

**IN THE MATTER OF AN APPEAL TO THE APPEAL COMMITTEE  
OF THE CANADIAN INVESTOR PROTECTION FUND**

**RE:** [REDACTED]

**March 16, 2015**

**WRITTEN APPEAL CONSIDERED BY:**

BRIGITTE GEISLER

Appeal Committee Member

**DECISION AND REASONS**

**Introduction and Overview**

1. [REDACTED] (the “Appellant”) was a client of First Leaside Securities Inc. (“FLSI”), an investment dealer through which over 1,200 customers made investments in various affiliated companies, trusts and limited partnerships (collectively the “First Leaside Group”). FLSI was registered with the Ontario Securities Commission and was a member of the Investment Industry Regulatory Organization of Canada (“IIROC”). It was also a member of the Canadian Investor Protection Fund (“CIPF” or the “Fund”) until its suspension by IIROC on February 24, 2012, being the same date that FLSI sought protection under the *Companies’ Creditors Arrangement Act*. The relevant history leading up to these events and the role of CIPF with respect to claims to the Fund are set out in detail in the Appeal Committee’s decision dated October 27, 2014<sup>1</sup>.

2. FLSI was declared to be insolvent on February 24, 2012. The Appellant invested \$95,000 in 75,000 units of First Leaside Fund (Series B) on December 19, 2008 and January 27, 2010 and \$20,000 in 20,000 units of First Leaside Fund (Series C) on December 19, 2008. He also received

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<sup>1</sup> This decision is available on the CIPF website and will be referenced through as the October 27, 2014 decision.

stock dividends of 1,991 units of the Series C fund in 2009 which was converted into 2,111 units pursuant to a reorganization in 2011. The Appellant sought recovery from CIPF on the basis that FLSI was a Member of CIPF and as such the Appellant was entitled to protection through the Fund which was established to provide coverage in the event of insolvency. CIPF Staff made a decision denying compensation to the Appellant on the basis that the Appellant's losses did not arise as a result of the insolvency of FLSI and thus were not covered under the CIPF Coverage Policy dated September 30<sup>th</sup>, 2010.

3. On February 20, 2015, a hearing was scheduled before an Appeal Committee Member of CIPF's Board heard an appeal to determine whether to depart from the decision of CIPF Staff. The appeal hearing was to have taken place at Neeson Arbitration Chambers in Toronto, Ontario and was open to the public. The Appellant did not appear. An Order was issued by the Appeal Committee Member allowing the Appellant ten (10) days to indicate whether he intended to proceed by way of oral hearing. The Appellant responded to the Order, but did not provide any indication of how he wished to proceed. Pursuant to the terms of the Order, the Appellant is deemed to have chosen to have his appeal determined on the basis of the materials already filed.

### **Chronology of Events Relevant to the Appellant's Claim**

#### *(i) The Appellant's Investments and Claim*

4. The claim arises from the Appellant's investments of \$50,000 in 50,000 units of First Leaside Fund (Series B) on December 19, 2008 and \$25,000 invested in 25,000 units of the same fund on January 27, 2010. He also invested \$20,000 in 20,000 units of First Leaside Fund (Series C) on December 19, 2008. The Series C fund paid out a stock dividend of 1,991 units on December 19, 2009 which was converted into 2,111 units on April 15, 2011. The total claim is for \$95,000 invested in the 75,000 units of First Leaside Fund (Series B) and 22,111 units of First Leaside Fund (Series C). The units of both of these funds, being held by Penson Financial Services Canada, Inc., were transferred to an account in the name of [REDACTED] at Fidelity Clearing Canada ULF following FLSI's insolvency.

(ii) *The Appellant's Application for Compensation*

5. The Appellant applied to CIPF on September 13, 2012 for compensation for his losses in investments made through FLSI. By letter dated April 17, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of his claim. The relevant part of the letter reads as follows:

As the basis for explaining your claim to CIPF, you stated: “?FRAUD”. While you have not provided evidence of the truth that assertion in support of your claim, losses caused by dealer misconduct, compliance failures or breaches of securities regulatory requirements in respect of the distribution of securities are not covered by CIPF. The securities that you purchased were subject to the disclosure of an offering memorandum or other offering documentation which, among other things, disclosed the risks relevant to the purchase and the investment. These investments, like any securities, were subject to market forces and, unfortunately, your loss appears to have been a loss caused by a change in the market value of your investments and not a loss resulting from the insolvency of FLSI.

In addition, with respect to the securities that you purchased, they were properly recorded in the books and records of FLSI at the date of insolvency. Those securities were transferred to an account in your name at another IIROC Dealer Member subsequent to February 24, 2012. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

**Analysis**

6. The Appellant made reference to the issue of fraud in his claim to CIPF, as noted above. In the October 27, 2014 decision, the Appeal Committee addressed the issues of fraud, material non-disclosure and/or misrepresentation. Reliance is made upon the analysis in that decision at paragraphs 27 through 49. As was indicated in the October 27, 2014 decision, the CIPF brochure outlines limitations on coverage. Furthermore, in the event that the Appellant is relying upon representations made by FLSI, it must be noted that oversight of the conduct of members is within the jurisdiction of IIROC, not CIPF.

7. CIPF coverage is custodial coverage. The Coverage Policy offers compensation for losses arising from a Member's failure as a custodian of customer property. It is coverage for what should be in one's account at the date of insolvency. The Appellant's securities were transferred to an account in his name as required by the Policy.

8. For a claim to be eligible, the relevant loss must arise solely as a result of the insolvency of a Member and be in respect of a Member's failure "to return or account for securities, cash balances ... or other property, received, acquired or held by, or in the control of, the Member for the customer, including property unlawfully converted". Further, the Coverage Policy expressly excludes from coverage losses that do not arise from a Member's insolvency, including losses resulting from fraud, the changing market value of securities, unsuitable investments, or the default of a securities issuer.

9. As in the October 27, 2014 decision, while the Appeal Committee has sympathy for the Appellant's position, I conclude that the argument in this appeal is not persuasive and do not give rise to a successful claim for compensation from CIPF.

### **Disposition**

10. The appeal is dismissed. The decision of CIPF Staff is upheld.

Dated at Toronto, this 17<sup>th</sup> day of March, 2015

Brigitte Geisler

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