



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: Bick Financial Security Corporation

Heard: September 24, 2009 in Toronto, Ontario
Reasons for Decision: November 12, 2009

REASONS FOR DECISION

Hearing Panel of the Central Regional Council

The Hon. Fred Kaufman, C.M., Q.C.
Jeanne Beverly
Linda Anderson

Chair
Industry Representative
Industry Representative

Appearances:

Shelly Feld)
Francis Roy) For the Mutual Fund Dealers Association
) of Canada

Leonard Bick)
Peter Bowers) For the Respondent
)

1. At the conclusion of a hearing held in Toronto, Ontario, on September 24, 2009, the Hearing Panel approved a Settlement Agreement entered into by the parties which, *inter alia*, provided as follows:

TERMS OF SETTLEMENT

The Respondent agrees to the following terms of settlement:

- (a) the Respondent shall pay a fine in the amount of \$10,000.00 upon the acceptance of this Settlement Agreement;
- (b) The Respondent shall retain an independent monitor at the Respondent's expense and in accordance with the terms set out in Schedule "B" to resolve:
 - (i) the Deficiencies; and
 - (ii) any other compliance deficiencies that the independent monitor identifies during its review;pursuant to section 24.1.2(g) of MFDA By-law No. 1;
- (c) the Respondent shall pay the costs of this proceeding in the amount of \$2,500 upon the acceptance of this Settlement Agreement.

THE FACTS

2. The facts, as agreed upon by the parties, are as follows:

Registration History

The Respondent has been registered in Ontario as a mutual fund dealer since December 5, 2001 and has been registered in Ontario as a limited market dealer since October 9, 2002. The Respondent has also been registered as a mutual fund dealer in British Columbia, New Brunswick and Alberta since April 27, 2009.

The Respondent became a Member of the MFDA on June 7, 2002.

Resignation of the Respondent's Membership from the MFDA

On or about July 6, 2009, Staff was informed that the Respondent intends to proceed with the bulk transfer of its assets and operations to an Investment Industry Regulatory Organization of Canada ("IIROC") regulated entity, Burgeonvest Securities Limited, owned by the Respondent's controlling shareholder. If the transaction is approved, the Respondent will resign from membership in the MFDA.

First Compliance Examination

In October 2005, MFDA Compliance Staff conducted a compliance examination of the Respondent covering the period October 1, 2004 to September 30, 2005 in order to assess the Respondent's compliance with MFDA Rules, By-laws and Policies (the "First Examination"). The results of the First Examination were summarized and delivered to the Respondent in a report dated December 22, 2005 (the "First Report").

The First Report identified numerous compliance deficiencies including the failure of the Respondent to be fully compliant in the areas of:

- (a) Implementing a Daily Trade Report containing all securities transactions required to be reviewed by the Respondent;
 - (b) Maintaining evidence of trade supervision;
 - (c) Adequately reviewing marketing materials of the Respondent and its Approved Persons for compliance with applicable MFDA requirements;
 - (d) Maintaining records of the review and approval of marketing materials that were authorized for distribution to clients or members of the public;
- (referred to collectively as the "Deficiencies")

Between January 25, 2006 and September 12, 2006, the Respondent exchanged detailed correspondence with Staff stating that it had taken, and would take additional corrective measures to resolve the Deficiencies described in the First Report.

On the basis of the Respondent's statements regarding those corrective measures, Staff advised the Respondent by letter dated September 14, 2006, that it had no further comments on the Deficiencies.

Second Compliance Examination – Repeat Deficiencies

Beginning in August 2008, Staff conducted a second round compliance examination of the Respondent covering the period October 1, 2005 to June 30, 2008 (the "Second Examination"). The results of the Second Examination were summarized in a report dated November 26, 2008 (the "Second Report") that was delivered to the Respondent.

The Second Report identified that the Respondent had still not adequately addressed all of the Deficiencies as described below¹:

- (a) Daily Trade Report - The trade blotters that were used by the Respondent's supervisory staff to perform trade supervision did not include all trades which met the Member's trade supervision criteria, resulting in the missing trades not being reviewed in a timely manner or at all. The missing trades included:
 - i. Intermediary trades;
 - ii. Trades placed by Approved Persons directly with the mutual fund company;
 - iii. Switch orders processed through the Respondent's trading system; and

¹ The Deficiencies described continued during the full examination period unless otherwise indicated

