



Contact: Hugh Corbett
Director of Litigation
Phone: 416-943-4685
Email: hcorbett@mfd.ca

CASE SUMMARY # 200816
October 7, 2008

MFDA Case Summary

Enforcement

This case summary was prepared by Staff of the MFDA.

Hearing Panel accepts Settlement Agreement with Evangeline Securities Limited

Nature of Proceeding A Hearing Panel of the Atlantic Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) has accepted a Settlement Agreement between the MFDA and Evangeline Securities Limited (“Evangeline”), a Member of the MFDA.

By-Laws, Rules, Policies Violated The Hearing Panel considered and accepted the Settlement Agreement at a hearing held on August 14, 2008 in Halifax. In the Settlement Agreement, Evangeline admitted that it failed to supervise and prevent trading in accounts where clients were resident in jurisdictions in which Evangeline and/or its Approved Persons were not registered, contrary to section 9.2.2 of MFDA By-law No. 1, MFDA Rules 2.5.1, 1.1.4(a) and/or 1.1.5(a), MFDA Policy No. 2, section 31 of the *Securities Act* (Nova Scotia), sections 148 and 149 of the *Securities Act* (Quebec), and section 6 of *The Securities Act* (Manitoba).

Section 9.2.2 of MFDA By-law No. 1 states:

Any firm or corporation shall be eligible to apply for Membership if:

...

the applicant carries on, or proposes to carry on, business in Canada as a mutual fund dealer and is registered or licensed in each jurisdiction in Canada where the nature of its business requires such registration or licensing, and is in compliance with such applicable securities legislation and the requirements of any securities commission having jurisdiction over the applicant; ...

MFDA Rule 2.5.1 states:

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 1.1.4(a) and **1.1.5(a)**, respectively state:

Employees. A Member may conduct its business by Approved Persons employed as employees by it provided that:

(a) any such employee is registered or licensed, in the manner necessary, and is in good standing, under the applicable legislation in the province or territory where the employee proposes to act;

Agents. A Member may conduct its business by Approved Persons retained or contracted by it as agents provided that:

(a) any such agent is registered or licensed in the manner necessary, and is in good standing, under the applicable legislation in the province or territory where the agent proposes to act;

MFDA Policy 2 establishes minimum industry standards for account supervision and states in part:

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 implement procedures which are supervised by qualified individuals.

Section 31 of the *Securities Act* (Nova Scotia), sections 148 and 149 of the *Securities Act* (Quebec), and section 6 of *The Securities Act* (Manitoba) set out the registration requirements of the applicable securities legislation.

Penalty

Under the terms of settlement, Evangeline agreed to pay a fine of \$10,000, costs of \$2,500 and to comply with all MFDA By-laws, Rules and Policies and applicable securities legislation and regulations.

Summary of Facts

Evangeline became a Member of the MFDA on July 2, 2002 and is currently registered as a mutual fund dealer in Prince Edward Island, Ontario, Nova Scotia, Newfoundland & Labrador and New Brunswick.

On September 9, 2004, Staff issued a Compliance Examination Report for Evangeline which included an assessment of Evangeline's compliance by with MFDA By-laws, Rules and Policies for the period June 1, 2003 to May 31, 2004 (the "2004 MFDA Report").

The 2004 MFDA Report identified, amongst other things, a deficiency with respect to the existence of client accounts in provinces where neither Evangeline nor its Approved Persons were registered or licensed to carry on business.

On October 6, 2004 Evangeline issued a response to the 2004 MFDA Report, in which it stated that it had identified all clients resident in jurisdictions in which Evangeline or its Approved Persons were not registered and had taken steps to obtain registration where possible. In jurisdictions in which Evangeline was unable to register without a resident compliance officer, or in provinces in which the Approved Person chose not to register, Evangeline indicated that clients were sent a letter notifying them that Evangeline could no longer service their accounts.

On November 29, 2004, Evangeline issued another response letter to MFDA Staff stating that Evangeline was “making use of controls within the back-office system to prevent trading in accounts where the client resides in a province in which the representative is not registered and the client has not taken steps to transfer the account. The only trades permitted will be transfer-out or full redemptions.” Evangeline also stated that all new client accounts were being reviewed to ensure that the Approved Person was registered where the client resided, and that, where there was a change in client address, checks were being done “to ensure compliance with the rules.”

On June 5, 2006, MFDA Staff commenced a second compliance examination of Evangeline which included an assessment of compliance for the period June 1, 2004 to April 30, 2006. The findings of the examination were reported to Evangeline in a Compliance Examination Report dated September 22, 2006 (the “2006 MFDA Report”).

The 2006 MFDA Report identified, amongst other things, deficiencies with respect to the failure to supervise and prevent trading in accounts where clients were resident in jurisdictions in which neither Evangeline nor its Approved Persons were registered.

As of November 3, 2006, Evangeline had 37 clients who resided in provinces where it and/or its Approved Persons were not registered. Between September 9, 2004 and September 22, 2006, Evangeline processed 76 purchase and switch transactions for 17 of the above clients. Approved Persons working out of the Ottawa branch location were assigned to the majority of those clients.

Evangeline failed to supervise and implement internal controls regarding accounts where the clients were resident in jurisdictions in which it and/or its Approved Persons were not registered and failed to prevent trading in those accounts.

Reasons for Decision

In accepting the Settlement Agreement, the Hearing Panel noted that the Settlement Agreement was reached by the parties after significant discussion and negotiation and represented what the parties believed to be an appropriate resolution given their knowledge and experience.

For greater detail, see the Settlement Agreement dated June 18, 2008 and the Decision and Reasons dated September 21, 2008 posted on the MFDA's website in the "Completed Cases" section under "Enforcement".

Doc 148031