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: Desjardins Financial Security Investments Inc.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada ("MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council ("Hearing Panel") of the MFDA should accept the settlement agreement ("Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Desjardins Financial Security Investments Inc. ("Respondent").

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule "A".

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule "A", will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part X) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. The Respondent became a Member of the MFDA on November 15, 2002 and is registered as a Mutual Fund Dealer in all 10 Canadian provinces.

Conrad Eagan – A Former Approved Person of Desjardins

7. From October 1987 to May 24, 2011, Conrad Eagan ("Eagan") was registered as a mutual fund salesperson (now known as a dealing representative) and was an Approved Person with the Respondent in the provinces of Ontario, Alberta and Quebec.

8. From May 30, 2011 to August 16, 2012, Eagan was registered as a dealing representative and was an Approved Person with Worldsource Financial Management Inc. ("Worldsource"), a Member of the MFDA, in the provinces of Ontario, Alberta and Quebec.

9. Eagan was a respondent to a separate but related disciplinary proceeding (MFDA Hearing File No. 201416) (the "Eagan Proceeding") that was commenced by Notice of Hearing initially issued on May 27, 2014 and amended on December 3, 2015. Following the hearing of the Eagan Proceeding on its merits on December 3, 2015, the Hearing Panel issued reasons for decision dated February 2, 2016 with findings that between February 2007 and December 2015, while he was registered as a mutual fund salesperson at Desjardins and Worldsource, Eagan engaged in the following misconduct:

i. he misappropriated at least $3,497,775 million from a number of clients[1] and one individual, contrary to MFDA Rule 2.1.1;

ii. he engaged in personal financial dealings with client JG by borrowing $173,346.35 from her which he failed to repay or otherwise account for and which gave rise to a conflict of interest between Eagan and JG that was not addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1;

iii. he acted as the executor of the estates of clients PL, JK and YC and thereby acted upon a general power of attorney or similar authorization from a client, contrary to MFDA Rules 2.3.1(a), 2.1.4 and 2.1.1;

iv. he engaged in another gainful occupation that was not disclosed to and approved by his Member by preparing wills for clients JK, YC and at least 11 other individuals, contrary to MFDA Rules 1.2.1(c) and 2.1.1;

v. he provided statements and documents to JG and to the beneficiaries of the estates of clients JK, PL and YC which he knew to be false, misleading or incorrect at the

[1]As set out in more detail in this agreement, unbeknownst to the Respondent, during the period when Conrad Eagan was an Approved Person of the Respondent, $611,571.41 was misappropriated from the estate of deceased client JK, $530,000 was misappropriated from the account of the estate of PL and $1,632,200 was misappropriated from the account of client JR.

time and in the circumstances he made them, in order to deceive them as to the amounts and whereabouts of their investments and monies, contrary to MFDA Rule 2.1.1; and

vi. he failed to cooperate with the MFDA during its investigation of his conduct, contrary to section 22.1 of MFDA By-law No. 1 and MFDA Rule 2.1.1.

Overview

10. This Settlement Agreement concerns:

(a) the failure of the Respondent to conduct a reasonable supervisory investigation when alerted to the fact that Eagan was acting as estate trustee for the estate of at least one client of the Respondent (JK) whose accounts he serviced;

(b) deficiencies with respect to the supervision by the Respondent of Eagan's conduct while he was an Approved Person of the Respondent including its failure to conduct adequate trade supervision; and

(c) the failure of the Respondent to deal fairly with a complaint that was received concerning Eagan's redemptions from client accounts held with the Respondent which, unbeknownst to the Respondent, resulted in the misappropriation of client money from accounts of the estate of JK held at financial institutions unrelated to the Respondent.

The Respondent's Response To Information That Eagan Was Estate Trustee For Client JK

11. In December 1997, JK became a client of the Respondent. Eagan was the mutual fund salesperson responsible for servicing her account.

12. During the period when Eagan was registered as an Approved Person with the Respondent, he prepared a will for client JK that JK signed on January 16, 2008. At the time that the will was signed, the Respondent was unaware of Eagan's conduct.

13. On October 15, 2008, client JK died at the age of 87.

14. On November 26, 2008, Eagan was appointed as estate trustee for the estate of client JK. Eagan did not report his appointment as estate trustee to the Respondent.

15. During the week of December 10, 2008, the Respondent was informed by Desjardins Financial Security Life Assurance Company ("DFSLA"), the insurance arm of the Desjardins Group, that Eagan had prepared JK's will, designated himself as executor ("estate trustee") of the will, obtained an appointment as estate trustee of client JK's estate and had submitted the necessary documentation to DFSLA to have the proceeds from 2 DFSLA insurance policies released to him in his capacity as estate trustee for client JK's estate.

16. On December 10, 2008, the proceeds from two life insurance policies held by client JK totaling $273,363.49 were disbursed by DFSLA to Eagan in his capacity as estate trustee for the estate of JK and deposited into a bank account opened for the estate of JK.

