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

RE: [redacted] and [redacted]

May 15, 2015

WRITTEN APPEAL CONSIDERED BY:

BRIGITTE GEISLER Appeal Committee Member

DECISION AND REASONS

Introduction and Overview

1. [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 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 dated October 27, 2014.[1]

[1] This decision is available on the CIPF website and will be referenced throughout as the "October 27, 2014 decision".

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 appeal be considered on the basis of written materials which they provided.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellants' Investments and Claim

4. The claim arises from the Appellants' purchases of First Leaside Properties Fund (Class B) as follows:

i. 12,043 units for a cost of $12,043, purchased on April 9, 2009;
ii. 62,741units for a cost of $62,741, purchased on April 9, 2009; and
iii. 1,000 units for a cost of $1,000, purchased on June 2, 2009.

5. These securities were transferred to accounts in the names of the Appellants at Fidelity Clearing Canada ULC ("Fidelity").

(ii) The Appellants' Application for Compensation

6. The Appellants applied to CIPF on August 15, 2012 for compensation for their losses in investments made through FLSI. By letter dated January 13, 2014, the Appellants were advised that CIPF Staff were unable to recommend payment of their claims. The relevant parts of the letter read as follows:

> Regarding your claim for unlawful conversion, it does not appear to us that any property held by FLSI for you was converted or otherwise appropriated. 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. 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.
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> 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 accounts in your name at another IIROC Dealer Member subsequent to February 24, 2012.

Analysis

7. The Appellants raised arguments similar to those advanced at the October 27, 2014 hearing. This included interpretation of the phrase "including property unlawfully converted" in the Coverage Policy. The Appellants argued that the funds they invested were to have been invested in proprietary First Leaside products on the understanding that such funds would be invested in those products for the primary purpose of funding the acquisition and/or development of various real estate products. They submitted that all of their investments were made after 2008, during the period in which the Ontario Securities Commission ("OSC") was investigating the First Leaside Group, and were unlawfully converted by FLSI for their own use. In fact, all of the investments by the Appellants were made in the first half of 2009, before the OSC began their investigation. Accordingly, any submissions relating to the allegation of "property unlawfully converted" would not be applicable to the Appellants' the claimed amounts.

8. In any event, the adoption of these arguments suggests that the Appellants' claims are really of fraud, material non-disclosure and/or misrepresentation which does not fall within the meaning of the phrase "including property unlawfully converted" as was discussed fully in the October 27, 2014 decision. Such an interpretation would in effect create a new head of coverage.

9. The Appellants addressed what they felt were shortcomings by the regulators with respect to FLSI. This included an obligation by the OSC and IIROC to regulate the conduct of the First

Leaside Group. They noted that FLSI had been in business for at least 20 years and during that period of time the First Leaside Group appeared to be operating profitably. They questioned how IIROC could have continued "to endorse First Leaside for SEVEN YEARS, if the investment options provided did not meet IIROC's 'high regulatory and investment industry standards'".

10. IIROC's regulatory function relates to the business and operations of FLSI. It does not have jurisdiction over the various proprietary products that were marketed by FLSI to various investors. Those products, or issuers, were under the jurisdiction of the OSC, which, having concerns over those operations, began an investigation into the First Leaside Group in the fall of 2009. The jurisdiction of IIROC, and by extension, CIPF, within the limits of its mandate, is confined to FLSI only.

11. The Appellants also submitted that the First Leaside Group of products should not have been sold to them as they were not "accredited investors", which they submitted was a required designation in order to purchase their investments. They offered no substantiation for this submission. The purchase of prospectus funds, which was the investment made by the Appellants, does not require that the purchaser be an "accredited investor". Further, whether or not the Appellants did not qualify, or in fact, needed to qualify as accredited investors, is a regulatory function, and not part of CIPF's mandate.

12. CIPF is not a regulator. Its mandate and its coverage is custodial in nature, in other words, to ensure that the clients of an insolvent member have received their property. This custodial coverage is set out in CIPF's mandate, which is approved by the OSC and other provincial securities regulators. The mandate is restricted to this coverage, and does not extend to coverage for fraud, material non-disclosure and/or misrepresentation. The nature and extent of the coverage is discussed in full in the October 27, 2014 decision.

13. The October 27, 2014 decision deals extensively with the Appellants' arguments and the reasoning in the October 27, 2014 decision is adopted by this Appeal Committee. As in the

October 27, 2014 decision, I conclude that the Appellants' submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

Disposition

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

Dated at Toronto, this 19th day of May, 2015

Brigitte Geisler _____*Brigitte Geisler*_____