



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: De Thomas Financial Corp.

Heard: September 3, 2009
Toronto, Ontario

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Fred Kaufman, C.M., Q.C.
Guenther W.K. Kleberg
Christopher Marrese

Chair
Industry Representative
Industry Representative

Appearances:

Michelle Pong)	For the Mutual Fund Dealers Association of Canada
)	
Tony De Thomasis)	President of the Respondent Corporation
)	

1. At the conclusion of a hearing held in Toronto, Ontario, on September 3, 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, pursuant to section 24.1.2(b) of By-law No. 1;
- (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 set out in paragraphs 9-23; and
 - (ii) any deficiencies that the independent monitor identifies during its review;pursuant to section 24.1.2(g) of By-law No. 1;
- (c) the Respondent shall pay the costs of this proceeding in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1; and
- (d) the Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.2.1, 2.2.2 and 2.5 and MFDA Policy No. 2.

The Facts

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

Registration History

The Respondent is registered as a mutual fund dealer in Alberta, British Columbia, Ontario and Quebec and as a limited market dealer in Ontario. The Respondent has been a Member of the MFDA since April 12, 2002.

The Respondent's head office is located in Thornhill, Ontario. The Respondent has seven branches, one of which is located in Thornhill, Ontario (the "Thornhill branch office"). The Respondent also has 10 sub-branches.

The Respondent has no previous disciplinary history.

Compliance Examinations

Commencing on October 6, 2003, Staff conducted a compliance examination of the Respondent's head office and the Respondent's branch located in Woodbridge, Ontario (the "First Examination") in order to assess the Respondent's compliance with MFDA By-laws, Rules and Policies. Staff reviewed the Respondent's business for the period April 2002 to August 31, 2003.

The results of the First Examination were summarized in a report dated February 27, 2004 (the "First Report"), which was delivered to the Respondent. The First Report identified a number of compliance deficiencies, including:

- i. The failure of the Respondent to conduct adequate trade supervision; and
- ii. The failure of the Respondent to obtain adequate Know-Your-Client ("KYC") and suitability information for client accounts.

In January 2008, Staff conducted a compliance examination of the Respondent's head office and Thornhill branch office (the "Second Examination"). Staff reviewed the Respondent's business for the period September 1, 2003 to November 30, 2007. The results of the Second Examination were summarized in a report dated March 13, 2008 (the "Second Report"), which was delivered to the Respondent.

The Second Report identified a number of compliance deficiencies, the most serious of which concerned:

- i. The failure of the Respondent to have a two-tier account supervision structure;

- ii. The failure of the Respondent to conduct adequate trade supervision and maintain evidence of trade supervision; and
- iii. The failure of the Respondent to obtain adequate KYC and suitability information for client accounts.

The Respondent's failure to conduct adequate trade supervision and failure to obtain adequate KYC and suitability information were repeat deficiencies in so far as they were identified by Staff during both the First Examination and Second Examination.

Failure to Implement Two-Tier Supervision Structure

In the Second Examination, Staff identified that the Respondent did not have a two-tier account supervision structure in place, contrary to MFDA Rule 2.5 and MFDA Policy No. 2.

At the time of the Second Examination, there were:

- i. 50 Approved Persons who worked at, and were supervised directly and only by, the Respondent's head office; and
- ii. 14 Approved Persons who worked at five other of the Respondent's branches and were supervised only by the on-site branch managers and were not subject to head office supervision.

Inadequate Trade Supervision

During the Second Examination, Staff found that the Respondent did not conduct adequate trade supervision and maintain evidence of trade supervision, contrary to MFDA Rule 2.5.4 and MFDA Policy No. 2.

The Respondent's supervisory staff assessed the suitability of trading activity based on a client's KYC information for purchases only. The Respondent did not assess the suitability of switches between mutual funds administered by the same mutual fund company and did not supervise redemption activity.

The Respondent's procedures required supervisory staff to initial and date the trade order form to evidence trade supervision. Staff reviewed a sample of trades at the Respondent's head office and identified:

- i. trades where the trade order form was not initialed and dated; and
- ii. trades where the trade order form was initialed but not dated, meaning the Respondent and Staff were unable to verify when the trade review was conducted.

The Respondent did not maintain evidence of any follow-up inquiries made by supervisory staff where it appeared that a trade may be unsuitable.

Staff reviewed a sample of trades at the Respondent's Thornhill branch office and identified:

- i. trades where the trade order form was not initialed and dated; and
- ii. trades where the trade order form was initialed but not dated, meaning the Respondent and Staff were unable to verify when the trade review was conducted.

The branch manager of the Thornhill branch office did not maintain evidence of any follow-up inquiries made where it appeared that a trade may be unsuitable.

Inadequate KYC and Suitability Information

The Respondent failed to obtain adequate KYC and suitability information for each client account, contrary to MFDA Rules 2.2.1 and 2.2.2 and MFDA Policy No. 2.

Staff reviewed a sample of client files at the Respondent's head office and Thornhill branch office and identified:

- i. client accounts that did not have any KYC information on file;
- ii. KYC information forms that had not been signed by the clients;
- iii. client accounts that did not have adequate KYC information on file in the following respects: KYC information forms that were signed but not dated by the client and KYC information forms that were signed and dated subsequent to the date the account was opened.

Contraventions

3. Based on these facts, the Respondent admitted the following violations of MFDA Rules and Policies:

...that from September 1, 2003 to November 30, 2007, the Respondent did not implement and maintain a two-tier account supervision structure, contrary to MFDA Rule 2.5 and MFDA Policy No. 2.