17. On December 17, 2008, the Respondent sent an email to Eagan's branch that addressed a number of compliance concerns including the following:

> We are currently investigating a few situations involving Mr. Conrad Eagan . . . We are writing to you as his Branch Manager.
>
> **1. Will:**
>
> It has come to our attention last week that Mr. Eagan has prepared a will for one of his clients, [JK], in January 2008. [JK] passed away a few weeks ago and the Estate has claimed payment on a DFS life policy Mr. Eagan sold her. The will was prepared under his corporation, Eagan Financial Corporation and bears the name "Desjardins Financial (…)" on the cover page.
>
> According to the content of this will, *we feel that Mr. Eagan may have put himself in a real or potential conflict of interest situation*. *Will preparation is not an 'outside business activity' that is accepted by our mutual fund dealership, Desjardins Financial Security Investments Inc. (DFS Investments), and it is not allowed nor authorized to any DFS Investments mutual fund representative*. . . . [Emphasis added]

> We require that you inform again Mr. Eagan as soon as possible that he is prohibited from preparing wills for anyone, whether they be clients of DFS Investments or not.
> Also, we ask that Mr. Eagan provides us by January 12, 2009 with a full list of all wills that he has prepared, either himself or through his corporation, since the time he has been contracted with DFS Investments, including the name of all individuals involved.
> . . .
>
> We expect to receive a full and complete answer for each account by January 12, 2009.
>
> . . . We thank you in advance for your and Mr. Eagan's cooperation and remain available should you require any additional information.

18. On December 18, 2008, the head office of the Respondent was advised that Eagan had agreed to provide the requested information after the holiday period.

19. On January 12, 2009, Eagan sent a letter to the Respondent by e-mail in which he acknowledged receipt of the December 17, 2008 e-mail from the Respondent and stated, among other things, that:

> "Your e-mail is the <u>first and only</u> indication that I have received indicating that Will preparation is not an approved outside business activity. If this topic was discussed in a meeting (as you have indicated) I either did not attend the meeting or did not hear this information. Now that I am aware of this rule, I can assure you with 100% certainty, I will no longer engage in the activity of Will preparation.
> I thank you in advance for your patience and guidance in this matter."

20. On January 15, 2009, Eagan provided the Respondent with a list of names of 8 individuals (in addition to JK) for whom he had prepared wills and listed the dates between January 2004 and October 2008 when each of those wills was completed.

21. In light of the content of Eagan's January 12, 2009 e-mail response to the Respondent, the Respondent believed that Eagan appeared to be cooperating and had accepted and agreed to comply with its direction to cease further involvement in will preparation.

22. Although the Respondent did obtain Eagan's commitment to discontinue his will preparation activities in the future, the Respondent took no action to address the conflict of

interest arising from Eagan's appointment as estate trustee for clients or to inform clients about its concerns with respect to Eagan's conduct.

23. After receiving Eagan's letter, the Respondent took no further steps to investigate or follow up on the concerns that had been identified with respect to Eagan. In particular, the Respondent did not:

(a) require Eagan to resign as estate trustee for the estates of JK and any other deceased clients for whom he served as estate trustee or arrange for those client accounts to be transferred to another dealer;

(b) freeze, flag or otherwise supervise the accounts of clients (such as JK) whose accounts were controlled by Eagan in his capacity as an estate trustee pending receipt of evidence of Eagan's resignation as estate trustee to more closely supervise trading in such estate accounts that Eagan controlled and serviced;

(c) review the list of clients whose accounts were serviced by Eagan to see if any other accounts were estate accounts and if so, to determine who was authorized to provide trade instructions for and otherwise control the account;

(d) review past trading in estate accounts that Eagan controlled as estate trustee to identify large redemptions or other trades for which explanations ought to be obtained;

(e) obtain and review copies of the wills that Eagan had prepared for clients of the Respondent, as identified in his January 15, 2009 letter to the Respondent to determine, among other things, whether Eagan or any other Approved Person of the Respondent had been appointed or designated to become estate trustee, alternate estate trustee or to hold power of attorney for any other clients of the Respondent;

(f) make inquiries to:

(i) Eagan;

(ii) Eagan's registered assistant;

(iii) Eagan's branch manager;

(iv) other individuals who worked at Eagan's branch office; or

(v) clients whose accounts were serviced by Eagan;

to further investigate the nature and full extent of Eagan's outside business activities including, in particular, the estate planning services that Eagan had offered or provided to clients of the Respondent and the extent to which he was serving as an estate trustee for individuals (other than JK) including clients of the Respondent;

(g) contact any of the clients for whom Eagan had admitted to preparing wills to determine:

(i) how it had come about that Eagan had prepared their wills;

(ii) to ensure that they understood that estate planning services were not part of the business of the Member; and

