THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

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DISCIPLINE COMMITTEE - CPA ONTARIO
RE: MINTZ + PARTNERS
EX: 2 FILED NOV. 19, 2014
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IN THE MATTER OF: **DRAFT ALLEGATIONS AGAINST HARLEY MINTZ, FCPA, FCA, LORN KUTNER, CPA, CA AND SYD BOJARSKI, CPA, CA, MEMBERS OF THE INSTITUTE, BEFORE THE DISCIPLINE COMMITTEE**

AND IN THE MATTER OF: **DRAFT ALLEGATIONS AGAINST MINTZ & PARTNERS CHARTERED ACCOUNTANTS LLP, BEFORE THE DISCIPLINE COMMITTEE**

SETTLEMENT AGREEMENT

made pursuant to Section 34 (1)(c) of the Chartered Accountants Act, 2010, and ICAO Regulation 7-1, s. 22.4

Background

1. The Professional Conduct Committee ("PCC") on January 8, 2013 approved the drafting of allegations against Harley Mintz, FCPA, FCA, Lorn Kutner, CPA, CA and Syd Bojarski, CPA, CA ("Mintz", "Kutner", "Bojarski" or "the member(s)"). **Schedule "A"**

2. The Professional Conduct Committee ("PCC") on January 8, 2013 approved the drafting of allegations against Mintz & Partners Chartered Accountants LLP ("M&P" or "the firm"). **Schedule "B"**

3. M&P was a full service public accounting firm located in North York. On January 28, 2008, M&P ceased carrying on practice as a public accounting firm.

4. Mintz has been a member of the Institute since 1975. He joined M&P in 1976 after working at Arthur Andersen. Mintz specializes in tax and during the relevant period of time was the managing partner of Mintz & Partners. Mintz continues to practice as CPA, CA

5. Bojarski has been a member of the Institute since 1980 and was an accounting and audit partner at M&P. Currently, Bojarski is a retired member.

6. Kutner has been a member of the Institute since 1982. During the relevant period he was a tax partner at M&P. Kutner continues to practice as a CPA, CA.

The Athletic Trust of Canada ("Athletic Trust")

7. The Athletic Trust was created by SE and SM. M&P helped SM and SE create a tax structure that they believed would be accepted by CRA.

8. The Athletic Trust was a product that provided investors with charitable tax credits in return for a donation of time share weeks and cash. In 2000 the Athletic Trust was established for the purpose of "financially assisting amateur athletes and amateur athletic organizations in Canada". The investor, beneficiary of the Trust, would subscribe to the Athletic Trust and receive time share weeks at a resort in the Bahamas. The beneficiary would have the option to donate their time share weeks to various registered Canadian athletic associations. In addition, they would make a cash donation sufficient to discharge the lien on the time share weeks. It was contemplated that most beneficiaries would donate their timeshare weeks.

9. Two donation receipts were issued to the investors by the Athletic Trust; one in respect of the cash donation made to discharge the lien on the property, and the second represented the difference between the cash donation and the estimated fair market value of the time share week. The 2000 beneficiary guide for the Athletic Trust stated that the two donation receipts that would be issued to beneficiaries of the Athletic Trust were (i) a receipt for the $4,700 cash per unit to discharge the lien and (ii) a receipt in the amount of $8,575 per unit representing the balance of the estimated fair market value of the time share.

10. As a result of their cash investment of $4,700, the beneficiary would receive a tax benefit of $6,359 based on an effective tax rate of approximately 48%, resulting in a rate of return on cash of 35.3%.

11. Investors in the Athletic Trust were recruited primarily by third party recruiters but also by M&P partners.

12. During the relevant period of time, approximately 15 to 24% of the total time share weeks sold in the Athletic Trust were subscribed for by M&P clients who were referred by M&P partners. In addition, M&P's contacts who were not clients purchased a significant number of time share weeks.

