



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: Donald James Cunningham

Heard: December 1, 2009 in Toronto, Ontario
Decision and Reasons: February 24, 2010

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, Q.C.
Sandy Grant
Anne Traczuk

Chair
Industry Representative
Industry Representative

Appearances:

Shelly Feld)	For the Mutual Fund Dealers Association of
)	Canada
A. Benson Forrest)	For the Respondent
)	

1. By Notice of Hearing, dated March 3, 2009, the Mutual Fund Dealers Association of Canada (“MFDA”), made the following Allegations against Donald James Cunningham (the “Respondent”):

(a) Allegation #1: Between June 2003 and September 2005, the Respondent failed to fulfill his supervisory responsibilities as branch manager of the London, Ontario branch of Desjardins Financial Security Investments Inc. (formerly known as “Optifund Investments Inc.”) (“Desjardins”), contrary to MFDA Rules 2.5, 2.5.3 and 2.5.5 and MFDA Policy No. 2.

(b) Allegation #2: Between September 2003 and November 2004, the Respondent failed to employ adequate supervision to prevent Anthony McPhail (“McPhail”), an unregistered individual, from engaging in securities related business with clients of Desjardins, contrary to MFDA Rules 2.5 and 2.1.1(c).

(c) Allegation #3: Between January 2004 and November 2004, the Respondent failed to conduct reasonable supervisory investigations in response to information that McPhail, an unregistered individual, was engaging in securities related business with clients of Desjardins and to take such supervisory and disciplinary measures as might be warranted by the results of such investigations, contrary to MFDA Rules 1.1.1(c), 2.5 and 2.1.1(c).

2. On March 6, 2009, on consent, the Respondent was served with the Notice of Hearing, in accordance with Rule 4.2(1)(d) of the MFDA Rules of Procedure.

3. On May 29, 2009, the First Appearance took place before a Hearing Panel of the Central Regional Council, at which time a number of procedural Orders were made, including that the Hearing on the Merits would take place at the offices of the MFDA at 121 King Street West, Suite 1000, Toronto, Ontario, from Monday, January 11, 2010, to Friday, January 15, 2010.

4. On June 30, 2009, the Respondent delivered his Reply.

5. On November 11, 2009, Staff and the Respondent entered into a Settlement Agreement.

6. By Notice of Settlement Hearing, dated November 20, 2009, the Hearing Panel was convened on December 1, 2009, in Toronto, Ontario, to consider whether, pursuant to Section 24.4.3 of MFDA By-law No. 1, the Hearing Panel should accept the Settlement Agreement.

7. At the outset of the proceedings, Staff advised that the Settlement Agreement had been prepared in accordance with Section 24.4.2 of By-law No. 1. Staff further advised that the Notice of Settlement Hearing had been publicized in accordance with Rule 15.2 of the MFDA Rules of Procedure.

8. We also 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 Rules of Procedure, which provides as follows:

“15.2(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.”

9. Rule 1.8(2) of the Rules of Procedure 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.”

10. 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 Rules of Procedure.

11. The Hearing Panel then considered the provisions of the Settlement Agreement, the salient portions of which are as follows:

“IV. AGREED FACTS

Registration History

6. The Respondent was registered in Ontario as a mutual fund salesperson with Desjardins from June 2003 to December 31, 2005, when his registration expired. From June 2003 to September 2005, the Respondent was also registered as the branch manager of the branch office of Desjardins Financial Security Investments Inc. (formerly known as “Optifund Investments Inc.”) (“Desjardins”) located in London, Ontario (the “London Branch”).

7. Previously, from January 1994 to May 2003, the Respondent was registered as a mutual fund salesperson and branch manager with other mutual fund dealers. The Respondent, however, did not perform any supervisory functions with those previous dealers.

8. Desjardins became a Member of the MFDA on November 15, 2002.

Failure to Fulfill Supervisory Responsibilities of a Branch Manager

9. In June 2003, the Respondent purchased from Desjardins, the right to open, own and operate the London Branch and was granted the title of Managing Director of the London Branch (a non-registered position). In accordance with MFDA Rule 2.5.3(a), Desjardins also designated the Respondent as the branch manager of the London Branch (a registered position).