(iii) to warn the clients about the potential conflict of interest that would arise if Eagan served as their estate trustee; and

(h) send letters to all clients whose accounts were serviced by Eagan to:

(i) find out whether Eagan had prepared wills for clients other than those whose names Eagan had disclosed to the Respondent;

(ii) find out whether Eagan was designated as estate trustee for the estates of any clients of the Respondent whose names had not been disclosed to the Respondent by Eagan in January 2009;

(iii) inform clients that Eagan was not authorized to offer will preparation or other estate planning services to clients; and

(iv) warn clients that Approved Persons of the Member are not authorized to accept powers of attorney or an appointment as estate trustee with authority to control the assets in an investment account held with the Member because such conduct would contravene regulatory requirements (e.g.; MFDA Rule 2.3.1) and give rise to a conflict of interest.

24. If the Respondent had reviewed the list of client accounts that were serviced by Eagan in December 2008, the Respondent would have discovered that Eagan was servicing 11 client accounts (in addition to JK's account) that were identified as accounts for the estates of deceased individuals.

25. The Respondent did not make any inquiries or take any other steps to determine whether Eagan had prepared the wills for the clients whose estate accounts he serviced or to find out whether Eagan was estate trustee with authority to control the trading in those accounts. The Respondent also did not take any steps to address the applicable conflicts of interest and regulatory contraventions (including contraventions of MFDA Rules 2.3.1 and 2.1.4) in cases in which Eagan served as estate trustee for client accounts.

26. Unbeknownst to the Respondent, in November 2009, Eagan prepared wills for VS, RS, and AS who were each clients of the Respondent, and designated himself as estate trustee to administer their wills.

27. Shortly after Eagan resigned his position as an Approved Person in May 2011, it was also reported to the Respondent that Eagan had prepared wills for clients ET and JS.

28. In its February 2, 2016 decision concerning the conduct of Eagan, the Hearing Panel determined that Eagan had misused his authority as estate trustee of the estates of clients JK and PL to misappropriate their assets by depositing assets of their estates in bank accounts and investment accounts that he controlled. Similarly, the Hearing Panel found that Eagan deposited the proceeds from redemptions from the investment accounts of JR that were held with the Respondent into a bank account of JR and from that bank account of JR, Eagan transferred the money into bank accounts and investment accounts of Eagan. The bank accounts and investment accounts of Eagan into which he deposited the proceeds of assets of former clients were not accounts of the Respondent or any corporate entity related to the Respondent. The Hearing Panel noted that Eagan admitted during Staff's investigation of his conduct that he had used

amounts obtained from the estates of clients JK and PL to pay personal expenses or for his personal benefit.[2]

29. Since the findings of the Hearing Panel were released in February 2016, former client RS has commenced a civil proceeding alleging, among other things, that Eagan misused his authority as estate trustee for clients.

30. If the Respondent had informed clients that Eagan was not authorized to offer estate planning services to clients or act as their estate trustee, it is more likely that clients of the Respondent would have withheld or withdrawn authorization granted to Eagan to prepare their wills or act as their estate trustee.

31. In total, Eagan prepared wills for at least 15 clients and at least 1 other individual[3] during the period when he was registered as a mutual fund salesperson or dealing representative with the Respondent.

32. As set out in more detail below, if the Respondent had conducted a reasonable supervisory investigation and implemented appropriate controls commencing in December 2008 after discovering that Eagan had drafted a will for client JK and accepted an appointment as Estate Trustee for the Estate of JK while continuing to service the investment account of the Estate of JK, it is more likely that Eagan's misconduct with respect to the account of the Estate of PL and possibly other clients of the Respondent could have been detected or prevented before Eagan ceased to be an Approved Person of the Respondent.

Supervision Of The Accounts Of The Estate of Client JK

33. After learning that Eagan had accepted an appointment as estate trustee of the estate of client JK, the Respondent failed to require Eagan to resign that appointment and failed to

[2]See paragraphs 19 and 38 of the Reasons For Decision re Eagan dated February 2, 2016.
[3]8 individuals disclosed by Eagan in his letter to the Respondent dated January 15, 2009 in addition to JK, PL, AS, VS, RS, JS and ET. All of those individuals were clients of the Respondent when their wills were prepared with the exception of PL. An account for the Estate of PL was opened with the Respondent by Eagan after PL passed away and Eagan was appointed as Estate Trustee of PL's estate.

implement heightened trade supervision with respect to client JK's accounts with the Respondent.

34. Between September 23, 2009 and September 30, 2009, more than 9 months after the Respondent learned that Eagan had been appointed as estate trustee for the estate of client JK, Eagan processed 10 redemption transactions in the accounts of the estate of client JK resulting in redemption proceeds that totaled $537,622.47 during a one week period. Of the redemption transactions, four transactions generated proceeds in excess of $50,000 including one that generated proceeds of $199,641.74. Nine of 10 transactions were also subject to deferred sales charges ("DSC"). Eagan was both the advisor of record for the account responsible for recommending the transactions and the estate trustee who purported to authorize each of the transactions.

