

# Re MF Global Canada Co

IN THE MATTER OF:

**THE DEALER MEMBER RULES OF THE  
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

AND

**THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA**

AND

**MF GLOBAL CANADA CO**

2008 IIROC 19

Investment Industry Regulatory Organization of Canada  
Hearing Panel (Ontario District)

Heard: October 27, 2008 in Toronto ON

Decision: October 27, 2008

(2 paras.)

## **Hearing Panel:**

Mr. Terrance Sweeney

Mr. David Kerr

Mr. Robert Guilday

## **Appearances:**

Ms. Tamara Brooks , Enforcement Counsel

Mr. Joel Wiesenfeld, Counsel for the Respondent

Ms. Eugenia Chee, Chief Financial Officer, M.F. Global Canada Co.

Ms. Jane Ratchford, Chief Compliance Officer, M.F. Global Canada Co.

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## **REASONS FOR DECISION**

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1. This hearing proceeded pursuant to a Settlement Agreement as a joint submission. The Settlement Agreement is reproduced below:

### **SETTLEMENT AGREEMENT**

#### **I. INTRODUCTION**

1. The Enforcement Department Staff (“Staff”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) has conducted an investigation (“the Investigation”) into the conduct of MF Global Canada Co (“the Respondent”).
2. The Investigation was commenced by Enforcement Department Staff (“IDA Staff”) of the Investment Dealers Association of Canada (“IDA”) prior to May 30, 2008. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment

Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between the IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services necessary for IDA to carry out its regulatory functions.

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. The Respondent consents to be subject to the jurisdiction of IIROC.
5. Staff and the Respondent consent and agree to the settlement of these matters by way of this settlement agreement (the “Settlement Agreement”) in accordance with IIROC Dealer Member Rule 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
6. The Settlement Agreement is subject to acceptance by the Hearing Panel.
7. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
8. 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.
9. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
10. 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.
11. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
12. 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.
13. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

## **III. STATEMENT OF FACTS**

### **(i) Acknowledgement**

14. 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**

#### **Respondent’s Background**

15. On or about January 1, 2005, the Bourse de Montréal transferred its primary audit jurisdiction to the Association over a number of its members, including Refco Futures (Canada) Ltd.
16. On or about January 29, 2005, as a result of a corporate reorganization, Refco Futures (Canada) Ltd. changed its name to Refco Canada Co.
17. On or about January 31, 2006, Refco Canada Ltd. was acquired by Man Financial Holdings Canada, Ltd. Because of this acquisition, Refco Canada Co. changed its name to Man Financial Canada Co.
18. On or about July 19, 2007, Man Financial Canada Co. changed its name to MF Global Canada Co.

### **Capital Deficiency**

19. On or about December 2006, Association Financial Compliance Staff commenced its second field examination of the Respondent since it became a Member of the Association. As part of the field examination, the Respondent's Monthly Financial Reports ("MFRs") were reviewed. This occurred on Friday, January 19, 2007. In reviewing the Respondent's MFR for October 2006, Association Financial Compliance Staff determined that the Respondent had been capital deficient by approximately \$ 5.4 million as of October 31, 2006
20. The capital deficiency was caused by the Respondent's failure to provide adequate margin for certain un-hedged foreign exchange forward contract positions.
21. The Respondent used Man Capital LLC and Man FX Clear LLC to clear these foreign exchange contracts. Because the Respondent mistakenly treated these two entities as "Acceptable Counterparties" it did not provide any margin for these positions.
22. Margin is not required for deposits with "Acceptable Counterparties" since those entities pose relatively low financial risk because they are either already financially regulated and/or are abundantly capitalized. However, neither Man Capital LLC or Man FX LLC is an "Acceptable Counterparty" recognized by the Association and would not have qualified as such given their most recent financial statements. These two entities should have been classified as "Other Counterparties", and, as such, the Respondent was required to provide the necessary margin for positions held with them in accordance with Association Regulation 100.2(d).

### **Rectification of Capital Deficiency and Discovery of Further Capital Deficiencies**

23. On or about January 23, 2007, the Association's Vice-President, Financial Compliance, notified the Respondent in writing of the capital deficiency described above and imposed Early Warning restrictions pursuant to Association by-law 33.3(iv).
24. By the end of business on January 24, 2007, the Respondent had rectified the capital deficiency by moving the un-hedged open foreign exchange contract positions to another entity.
25. On or about January 25, 2007, the Early Warning restrictions were withdrawn by the Association's Vice President, Financial Compliance.
26. However, given that the cause of the capital deficiency would have likely resulted in a misstatement of the Respondent's RAC at other times as well, the Respondent and the Association's Financial Compliance Staff recalculated the Respondent's RAC for other time periods.
27. As a result of these recalculations, Association Financial Compliance Staff discovered that, due to the same inadvertence, the Respondent had also been capital deficient from November 1, 2006, to December 15, 2006, and from January 4, 2007, to January 24, 2007.
28. From November 1, 2006 to December 15, 2006, the highest capital deficiency was \$2,211,000 which occurred on November 22, 2007. Between January 4, 2007 and January 24, 2007, the highest capital deficiency was recorded on January 11, 2007, in the amount of \$ 24,223,000.
29. The total capital employed by the Respondent from November 2006 to January 2007 was approximately \$30,000,000.

### **IV. CONTRAVENTIONS**

30. The Respondent admits to the following contraventions of IIROC Rules, Guidance, IDA By-Laws, Regulations or Policies:
  - a) From October 31, 2006, to December 15, 2006, and from January 4, 2007, to January 24, 2007, the Respondent violated by-law 17.1 of the IDA by failing to keep its Risk Adjusted Capital greater than zero.

**V. TERMS OF SETTLEMENT**

31. The Respondent agrees to the following terms of settlement:  
(i) A fine in the amount of \$25,000
32. The Respondent shall pay a portion of Staff's costs of this proceeding in the amount of \$5,000.
33. Unless otherwise stated, any monetary penalties imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
34. 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 Toronto in the Province of Ontario, this 27<sup>th</sup> day of August, 2008.

*Original Executed by:*

*"J. Ratchford"*

(Jane Ratchford)

\_\_\_\_\_  
"WITNESS"

*"MFG Global Canada Co."*

Per: *"P. Gloutney"*

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(Pierre Gloutney)

"Chairman"

"RESPONDENT"

**AGREED TO** by Staff at the City of Toronto in the Province of Ontario this 29<sup>th</sup> day of August, 2008.

*"Kathryn Andrews"*

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"WITNESS"

*"Tamara Brooks"*

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"TAMARA BROOKS"

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

2. We are of the opinion that the Settlement Agreement is fair to both parties. The Settlement Agreement is, therefore, approved and we accept it.

DATED at Toronto, this 27<sup>st</sup> day of October, 2008.

Terrance Sweeney, Panel Chair

Robert Guilday, Panel Member

David Kerr, Panel Member

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