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

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

Re: Mark Kricievski

Heard: December 7, 2009 in Toronto, Ontario
Reasons for Decision: December 15, 2009

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
Christopher Marrese	Industry Representative
Anne Traczuk	Industry Representative

Appearances:

Shelly Feld	)	For the Mutual Fund Dealers Association of Canada
	)	
Mark Kricievski	)	Attended Personally
	)	

1. A Notice of Settlement Hearing, dated November 24, 2009, directed a hearing before a Hearing Panel of the Ontario Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") on Monday, December 7, 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 Sections 20 and 24.1.1 of MFDA By-law No. 1, the Panel should accept a Settlement Agreement, entered into by Staff of the MFDA and the Respondent Mark Kricievski, dated November 20, 2009. The proposed Settlement Agreement between Staff of the MFDA and Mark Kricievski involved matters for which Mr. Kricievski may be disciplined by the Regional Council pursuant to the MFDA by-laws.

3. Mr. Kricievski appeared without counsel. He advised the panel that he did not require counsel. He was prepared to proceed on the date of the hearing and, accordingly, the matter proceeded.

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

5. In determining whether the Settlement Agreement should be accepted, we have considered a number of factors. These factors 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 a cease trade order of February 2, 2005 issued by the Ontario Securities Commission requiring Portus Alternative Management Inc. ("Portus") and its affiliates to cease trading in securities because of the apparent breaches of the *Securities Act*, R.S.O. 1990. The Respondent was registered as a mutual fund salesperson with Sterling Mutuals Inc. ("Sterling"). He sold, referred or facilitated the sale of approximately $1.8 million of Portus investment products to 44 clients. None of these transactions were carried on for the account of Sterling or processed through the facilities of Sterling.

6. The Respondent was paid a sales commission of $72,000 for his involvement. He rebated to the clients approximately one-half or $36,000. We were advised that all of the investors in Portus recovered up to well in excess of 90 percent of their loss.

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

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

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

10. 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.

11. In addition, we have carefully reviewed the MFDA penalty guidelines and the effect of

these guidelines on the type of conduct in this matter. We 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 and made during oral presentations.

a. The Respondent was disciplined by Sterling which imposed a fine upon the Respondent.

b. Sterling placed the Respondent under strict supervision for a period of one year and reduced his share of commissions earned from sales of investment products.

c. The Respondent has cooperated fully with the investigations conducted by Sterling and by MFDA Staff.

d. The Respondent has limited sources of income and is unemployed. He will be 60 years of age in December 2009. He has experienced macular degeneration and cataracts in both eyes and will soon be undergoing surgery for his medical condition. It is his submission that, because of his medical condition, he can no longer be gainfully employed.

e. The Respondent completely admitted his contraventions involving the Portus investment product in contravention of Sterling's written direction and subsequent oral direction that he refrain from selling, referring or facilitating the sale of investment products offered by Portus. He fully admitted that he sent communications to clients which were untrue and misleading, with unjustified promises of specific results. He failed to fairly present the potential risks that were actually detrimental to the interests of clients.

12. 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. In our view, notwithstanding the quantum of the fine, the Settlement Agreement is reasonable and in the public interest.

13. For all of these reasons, we accepted the Settlement Agreement and signed the appropriate order as presented at the hearing. We indicated to counsel and the Respondent that these reasons would follow upon signing of the order.

DATED at Toronto, this 15th day of December, 2009.

"John Webber"

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

"Christopher Marrese"

Christopher Marrese, Industry Representative

"Anne Traczuk"

Anne Traczuk, Industry Representative

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