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: Queensbury Strategies Inc.

Heard: August 25, 2011 in Toronto, Ontario
Reasons for Decision: September 1, 2011

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
Robert Guilday	Industry Representative
Kenneth Mann	Industry Representative

Appearances:

David Halasz	)	For the Mutual Fund Dealers Association of Canada
	)	
Edward Waitzer	)	For the Respondent
	)	

1. This Panel was convened to hear submissions as to a settlement agreement reached between the Respondent Queensbury Strategies Inc. and Staff of the MFDA on June 29, 2011. The Panel was required to consider whether, pursuant to section 24.4 of the MFDA By-Law No. 1, the Panel should accept the Settlsement Agreement.

2. At the outset of the proceedings, we considered a joint motion by Staff and Respondent's counsel 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 that should guide this Panel in determining whether to accept or reject the Settlement Agreement. We 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.

3. The investigation by Staff of the Respondent's activities disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of discretion of the Hearing Panel pursuant to section 24.1 of By-Law No. 1. The specific allegations were that the Respondent failed to conduct adequate trade supervision during the period March 1, 2006 to June 30, 2009. These failures included the following:

1) Inadequate Tier 2 supervision of trades.
2) Inadequate Tier 1 supervision of trades.
3) Inadequate back-office system controls.

4. These deficiencies, set out in the Settlement Agreement in paragraphs 12, 13 and 14, resulted in trades that may have been unsuitable and processed by the Respondent without proper supervision.

5. The details of the Respondent's activity are set forth in paragraphs 16, 17 and 18 of the Settlement Agreement. The Respondent admits to three contraventions as detailed in paragraphs 20, 21 and 22 of the Settlement Agreement.

6. The Respondent has, in addition, agreed to the following terms of settlement:

a) The Respondent shall pay a fine in the amount of $35,000 upon the acceptance of the Settlement Agreement, pursuant to s. 24.1.2(b) of MFDA By-Law No. 1;
b) The Respondent shall pay the costs of this proceeding in the amount of $2,500 upon the acceptance of the settlement, pursuant to s. 24.2 of MFDA By-Law No. 1;
c) In accordance with s. 24.4.2 of MFDA By-Law No. 1, the Respondent agrees that in the future, the Respondent shall comply with all MFDA By-Laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.1.1, 2.2.1, 2.5.1, 2.5.2 (now 2.5.3), 2.5.3 (now 2.5.5), 2.5.4 (now 2.5.7), 2.9, and 2.10, and MFDA Policy No. 2; and
d) A senior officer of the Respondent will attend the settlement hearing in person.

7. Our consideration as to whether the proposed Settlement Agreement should be accepted or rejected include the principles as to whether it would be in the public interest and whether the penalties imposed will protect investors. We have also considered as to whether it is a reasonable and proportionate penalty having reference to the conduct of the Respondent. We believe that the Settlement Agreement fairly addresses the concerns that we have, including the public interest, reasonableness, specific and general deterrence and the prevention of this type of conduct in the future. We believe that the Settlement Agreement will also foster confidence in the integrity of the Canadian capital markets, the MFDA and the regulatory process itself. We believe that each and every one of these factors was 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 Penalty Guidelines on this type of conduct. We have also reviewed the various decisions which have been provided to us by Enforcement Counsel which disclose that similar types of activity have resulted in monetary penalties from $10,000 to $50,000 together with appropriate costs. In our view, the proposed penalty in the amount of $35,000 by way of a fine is entirely within a reasonable amount for a matter of this nature and should not be disturbed.

9. We have considered other matters such as the fact that the Respondent has not been the subject of any previous MFDA disciplinary hearings. Its admission was prompt and full as to the misconduct. The Respondent entered into the Settlement Agreement and has thereby accepted

full responsibility for its misconduct. The execution of the Settlement Agreement has eliminated the necessity of a full investigation and hearing. Enforcement counsel takes the position that the Respondent is truly remorseful when one considers its cooperation and the removal of the Member of the firm from the industry. There is no evidence of any client complaints, losses or harm in this case.

10. Discussion was held as to whether a monitor's services were required. As a result of the investigation by Staff and the cooperation of the Respondent, it is clear that the Respondent has implemented and continues to implement changes to its policies and procedures, including its policies and procedures with respect to the supervision of trades. This activity enhances its compliance with the MFDA By-Laws, Rules and Policies. For these reasons and considering the size of the monetary penalty, we do not believe that it is appropriate to order an independent monitor to address compliance deficiencies and to conduct testing to confirm corrective measures have been taken.

11. We are also of the view that a negotiated settlement should not be disturbed provided that the penalties are within the reasonable range of appropriateness. In that regard, we considered the remarks of the of the panel of the District Council in *Re Milewski,* [1999] I.D.A.C.D. No. 17, decided on July 28, 1999. The Panel made these comments at page 9:

> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

12. Finally, we observe that trade supervision is critical to the process of ensuring that, among other things, all trade orders accepted and recommendations made for clients are suitable. The necessity to maintain adequate records by the Respondent of all trades, enquiries and responses and resolutions resulting therefrom are most important. Proper record keeping is a key element in the overall supervision structure of the Respondent. This activity provides the basis

for supervision over the Respondent's compliance staff. In our view, efforts are being made by the Respondent as described by its counsel to address this particular issue.

13. For all of the above reasons, we accepted the Settlement Agreement and signed the appropriate Order presented to us at the hearing.

14. We agreed to provide reasons for our decision after the hearing. These are our reasons.

DATED this 1st day of September, 2011.

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

"Robert Guilday"
Robert Guilday,
Industry Representative

"Kenneth Mann"
Kenneth Mann,
Industry Representative

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