



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

IN THE MATTER OF A DISCIPLINARY HEARING  
PURSUANT TO SECTIONS 20 and 24 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

**RE: Farm Mutual Financial Services Inc.**

MOTION

Heard: September 30, 2008  
Panel Decision: September 30, 2008  
Toronto, Ontario

DECISION and REASONS

Hearing Panel of the Ontario Regional Council:

|                          |                         |
|--------------------------|-------------------------|
| Thomas J. Lockwood, Q.C. | Chair                   |
| Sandy Grant              | Industry Representative |
| Guenther Kleberg         | Industry Representative |

Appearances:

|                      |   |                                         |
|----------------------|---|-----------------------------------------|
| Jason D. Bennett     | ) | for Mutual Fund Dealers Association     |
|                      | ) | of Canada                               |
| Stephanie A. McManus | ) | for Farm Mutual Financial Services Inc. |
| Robert Brush         | ) | for Stephanie A. McManus                |

1. By Notice of Motion, dated September 29, 2008, Staff of the Mutual Fund Dealers Association of Canada (“MFDA”) brought a Motion to the Hearing Panel pursuant to Rule 6 of the MFDA Rules of Procedure.

2. The Motion is for:

(a) An Order suspending section (iii) of the Hearing Panel’s June 27, 2008 Order until such time as the Hearing Panel has made a decision with respect to the preliminary issue raised by Staff at the Respondent’s pre-hearing motion heard September 9, 2008, namely the propriety of Respondent counsel’s representation of the Respondent.

(b) In the alternative, an Order varying section (iii) of the Hearing Panel’s June 27, 2008 Order to permit Staff until October 31, 2008 or later to make the pre-hearing disclosure contemplated by that section.

(c) Such further and other relief as Staff may request and the Hearing Panel deems just.

3. Staff proposed that the motion be conducted as a written hearing pursuant to Rule 6.3(2). This Rule provides as follows:

**“6.3 Motions – To Whom to be Made and Form of Motion**

(2) The Moving Party may propose that the motion be conducted as an oral hearing, a written hearing or an electronic hearing, and the motion shall be heard in that form unless a Responding Party objects or the Panel directs otherwise.”

4. Rule 6.3(3) provides as follows:

“(3) A Responding Party may object to the proposed form of a motion by advising all other parties and the Secretary in writing of the grounds for the objection no later than two days after the effective date of service of the Motion Record.”

We note that the time provided to the Responding Party under this Rule has not yet expired as the Notice of Motion is dated September 29, 2008 and was, presumably, served on the Responding Party either September 29th or 30th, 2008.

5. We believe that fairness and the Rules require that the Responding Party be afforded an opportunity to advise the Hearing Panel of its position and provide any material it deems appropriate before the Panel makes a final decision on this motion.

6. We note that Tab 7 of the Notice of Motion is a letter dated September 26, 2008, from Stephanie McManus to Jason Bennett of the MFDA in which she states, *inter alia*, that “Should you advance the motion proposed by your letter of September 22, . . . we will heartily oppose it . . . .”

7. We also note that Tab 4 of the Notice of Motion is a letter, dated September 17, 2008, from Jason Bennett to Stephanie McManus, the first line of which states: “This is further to your email message of September 15, 2008 and your letter dated September 16, 2008.” The Hearing Panel has not been provided with a copy of either piece of correspondence. They may or may not be relevant to the motion. However, we believe that Ms. McManus should have an opportunity to put either or both before us should she deem it appropriate.

8. Paragraph (iii) of our June 27, 2008 Order provides as follows:

“Staff shall, on or before September 30, 2008, provide the Respondent with copies of all documents, and a list of items other than documents, in respect of Allegations 5 and 6 in the Notice of Hearing upon which Staff intends to rely at the hearing of those matters on the merits.”

9. In order to provide the Responding Party with a full and fair opportunity to respond to this motion and in order for the Hearing Panel to have time to review the material, in our view, it is necessary to temporarily suspend the operation of this paragraph and we so order. Once we are in possession of and have

considered the positions of all parties, we will determine the length of this temporary suspension.

10. We note that paragraph (iv) of our June 27, 2008 Order provides as follows:

“the Respondent and Staff may appear before the Hearing Panel on October 31, 2008 and make submissions as to the conduct of the hearing on the merits and other procedural matters, including the question of whether the hearing on the merits ought to proceed on December 8, 9 and 10, 2008.”

11. We believe that this will provide all parties with a full opportunity to make submissions as to the effect that both this Order and any other Orders we may make in the interim could have on the conduct of the hearing on the merits currently scheduled for December 8, 9 and 10, 2008.

“Thomas J. Lockwood”

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Thomas J. Lockwood, Q.C.  
Chair

“Sandy Grant”

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Sandy Grant  
Industry Representative

“Guenther Kleberg”

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Guenther Kleberg  
Industry Representative