...that from September 1, 2003 to November 30, 2007, the Respondent failed to conduct adequate trade supervision contrary to MFDA Rule 2.5.4 and MFDA Policy No. 2 in so far as the Respondent did not:

- i. assess the suitability of switches in client accounts and review redemption activity;
- ii. maintain adequate evidence of trade supervision; and
- iii. maintain evidence of any follow-up inquiries made by supervisory staff where it appeared that a trade may not be suitable.

...that from September 1, 2003 to November 30, 2007, the Respondent failed to obtain adequate KYC and suitability information for each client account, contrary to MFDA Rules 2.2.1 and 2.2.2 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 Rodney Jacobson*, June 11, 2007, Prairie Regional Council, No. 200712; *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 misconduct was serious, it is clear that its president now recognizes the gravity of the improper activity. The prompt acknowledgement of the misconduct avoided the need for a lengthy and complicated investigation, as well as a lengthy hearing, should the charges have been contested. Furthermore, as enforcement counsel pointed out, the Respondent took immediate steps to avoid similar occurrences in future.

7. There is no evidence of client harm or loss.

8. Arrangements are in place to appoint an acceptable monitor, whose Terms are set out in Appendix "A" to these Reasons, and whose Duties and Standards are found in Appendix "B".

9. We are conscious of the fact that the fine agreed upon falls below the MFDA Penalty Guidelines, but we are satisfied that in the circumstances of this case, the public interest is well served by the agreed-upon penalties.

Disposition

10. Given the circumstances outlined above, we are unanimously of the view that the parties have demonstrated that the terms of the settlement meet the applicable criteria, and we therefore accepted the Settlement Agreement reached by the parties on the terms set out in the Agreement.

Dated this 3rd day of September, 2009.

“Fred Kaufman”

Hon. Fred Kaufman, Chair

“Guenther Kleberg”

Guenther W.K. Kleberg, Member

“Christopher Marrese”

Christopher Marrese, Member



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Re: De Thomas Financial Corp.

TERMS OF THE INDEPENDENT MONITOR

1. In accordance with the terms of the Settlement Agreement dated August 12, 2009 between De Thomas Financial Corp. (the “Member”) and the Mutual Fund Dealers Association of Canada (the “MFDA”) (the “Settlement Agreement”), and the Order of the Hearing Panel dated September 3, 2009 arising therefrom (the “Order”), the Member:
 - a. Shall resolve the following deficiencies (the “Deficiencies”):
 - i. The Member failed to implement and maintain a two-tier account supervision structure, and thereby failed to have an adequate account supervision structure in accordance with MFDA Rule 2.5 and MFDA Policy No. 2;
 - ii. The Member failed to failed to assess the suitability of switches in client accounts and review redemption activity; failed to maintain adequate evidence of trade supervision; and failed to maintain evidence of any follow-up inquiries made by supervisory staff where it appeared that a trade may be unsuitable, and thereby failed to conduct adequate trade supervision in accordance with MFDA Rule 2.5.4 and MFDA Policy No. 2; and
 - iii. The Member failed to obtain adequate KYC and suitability information for each client account in accordance with MFDA Rules 2.2.1 and 2.2.2 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 October 12, 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 sufficiency of the Member’s compliance department (the “Compliance Department”), including the number, experience and proficiency of staff, and the internal education and training programs, to ensure that the Member will comply with the implemented Action Plan and the MFDA By-laws, Rules and Policies, and make and provide to the MFDA and the Member its recommendations to address any deficiencies (the “Compliance Department Recommendations”) The Compliance Department Recommendations shall be delivered to Staff by no later than October 12, 2009;
 - v. Staff reserves the right to add, delete or change any part of the Compliance Department 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 Compliance Department Recommendations;

- vi. The Member, with the assistance and participation of the Monitor, shall fully implement the actions identified in the Compliance Department Recommendations within the time frames set out therein. The Monitor must review and approve all such actions as being consistent with the Compliance Department 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 Compliance Department 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 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.

“Tony De Thomasis”
Name: Tony De Thomasis
Title: President
De Thomas Financial Corp.

Aug 12/09
Date

“Therese Grillo”
Witness

Name: Therese Grillo

Mutual Fund Dealers Association of Canada

“Mark Gordon”
Mark T. Gordon
Executive Vice-President

Aug 12/09
Date



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**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. Changes to compliance department staffing;
 - ii. Newly developed processes or written procedures;
 - iii. Training provided to supervisory staff and Approved Persons;
 - iv. Newly developed client account forms or disclosure documents;
 - v. Changes to branch and sub-branch review procedures;
 - vi. Results of any branch or sub-branch reviews;
 - vii. Reports used for branch or head office supervision; and
 - viii. Changes to back-office systems.

F. Compliance Department Recommendations

1. When assessing and making its recommendations with regard to the Member's Compliance Department, the Monitor shall:
 - i. Specify the measurements and criteria used in the assessment;
 - ii. Specifically reference staffing and training with relation to the major compliance processes within the Member, including, Approval of new accounts, Branch Office Supervision of Trading and Leveraging, Head Office Supervision of Trading and Leveraging, Complaint Handling, Registration, and Branch Reviews;

G. Testing Procedures

1. The testing procedures determined 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.

H. 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

[*Insert Monitor Name*], 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: _____

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