		2000	2001	2002	2003
M&P – Clients (# of weeks)	A	331	n/a	485	400
M&P – Non-Clients (# of weeks)		24	n/a	18	20
Sub-total	B	355	n/a	503	420
Total weeks sold including by third party recruiters	C	2038	n/a	2086	2251
Sales to M&P clients as % of total sold	A/C	17%	n/a	24%	19%

Tuscany Marketing Services

13. The administration of the marketing of the Athletic Trust was conducted by Tuscany Marketing Services ("Tuscany"), a limited partnership. Tuscany had no operations other than marketing the Athletic Trust.

14. Tuscany's limited partners were Mintz & Partners Management Services (MinMan) and Mintz & Partners Financial Services (MinFin). MinMan and MinFin's limited partners were Family Trusts of which family members of M&P partners, including Mintz, Bojarski and Kutner, were beneficiaries. MinMan and MinFin were limited partnerships which pre-existed the Athletic Trust investment and were used for a variety of business purposes in addition to receiving the profits made by Tuscany on commissions earned on the sale of time share weeks in Athletic Trust. Tuscany was operated out of M&P's offices by Kutner.

15. During the years 2000, 2002 and 2003 the total time share weeks in the Athletic Trust sold to M&P clients was 17%, 24% and 19% of all time share weeks sold, respectively.

16. The total number of weeks sold by the partners to clients of M&P is set out in the table below. There is no amount recorded for 2001 because the records for that year are lost.

	2000	2001	2002	2003	Total
Harley Mintz	38				38
Syd Bojarski	55		340	323	718
Lorn Kutner	53		60	36	149
EP	77		17		94
ES	43		3		46
SS	38		11	2	51
PL	10				10
AC	10		8	4	22
MF			4	10	14
SC	7		10	10	27
SD			2		2
CS			30	15	45
Total	**331**	**n/a**	**485**	**400**	**1216**

17. As indicated in the table, during the period for which there are records Mintz sold a total of 38 weeks, Bojarski a total of 718 weeks and Kutner a total of 149 weeks.

18. Kutner was responsible for organizing M&P's Athletic Trust recruitment efforts. For each year of the Athletic Trust program Kutner sent out information to M&P partners and to third party recruiters regarding the Athletic Trust program including the cost, any incentives, and recruitment fee structure, amongst other things.

19. In October of 2000 Kutner sent a memo to all partners, managers and supervisors of M&P stating "...it is imperative that any client of the firm that completes the forms to

become a beneficiary under the Athletic Trust of Canada signs the attached acknowledgement form". The acknowledgement form attached to the memo stated the following:

> *I acknowledge that Tuscany Marketing Services ("Tuscany") is owned by family members of the partners of Mintz & Partners and that Tuscany will profit as a result of its involvement with the Athletic Trust charitable venture.* (Doc *, Vol 1, Tab 3, p. 36)

20. Kutner sent emails each year to the partners and managers of M&P to ensure that these acknowledgement forms were signed by clients who invested in the Athletic Trust program. Every client that invested signed the acknowledgement form.

21. It is agreed that disclosure of the relationship of the partners with Tuscany does not avoid their obligations under Rule 216 and that they are not permitted to receive, directly or indirectly, commissions or other compensation for referrals to clients of products or services of others.

22. By June 2001 M&P, through Kutner, was actively encouraging the M&P partners to contact their clients and contacts about the Athletic Trust for 2001. Ten days after sending out an email introducing the 2001 program to M&P partners and managers, Kutner sent out a further email to the partners advising that partners were not sending out to clients packages promoting the Athletic Trust and reminding them that the Athletic Trust Program netted the firm over $1 million in just over two months the year before. Kutner told the partners that while the amount netted was not representative of only Mintz clients the firm was one of the biggest recruiters. Kutner asked the partners to get organized and get the packages out to clients and contacts immediately.

The Commission or Other Compensation Received

23. In consideration of the services provided by Tuscany, Tuscany earned fees based on the amount of cash paid by the beneficiary with respect to each lien that was discharged in the Athletic Trust.

