

# INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY  
ORGANIZATION OF CANADA (IIROC)**

**AND**

**JOHN SHANE MACEachern**

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. IIROC Enforcement Staff and John Shane MacEachern (the “Respondent”), consent and agree to the settlement of this matter by way of this settlement agreement (the “Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (the “Investigation”) into the conduct of the Respondent.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the “Hearing Panel”).

### II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

Between July 2010 and June 2011, he recommended and facilitated an investment in securities without the consent or knowledge of his Dealer Member, contrary to IIROC Dealer Member Rule 29.1.

6. Staff and the Respondent agree to the following terms of settlement:
  - a) A fine in the amount of \$25,000;
  - b) A 6 month period of strict supervision; and

- c) The Respondent shall re-write and successfully complete the Conduct and Practices Handbook Course within 12 months of acceptance of this Settlement Agreement.

7. The Respondent agrees to pay costs to IIROC in the sum of \$5,000.

### **III. STATEMENT OF FACTS**

#### **(i) Acknowledgment**

8. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

#### **(ii) Factual Background**

##### **A. Overview**

- 9. Between July 2010 and June 2011, the Respondent recommended and facilitated an investment in securities offered by Capital Market Technologies Inc. (“CMT”). The Respondent did not conduct any due diligence on CMT or its principal, Paul Maines. Nonetheless, the Respondent proceeded to recommend an investment in CMT to potential investors.
- 10. None of the transactions took place through the facilities of RBC Dominion Securities Inc. (“RBC DS”), the Respondent’s Dealer Member employer. The Respondent did not advise anyone at RBC DS that he was recommending an investment in CMT.
- 11. In total, 17 investors purchased securities offered by CMT totaling \$178,000.

##### **B. Registration History**

- 12. From January 2010 to December 2012, the Respondent was registered as a Registered Representative with a Charlottetown, PEI branch of RBC DS, a Dealer Member of IIROC. Prior to that, the Respondent had been registered as a Mutual Fund Representative with Royal Mutual Funds Inc. since November 2000.
- 13. Since February 2013, the Respondent has been registered as a Registered Representative with a Charlottetown, PEI branch of TD Waterhouse Canada Inc. (“TD Waterhouse”).

### **C. Capital Market Technologies Inc. and Paul Maines**

14. In or around 2010, the Respondent was introduced to Paul Maines, a representative of CMT. CMT was a financial technology company with offices in Chicago, Toronto and London (UK). The Respondent had previously known Maines approximately 20 years prior, but had not had any dealings with him since that time.
15. Maines advised the Respondent that CMT was considering establishing operations in or around Charlottetown, PEI. Maines further advised that CMT would be looking to ultimately secure a listing on a recognized exchange. Maines advised the Respondent that, if successful, CMT would like the Respondent to potentially be involved as the “Broker of Record”.
16. The Respondent approached his supervisor at RBC DS and both spoke to representatives of RBC DS’ compliance department about this potential opportunity. Specifically, the Respondent inquired as to whether he could act as a “Broker of Record” for CMT. The Respondent was advised that, once CMT obtained a listing he could be “Broker of Record” for CMT, and he could recommend CMT to clients; but if he recommended CMT to clients, he could not invest personally. Likewise, if he wished to invest personally in the company, he could not recommend the purchase of shares to clients.
17. Both the supervisor and compliance department representatives advised the Respondent that if or when CMT obtained a listing, the Respondent and RBC DS could revisit his involvement as “Broker of Record” at that time.
18. At no time did the Respondent advise his supervisor or the compliance department that he would be recommending CMT to potential investors prior to CMT obtaining a public listing.

### **D. Recommendation to Invest**

19. Shortly thereafter, and on various occasions, the Respondent communicated with a number of potential investors regarding the prospects of CMT and did so prior to CMT being publicly listed.
20. The Respondent advised the potential investors that CMT was a high risk investment and that they could potentially lose the full amount of any investment.
21. If potential investors were interested in securities of CMT, the Respondent forwarded a copy of a subscription agreement that had been sent to him by CMT. The Respondent also advised the potential investors to send the completed subscription agreement, along with payment, directly to CMT.
22. In total, 17 potential investors who were communicated with by the Respondent invested approximately \$178,000 in securities of CMT. Twelve of these investors were clients of RBC DS. None of the investments were recorded on the books of RBC DS. Although

some of the investors qualified as “accredited investors” pursuant to NI 45-106, several did not. The Respondent did not receive any compensation as a result of these investments.