35. The Respondent failed to query the redemption transactions in the accounts of the Estate of JK or take any other steps to ensure those transactions were processed for the benefit of the client. The Respondent ought to have queried those trades having regard to:

(a) the number of large redemption transactions that were processed in the accounts of client JK during a single week;
(b) the substantial value of each redemption that was processed in those accounts;
(c) the DSC fees applicable to nine of the 10 transactions; and
(d) the fact that the transactions in the accounts were both processed and authorized by the Approved Person servicing the account (Eagan).

36. The proceeds from four redemptions from the accounts of the estate of JK totaling $132,866.72 that were processed on September 30, 2009 were deposited into a no load (commission free) cash management account that was maintained with the Respondent for the estate of JK.

37. Between October 20, 2009 and October 26, 2009, two redemption transactions were processed from that cash management account held with the Respondent for the estate of client

JK totaling $132,503.01 (one on October 20, 2009 for $100,509.59 and the other on October 26, 2009 for $31,993.42) and an administrative fee of $393.75 was charged to the estate of client JK on October 26, 2009. The redemption transactions from the cash management account resulted in the withdrawal of the $132,866.72 that had been deposited in the account on September 30, 2009.

38. Taking into account the two redemptions from the cash management account in October 2009 (which resulted in the withdrawal of money that was temporarily maintained in that account during the month of October 2009), the total value of redemptions from the accounts of the estate of client JK between September 23, 2009 and October 26, 2009 was $670,125.48.[4] The Respondent failed to query any of the September and October 2009 redemption transactions from the accounts of the estate of client JK.

39. Between December 2008 and February 2012, Eagan deposited the proceeds from the two insurance policies that had been disbursed by DFSLA in December 2008, the proceeds from the redemptions of investments held with the Respondent and the proceeds from the sale of the home of JK that was sold in February 2012 into a bank account of the estate of JK that was held with a financial institution unrelated to the Respondent. Unbeknownst to the Respondent, between December 15, 2008 and February 22, 2012, Eagan misappropriated at least $611,571.41 from the bank account of the estate of client JK by writing cheques payable to himself that were drawn on the estate bank account and depositing the cheques into other bank accounts and investment accounts that he held or controlled at financial institutions unrelated to the Respondent. To date, Eagan has not repaid the rightful beneficiaries of the estate of client JK or otherwise accounted for the money that he misappropriated from the estate.

[4]Although the total value of the redemption transactions processed in the accounts of JK totaled $670,125.48, this amount includes $132,866.72 referenced in paragraph 37 above that was redeemed from the portfolio of JK twice. Proceeds from redemptions that were processed on or about September 30, 2009 totaling $132,866.72 were reinvested in a no-load money market account by means of 4 purchases processed between September 30, 2009 and October 19, 2009. Those amounts were then redeemed in totality by way of redemptions processed on October 20, 2009 (in the amount of $100,509.59) and October 26, 2009 (in the amount of $31,993.42). None of the redemptions processed from the accounts of JK between September 30, 2009 and October 26, 2009 were queried.

Supervision Of The Accounts Of The Estate Of PL

40. PL was not a client of the Respondent during his lifetime.

41. On December 13, 1996, PL signed his last will and testament which had been prepared by Eagan and designated Eagan as estate trustee of his estate. Eagan did not inform or seek approval from the Respondent prior to preparing PL's will.

42. On June 10, 1998, PL passed away at the age of 87 and on August 10, 1998, Eagan was appointed as estate trustee of the estate of PL.

43. In January 1999, in his capacity as estate trustee, Eagan opened 2 investment accounts with the Respondent in the name of the "Estate of PL". Eagan was the mutual fund salesperson responsible for servicing the investment account for the Estate of PL and the individual authorized to provide trading instructions for the accounts in his capacity as estate trustee.

44. Commencing on November 15, 2002 when the Respondent became a Member of the MFDA, the Respondent failed to implement sufficient supervisory procedures or internal controls to detect the resulting conflict of interest and contravention of MFDA Rules that resulted from Eagan servicing the account of the estate of PL that he controlled as Estate Trustee.

45. When the Respondent discovered that Eagan had accepted an appointment as estate trustee of the estate of JK, the Respondent failed to investigate whether Eagan also served as estate trustee for the estates of other clients. If the Respondent had investigated who held trading authority for other estate accounts that Eagan serviced, it is likely that the Respondent would have discovered that Eagan was the estate trustee for the account of PL and the Approved Person responsible for servicing the account.

46. If the Respondent had reviewed the trading that had occurred in the account of PL between 2006 and 2008, the Respondent would have observed that Eagan had processed:

(a) 8 redemption transactions in the account that generated proceeds of $50,000 or more (including 5 redemptions that generated proceeds of more than $100,000); and

(b) large purchases in the same mutual funds from which comparably large redemptions had been processed several days prior to the purchases.