10. Due to his lack of skills, knowledge and experience with respect to the sale of mutual funds and the regulatory responsibilities of a branch manager, the Respondent recruited an individual whom he believed was an experienced branch manager, Anthony McPhail (“McPhail”), to take his place as the designated branch manager.

11. In August 2003, McPhail agreed to accept the position of branch manager of the London Branch. Desjardins and McPhail submitted an application to the Ontario Securities Commission (“OSC”) to transfer McPhail’s registration from his former Member to Desjardins (the “Application”). Although McPhail had agreed to become the branch manager, the OSC ultimately did not approve the transfer of his registration to Desjardins due to regulatory concerns arising from on-going investigations into his conduct at his former Member. Consequently, the Respondent continued as the designated branch manager of the London Branch.

12. The Respondent did not fulfill his supervisory obligations and responsibilities as branch manager of the London Branch, contrary to MFDA Rules 2.5.3, 2.5.5 and MFDA Policy No. 2. In particular, the Respondent:

- (a) did not familiarize himself with the policies and procedures of Desjardins and the regulatory obligations of a designated branch manager;
- (b) improperly delegated most of his supervisory responsibilities for trade review and new account approval to an unregistered office administrator at the London Branch who had not fulfilled the proficiency requirements for a branch manager set out in MFDA Rule 1.2.2, contrary to MFDA Rule 2.5.5 and MFDA Policy No. 2; and
- (c) failed to ensure that an alternate branch manager had been designated to perform and did perform his duties as branch manager on the occasions when he was absent from the office because of business commitments or vacations, contrary to MFDA Rule 2.5.3(c).

Failure To Detect and Prevent Unregistered (“Stealth”) Advising

13. In August 2003, McPhail was formally introduced to Approved Persons and unregistered staff in the London Branch as the branch manager, even though the Application had not yet been approved by the OSC.

14. The Respondent (with the permission of Desjardins) authorized McPhail to open a sub-branch of the London Branch in Chatham, Ontario (the “Chatham sub-branch”).

15. Pending the approval of the Application, the Respondent permitted McPhail to access and regularly attend at the London Branch and Chatham sub-branch. McPhail claimed that he would be working at the Chatham sub-branch for the purpose of providing insurance and tax planning advice which he was approved and licensed to do. No internal controls or supervisory procedures were

established or implemented to prevent McPhail from engaging in securities related business with clients of Desjardins.

16. The OSC did not approve the Application and in May 2004, it was withdrawn by Desjardins. Consequently, McPhail was never registered as an Approved Person of Desjardins. Most of the Approved Persons and unregistered staff of Desjardins were not aware and were not informed by the Respondent that McPhail was not registered.

17. Commencing in the fall of 2003, McPhail arranged for the transfer of client accounts from his former Member to Desjardins (the “Clients” and the “Accounts”). As McPhail was not registered, the Accounts were assigned to another Approved Person, AP#1 and any trades in the Accounts were processed under AP#1’s representative code. The Respondent, McPhail and AP#1 anticipated that upon approval of the Application the Clients and the Accounts would be reassigned to McPhail. Most of the Clients believed (incorrectly) that McPhail was the Approved Person responsible for their Accounts. Most Clients did not question AP#1’s involvement with their accounts because she had been McPhail’s registered administrative assistant at his former Member and the Clients were accustomed to dealing with her.

18. In December 2003, AP#1 resigned from Desjardins. The Application still had not been approved so the Accounts were re-assigned to another Approved Person, CE. Again, it was anticipated that upon approval of the Application, the Clients and the Accounts would be reassigned to McPhail. Most of the Clients continued to believe that McPhail was the Approved Person responsible for their Accounts.