- iv. Other trades that did not appear on the trade blotters as a result of the Respondent's practice of printing the trade blotters on the trade date rather than on the next business day.
- (b) Evidence of trade supervision – During the period October 1, 2005 to January 31, 2008, the Chief Compliance Officer (“CO”) or other designated supervisory staff failed to maintain evidence of any inquiries made, replies received and resolutions achieved.
- (c) Review of Marketing Materials – The designated individual at the Respondent failed to adequately review marketing materials prepared by its Approved Persons and marketing materials posted on the Respondent's website for compliance with MFDA Rules 2.7.2, 2.8.2 and 2.8.3(a). Staff reviewed:
 - (i) marketing material regarding the “Smith Manoeuvre” and other leveraging strategies which were distributed to clients and other members of the public and included false and misleading statements such as:
 - I. promises to “Make your mortgage tax deductible”;
 - II. highlighting the potential benefits of leveraging without referring to the potential risks;
 - III. references to a leveraging strategy as generating “increasing tax refunds”; and
 - IV. references to leveraging as “Ideal for individuals and couples of all ages”.
 - (ii) Staff also identified other marketing materials in the files of Approved Persons which had been submitted to and approved by the Respondent's designated individual which:
 - I. contained unjustified promises of specific results, including projected rates of return;
 - II. contained unrepresentative statistics to suggest unwarranted or exaggerated conclusions;

- III. failed to adequately identify the material assumptions made in arriving at conclusions asserted;
 - IV. contained opinions or forecasts of future events which were not clearly labeled as such; and
 - V. failed to fairly present the potential risks of investing strategies, including leveraging strategies, promoted to clients.
- (d) Evidence of Review of Marketing Materials – Prior to October 2007, the designated individual at the Respondent failed to maintain any evidence of the review and approval of marketing materials submitted for approval by Approved Persons and other staff of the Respondent.

The Respondent hired a new CO in October 2007 who implemented improvements to its policies and procedures including its approval process for marketing materials and its trade supervision procedures. The new CO did immediately begin to maintain evidence of the review and approval of marketing materials and began documenting trade supervision including inquiries made, replies received and resolutions achieved during the period February 1, 2008 to June 30, 2008.

Second Round Compliance Examination – New Deficiency

During the Second Examination, Staff identified that the Respondent's policies and procedures were inadequate to supervise leveraging recommendations to clients by its Approved Persons. The Respondent had no procedures to assess the suitability of leveraging in relation to a client's risk tolerance, investment objectives, time horizon and other Know Your Client information. The only basis used by the Respondent to assess the suitability of leveraging in a client account was the client's ability to service the loan, i.e. whether the client had sufficient assets and income to make regular loan payments.

Current Practices

In October 2007 the Respondent hired a new CO and implemented changes to the

policies and procedures of the Respondent to enhance its compliance with MFDA By-laws, Rules and Policies prior to the completion of the Second Examination and the Second Report. In December 2007, the Respondent's controlling ownership was changed. The Respondent's new ownership has cooperated with MFDA Staff and demonstrated a commitment to resolving the compliance deficiencies that were identified in the Second Report, including the Deficiencies.

CONTRAVENTIONS

3. The Respondent admits the following violations of MFDA Rules and Policies:

...that prior to June 30, 2008, it failed to produce a comprehensive daily trade report recording all securities transactions that were required to be reviewed in accordance with MFDA Policy 2, thereby failing to fully conduct such review, contrary to MFDA Rule 5.1(a) and MFDA Policy No. 2.

...that prior to February 1, 2008, it failed to implement policies and procedures relating to maintaining adequate records of trade supervision that was conducted, including records of trades reviewed and records of inquiries made, responses received and resolutions achieved, contrary to MFDA Rules 2.2.1, 2.5.1, 2.5.4 and MFDA Policy No. 2.

...that prior to June 30, 2008, it failed to establish, implement and maintain adequate policies and procedures for the review and approval of advertisements, sales communications and client communications so as to prevent the distribution to clients and member of the public of materials that violated MFDA Rules, contrary to MFDA Rules 2.7.2, 2.8.2 and 2.8.3(a).

...that prior to October 2007, it failed to maintain evidence demonstrating that it had approved all advertisements, sales communications and client communications (including website content) that were sent to its clients or made accessible to its clients or members of the public, contrary to MFDA Rules 2.7.3, 2.7.2, 2.8.2, and 2.5.4.