47. The Respondent did not question Eagan about the reasons for any of the high value trading or the redemption and repurchase patterns that had occurred in the account of the estate of PL.

48. As it turned out, between February 2007 and April 2008, Eagan processed redemptions totaling $530,000 from the account of the estate of PL. Unbeknownst to the Respondent, the proceeds of those redemptions were deposited into financial institutions unrelated to the Respondent and Eagan then wrote 3 cheques drawn on those bank accounts and payable to himself and deposited those cheques into bank accounts and investment accounts that Eagan maintained in his own name at financial institutions unrelated to the Respondent. By means of this process, Eagan misappropriated $530,000 from investment accounts of the estate of PL which he then used for his own benefit. To date, Eagan has not repaid the rightful heirs and beneficiaries of the Estate of client PL or otherwise accounted for the money that he misappropriated from the estate.

49. If the Respondent had conducted a reasonable supervisory investigation in December 2008 after learning that Eagan had served as estate trustee for deceased client JK, it is more likely that Eagan's misuse of his authority as estate trustee for the account of PL would have been detected before he ceased to be an Approved Person of the Respondent.

Supervision Of The Account Of Client ES

50. In January 2002, ES became a client of the Respondent. Eagan was the mutual fund salesperson responsible for servicing her account.

51. On June 13, 2009, client ES died at the age of 95. The death of ES was not reported to the Respondent's head office. Accordingly, this account was not identified on the Respondent's records as an estate account.

52. Unbeknownst to the Respondent, on March 18, 2010, Eagan was appointed estate trustee for the estate of ES.

53. Unbeknownst to the Respondent, on March 27, 2010, Eagan liquidated the account of ES by submitting documentation directly to the fund company to facilitate the redemption of the remaining holdings in the account, thereby processing the trades off the books and records of the Respondent. The redemption transactions were processed effective April 1, 2010.

54. According to the Policies and Procedures of the Respondent:

> **Off-Book Trading**
>
> Under no circumstances may a trade be sent directly by a representative to a fund company . . . representatives are required to transact all business through the dealer. Any representative who submits a trade directly to a fund company and [*sic*] thereby bypassing DFS Investments and his branch office, will be fined a penalty fee. . .

55. The Respondent failed to:

(a) detect that the redemption of units valued at $175,085.95 had been processed in the account of client ES by means of an off-book trade direction that was submitted directly to the fund company, bypassing the back office system of the Respondent; and

(b) query the transaction even though it was a very large redemption transaction that resulted in the liquidation of the balance of the account.

56. If the Respondent had obtained the paper work that was submitted to the fund company to redeem the holdings in the account of ES, the Respondent would have discovered that the

paper work was submitted by Eagan from his office and the trades were not authorized by ES (who was deceased).

57. If the Respondent had done so, it is more likely that the Respondent would have detected that Eagan had accepted an appointment as estate trustee for the estate of client ES and had processed unauthorized transactions in the account of client ES following her death without informing the Respondent that ES had passed away more than 9 months prior to the submission of the paper work for the off-book redemptions in the account of ES, contrary to MFDA Rules and the policies and procedures of the Respondent.

Supervision Of The Account Of Client JR

58. In December 2007, JR became a client of the Respondent. Eagan was the mutual fund salesperson responsible for servicing her accounts.

59. On August 5, 2008, client JR invested approximately $1,200,000 in mutual funds subject to DSC fees in her pre-existing account with the Respondent. In spite of the fact that client JR was 84 years old at the time that this investment was made, the Respondent failed to query the fact that her time horizon was specified to be 'more than 10 years' or the fact that the money was invested exclusively in mutual funds subject to DSC fees.

60. On October 22, 2008, client JR contributed $159,000 more into her accounts with the Respondent.

61. Between November 7, 2008 and September 16, 2009, Eagan processed 27 redemption transactions in the account of client JR resulting in the redemption of approximately $1,552,338.47. 19 of the 27 transactions cost the client more than $1,000 in DSC Fees and the total amount of DSC fees connected with the 27 redemptions totaled $77,735.55.

62. During that period, the Respondent only directed 1 query to Eagan about the trading in JR's account.

63. On August 24, 2009, Eagan was asked by the Respondent's compliance staff for an explanation of the high number of redemption transactions that had recently been processed in client JR's accounts, many of which had generated significant DSC fees. No steps were taken by the Respondent to flag or freeze the account pending receipt of a response.

64. On September 3, 2009, Eagan responded to the inquiry from compliance by asserting that client JR was gifting the contents of her estate prior to her death. Eagan was asked to obtain a written statement from client JR explaining the redemptions.