19. Between December 2003 and October 2005, McPhail and CE carried on a “stealth advising” arrangement whereby CE permitted McPhail to process account related activities under CE’s representative code, thereby permitting McPhail to service the Accounts and engage in securities related business directly with the Clients while he was not registered. Among other things, McPhail:

- (a) provided advice and made investment recommendations to Clients at the Chatham sub-branch and elsewhere;
- (b) collected information required to open new accounts for the Clients; and
- (c) received trading instructions from the Clients and arranged for their trades to be processed by Desjardins.

Failure To Conduct A Reasonable Supervisory Investigation

20. Between January and November 2004, information was communicated to the Respondent on several occasions that alerted him or ought to have alerted him to the fact that McPhail was engaging in securities related business with clients

while unregistered. In particular:

- (a) In January 2004, the Respondent was informed about a complaint from a Client who objected to the fact that his account statements identified AP#1 as his Approved Person rather than McPhail;
- (b) In April 2004, following a visit to the Chatham sub-branch by the branch administrator and the alternate branch manager from the London Branch, the Respondent was informed that they had observed McPhail meeting with people who appeared to be clients of Desjardins;
- (c) On multiple occasions in April and May 2004, the Respondent was advised that the receptionist at the Chatham sub-branch regularly observed McPhail meeting with clients of Desjardins;
- (d) In April-May 2004, the branch administrator at the London Branch reported to the Respondent that she had observed McPhail's handwriting on mutual fund transaction forms received from the Chatham sub-branch;
- (e) On April 23, 2004, the Respondent received an e-mail from the Chief Compliance Officer of Desjardins notifying the Respondent that:
 - (i) McPhail was the subject of an MFDA investigation;
 - (ii) MFDA Staff were concerned that McPhail was engaging in securities related business while unregistered; and that
 - (iii) Desjardins intended to withdraw the Application
- (f) On July 21, 2004, the Respondent received another e-mail from the Chief Compliance Officer of Desjardins informing him that the MFDA remained concerned that McPhail was engaging in securities related business with clients;
- (g) By letter to Desjardins dated August 25, 2004, MFDA Staff requested that the Respondent provide a written statement to the MFDA disclosing whether he was aware of any way in which McPhail had engaged in the process of providing investment advice to clients of Desjardins, selling mutual fund products, or receiving any financial benefit from mutual fund sales activity while unregistered. On August 27, 2004, the Respondent signed a statement which asserted that he was not aware of any such conduct by McPhail and would report to Desjardins if he became aware of McPhail's involvement in any such conduct in the future; and

- (h) In the fall of 2004, the Respondent received complaints from two individuals that appeared to indicate that McPhail was engaging in securities related business with clients.
21. On October 24, 2004, the Respondent and Desjardins' Vice-President Sales met with an Approved Person and an unregistered employee from the Chatham sub-branch who announced their resignations and reported to the Respondent that:
- (i) McPhail was holding himself out to clients as an Approved Person;
 - (ii) McPhail was meeting with clients, arranging for trading documentation to be signed by clients on the basis of advice that he provided and then CE was signing the trading documentation as the Approved Person responsible for the client account and allowing it to be processed under CE's representative code;
 - (iii) Clients were complaining about McPhail;
 - (iv) The Chatham sub-branch was in financial distress; and
 - (v) McPhail and CE were rarely in the office and were not returning client calls.
22. The following day, on October 25, 2004, based on the first hand accounts of the facts as described in the previous paragraph, the Respondent presented CE and McPhail with the option to either resign or be terminated. McPhail and CE elected to immediately resign.
23. Between January and October 2004, the Respondent, as a result of his lack of knowledge and experience in respect of his supervisory obligations, disregarded and failed to take adequate supervisory and disciplinary action in response to the information that he received that alerted, or should have alerted him to the fact that McPhail was engaging in securities related business with clients while unregistered. During this period, the Respondent:
- (a) dismissed the reports that McPhail was engaging in securities related business with clients as unsubstantiated rumours;
 - (b) failed to conduct a reasonable supervisory investigation to determine whether CE and McPhail were engaging in a stealth advising arrangement and if so, the nature and extent of their activity;
 - (c) permitted McPhail to continue working from the Chatham sub-branch office;

