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CASE SUMMARY # NO. 200925
December 7, 2009

MFDA Case Summary

Enforcement

This case summary was prepared by Staff of the MFDA.

Hearing Panel accepts Settlement Agreement with Bick Financial Security Corporation

Nature of Proceeding A Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) has approved a Settlement Agreement between the MFDA and Bick Financial Security Corporation (“Bick”), a Member of the MFDA.

By-Laws, Rules, Policies Violated At a hearing held on September 24, 2009, the Hearing Panel considered the Settlement Agreement in which Bick admitted that it committed a number of compliance deficiencies (the “Deficiencies”), including:

- (a) prior to June 30, 2008, it failed to produce a comprehensive daily trade report recording all securities transactions that were required to be reviewed in accordance with MFDA Policy 2, thereby failing to fully conduct such review, contrary to MFDA Rule 5.1(a) and MFDA Policy No. 2;
- (b) prior to February 1, 2008, it failed to implement policies and procedures relating to maintaining adequate records of trade supervision that was conducted, including records of trades reviewed and records of inquiries made, responses received and resolutions achieved, contrary to MFDA Rules 2.2.1, 2.5.1, 2.5.4 and MFDA Policy No. 2;
- (c) prior to June 30, 2008, it failed to establish, implement and maintain adequate policies and procedures for the review and approval of advertisements, sales communications and client communications so as to prevent the distribution to clients and member of the public of materials that violated MFDA Rules, contrary to MFDA Rules 2.7.2, 2.8.2 and 2.8.3(a);

- (d) prior to October 2007, it failed to maintain evidence demonstrating that it had approved all advertisements, sales communications and client communications (including website content) that were sent to its clients or made accessible to its clients or members of the public, contrary to MFDA Rules 2.7.3, 2.7.2, 2.8.2, and 2.5.4; and
- (e) between October 1, 2005 and June 30, 2008, it failed to establish, implement and maintain adequate policies and procedures to assess and supervise the suitability of leveraging recommendations that its Approved Persons made to clients, contrary to MFDA Rules 2.2.1, 2.5.1, 2.5.4, and MFDA Policy No. 2.

MFDA Rule 2.2.1 states:

2.2.1 **“Know-Your-Client”**. Each Member and Approved Person shall use due diligence:

- (a) to learn the essential facts relative to each client and to each order or account accepted;
- (b) to ensure that the acceptance of any order for any account is within the bounds of good business practice;
- (c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and in keeping with the client's investment objectives; and
- (d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client and in keeping with the client's investment objectives, the Member has so advised the client before execution thereof.

MFDA Rule 2.5.1 states:

2.5.1 **Member Responsibilities**. Each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.

MFDA Rule 2.5.4 states:

2.5.4 **Maintenance of Supervisory Review Documentation**. The Member must maintain records of all compliance and supervisory activities undertaken by it and its partners, directors, officers, compliance officers and branch managers pursuant to the By-laws and Rules.

MFDA Rule 2.7.2 states:

2.7.2 General Restrictions. No Member shall issue to the public, participate in or knowingly allow its name to be used in respect of any advertisement or sales communication in connection with its business which:

- (a) contains any untrue statement or omission of a material fact or is otherwise false or misleading, including the use of a visual image such as a photograph, sketch, drawing, logo or graph which conveys a misleading impression;
- (b) contains an unjustified promise of specific results;
- (c) uses unrepresentative statistics to suggest unwarranted or exaggerated conclusions, or fails to identify the material assumptions made in arriving at these conclusions;
- (d) contains any opinion or forecast of future events which is not clearly labeled as such;
- (e) fails to fairly present the potential risks to the client;
- (f) is detrimental to the interests of the public, the Corporation or its Members; or
- (g) does not comply with any applicable legislation or the guidelines, policies or directives of any regulatory authority having jurisdiction over the Member.

MFDA Rule 2.7.3 states:

2.7.3 Review Requirements. No advertisement or sales communication shall be issued unless first approved by a partner, director, officer, compliance officer or branch manager who has been designated by the Member as being responsible for advertisements and sales communications.