...that between October 1, 2005 and June 30, 2008, it failed to establish, implement and maintain adequate policies and procedures to assess and supervise the suitability of leveraging recommendations that its Approved Persons made to clients, contrary to MFDA Rules 2.2.1, 2.5.1, 2.5.4, and MFDA Policy No. 2.

DISCUSSION

4. It is generally agreed that hearing panels should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness given the conduct of the Respondent. (See, for instance, *Re Clark*, [1999] I.D.A.C.D. No. 40; and *Re Milewski*, [1999] I.D.A.C.D. No. 17.)

5. The appropriateness of the penalty depends on a number of factors:

- (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.

(See, for instance, *Re Lamoureux*, [2002] A.S.C.D. No. 125; *Re Robert Roy Parkinson*, 2005, MFDA File NO. 200501; and *Re Stephan Headley*, 2006, MFDA File No. 200509.)

6. While the Respondent's violations are serious and were potentially harmful to its clients, we note that the Respondent has no disciplinary record, that its officers made efforts to address the compliance deficiencies prior to the commencement of the disciplinary proceedings, that it admitted the violations as soon as they were pointed out, and that its officers co-operated with MFDA staff throughout the process, demonstrating remorse, and avoiding the need for a lengthy and, no doubt, costly investigation and hearing.

7. We are conscious of the fact that the fine to be levied is less than the minimum suggested in the Penalty Guidelines, but when the costs of retaining a monitor are taken into account, the total cost to the Respondent will be substantial. Given the circumstances of this case, we are satisfied that the public interest is well served by the agreed-upon penalties.

8. The Terms of the Independent Monitor are set out in Appendix "A" and the Duties and Standards of the Independent Monitor are set out in Appendix "B", both of which are attached and form part of these Reasons.

Dated at Toronto, Ontario this 12th day of November, 2009

"Fred Kaufman"

Hon. Fred Kaufman, Chair

"Jeanne Beverly"

Jeanne Beverly, Industry Representative

"Linda Anderson"

Linda Anderson, Industry Representative



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Re: Bick Financial Security Corporation

TERMS OF THE INDEPENDENT MONITOR

1. In accordance with the terms of the Settlement Agreement dated September 11, 2009 between Bick Financial Security Corporation (the "Member") and the Mutual Fund Dealers Association of Canada (the "MFDA") (the "Settlement Agreement"), and the Order of the Hearing Panel dated September 24, 2009 arising there from (the "Order"), the Member:
 - a. Shall resolve the following deficiencies (the "Deficiencies"):
 - i. The failure to produce and implement use of a comprehensive Daily Trade Report recording all securities transactions that are required to be reviewed by the Member in accordance with MFDA Rule 5.1(a) and MFDA Policy No. 2;
 - ii. The failure to maintain adequate records of trade supervision conducted by the Member including records of trades reviewed, inquiries made, responses received and resolutions achieved in accordance with MFDA Rules 2.2.1, 2.5.1, 2.5.4 and MFDA Policy No. 2;
 - iii. The failure to establish, implement and maintain adequate policies and procedures for the review and approval of marketing materials (including advertisements, sales communications, client communications and website content) of the Member and its Approved Persons in order to prevent the distribution of inappropriate marketing materials to clients and members of the public, as required by MFDA Rule 2.7.2, 2.8.2 and 2.8.3(a).

- iv. The failure to maintain evidence of review and approval of marketing materials that were sent or made accessible to clients or members of the public in accordance with MFDA Rules 2.7.3, 2.7.2, 2.8.2 and 2.5.4; and
 - v. The failure to establish, implement and maintain adequate policies and procedures to assess and supervise the suitability of leveraging recommendations that its Approved Persons made to clients in accordance with MFDA Rules 2.2.1, 2.5.1, 2.5.4 and MFDA Policy No. 2.
- b. Has retained an independent consultant (the “Monitor”) at the Member’s expense, to assist in resolving all of the Deficiencies on the following terms:
- i. The Member has executed a retainer with the Monitor incorporating the requirements of the *Duties and Standards of the Independent Monitor* attached hereto as Appendix “1” (the “Duties and Standards”) and provided a copy of the retainer to MFDA Staff (“Staff”);
 - ii. The Member will fully co-operate with and provide full disclosure to the Monitor in a timely manner of all matters and information relevant to the activities of the Monitor hereunder and in accordance with the terms and conditions of the Duties and Standards; and
 - iii. Staff has approved the selection of the Monitor and the terms of the Member’s retainer of the Monitor.
- c. Shall resolve all of the Deficiencies in accordance with the terms and conditions of the Duties and Standards and on the following terms:
- i. The Member shall cause the Monitor to develop, in collaboration with the Member, a written plan containing proposed actions (and timeframes for implementation of the actions) to remedy the Deficiencies (the “Action Plan”). The Action Plan shall be delivered to Staff by no later than Friday, October 2, 2009;
 - ii. Staff reserves the right to add, delete or change any part of the Action Plan provided that the Member is given a reasonable opportunity to comment on any such addition, deletion or change. Any changes made by Staff become part of the Action Plan;
 - iii. The Member, with the assistance and participation of the Monitor, shall fully implement the actions identified in the Action Plan within the time frames set out therein. The Monitor must review and approve all such actions as being consistent with the Action Plan prior to their implementation. The Monitor may consult informally with the MFDA from time to time on any issues arising from the implementation of the Action Plan;
 - iv. The Member shall cause the Monitor to assess the Member’s leveraged accounts in accordance with the Member’s revised procedures under the