- (d) did not inform the Approved Persons and unregistered staff in the London Branch and the Chatham sub-branch that the Application had not been approved and therefore McPhail was not authorized to conduct securities related business;
 - (e) did not send written notification to Clients clarifying that CE was the Approved Person responsible for their Accounts;
 - (f) failed to implement any internal controls to prevent McPhail from engaging in securities related business with clients pending the approval of the Application and following its withdrawal; and
 - (g) did not subject CE to heightened supervision or take any disciplinary action against him.
24. On November 8, 2004, a complaint was submitted to the OSC concerning the same allegations that had been communicated to the Respondent on October 24, 2004.
25. Desjardins was informed about the complaint by the OSC and commenced an investigation. On February 18, 2005, Desjardins completed its investigation and concluded that McPhail and CE had been carrying on a stealth advising arrangement prior to CE's resignation in October 2004.
26. In November 2004, CE's registration was transferred to another MFDA Member where CE and McPhail continued their stealth advising arrangement.
27. In March 2005, the MFDA commenced disciplinary proceedings against McPhail and thereafter the new Member with whom CE was registered terminated McPhail's access to the premises. On June 7, 2006, CE passed away.
28. Following the commencement of the MFDA investigation into his conduct, the Respondent voluntarily resigned from his positions as an Approved Person and Branch Manager. Since that time he has not reapplied for registration in the securities industry. However, he remains owner and Managing Director of the London Branch.

V. CONTRAVENTIONS

29. The Respondent admits that between June 2003 and September 2005, the Respondent failed to fulfill his supervisory responsibilities as branch manager of the London Branch of Desjardins, contrary to MFDA Rules 2.5, 2.5.3 and 2.5.5 and MFDA Policy No. 2.
30. The Respondent admits that between September 2003 and November

2004, the Respondent failed to employ adequate supervision to prevent McPhail, an unregistered individual, from engaging in securities related business with clients of Desjardins, contrary to MFDA Rules 2.5 and 2.1.1(c).

31. The Respondent admits between January 2004 and November 2004, the Respondent failed to conduct reasonable supervisory investigations in response to information that McPhail, an unregistered individual, was engaging in securities related business with clients of Desjardins and to take such supervisory and disciplinary measures as might be warranted by the results of such investigations, contrary to MFDA Rules 1.1.1(c), 2.5 and 2.1.1(c).

VI. TERMS OF SETTLEMENT

32. The Respondent agrees to the following terms of settlement:
1. the Respondent shall pay a fine in the amount of \$10,000;
 2. the Respondent shall be permanently prohibited from being registered or acting in any supervisory capacity for a Member of the MFDA;
 3. the Respondent is permanently prohibited from being registered or acting as a partner, director or senior officer of a Member of the MFDA; and
 4. the Respondent shall pay costs in the amount of \$2,500.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

38. 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. If such additional enforcement action is taken, the Respondent agrees that the proceeding 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.”

12. At the Settlement Hearing on December 1, 2009, counsel for both Staff and the Respondent made extensive submissions as to why this Settlement Agreement should be accepted by the Hearing Panel. Staff also provided Written Submissions.

13. The parties agreed and relied upon the Supreme Court of Canada decision in *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, that the

primary goal of securities regulation is the protection of the investor.

14. Staff submitted that two cornerstones of the investor protection mandate are raised by this case. They are:

(a) Firstly, all securities related business is required to be conducted by properly registered individuals. Only those individuals who are registered, and thereby authorized to conduct securities related business, have fulfilled the proficiency requirements and satisfied securities regulators that they are otherwise fit to provide investment advice and facilitate trading in the securities industry. Where, as here, information is received which indicates that a formerly registered individual may be continuing to conduct securities related business with clients of the Member through one of the Member's existing Approved Persons – a practice referred to as “stealth advising” – appropriate steps must be taken immediately to detect and prevent the continuation of such conduct.