MFDA Rule 2.8.2 states:

2.8.2 General Restrictions. No client communication shall:

- (a) be untrue or misleading or use an image such as a photograph, sketch, logo or graph which conveys a misleading impression;
- (b) make unwarranted or exaggerated claims or conclusions or fail to identify the material assumptions made in arriving at these conclusions;
- (c) be detrimental to the interests of clients, the public, the Corporation or its Members;
- (d) contravene any applicable legislation or any guideline, policy, rule or directive of any regulatory authority having jurisdiction over the Member; or
- (e) be inconsistent or confusing with any information provided by the

Member or Approved Person in any notice, statement, confirmation, report, disclosure or other information either required or permitted to be given to the client by a Member or Approved Person under the By-laws, Rules, Policies or Forms.

MFDA Rule 2.8.3(a) states:

2.8.3 Rates of Return

(a) In addition to complying with the requirements in Rule 2.8.2, any client communication containing or referring to a rate of return regarding a specific account or group of accounts must be based on an annualized rate of return and explain the methodology used to calculate such rate of return in sufficient detail and clarity to reasonably permit the client to understand the basis for the rate of return.

MFDA Rule 5.1(a) states:

5.1 REQUIREMENT FOR RECORDS

Every Member shall keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others and shall keep such other books, records and documents as may be otherwise required by the Corporation. Such books and records shall contain as a minimum the following:

- (a) blotters, or other records, containing an itemized daily record of:
 - (i) all purchases and sales of securities;
 - (ii) all receipts and deliveries of securities, including certificate numbers;
 - (iii) all receipts and disbursements of cash;
 - (iv) all other debits and credits, the account for which each transaction was effected;
 - (v) the name of the securities;
 - (vi) the class or designation of the securities;
 - (vii) the number or value of the securities;
 - (viii) the unit and aggregate purchase or sale price; and
 - (ix) the trade date and the name or other designation of the person from whom the securities were purchased or received or to whom they were sold or delivered.

MFDA Policy No. 2 states:

...

I. Establishing and Maintaining Procedures

Effective self-regulation begins with the Member establishing and

maintaining a supervisory environment which both fosters the business objectives of the Member and maintains the self-regulatory process. To that end a Member must establish and maintain procedures which are supervised by qualified individuals. A major aspect of self-regulation is the ongoing education of staff in all areas of sales compliance...

III. Branch Office Account Supervision

Each branch manager must undertake certain activities within the branch for purposes of assessing compliance with the Member's policies and procedures and regulatory requirements. These activities should be designed to identify failures to adhere to required policies and procedures and provide a means of revealing and addressing undesirable account activity...

IV. Head Office Account Supervision

A two-tier structure is required to adequately supervise client account activity. While the head office or regional area level of supervision by its nature cannot be in the same depth as branch level supervision, it should cover the same elements. Head office review should be focused on unusual activity or reviews that cannot be carried out at the branch level.

Penalty

Under the terms of settlement, Bick agreed to the following penalties:

- (a) it shall pay a fine in the amount of \$10,000, pursuant to s. 24.1.2(b) of the By-law;
- (b) it shall retain an independent monitor to assist it in resolving the Deficiencies as well as any other compliance deficiencies that the independent monitor identifies during its review, pursuant to s. 24.1.2(g) of the By-law; and
- (c) it shall pay costs of this proceeding in the amount \$2,500, pursuant to s. 24.2 of the By-law.

Summary of Facts

In October 2005, MFDA Staff conducted a compliance examination of Bick in order to assess the Member's compliance with MFDA Rules, By-laws and Policies. The examination identified that Bick had committed Deficiencies (as this term is defined above). A second compliance examination of Bick conducted by MFDA Staff in August 2008 revealed that the Deficiencies had not been addressed by Bick. The August 2008 examination also revealed that Bick's policies and procedures were inadequate to supervise leveraging recommendations to clients by its Approved Persons and had no procedures to assess the suitability of leveraging for clients. As a result, MFDA Staff commenced enforcement proceedings against Bick.

For greater detail, see the Reasons for Decision, dated November 12, 2009, posted on the MFDA's website in the "Enforcement" section under "Completed Cases".