24. For the year 2000, Tuscany was paid 20% of the Canadian dollar equivalent of the amount to discharge the charges of the time share interest or $940 per charge (20% of $4,700).

25. In 2002 Tuscany was paid 20% of the cash amount paid with respect to each lien that had been discharged and in addition there was a potential for a bonus payment in the range of 1% to 2%.

26. In 2001 the information was not available but total compensation in amounts similar to 2000 and 2002 was paid.

27. In 2003, Tuscany did not receive compensation for the referral of M&P clients to the Athletic Trust.

28. In addition to the commissions paid by the Athletic Trust to Tuscany, partners and managers of M&P received bonuses and other compensation for their recruitment efforts related to the Athletic Trust paid by M&P. In 2000 M&P ensured that partners and managers were paid :

    - 25% of 10% times the cash donation component for any time share weeks donated by non-M&P clients and M&P clients/contacts where they were the one who brought them into the firm.
    - 10% of the cash component for any time share weeks donated by them.
    - A discretionary bonus of any time share weeks donated by individuals recruited by a recruiter introduced by them.

29. As indicated these bonuses or other compensation were paid by M&P, not Tuscany, from M&P income.

30. Mintz was awarded special bonuses by M&P as a result of his involvement in Tuscany and the Athletic Trust program. In 2000 he was awarded a $100,000 special bonus. In 2001 he was awarded a $134,000 special bonus. In 2002 Mintz was awarded a $75,000 special bonus.

31. The commissions earned by Tuscany for the referral of M&P clients to the Athletic Trust for the year 2000 was $311,000. For 2002 it was in the amount of $562,000. While there are no records available for the year 2001 there is no dispute that the fee income received in that year was somewhere between that received in 2000 and that received in 2001, i.e. between $300,000 and $560,000.

32. The commissions received by Tuscany from the Athletic Trust were distributed equally through MinMan and MinFin to each of the Family Trusts whose beneficiaries were family members of the partners of M&P including Mintz, Kutner and Bojarski. It is agreed that this distribution amounted to the partners receiving, indirectly, a commission or other compensation for a referral to clients of products or services of others.

Conclusion

33. It is agreed by each of the parties that the conduct of the members described in this Settlement Agreement constitutes a failure to comply with Rule 216 of the Rules of Professional Conduct in that during the period set out in the allegations, the firm and the members accepted, indirectly, from persons who were not public accountants, commissions or other compensation as a result of referring to them products or services of others.

34. It is further agreed by each of the parties that the firm failed to establish, maintain and uphold appropriate policies and procedures designed to ensure that members of the Institute associated with the firm compiled with the Rules of Professional Conduct, contrary to Rule 502 of the Rules of Professional Conduct.

Terms of Settlement

35. Mintz & Partners Chartered Accountants LLP and Harley Mintz and Lorn Kutner and Syd Bojarski agree to the following terms of settlement.

   a. Mintz & Partners will pay a fine in the amount of $100,000 and costs of $70,000 within 30 days of the date this agreement is approved by the Discipline Committee.
   b. Harley Mintz will pay a fine in the amount of $30,000 within 30 days of the date this agreement is approved by the Discipline Committee.
   c. Lorn Kutner will pay a fine in the amount of $15,000 within 30 days of the date this agreement is approved by the Discipline Committee.
   d. Syd Bojarski will pay a fine in the amount of $15,000 within 30 days of the date this agreement is approved by the Discipline Committee.
   e. Notice of the terms of the Settlement Agreement will be given in accordance with the Regulations including to all members of the Institute, the Public Accountants Council, the CICA and the provincial Institutes, with publication in *CheckMark* magazine.

The members and the firm shall pay the fine and costs agreed to by the members and the firm to Dentons Canada LLP, in trust, upon execution of this Settlement Agreement by all parties. The said fine and costs shall be paid by Dentons Canada LLP to the Institute of Chartered Accountants of Ontario within seven days of the acceptance of this Settlement Agreement by the Discipline Committee, and the provision of the Settlement Agreement shall constitute an irrevocable direction to Dentons Canada in that regard.