(b) Secondly, an adequate supervisory environment must be established and maintained to ensure that Member business is handled in accordance with the regulatory requirements set out in the By-laws, Rules and Policies of the MFDA and applicable securities legislation. Members designate branch managers and entrust them with a significant amount of responsibility for supervision. Branch managers essentially serve as the Member's eyes on the ground. Individuals who accept such responsibility must have the proficiency and training necessary to fulfill their important supervisory role. In addition to performing regular duties of supervision and review required in their positions, branch managers must pro-actively follow-up on information that comes to their attention which raises concerns that regulatory obligations or the Member's policies and procedures are being contravened or the interests of clients and other individuals are not being protected.

15. At the conclusion of the submissions, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement in its current form.

16. We were aware that, in considering the Settlement Agreement, we were restricted to the jointly agreed upon facts set out in the Settlement Agreement and that additional facts could only be disclosed with the consent of the parties.

17. We were, however, concerned with paragraph 28 of the Settlement Agreement, which provided that the Respondent would remain as the “Managing Director” of the London Branch of Desjardins, even though the joint recommendation was that he be permanently prohibited from being registered or acting as a partner, director or senior officer of a Member of the MFDA.

18. We discussed our concern with counsel for the parties. They requested an opportunity to consider the matter and, if thought appropriate, to file Supplementary Submissions. We granted this request.

19. On December 23, 2009, the Hearing Panel was provided with Joint Supplementary Submissions, which stated, in part, as follows.

“2. In order to address the Hearing Panel’s concerns, the parties have agreed to add an additional paragraph to the draft Order attached as Schedule “A” to the Settlement Agreement which will state as follows:

“The Respondent shall not hold himself out to members of the public as the Managing Director of the London branch of Desjardins in respect of mutual fund business, including, without limitation, by distributing business cards or stationary to clients of Desjardins or members of the public reflecting that title in respect of mutual fund business;”

3. Further, to avoid any confusion to the public with respect to the nature of the Respondent’s position and the scope of the Respondent’s authority, the parties have made a joint request to Desjardins and Desjardins has agreed to consent to a change in the title that will appear on the Respondent’s business card. The Respondent’s new title will be “Recruitment Specialist”.”

20. The Hearing Panel is grateful to the parties for this clarification.

FACTORS CONCERNING ACCEPTANCE OF A SETTLEMENT AGREEMENT

21. Previous MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed Settlement Agreement should be accepted:

- (a) whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;
- (b) whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- (c) whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- (d) whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- (e) whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- (f) whether the Settlement Agreement will foster confidence in the integrity of the MFDA; and
- (g) whether the Settlement Agreement will foster confidence in the regulatory process itself.

Re: *Professional Investments (Kingston) Inc. (Re)*, [2009] MFDA Central Regional Council, Hearing Panel Decision dated March 24, 2009, File No. 200836, at page 9.

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

Re: *Desjardins Financial Security Investments Inc. (Re)*, [2009] MFDA Central Regional Council, Hearing Panel Decision dated May 11, 2009, File No. 200908, at pages 2 to 3.

FACTORS CONCERNING THE APPROPRIATE PENALTY

22. We also reviewed the factors which previous Hearing Panels have indicated should be considered when determining the appropriate penalty. These include the following:

- (a) the seriousness of the allegations proved against the Respondent;
- (b) the Respondent's past conduct, including prior sanctions;
- (c) the Respondent's experience and level of activity in the capital markets;
- (d) whether the Respondent recognizes the seriousness of the improper activity;
- (e) the harm suffered by investors as a result of the Respondent's activities;
- (f) the benefits received by the Respondent as a result of the improper activity;
- (g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- (h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- (i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- (j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- (k) previous decisions made in similar circumstances.

Re: *Professional Investments (Kingston) Inc.*, supra, at page 11.

Re: *Investors Group Financial Services*, supra, at pages 2 and 3.

Re: *Desjardins Financial Security Investments Inc.*, supra, at pages 2 and 3.

