



**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: Dylan Brown**

SETTLEMENT HEARING

November 18, 2008  
Toronto, Ontario

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, Q.C.	Chair
Sandy Grant	Industry Representative
Christopher Marrese	Industry Representative

Appearances:

A. Michael Rothe	)	for Mutual Fund Dealers Association
	)	of Canada
Harold Geller	)	for Dylan Brown

1. By Notice of Settlement Hearing, dated the 17<sup>th</sup> day of October, 2008, the Mutual Fund Dealers Association of Canada (“MFDA”) announced that it proposed to hold a Hearing before a Hearing Panel of the Central Regional Council to consider whether, pursuant to Section 24.4 of MFDA By-Law No. 1, the Hearing Panel should accept a Settlement Agreement entered into between Staff of the MFDA and Dylan Brown (“Respondent”).

2. At the outset of the proceedings, we considered a joint motion by Staff and the Respondent to move the proceedings “in-camera”. This motion was brought pursuant to Rule 15.2(2) of the MFDA Rules of Procedure, which provides as follows:

“(2) A Hearing Panel may, on its own initiative or at the request of a party, order that all or part of the settlement hearing be held in the absence of the public, having regard to the principles set out in Rule 1.8.”

3. Rule 1.8(2) provides as follows:

“(2) A Panel may order that all or part of a hearing be heard in the absence of the public where the Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.”

4. We granted the motion on the condition, which was agreeable to both Staff and the Respondent, that, should the Hearing Panel accept the Settlement Agreement, we would provide reasons for our decision which, along with the record of the Settlement Hearing, would be available to the public. This is consistent with Rule 15.2(3) of the MFDA Rules of Procedure.

5. By way of background, on the 14<sup>th</sup> day of May, 2008, a Notice of Hearing was issued against, *inter alia*, the Respondent. The Allegation in the Notice of Hearing relating to the Respondent was as follows:

“Between May 2, 2002 and June 30, 2002, the Respondent Dylan Brown, as co-branch manager, knew or ought to have known that the Respondent Ronald Brown was engaging in securities related business that was not carried on for the account of the Member or through the facilities of the Member and failed to take appropriate supervisory action, contrary to MFDA Rule 2.5.3 and MFDA Policy No. 2.”

6. The salient portions of the Settlement Agreement are as follows:

**“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 paragraph 18) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is approved by the MFDA.

**IV. AGREED FACTS**

6. The Respondent Dylan Brown is the son of Ronald Brown. At the material times, Dylan Brown was registered as a mutual fund salesperson in Ontario and British Columbia with Independent Planning Group Inc. (“IPG”) and as a co-branch manager along with Ronald Brown at their shared Ontario branch office.

7. In October 2002, in the process of transferring from another mutual fund dealer to IPG, Ronald Brown sought permission from IPG to sell units in limited partnership investments offered by the Jaymor Group of Companies (“Jaymor”). Ronald Brown had previously sold Jaymor products while at the other mutual fund dealer. Jaymor invested in real estate properties located in Florida. On or about October 22, 2002, Ronald Brown was advised by IPG that the sale of Jaymor products was not permitted.

8. Between November 2002 and November 2005, Ronald Brown sold \$233,339.75 of units in the Atrium Limited Partnership (“ALP”), the

Villabar Properties (2003) Limited Partnership ("VPLP2003"), the Lighthouse Pointe Limited Partnership ("LPLP") and the Villabar Properties (2005) Limited Partnership ("VPLP2005") issued by Villabar Properties Inc. ("Villabar") to clients and other individuals. The sales were not carried on for the account of IPG or through the facilities of IPG, contrary to MFDA Rule 1.1.1.

9. In or about November 2002, Dylan Brown was the payee of a sales commission cheque for \$9,408.42 issued by Jaymor in relation to Ronald Brown's sale of the ALP units to an individual. Dylan deposited the sales commission monies into his personal bank account.

10. By no later than Dylan Brown's receipt and acceptance of the commission cheque, he should have been aware of and did not report or disclose to IPG Ronald Brown's sale of securities outside IPG. As co-branch manager, Dylan Brown did not notify IPG head office that Ronald Brown was selling investment products that IPG had not approved for sale by its Approved Persons, nor did he take any other steps to restrain Ronald Brown from selling any further Jaymor products or to inquire into Ronald Brown's activities.

