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: Desjardins Financial Security Investments Inc.

Heard: May 6, 2009
Toronto, Ontario

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
Jeanne E. Beverly	Industry Representative
Vincent A. Valenti	Industry Representative

Appearances:

Shelly Feld	)	For the Mutual Fund Dealers Association of Canada
	)	
Alan P. Gardner	)	For the Respondent, Desjardins Financial Security
	)	Investments Inc.

1. A Notice of Settlement Hearing dated April 6, 2009 directed a hearing before a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") on Wednesday, May 6, 2009, commencing at 10:00 a.m., in the Hearing Room located at 121 King Street West, Suite 1000, Toronto, Ontario.

2. The hearing was to consider whether, pursuant to s. 24.4 of MFDA By-law No. 1, the panel should accept the Settlement Agreement entered into by Staff of the MFDA and the Respondent, Desjardins Financial Security Investments Inc.

3. The proposed Settlement Agreement was between Staff of the MFDA and Desjardins Financial Security Investments Inc. and involved matters for which the Respondent may be disciplined by the Regional Council pursuant to the MFDA by-laws.

4. At the outset of the proceedings we considered a joint motion by Staff and the Respondent to move the proceedings "in camera". We granted that motion. We then considered, in detail, the provisions of the Settlement Agreement itself. We heard submissions as to the applicable law which should guide this panel in determining whether to accept or reject the Settlement Agreement. We next heard submissions as to why this particular Settlement Agreement met the appropriate criteria. We then retired to consider both the Settlement Agreement and the applicable legal principles. After deliberation, we unanimously concluded that it was appropriate to accept the Settlement Agreement.

5. As a panel, we are obviously concerned with the type of conduct which is reflected in the Settlement Agreement. We believe, however, that the Settlement Agreement fairly addresses the concerns that we have.

6. In determining whether the Settlement Agreement should be accepted, we have considered a number of factors. These include the following:

a. We have considered the public interest and whether, in our view, the penalty imposed will protect investors.

b. We have considered whether, in our view, the Settlement Agreement is

reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement.

c. We have considered whether, in our view, the Settlement Agreement addresses the issues of both specific and general deterrence.

d. We have considered whether, in our view, the proposed settlement will prevent the type of conduct, which is set out in the Settlement Agreement, from occurring again in the future, and in particular the existence of stealth advising arrangements and their nature and extent. The issue of stealth advising has been clarified by MFDA Member Regulation Notice MR-0067 dated November 14, 2007.

e. We have considered whether, in our view, the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets.

f. We have considered whether, in our view, the Settlement Agreement will foster confidence in the integrity of the MFDA.

g. Finally, we have considered whether, in our view, the Settlement Agreement will foster confidence in the regulatory process itself.

7. In our view, the Settlement Agreement addresses all of the above factors. We believe that each and every one of these factors is dealt with in an appropriate fashion by the Settlement Agreement.

8. In addition, we have carefully reviewed the MFDA Penalty Guidelines and the effect of these guidelines on the type of conduct found in this matter.

9. We also believe that, in a hearing of this nature, it is appropriate to consider any and all mitigating factors. A number of these factors are set out below as taken from the written submissions of Staff of the MFDA:

20. However, it is also appropriate for the Hearing Panel to take into account the following mitigating factors:

(a) The Respondent has no previous disciplinary history with the MFDA;

(b) The Respondent co-operated with Staff throughout the investigation of this matter;

(c) The misconduct occurred in the early days of the MFDA's regulatory mandate prior to the issuance of additional guidance about supervisory obligations that has been provided to the industry by the MFDA in the intervening years by means of additional MFDA policies, member regulation notices, member regulation forums and decisions in other disciplinary proceedings;

(d) The Respondent's admissions to the misconduct described in the Settlement Agreement reflect acceptance of responsibility for its misconduct and demonstrate remorse; and

(e) 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.

10. We have finally considered that this was a Settlement Agreement that was reached by the parties after significant discussion and negotiation. The Settlement Agreement represents what they feel, with their knowledge and their experience, is an appropriate resolution. It is our view that the Settlement Agreement is reasonable and in the public interest. For all of these reasons we accepted the Settlement Agreement and signed the appropriate order as presented at the hearing. We indicated to counsel that these reasons would follow upon the signing of the order.

Dated this 11th day of May, 2009.

"John B. Webber"
The Hon. John B. Webber, Q.C.
Chair

"Jeanne Beverly"
Jeanne Beverly
Industry Representative

"Vincent A. Valenti"
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