Action Plan described to in 1(c)(i) and make and provide to the MFDA and the Member its recommendations to address any deficiencies (“Leveraged Accounts Recommendations”);

- v. Staff reserves the right to add, delete or change any part of the Monitor’s Leveraged Accounts Recommendations provided that the Member is given a reasonable opportunity to comment on any such addition, deletion or change. Any changes made by Staff become part of the Leveraged Accounts Recommendations;
- vi. The Member, with the assistance and participation of the Monitor, shall fully implement the actions identified in the Leveraged Accounts Recommendations within the time frames set out therein. The Monitor must review and approve all such actions as being consistent with the Leveraged Accounts Recommendations prior to their implementation. The Monitor may consult informally with the MFDA from time to time on any issues arising from the implementation of the Leveraged Accounts Recommendations;
- vii. The Monitor shall discuss with the MFDA its proposed procedures for testing the Member’s implementation of the Action Plan and thereafter submit written proposals for testing procedures, time frame for completion of testing and format for a report to the MFDA on the Member’s completion of the implementation of the Action Plan and resolution of the Deficiencies (the “Completion Report”).
- viii. The MFDA reserves the right to add, delete or change any aspect of the proposed testing procedures, time frame or Completion Report format, provided that the Member will be given a reasonable opportunity to comment on any such addition, deletion or change;
- ix. Once the testing procedures, time frame and Completion Report format have been approved by the MFDA, the Monitor shall complete the testing procedures and provide the Completion Report to the MFDA in the format and within the time frame approved by the MFDA in accordance with subparagraph 1(c)(vii);
- x. Where the Completion Report identifies any continuing Deficiencies, or where prior to the determination by the MFDA that the Deficiencies have been resolved (but after the Completion Report has been provided to the MFDA) the MFDA becomes aware from other sources that there are continuing Deficiencies, the MFDA may in its sole discretion do either or both of the following:
 - 1. Make recommendations to resolve the continuing Deficiencies identified in the Completion Report and direct the Member to implement all such recommendations and have the Monitor conduct any additional testing within a reasonable time period to be determined by the MFDA;

- 2. Pursue additional enforcement action pursuant to Section 24 of MFDA By-law No. 1 with regard to the Member's failure to resolve the Deficiencies.
 - xi. The Member shall provide a copy of this Settlement Agreement and *Terms of the Independent Monitor* to all members of its Board of Directors and provide written confirmation of the same to the MFDA within four (4) weeks of the date of signing of this Settlement Agreement.
 - xii. The Member shall provide its Board of Directors with copies of the Action Plan and the Completion Report; and
 - xiii. The MFDA shall in its sole discretion determine whether it is satisfied that the Deficiencies have been resolved and the Member shall not consider the MFDA satisfied until it has received express written confirmation from the MFDA that the MFDA is satisfied that the Deficiencies have been resolved;
2. Varying of the terms of the *Terms of the Independent Monitor*:
- a. To the extent that there are fixed timelines in these *Terms of the Independent Monitor* or the Action Plan, the MFDA may abridge or extend any time frame as may reasonably be required and with the provision of reasonable notice to the Member;
 - b. Other exceptions to the *Terms of the Independent Monitor* are permissible only with the prior express written consent of Staff.

I confirm that by my signature, I am authorized to bind the Member to these *Terms of the Independent Monitor* as part of the implementation of the Settlement Agreement and the Order.

