



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen oust
Toronto ON M5H 3S8

Citation: Manulife Securities Incorporated (Re), 2017 ONSEC 29
Date: 2017-07-13

**IN THE MATTER OF
MANULIFE SECURITIES INCORPORATED AND
MANULIFE SECURITIES INVESTMENT SERVICES INC.**

**ORAL REASONS FOR APPROVAL OF SETTLEMENT
(Subsections 127(1) and 127(2) of the
Securities Act, RSO 1990, c S.5)**

Hearing: July 13, 2017

Decision: July 13, 2017

Panel: D. Grant Vingoe Vice-Chair and Chair of the Panel
William J. Furlong Commissioner

Appearances: Michelle Vaillancourt For Staff of the Commission
David Hausman For Manulife Securities Incorporated
Brad Moore and Manulife Securities Investment
Services Inc.

ORAL REASONS FOR APPROVAL OF SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing as edited and approved by the panel, to provide a public record of the oral reasons.

- [1] This is a hearing concerning allegations made by Staff of the Ontario Securities Commission against Manulife Securities Incorporated and Manulife Securities Investment Services Inc. (together, the "**Manulife Dealers**"), each of which is a subsidiary of Manulife Financial Corporation.
- [2] Staff alleges that the Manulife Dealers failed to establish, maintain and apply appropriate procedures in their systems of controls and supervision that formed part of their compliance systems (the "**Controls and Supervision Inadequacies**"), which resulted in certain clients paying excess fees that were not detected or corrected by the Manulife Dealers in a timely manner.
- [3] The inadequacies fall into two categories. First, certain investment products with embedded advisor fees held in fee-based accounts with the Manulife Dealers were incorrectly included in account fee calculations, resulting in some clients paying excess fees. Second, certain clients of the Manulife Dealers were not advised that they qualified for a lower management expense ratio ("**MER**") series of a mutual fund, and they indirectly paid excess fees when they invested in the higher MER series of the same mutual fund.
- [4] Had these allegations been proven in a contested hearing, the Control and Supervision Inadequacies would have constituted a breach of section 11.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligation* and been contrary to the public interest.
- [5] However, Staff and the Manulife Dealers have entered into a settlement agreement in which the Manulife Dealers neither admit nor deny the accuracy of the facts or the conclusions of Staff.
- [6] The settlement agreement is the result of extensive negotiations between Staff and the Manulife Dealers, and the Commission affords significant deference to negotiated agreements reached by parties. As such, the Panel's consideration of the settlement before us is based only on the facts described by Staff and Staff's conclusions as set out in the settlement agreement. However, we must still be satisfied that the measures called for in the settlement agreement are appropriate and in the public interest.
- [7] This Panel had the opportunity to meet with Staff and counsel for the Manulife Dealers in a confidential settlement conference. We reviewed the proposed settlement agreement and heard submissions from both parties.
- [8] The role of the Panel in reviewing a settlement agreement is to determine whether the terms of the settlement as a whole are fair and reasonable in the circumstances and whether the approval of the settlement is in the public interest. In making a determination of what is in the public interest, the Panel must have regard to the purposes of the *Securities Act*, RSO 1990, c S.5 described in section 1.1, namely, to provide protection to investors from unfair,

improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

- [9] Given that the parties have agreed to a settlement on a no-contest basis, the Panel must also consider OSC Staff Notice 15-702 – *Revised Credit for Cooperation Program* (2014), 37 OSCB 2583, which identifies the circumstances in which Staff may recommend that an enforcement matter be resolved on the basis of a settlement agreement in which the respondent makes no admissions of fact or liability.
- [10] The Panel ultimately finds that it is in the public interest to approve the settlement agreement between Staff and the Manulife Dealers.
- [11] In determining that it is in the public interest to approve the settlement agreement, we consider the following factors to be relevant:
- a. the Manulife Dealers discovered and promptly self-reported the Control and Supervision Inadequacies to Staff;
 - b. the Manulife Dealers provided prompt, detailed and candid cooperation to Staff during the investigation of the alleged inadequacies;
 - c. the Manulife Dealers conducted an extensive review of its other business operated in Canada to identify whether there were any other instances of inadequacies in their systems of controls and supervision leading to clients directly paying excess fees or indirectly paying excess fees on mutual funds managed by Manulife Asset Management Limited, an affiliate of the Manulife Dealers;
 - d. the Manulife Dealers have made a voluntary payment of \$495,000 to the Commission for the benefit of third parties or for investor education and an additional voluntary payment of \$25,000 to reimburse the Commission for costs incurred;
 - e. the Manulife Dealers have undertaken to provide compensation in the amount of approximately \$11,700,000 to affected clients, in accordance with a plan submitted by the Manulife Dealers to Staff and reviewed by the Panel (the "**Compensation Plan**");
 - f. the Manulife Dealers have taken corrective action, including implementing additional controls and supervision to address and prevent the reoccurrence of the Control and Supervision Inadequacies and agreeing to report to the Commission on the development and implementation of such measures; and
 - g. there is no allegation or evidence of dishonest conduct by the Manulife Dealers.
- [12] The Panel notes that in determining compensation for those clients that invested in the higher MER series, a methodology was required to compare the return that they would have received had they invested in the lower MER series in relation to variable service charges that the affected clients would have paid had they been afforded the lower cost funds. The methodology adopted for funds other than money market/cash funds was one found to be a globally favourable methodology for the benefit of affected clients. The precise methodology employed was therefore one that was tailored to this particular case. A favourable fixed fee was also utilized in the case of money market/cash funds.

- [13] The Compensation Plan mentioned above, which details the manner in which the Manulife Dealers will compensate affected clients, has not been filed by the parties with the settlement agreement. The Panel, however, has reviewed and is satisfied with the terms of the Compensation Plan. There may be circumstances in the future that would warrant the inclusion of the compensation plan with the settlement agreement submitted to the Commission for approval; however, we do not consider it necessary in this matter, and to require disclosure now would be inconsistent with the approach taken in other excess fee no-contest settlements.
- [14] For all the reasons stated above, this Panel finds that it is in the public interest to approve the settlement agreement between Staff and the Manulife Dealers dated July 10, 2017. We will issue an order substantially in the form of the order in Schedule "A" to the settlement agreement.

Dated at Toronto this 13th day of July, 2017.

"D. Grant Vingoe"
D. Grant Vingoe

"William J. Furlong"
William J. Furlong