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: EVANGELINE SECURITIES LIMITED

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SETTLEMENT HEARING
August 14, 2008
Halifax, Nova Scotia

**Hearing Panel of the Atlantic Regional Council**

The Honourable Hilroy S. Nathanson, Q.C. .....Chair
Ann C. Etter, Esq..... Panel Member
Karen Smart, Esq..... Panel Member

**Appearances**

H.C. Clement Wai, Esq. ....Counsel for Mutual Fund Dealers Association of Canada
Trevor Hughes, Esq.....President and CEO, for Respondent

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## DECISION AND REASONS

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[1] By Notice of Settlement Hearing dated June 25, 2008, a Hearing Panel of the Atlantic

Regional Council of the Mutual Fund Dealers Association of Canada (hereinafter "MFDA") was convened on August 14, 2008, to consider whether, pursuant to section 24.4 of By-law No. 1 of the MFDA, the Panel should accept a Settlement Agreement entered into by the Staff of the MFDA and the Respondent, Evangeline Securities Limited, on June 18, 2008.

[2] At the outset of the proceedings, the Panel considered a joint Motion by Staff and the Respondent to move the proceedings *in camera*. After consideration of the submissions of the parties, the Panel granted the Motion.

[3] The Panel then considered the provisions of the Settlement Agreement. After submissions as to the applicable law which should guide the Panel in determining whether to accept or reject the Settlement Agreement, and further submissions as to why this particular Settlement Agreement met the appropriate criteria, the Panel retired to consider both the Settlement Agreement and the appropriate criteria. After deliberation, the Panel unanimously concluded that it was appropriate to accept the Settlement Agreement.

[4] The Panel is obviously concerned with the type of conduct which is reflected in the Settlement Agreement. It believes that the Settlement Agreement fairly and fully addresses its concerns.

[5] In determining whether the Settlement Agreement should be accepted or rejected, the Panel considered a number of factors, including the following:

1. The Panel considered the public interest and whether the penalty imposed will protect investors.

2. The Panel considered whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement.

3. The Panel considered whether the Settlement Agreement addresses the issues of both specific and general deterrence.

4. The Panel considered whether the proposed settlement will prevent the type of conduct, which is set out in the Settlement Agreement, from occurring again in the future.

5. The Panel considered whether the Settlement Agreement will foster confidence in the integrity of the Canadian Capital Markets.

6. The Panel considered whether the Settlement Agreement will foster confidence in the integrity of the MFDA.

7. Finally, the Panel considered whether the Settlement Agreement will foster confidence in the regulatory process itself.

[6] The Panel believes that each and every one of the factors is dealt with in an appropriate fashion by the Settlement Agreement.

[7] Counsel for the MFDA informed the Panel that there were a number of mitigating factors, including:

1. The Respondent co-operated in the investigation and the settlement of the issues.

2. The Respondent made specific admissions as to its conduct which avoided the necessity of a protracted investigation and a lengthy hearing and, thereby, reduced the time and cost of these proceedings.

3. The Respondent undertook that it would in future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder.

[8] The Panel accepts that the penalty of a fine of $10,000 plus $2,500 costs, as set out in paragraph 20 of the Settlement Agreement, is appropriate because:

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

(b) the misconduct occurred predominantly out of a single branch location,

(c) the Respondent's misconduct has not caused any known financial loss to clients;

(d) as of October, 2006, the Respondent has taken steps to resolve the misconduct; and

(e) the Respondent has calculated its gross commission earned by the misconduct to be approximately $9,000.

[9] The Panel also considered the nature of these proceedings, the fact that they are public and that the Respondent is subject to scrutiny by both members of the media and members of the public, and the effect that has had and will have on the Respondent.

[10] Finally, the Panel considered that this was a Settlement Agreement which was reached by the parties after significant discussion and negotiation. The Settlement Agreement represents what they believe, with their knowledge and experience, is an appropriate resolution.

[11] For all these reasons, the Panel concluded that the Settlement Agreement was reasonable and in the public interest and, therefore, the Panel has signed the Order as requested which implements the settlement as found in Paragraph 20(a) and (b) of the Settlement Agreement.

**DATED** at Halifax, Nova Scotia, this 21st day of September, 2008.

The Honourable Hilroy S. Nathanson, Q.C.
Chair

Ann C. Etter,
Panel Member

Karen Smart,
Panel Member

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