



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 DEALERS ASSOCIATION OF CANADA**

Re: ASL Direct Inc. and Adrian Samuel Leemhuis

ORDER

WHEREAS on October 17, 2008, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 in respect of a disciplinary proceeding commenced against ASL Direct Inc. (“ASL”) and Adrian Samuel Leemhuis (“Mr. Leemhuis”) (collectively referred to as the “Respondents”);

AND WHEREAS on September 15, 2009, a Hearing Panel of the Central Regional Council of the MFDA (the “Hearing Panel”) issued an order setting a schedule for the continuation of the proceeding which, among other things, required that on or before Friday, October 30, 2009:

- (a) Staff of the MFDA (“Staff”) and Mr. Leemhuis would complete the disclosure process in accordance with Rule 10 of the MFDA Rules of Procedure; and
- (b) Mr. Leemhuis would identify any documents (including electronic documents) that were obtained by Staff during its investigation of the Respondents over which Leemhuis wished to assert privilege claims.

AND WHEREAS the Respondents have not yet provided any disclosure to Staff in accordance with Rule 10 of the MFDA Rules of Procedure;

AND WHEREAS Mr. Leemhuis has not yet identified all of the documents over which he wishes to assert privilege claims which are contained on forensic images of ASL hard drives that were created by a third party service provider called Digital Evidence International Inc. (“DEI”) in order to enable Staff to continue its investigation;

AND WHEREAS Mr. Leemhuis has not produced to Staff, documents over which spousal privilege was previously claimed and later withdrawn;

AND WHEREAS by Notice of Motion dated December 9, 2009, Staff brought a motion for directions from the Hearing Panel in light of the fact that Mr. Leemhuis has not yet complied with the September 15, 2009 Order of the Hearing Panel;

AND WHEREAS at the request of counsel for Mr. Leemhuis, Staff has requested that DEI produce new copies of the forensic images on a USB Hard Drive to facilitate the process that Mr. Leemhuis must undertake to identify privileged documents contained on the forensic images;

AND WHEREAS Staff has requested an order requiring Mr. Leemhuis to bear the costs of services that were provided by Digital Evidence in December 2009 at the request of Mr. Leemhuis;

AND WHEREAS Staff’s motion was heard by teleconference on Friday, December 18, 2009;

AND UPON reading the Motion Record of Staff including the Affidavit of Robert Lamshead sworn December 9, 2009, the Affidavit of Wayne Doney sworn December 17, 2009 in support of Staff and the Affidavit of Stephen O’Keefe sworn December 18, 2009 in support of Mr. Leemhuis and upon hearing the oral submissions of Staff and Counsel for Mr. Leemhuis;

IT IS HEREBY ORDERED THAT:

1. Staff shall arrange for DEI to make best efforts to deliver to counsel for Mr. Leemhuis, copies of the forensic images on a USB Hard Drive on or before Tuesday, December 22, 2009.
2. If the forensic images are provided to counsel for Mr. Leemhuis on a USB Hard Drive on or before Tuesday December 22, 2009, then Mr. Leemhuis shall provide the following documents to Staff by 5 p.m. on Tuesday, January 5, 2010:
 - (a) a list of documents contained on the forensic images over which the Respondent wishes to assert privilege claims (the “Privileged Documents List”);
 - (b) copies of all documents and a list of all items that the Respondent intends to rely on at the hearing; and
 - (c) copies of all documents over which claims of spousal privilege were previously asserted and later withdrawn.
3. The Privileged Documents List described in paragraph 2(a) above, shall include a description sufficient to identify the document including the following:
 - (a) the date when the document was created, sent or received;
 - (b) the names of the individuals who created, sent or received the document;
 - (c) the type of document (e.g.; letter, e-mail, memorandum, etc.); and
 - (d) the basis for the privilege claim that is being asserted.
4. Mr. Leemhuis shall also prepare and maintain printed copies of any documents over which privilege claims have been asserted.
5. If a USB Hard Drive containing the forensic images is not delivered to the office of counsel for Mr. Leemhuis by Digital Evidence on December 22, 2009, Mr. Leemhuis shall be entitled to an extension of time beyond January 5, 2010 to complete the requirements of paragraphs 2-4 above equivalent to one business day for each business day after December 22, 2009 that the delivery of the USB Hard Drives is

delayed.

6. If for any reason, Mr. Leemhuis is unable to comply with the January 5, 2010 deadline set out above, he shall prior to January 5, 2010 bring a motion requesting an extension of time and justifying any delay that is required.
7. On or before January 5, 2010, counsel for Mr. Leemhuis may file written submissions concerning whether Mr. Leemhuis should bear the costs of services that were provided by Digital Evidence in December 2009 at the request of Mr. Leemhuis.
8. On or before Monday, January 11, 2010, Staff may file written submissions in reply to any written submissions filed by counsel for Mr. Leemhuis.
9. The next appearance in this proceeding shall take place by teleconference on Monday, January 18, 2010 at 3 p.m. (Eastern) at which time, the parties:
 - (a) shall provide the Hearing Panel with a status update;
 - (b) may make further oral submissions as to whether Mr. Leemhuis should bear the costs of services that were provided by Digital Evidence in December 2009 at the request of Mr. Leemhuis; and
 - (c) may seek any additional relief that may be appropriate.

DATED this 18th day of December, 2009.

Per: “Thomas J. Lockwood”
Thomas J. Lockwood, Q.C., Chair

Per: “Sandy Grant”
Sandy Grant, Industry Representative

Per: “Selwyn Kossuth”
Selwyn Kossuth, Industry Representative

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