65. No follow up queries were directed to Eagan to explain why client JR's money was invested in DSC funds in August 2008 if she intended to begin distributing her assets to her beneficiaries in September 2008. No effort was made by the Respondent to contact client JR directly about the trading processed in her account and the substantial DSC fees that she was paying to redeem her investments and no controls were implemented on the account pending receipt of the statement that the Respondent had asked Eagan to obtain from the client.

66. Between September 15, 2009 and September 16, 2009, the last 3 (of the 27) redemptions were processed by Eagan in client JR's accounts resulting in proceeds of $467,775.32 and additional DSC fees totaling $25,985.

67. The September 2009 trades were not queried.

68. On October 2, 2009, Eagan produced a letter to the Respondent that he claimed he had obtained from client JR that was dated September 26, 2009 and appeared to be signed by JR. Among other things, the letter stated that:

> This letter is to confirm that I have redeemed all of the non-registered investments that I held through Desjardins Investments Inc. for the sole purpose of gifting those assets. I decided to gift those assets to various individuals that I have known for many years and that are all very dear to my heart. I was never married and I have no children so I wanted to simplify the duties of my executor and to do something financially positive for these individuals while I am alive.

69. After receiving the letter, the Respondent made no effort to contact client JR directly to confirm the authenticity of the letter. The Respondent also failed to obtain an explanation for the initial investment of JR's purchases in mutual funds subject to DSC fees or to obtain an acknowledgement from JR that she was aware of the DSC fees and willing to incur those fees.

70. Unbeknownst to the Respondent, between November 12, 2008 and September 18, 2009, Eagan made 22 transfers of amounts that totaled $1,632,200 from client JR's personal bank account to accounts at financial institutions unrelated to the Respondent that Eagan controlled personally.

71. Unbeknownst to the Respondent, as of November 2010, client JR was admitted to a long term home and was no longer capable of managing her affairs. Her friend and former colleague, NM, was appointed as power of attorney at that time. Eagan had not prepared JR's will nor was he named as power of attorney or estate trustee of her estate.

72. On February 10, 2015, client JR died at the age of 90.

73. Eagan was not named as a beneficiary of client JR's estate and has failed to repay or otherwise account for any of the monies redeemed from her accounts with the Respondent which were subsequently converted through financial institutions unrelated to the Respondent to his personal use.

74. The Respondent admits that between November 2008 and September 2009, its trade supervision of transactions processed in accounts of client JR was inadequate bearing in mind:

(a) the high number of redemptions that were processed from recently purchased DSC funds in client JR's accounts;
(b) the high value of many of the redemptions processed in client JR's accounts; and
(c) the substantial DSC fees that were incurred by client JR as a result of the transactions.

Eagan's Resignation and Subsequent Arrest

75. Unbeknownst to the Respondent, in total, between February 2007 and October 2009, Eagan stole or otherwise misappropriated more than $2 million from clients of the Respondent. The misappropriated amounts were transferred from accounts of the clients and to accounts of Eagan that were held at financial institutions that were not related to the Respondent.

76. On May 24, 2011, Eagan resigned voluntarily from the Respondent and his registration was terminated. Eagan subsequently transferred his registration to another mutual fund dealer where his misconduct continued.

77. In April 2015, Eagan was charged by Ottawa Police Services with respect to conduct that he engaged in that occurred while he was a mutual fund salesperson including conduct that he engaged in while he was an Approved Person of the Respondent.

The Handling of the Complaint of LD

78. By letter dated September 12, 2012, more than two years after Eagan resigned from the Respondent, LD, the daughter of deceased client JK and a beneficiary of her estate, submitted a complaint letter to the Respondent.

79. In LD's letter to the Respondent, she stated that the account of the Estate of JK had been managed by Eagan for several years during which Eagan managed the account and served as Executor for the Estate. She advised the Respondent that Eagan had not provided her and the other beneficiaries of the Estate with information and documentation concerning the account and the Estate that they had requested. She also informed the Respondent that she understood that Eagan had been terminated as a result of the conflict of interest that arose in the circumstances. LD requested certain information and documentation concerning the transaction history and current status of the investment accounts of the Estate of JK.

80. By letter dated September 17, 2012, LD also submitted a complaint to the MFDA.

81. In her September 17, 2012 Complaint to the MFDA, LD alleged that Eagan had taken advantage of the advanced age and compromised health of LD's mother JK to persuade JK to prepare a will that named Eagan as estate trustee and to arrange for the management of JK's assets after JK's death in a manner that benefited Eagan rather than the beneficiaries. LD alleged that Eagan's conduct gave rise to a serious conflict of interest that was not resolved in the best interest of client JK or her beneficiaries. She described Eagan's conduct as "unacceptable and atrocious". LD asserted that the Respondent should compensate the beneficiaries of JK's estate for, among other things, any shortfall in the value of JK's estate that had occurred since the date of JK's death.

82. On September 18, 2012, the Respondent acknowledged receipt of LD's complaint.

83. On or about September 25, 2012, LD sent another letter to the Respondent that was consistent with the content of the letter dated September 17, 2012 that she had sent to the MFDA. In her letter to the Respondent, LD requested compensation on behalf of the beneficiaries of the Estate of JK.