CONSIDERATIONS IN THE PRESENT CASE

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

- (a) The Respondent:
- i.) lacked sufficient knowledge, ability and training to fulfill his supervisory obligations and responsibilities as required by MFDA Rules and Policies;
 - ii.) improperly delegated many of his supervisory responsibilities to an individual who had not fulfilled the minimum proficiency requirements required of a branch manager; and
 - iii.) did not take adequate steps to obtain the additional training and support that he required to serve as an effective branch manager;
- (b) The Respondent failed to adequately respond to information from multiple sources including the MFDA that suggested that Anthony McPhail, a former Approved Person of a different Member, was continuing to conduct securities related business with clients of Desjardins.
- (c) The conduct of the Respondent was serious.
- (d) It was not an isolated incident but rather a series of incidents which took place over a lengthy period of time.
- (e) On the other hand, there were a number of mitigating factors, including the following:
- i.) the Respondent has no previous disciplinary history with the MFDA;
 - ii.) the Respondent co-operated with Staff throughout the investigation of this matter;
 - iii.) the Respondent voluntarily resigned from his positions as an Approved Person and Branch Manager shortly after the commencement of the MFDA investigation into his conduct and since that time he has not reapplied for registration in the securities industry;
 - iv.) the Respondent's admissions to the misconduct described in the

Settlement Agreement reflect acceptance of responsibility for his misconduct and demonstrate remorse; and

- v.) by entering into a Settlement Agreement, the Respondent has avoided the need for a potentially lengthy hearing that would have entailed additional effort, time and expense to the MFDA.

24. We also considered the MFDA Penalty Guidelines (“Guidelines”), recognizing that:

“Range Is Guideline Only

The penalty types and ranges stated in the Guidelines are not mandatory. The Guidelines suggest the types and ranges of penalties that would be appropriate for particular case types. The Guidelines are intended to provide a basis upon which discretion can be exercised consistently and fairly in like circumstances but are not binding on a Hearing Panel.”

25. In cases that address contraventions of an Approved Person’s supervisory obligations, the Guidelines recommend a minimum fine of \$10,000 and in appropriate cases, conditions, suspensions or prohibitions on the Approved Person’s authority to be registered or act in particular supervisory roles for Members of the MFDA. The minimum recommended fine in cases involving a contravention of the standard of conduct by an Approved Person is \$5,000. The fine agreed upon in the present case meets the minimum fine threshold.

26. This is a companion case to the proceeding that was brought against the Member, Desjardins, concerning the Member’s role with respect to the subject matter of this proceeding. On May 6, 2009, a Settlement Agreement between MFDA Staff and the Member was accepted by a Hearing Panel, as a consequence of which the Member paid a fine of \$75,000 and costs in the amount of \$15,000.

27. In our view, it is important that 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.

28. We believe that 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.

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

30. Finally, we also considered that this was a Settlement Agreement that was reached by the parties after significant discussions and negotiations. It represents what they feel, with their knowledge and experience, is an appropriate resolution.

31. After careful consideration of all of the above factors, we unanimously concluded that the Settlement Agreement was reasonable and in the public interest and should be accepted by this Hearing Panel.

PENALTIES IMPOSED

32. In summary, the penalties, which we impose on the Respondent, are the following:

- (a) A permanent prohibition from being registered or acting in any supervisory capacity for a Member of the MFDA, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
- (b) A permanent prohibition from being registered or acting as a partner, director or senior officer of a Member of the MFDA, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
- (c) The Respondent shall not hold himself out to members of the public as the “Managing Director” of the London branch of Desjardins in respect of mutual fund business, including, without limitation, by distributing business cards or stationary to clients of Desjardins or members of the public reflecting that title in respect of mutual fund business;
- (d) A fine in the amount of \$10,000.00, pursuant to s. 24.1.1(b) of MFDA By-law

No. 1;

(e) Costs in the amount of \$2,500.00, pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 24th day of February, 2010.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.
Chair

“Sandy Grant”

Sandy Grant
Industry Representative

“Anne Traczuk”

Anne Traczuk
Industry Representative