23. The Respondent did not conduct any due diligence on CMT or on Maines. He simply relied on representations made to him by Maines and others.
24. At the time of the Respondent’s recommendations to his clients regarding CMT, the common stock of CMT was on OTC Link. However, the company had failed to file periodic reports since September 2008 and had also been subject to an administrative dissolution order in Florida. The Respondent understood that CMT had been restructured and put new management in place in 2010, but he was not aware of CMT’s delinquency in regard to financial reporting or the administrative order in Florida.
25. In October 2004, the New York Stock Exchange (the “NYSE”) censured and barred Maines from membership with the NYSE for failing to appear and testify and to submit a written statement to the NYSE in connection with an investigation into his conduct. The Respondent was unaware of this.
26. Had the Respondent conducted due diligence or advised RBC DS prior to recommending CMT to potential investors, the Respondent might have learned of these potentially relevant facts regarding CMT and Maines set out in paragraphs 24 and 25.

#### **D. CMT and Maines Settlement**

27. At no time had CMT filed, sought to file or obtained a receipt for a prospectus with the Superintendent of Securities in PEI (the “Superintendent”).
28. In June 2013, CMT and Maines, among others, entered into a settlement agreement with the Superintendent.
29. CMT admitted that it had contravened s. 94 of the Securities Act by distributing a security without having obtained a receipt for a prospectus with respect thereto or, having, in all instances, properly relied on the accredited investor exemption from the prospectus requirement as set out in National Instrument 45-101 and that it contravened s. 6.1 of National Instrument 45-106 by failing to file a Report of Exempt Distribution on or before the 10<sup>th</sup> day after the distribution.
30. Pursuant to the settlement agreement, CMT agreed to the following penalties:
  - a) a five year prohibition from relying on the exemptions set out in NI 45-106 in PEI;
  - b) an administrative penalty in the amount of \$10,000;
  - c) To offer a right of rescission and refund to investors who did not qualify as “accredited investors” as defined in NI 45-106;

- d) costs in the amount of \$5,000;
- e) to engage an independent accountant to prepare audited financial statements for the years 2010, 2011 and 2012.

31. In or around November 2013, CMT sent a letter to clients offering the option of full rescission along with accrued interest of 12%.

#### **IV. TERMS OF SETTLEMENT**

32. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.

33. The Settlement Agreement is subject to acceptance by the Hearing Panel.

34. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

35. The Settlement Agreement will be presented to the Hearing Panel at a hearing (“the Settlement Hearing”) for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

36. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

37. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.

38. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

39. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.

40. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

41. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

**AGREED TO** by the Respondent at the City of \_Charlottetown, in the Province of  
\_PEI\_\_\_\_\_ ,

this \_\_\_7\_\_\_ day of \_\_\_April\_\_\_\_\_, 2014.

“Tamara Perry” \_\_\_\_\_

**WITNESS**

**NAME:**

“John MacEachern” \_\_\_\_\_

**JOHN SHANE MACEACHERN**

**AGREED TO** by Staff at the City of \_Charlottetown\_\_\_\_\_, in the Province of  
\_PEI\_\_\_\_\_ ,

this \_\_\_7\_\_\_ day of \_\_\_April\_\_\_\_\_, 2014.

“Tamara Perry” \_\_\_\_\_

**WITNESS**

Name

“Rob Delfrate” \_\_\_\_\_

**ROB DELFRATE**

Enforcement Counsel on behalf of  
Staff of the Investment Industry  
Regulatory Organization of Canada

ACCEPTED at the City of \_Charlottetown\_\_\_\_\_, in the Province of  
\_\_\_\_PEI\_\_\_\_\_ ,

this \_\_\_\_7\_\_\_\_ day of \_\_\_\_April\_\_\_\_, 2014, by the following Hearing Panel:

Per: Edward Keyes  
Panel Chair

Per: Roland Cofill  
Panel Member

Per: Bruce Walker  
Panel Member