36. Should the Discipline Committee accept this Settlement Agreement, the firm and the members agree to waive the right to a full hearing, judicial review or appeal of the matter subject to the Settlement Agreement. The draft allegations attached to this agreement shall be stayed.

37. This Settlement Agreement is for the purpose of this regulatory proceeding to resolve the matters raised herein and it is understood and agreed that, in accordance with section 61 of the Chartered Accountants Act, 2010, it is not admissible in any other civil proceeding.

If Settlement Agreement Not Approved

38. If, for any reason, this Settlement Agreement is not approved by the Discipline Committee, then;

    a. This Settlement Agreement and its terms, including all settlement negotiations between the Professional Conduct Committee and the members leading up to its presentation to the Discipline Committee, shall be without prejudice to the Professional Conduct Committee and the members;

    b. The Professional Conduct Committee and the members shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations, or negotiating a new Settlement Agreement, unaffected by this Settlement Agreement or the settlement negotiations;

    c. The terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of the Professional Conduct Committee and the members or as may be required by law.

39. Any obligations of confidentiality shall terminate upon approval of the Settlement Agreement by the Discipline Committee.

All of which is agreed to for the purpose of this proceeding alone this 17th day of November, 2014.

HARLEY MINTZ, FCPA, FCA
On his own behalf

LORN KUTNER, CPA, CA
On his own behalf

SYD BOJARSKI, CPA, CA
On his own behalf

HARLEY MINTZ, FCPA, FCA
On behalf of Mintz and Partners Chartered Accountants LLP

PAUL F. FARLEY
SENIOR COUNSEL,
PROFESSIONAL CONDUCT COMMITTEE
On behalf of the Committee

SCHEDULE A

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

TO: Harley Mintz, FCPA, FCA
Lorn Kutner, CPA, CA
Syd Bojarski, CPA, CA

AND TO: The Discipline Committee of the Institute of Chartered Accountants of Ontario

The Professional Conduct Committee hereby makes the following allegations against Harley Mintz, FCPA, FCA, Lorn Kutner, CPA, CA and Syd Bojarski, CPA, CA of the Institute:

1. THAT, the said Harley Mintz, FCPA, FCA, Lorn Kutner, CPA, CA and Syd Bojarski, CPA, CA, in or about the years 2000, 2001 and 2002 while engaged in the practice of public accounting as partners in the firm Mintz & Partners Chartered Accountants LLP, accepted directly or indirectly from persons who were not public accountants a commission or other compensation for a referral to clients of products or services of others, contrary to Rule 216 of the Rules of Professional Conduct.

Dated at Toronto, Ontario this day of May, 2013

DAVID SETTERINGTON, FCPA, FCA, CHAIR
PROFESSIONAL CONDUCT COMMITTEE

SCHEDULE B

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

TO: Mintz & Partners Chartered Accountants LLP

AND TO: The Discipline Committee of the Institute of Chartered Accountants of Ontario

The Professional Conduct Committee hereby makes the following allegation against the firm Mintz & Partners Chartered Accountants LLP:

1. THAT, the said Mintz & Partners Chartered Accountants LLP, in or about the years 2000, 2001 and 2002 while a firm engaged in the practice of public accounting, failed to establish, maintain and uphold appropriate policies and procedures designed to ensure that, in the conduct of the practice, the members of the Institute associated with the firm, complied with the rules of professional conduct, contrary to Rule 502 of the Rules of Professional Conduct, in that:

    a) during the period members of the firm accepted directly or indirectly from persons who were not public accountants a commission or other compensation for a referral to clients of products or services of others, contrary to Rule 216 of the Rules of Professional Conduct.

Dated at Toronto, Ontario this day of May 2013

DAVID SETTERINGTON, FCPA, FCA, CHAIR
PROFESSIONAL CONDUCT COMMITTEE