

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

RE: [REDACTED], [REDACTED],

[REDACTED] and [REDACTED]

**September 3, 2015**

**WRITTEN APPEAL CONSIDERED BY:**

BRIGITTE GEISLER

Appeal Committee Member

**DECISION AND REASONS**

**Introduction and Overview**

1. [REDACTED], [REDACTED] and [REDACTED] (the “Appellants”) were clients 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 (“OSC”) 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 was declared to be insolvent and 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 in relation to an appeal heard on October 27, 2014.<sup>1</sup>

2. The Appellants sought recovery from CIPF on the basis that FLSI was a Member of CIPF and as such the Appellants were 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 Appellants on the basis that the Appellants' 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, 2010.

3. The Appellants requested that their appeals be considered on the basis of the written claim materials which they provided to CIPF.

### **Chronology of Events Relevant to the Appellants' Claim**

#### *(i) The Appellants' Investments and Claim*

4. The claim arises from the Appellants' purchase of various First Leaside Group products as follows:

- i) [REDACTED] – purchases made between December 1, 1993<sup>2</sup> and October 28, 2011 for a total net claim amount of \$439,714.03;
- ii) [REDACTED] – purchases made between October 17, 2005 and December 2, 2009 for a total net claim amount of \$108,096.04;
- iii) [REDACTED] – purchases made between December 1, 1993<sup>3</sup> and December 30, 2010 for a total net claim amount of \$290,275.47; and
- iv) [REDACTED] – purchases made between December 30, 2003<sup>4</sup> and December 30, 2010 for a total net claim amount of \$815,509.63.

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

<sup>2</sup> Based on FLWMS Portfolio account provided by the Appellants. CIPF Staff does not have access to account statements prior to March 1, 2004. See Appeal Record, Vol 1, p.67.

<sup>3</sup> Based on Claim Form submitted. See Appeal Record, Vol.1, p.181.

<sup>4</sup> Based on Claim Form submitted. See Appeal Record, Vol 1, p.256.

5. The net claims of the Appellants include claims for undocumented securities for which no information as to purchase price or purchase date were available, and claims for stock exchanges. The claims have been reduced by payments from the insolvency trustee which have been received by all of the Appellants. In addition, the Appellants claimed \$0.64/unit for their purchases in the Wimberly Apartments Limited Partnership investments even though some units were purchased at \$0.70/unit.

6. The majority of the certificates representing the Appellants' purchases were delivered to the possession of the Appellants, other than securities which were held in registered accounts. Those securities were transferred to accounts in the names of the Appellants at Fidelity Clearing Canada ULC ("Fidelity").

*(ii) The Appellants' Application for Compensation*

7. The Appellants applied to CIPF for compensation for their losses in investments made through FLSI. By separate letters dated March 14, 2014, the Appellants were advised that CIPF Staff were unable to recommend payment of their claims. The relevant parts of the letters read as follows:

The CIPF Coverage Policy requires that a customer must have: (a) been an eligible customer (as defined), (b) had an account with the insolvent CIPF Member, and (c) suffered financial loss due to the Member's failure to return or account for securities, cash balances, commodities, futures contracts, segregated insurance funds or other property, received, acquired or held by, or in the control of, the Member for the customer, including property unlawfully converted. CIPF does not cover customers' losses that result from other causes such as dealer misconduct, changing market values of securities, unsuitable investments or the default of an issuer of securities.

**Analysis**

8. As has been explained by the letter from CIPF Staff, from which an extract is quoted above, the limitation of the CIPF's Coverage Policy is to ensure that customers have received the securities which were held for them by a Member firm. The vast majority of the Appellants' securities were

physically delivered to their possession. The securities which were not delivered were held in registered accounts from which securities cannot be delivered. Those securities were transferred to Fidelity following the insolvency of FLSI. All of the Appellants' securities have been accounted for.

9. The Appellants have clearly suffered substantial losses, from which the minimal payments received from the insolvency trustee is of little comfort. While I have considerable sympathy for the Appellants' position, I conclude that their claims have not provided any additional information or grounds upon which a reversal of the CIPF staff decision should be made.

**Disposition**

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

Dated at Toronto, this 3<sup>rd</sup> day of September, 2015.

*Brigitte Geisler*