#### **V. CONDUCT CONTRARY TO THE PUBLIC INTEREST**

11. The Respondent Dylan Brown admits that he knew or ought to have known that Ronald Brown was engaging in securities related business that was not carried on for the account of the Member or through the facilities of the Member and failed to take appropriate supervisory action, contrary to MFDA Rule 2.5.3 and MFDA Policy No. 2.

#### **VI. TERMS OF SETTLEMENT**

12. The Respondent Dylan Brown agrees to the following terms of settlement to be effective immediately upon approval by the Hearing Panel of this Settlement Agreement:

- (a) a fine in the amount of \$10,000;
- (b) a prohibition from acting as a Branch Manager for a period of 3 years;
- (c) a suspension from acting as a mutual fund salesperson for a period of 1 month; and
- (d) Costs in the amount of \$2,500.00

#### **VII. STAFF COMMITMENT**

13. 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 any conduct or alleged conduct of the Respondent in relation to the facts set out in Part IV of this Settlement Agreement, subject to the provisions of paragraph 18 below.

## VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

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15. 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.

16. 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.

17. 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 them.

18. 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.

19. 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.

20. 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 of 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.

**IX. DISCLOSURE OF AGREEMENT**

21. 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 Respondents and Staff or as may be required by law.

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

...

Dated: October 15, 2008

“Sandra Brown”  
Witness – Print name

“Dylan Brown”  
Dylan Brown

“Mark T. Gordon”  
Staff of the MFDA  
Per: Mark T. Gordon  
Executive Vice-President”

7. It was jointly submitted by Staff and counsel for the Respondent that the role of the Hearing Panel in a Settlement Hearing is not the same as its role in making a penalty determination after a contested Hearing. We agree.

8. In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. As has been said: “The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made.”

Re: Clark (Re), [1999] I.D.A.C.D. No. 40 at page 3.

9. Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

- (i) Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;
- (ii) Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- (iii) Whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- (iv) Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- (v) Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- (vi) Whether the Settlement Agreement will foster confidence in the integrity of the MFDA;
- (vii) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

Re: Investors Group Financial Services (Re), [2005] MFDA Regional Council, File No. 200401, Panel Decision dated December 16, 2004 at pages 2-3.

Re: IQON Financial Inc. (Re), [2007] MFDA Pacific Regional Council, Hearing Panel Decision dated May 24, 2007 at page 9.

### CONSIDERATIONS IN THE PRESENT CASE

10. It was submitted to us that we should accept the Settlement Agreement and the proposed penalties for, *inter alia*, the following reasons:

- (a) The Respondent has no past disciplinary history with the MFDA.
- (b) The Respondent's misconduct has not resulted in any known financial loss to the clients.
- (c) The Respondent has co-operated fully with the MFDA in the investigation and resolution of this matter.
- (d) The Respondent has accepted responsibility for his misconduct, thereby avoiding the necessity of the MFDA conducting both a protracted investigation and a

- lengthy hearing at considerable additional expense to the MFDA and, ultimately, to the membership of the MFDA.
- (e) The Respondent, since the incident in question, has taken a number of professional development courses, many of which had ethical components.
  - (f) The Settlement Agreement and the proposed penalties are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by its Members and Approved Persons.
  - (g) The proposed penalties will deter misconduct by the Respondent, deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry participants and foster public confidence in the mutual fund industry.

11. We have also considered the nature of these proceedings, the fact that they are public and the effect that this has had, and will have, on the Respondent.

12. We have also considered that this was a Settlement Agreement that was reached by the parties after significant discussion and negotiation. It represents what they feel, with their knowledge and experience, is an appropriate resolution.

13. Taking all of these factors into consideration, we unanimously concluded that this Settlement Agreement was reasonable and in the public interest and should be accepted by this Hearing Panel.

Dated at Toronto, this 24th day of November, 2008.

“Thomas J. Lockwood”  
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Thomas J. Lockwood, Q.C.  
Chair

“ Sandy Grant”  
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Sandy Grant  
Industry Representative

“ Christopher Marrese”  
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Christopher Marrese  
Industry Representative