84. On or about November 13, 2012, the Respondent sent LD a transaction history of the account of the Estate of JK from inception to October 18, 2012.

85. On November 29, 2012, the Respondent sent a substantive response to LD denying her request for compensation on the basis of the Respondent's conclusion that the Respondent was not at fault or in any way responsible for the losses suffered by the estate of JK. The Respondent characterized the conduct of Eagan in connection with the account of the estate of JK as "a private arrangement between [JK] and [Eagan]" and asserted that Eagan's activities were "conducted outside our organization [and] were not overseen by [the Respondent]." In the November 29, 2012 letter to LD, the Respondent also inaccurately asserted that:

(a) the Respondent had sent Eagan a warning letter after discovering that he had accepted an appointment as an executor; and

(b) Eagan had assured the Respondent that he would not appoint himself as an executor again.

86. The Respondent's conclusion in this case was unfair in light of the following facts:

(a) the Respondent discovered that Eagan had been appointed as estate trustee for the estate of client JK shortly after his appointment and more than 9 months before Eagan began processing redemptions from the account;

(b) the Respondent recognized that Eagan's appointment as estate trustee for the estate of a client whose account he serviced gave rise to a conflict of interest but failed to take action to address that conflict of interest by the exercise of responsible business judgment influenced only by the best interests of the client and in particular, failed to require Eagan to resign as estate trustee for the estate of JK or transfer her account to another dealer;

(c) the Respondent failed to notify any family members of the deceased or beneficiaries of client JK's estate of its concerns; and

(d) the Respondent failed to freeze the accounts of the estate of client JK or even subject those accounts to heightened supervision.

87. The Respondent refused to reconsider its disposition of the complaint of client LD.

88. In January 2015, 3 beneficiaries of the estate of client JK (including the complainant LD) commenced a civil action against multiple defendants including Eagan and the Respondent.

89. By failing to handle the complaint of LD in a fair manner, the Respondent contravened MFDA Rules 2.1.1, 2.1.4, 1.1.5 and 2.11 and MFDA Policy No. 3.

V. CURRENT PRACTICES

90. Since 2011, the Respondent has increased the number of compliance staff responsible for trade supervision, investigations and complaint handling and changed the reporting structure in the compliance department. The Respondent has also enhanced the technology and procedures that support its supervision and complaint handling processes.

91. The Respondent has also implemented a more robust back office system and has amended and enhanced its policies and procedures in many respects including the following:

(a) Approved Persons are required to identify estate accounts on the Respondent's back office system, input the date of death of the deceased account holder and identify all individuals who are authorized to provide trade instructions on the account;

(b) the Respondent's head office also runs monthly reviews of accounts that are subject to trading authority of an Approved Person by way of powers of attorney, trusteeships and appointments as estate trustee for a client to ensure compliance with MFDA Rule 2.3.1;

(c) the Respondent has instituted stricter trade supervision requirements. In particular, redemptions that generate proceeds of $50,000 or more must be queried by head office and the branch manager is copied on all queries from head office concerning redemptions that generate proceeds of more than $150,000 and the Approved Person servicing the account in which such a redemption has been processed is required to complete and submit responses in a special trade query form concerning redemptions of more than $150,000; and

(d) the Respondent's back office system identifies "off-book trades" that are processed as a result of the submission of trade documentation directly to a fund company that was not processed through the facilities of the Respondent and the reasons why the trade was processed 'off book' are now investigated by the Respondent.

VI. CONTRAVENTIONS

92. The Respondent admits that commencing in December 2008, after discovering that Approved Person Conrad Eagan had engaged in unauthorized outside business activities preparing wills (including a will for client JK) and accepted an appointment as estate trustee for client JK, it failed to conduct a reasonable supervisory investigation to investigate the full nature and extent of Eagan's misconduct, or take other supervisory and disciplinary measures warranted by the results of its investigation, contrary to MFDA Rules 2.1.1, 2.1.4, 1.1.5, 2.5 and MFDA Policy No. 2.

93. The Respondent admits that commencing in December 2008, after becoming aware that an actual or potential conflict of interest had arisen as a result of Conrad Eagan's appointment as estate trustee of the estate of client JK and that Conrad Eagan had thereby accepted discretionary authority over the accounts of client JK in contravention of MFDA Rule 2.3.1, the Respondent failed to take steps to ensure that the resulting conflict was addressed by the exercise of responsible business judgment influenced only by the best interests of the client and failed to take steps to prevent Conrad Eagan from exercising discretionary authority over the account, contrary to MFDA Rules 2.1.1, 2.1.4, 2.3.1, 1.1.5 and 2.5.

