which also occurred at the same time as the MFDA investigation was ongoing. The Respondent was prepared to deal with any necessary fine as part of an MFDA proceeding.

V. CONTRAVENTIONS

37. The Respondent admits that, prior to being registered he referred one client, and between August 12, 2008 and 2010, he referred two individuals to a company selling an exempt market product, and received at least $4,505.08 in referral fees for doing so, thereby participating in a referral arrangement to which the Member was not a party and which did not otherwise comply with MFDA Rules 1.1.1 and 2.4.2, and sections 13.7 to 13.10 of National Instrument 31-103.

VI. TERMS OF SETTLEMENT

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

(a) the Respondent shall pay a fine of $10,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

(b) the Respondent shall be prohibited from conducting securities related business while in the employ of or associated with any MFDA Member for a period of three years, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

(c) the Respondent shall pay costs of $5,000, pursuant to section 24.2 of MFDA By-law No. 1; and

(d) the Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

39. 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 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 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

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

41. 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.

42. 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. 24.1.1 and/or 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.

43. 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

44. 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 section 24.3 of 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

45. 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.

46. 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

47. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 30th day of September, 2016.

"Al Thong"
Al Thong

"WL"
Witness – Signature

WL
Witness – Print Name

"Shaun Devlin"
Shaun Devlin
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement

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IN THE MATTER OF A SETTLEMENT HEARING
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Re: Al Wei Loong Thong

ORDER

WHEREAS on [date], 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 Al Wei Loong Thong (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (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, prior to being registered, referred one client, and between August 12, 2008 and 2010, referred two individuals to a company selling an exempt market product, and received at least $4,505.08 in referral fees for doing so, thereby participating in a referral arrangement to which the Member was not a party and which did not otherwise comply with MFDA Rules 1.1.1 and 2.4.2, and sections 13.7 to 13.10 of National Instrument 31-103.

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

1. the Respondent shall pay a fine of $10,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

2. the Respondent shall pay costs of $5,000, pursuant to section 24.2 of MFDA By-law No. 1;

3. the Respondent will attend in person, on the date set for the Settlement Hearing; and

4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, 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 personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this [day] day of [month], 20[ ].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

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