“Peter Bowers”	09/11/2009	“Judy Agis”
Name: Peter Bowers	Date	Witness
Title: Chief Financial Officer		
Bick Financial Security Corporation		Name: Judy Agis

“Shaun Devlin”	
Shaun Devlin	Date
Vice-President, Enforcement	
Mutual Fund Dealers Association of Canada	



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Re: Bick Financial Security Corporation

**DUTIES AND STANDARDS OF
THE INDEPENDENT MONITOR**

A. Defined Terms

1. Terms defined in the *Terms of the Independent Monitor* shall have the same meaning in these *Duties and Standards of the Independent Monitor*.

B. Duties of the Independent Monitor

1. The Monitor shall perform its duties with unimpaired professional judgment and objectivity, and shall be seen to be doing so by a reasonable observer.
2. The Monitor shall be retained and remunerated by the Member.
3. The Monitor shall perform its services in accordance with these *Duties and Standards of the Independent Monitor*.
4. The Monitor:
 - i. Shall notify the MFDA of any disagreement, dispute or other limitation encountered with the Member that may result in the Terms of the Independent Monitor not being satisfied. This includes but is not limited to situations where there is a difference of opinion between the Monitor and the Member with regard to:
 1. The detailed nature of the Deficiencies;
 2. The actions necessary to remedy the Deficiencies;

3. The procedures to be used to test the Member's implementation of the Action Plan.
- ii. May advise the Member of the results during the testing process;
- iii. Shall prepare the Completion Report in an independent manner without consultation with the Member as to the content of the report; and
- iv. Shall provide the Completion Report directly to Staff, with a copy to the Member.

C. Qualifications of the Independent Monitor

1. The Monitor must exhibit and apply:
 - i. An understanding of MFDA requirements (i.e. By-laws, Rules, Policies, Notices and Bulletins);
 - ii. Familiarity with mutual fund dealer operations and compliance issues; and
 - iii. Familiarity with adequate Member compliance procedures (i.e. the Monitor should not be proposing procedures it develops at first instance without an understanding of procedures compliant Members have instituted to meet MFDA requirements).

D. Action Plan

1. The Action Plan must outline the actions that will remedy the Deficiencies and specific time frames for the completion of those actions.

E. Implementation of the Action Plan

1. The Monitor shall supervise the implementation of the Action Plan and provide necessary recommendations so that the plan is implemented to the satisfaction of the Monitor. The Monitor's supervision shall include review of the implementation of any components of the Action Plan. This shall include but not be limited to:
 - i. Newly developed processes or written procedures;
 - ii. Training provided to supervisory staff and Approved Persons;
 - iii. Newly developed client account forms or disclosure documents;
 - iv. Changes to branch and sub-branch review procedures;
 - v. Results of any branch or sub-branch reviews;
 - vi. Reports used for branch or head office supervision; and
 - vii. Changes to back-office systems.

F. Testing Procedures

1. The testing procedures implemented by the Monitor shall:
 - i. Be sufficient to determine whether the Deficiencies have been resolved or remain unresolved;
 - ii. Specify the objective of the testing procedures, including citing which of the Deficiencies the testing will address; and

- iii. Specify the sampling methodology, including the size of samples to be tested.
2. The Monitor shall prepare and maintain a file of its working papers regarding the testing, which shall be made available to Staff upon request. The file must contain sufficient information to enable an experienced individual, having no previous connection to the engagement, to re-perform the testing procedures and come to the same conclusions. The file must include appropriate documentation of the procedures performed and the evidence obtained, including copies of documents reviewed or sufficiently detailed information to identify the specific documents reviewed.

G. Completion Report

1. When reporting on the results of testing, the Monitor must:
 - i. Specify the procedures performed and the details of the samples selected;
 - ii. State the factual results of performing the procedures and not express an opinion on the results;
 - iii. Link the factual findings to the Deficiency being tested;
 - iv. List any new deficiencies in compliance with MFDA requirements that are noted during the testing on the original Deficiencies;
 - v. Indicate any restrictions or limitations on the Monitor's ability to perform the procedures; and
 - vi. Provide recommendations to remedy any new deficiencies or any continuing Deficiencies.

ACKNOWLEDGEMENT

KPMG Inc., the Independent Monitor retained by the Member and approved by Staff to provide services to the Member in accordance with the *Terms of the Independent Monitor*, hereby acknowledges that the terms of its retainer with the Member requires it to provide those services in accordance with the *Terms of the Independent Monitor* and these *Duties and Standards of the Independent Monitor*.

Date: _____

Name: _____

Title: _____