94. The Respondent admits that between August 5, 2008 and April 2010, the Respondent failed to conduct adequate trade supervision or implement sufficient internal controls to detect or prevent the processing of potentially unauthorized and/or unsuitable trades in the accounts of clients JK, PL, ES and JR including an off-book trade processed in the account of ES by Conrad Eagan, contrary to MFDA Rules 1.1.5, 2.2.1, 2.5 and MFDA Policy No. 2.

95. The Respondent admits that after receiving a client complaint on September 12, 2012 from a beneficiary of the estate of deceased client JK concerning the proceeds from the redemption of investments from the accounts of the estate of JK that were held with the Respondent that Eagan failed to distribute to the beneficiaries or otherwise account for, the

Respondent failed to handle the complaint fairly, contrary to MFDA Rules 2.1.1, 2.1.4, 1.1.5, 2.11 and MFDA Policy No. 3.

VII. TERMS OF SETTLEMENT

96. The Respondent agrees to the following terms of settlement:

a) the Respondent shall pay a fine in the amount of $200,000;
b) the Respondent shall pay costs in the amount of $25,000;
c) the Respondent shall in the future comply with MFDA Rules 1.5, 2.5, 2.1.1, 2.1.4, 1.1.5, 2.3.1, 2.11, and MFDA Policy Nos. 2 and 3
d) a senior representative of the Respondent will attend in person, on the date set for the Settlement Hearing.

VIII. STAFF COMMITMENT

97. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent or any of its officers or directors in respect of the facts set out in Part IV and the contraventions described in Part VI of this Settlement Agreement, subject to the provisions of Part X below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and VI of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and VI, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

IX. PROCEDURE FOR APPROVAL OF SETTLEMENT

98. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

99. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive its rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

100. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

101. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against it.

X. FAILURE TO HONOUR SETTLEMENT AGREEMENT

102. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent or any of its officers or directors based on, but not limited to, the facts set out in Parts IV and VI of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

XI. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

103. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

104. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XII. DISCLOSURE OF AGREEMENT

105. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

106. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XIII. EXECUTION OF SETTLEMENT AGREEMENT

107. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

108. A facsimile copy of any signature shall be effective as an original signature.

DATED this 16th day of June 16, 2017.

"Vincent P. Hogue"
Vincent P. Hogue
President and Chief Operating Officer
& Ultimate Designated Person

"FL"
Witness – Signature

"FL"
Witness – Print Name

"Shaun Devlin"
Shaun Devlin
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement

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: Desjardins Financial Security Investments Inc.

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Desjardins Financial Security Investments Inc. (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS on the basis of the admissions made by the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that:

(a) commencing in December 2008, after discovering that Approved Person Conrad Eagan had engaged in unauthorized outside business activities preparing wills (including a will for client JK) and accepted an appointment as estate trustee for client JK, it failed to conduct a reasonable supervisory investigation to investigate the full nature and extent of Eagan's misconduct, or take other supervisory and disciplinary measures warranted by

the results of its investigation, contrary to MFDA Rules 2.1.1, 2.1.4, 1.1.5, 2.5 and MFDA Policy No. 2.

(b) commencing in December 2008, after becoming aware that an actual or potential conflict of interest had arisen as a result of Conrad Eagan's appointment as estate trustee of the estate of client JK and that Conrad Eagan had thereby accepted discretionary authority over the accounts of client JK in contravention of MFDA Rule 2.3.1, the Respondent failed to take steps to ensure that the resulting conflict was addressed by the exercise of responsible business judgment influenced only by the best interests of the client and failed to take steps to prevent Conrad Eagan from exercising discretionary authority over the account, contrary to MFDA Rules 2.1.1, 2.1.4, 2.3.1, 1.1.5 and 2.5;

(c) between August 5, 2008 and April 2010, the Respondent failed to conduct adequate trade supervision or implement sufficient internal controls to detect or prevent the processing of potentially unauthorized and/or unsuitable trades in the accounts of clients JK, PL, ES and JR and including an off-book trade processed in the account of client ES by Conrad Eagan, contrary to MFDA Rules 1.1.5, 2.2.1, 2.5 and MFDA Policy No. 2;

(d) after receiving a client complaint on September 12, 2012 from a beneficiary of the estate of deceased client JK concerning the proceeds from the redemption of investments from the accounts of the estate of JK that were held with the Respondent that Eagan failed to distribute to the beneficiaries or otherwise account for, the Respondent failed to handle the complaint fairly, contrary to MFDA Rules 2.1.1, 2.1.4, 1.1.5, 2.11 and MFDA Policy No. 3.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits

to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;

2. The Respondent shall pay a fine in the amount of $200,000 on the date of this Order pursuant to s. 24.1.2(b) of MFDA By-law No. 1; and

3. The Respondent shall pay costs in the amount of $25,000 on the date of this Order pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this [day] day of [month], 20[ ].

Name,
Chair

Name,
Industry Representative

Name,
Industry Representative

DM 558104 v1