

**IN THE MATTER OF THE SECURITY FRAUDS PREVENTION ACT
R.S.N.B. 1973, c. S-6 AS AMENDED**

AND

**IN THE MATTER OF
HERITAGE FINANCIAL SERVICES LIMITED**

ORDER

WHEREAS on January 23, 2001, the Administrator of the Securities Administration Branch issued a Notice of Hearing in respect of Heritage Financial Services Limited ("Heritage");

AND WHEREAS Heritage entered into a settlement agreement dated February 23, 2001 (the "Agreement") in which it agreed to a proposed settlement of the proceeding, subject to the approval of the Administrator;

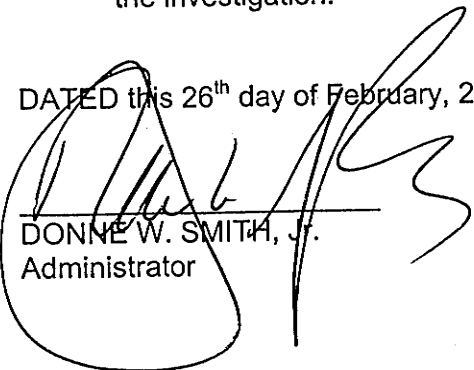
AND UPON REVIEWING the Agreement and the Statement of Allegations of Staff of the Branch;

AND WHEREAS the Administrator is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

1. the Agreement, a copy of which is attached to this Order, is hereby approved;
2. Heritage pay, pursuant to section 25(2) of the *Security Frauds Prevention Act* an amount of \$1,000 to the Minister of Finance for the Province of New Brunswick, for the costs of the investigation.

DATED this 26th day of February, 2001.



DONNE W. SMITH, Jr.
Administrator

**IN THE MATTER OF THE SECURITY FRAUDS PREVENTION ACT
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SETTLEMENT AGREEMENT

I INTRODUCTION

- 1.1 Heritage Financial Services Limited ("Heritage") is a broker registered in New Brunswick to trade in securities.
- 1.2 In the course of a compliance review, staff of the Securities Administration Branch ("staff") learned that salespersons employed by Heritage in other provinces were trading on behalf of New Brunswick residents. These salespersons were not registered in New Brunswick.
- 1.3 Heritage provided a list of 17 salespersons, responsible for New Brunswick accounts, who were not registered in New Brunswick.
- 1.4 Heritage has agreed to either submit application for the registration of these salespersons or provide confirmation that they have transferred the accounts to a registered salesperson, to ensure compliance with New Brunswick's legislation.

II STATEMENT OF FACTS

- 2.1 Heritage acknowledges the following facts as correct for the purposes of regulatory proceedings in the Province of New Brunswick and for no other purposes.
- 2.2 Heritage Financial Services Limited ("Heritage") is a body corporate, incorporated under the laws of the province of Nova Scotia on April 3, 1988 and registered in New Brunswick as an Extra-Provincial Corporation on January 9, 1990 by certificate 072459.
- 2.3 On November 1, 1991, Heritage was registered with the Securities Administration Branch as a broker, licensed to trade securities, restricted to distributing mutual funds approved for distribution in New Brunswick, and has been registered continuously since that date.
- 2.4 In the course of a compliance review, staff noted that salespersons employed by Heritage in other provinces were trading on behalf of New Brunswick residents. These salespersons were not registered in New Brunswick.

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- 2.5 By letter dated October 4, 2000, Heritage was required to provide, among other things, a list of New Brunswick clients with the name of the representative who serviced each one and a list of non-resident clients who were serviced by New Brunswick representatives.
- 2.6 The requested information was provided with a letter from Terry Miller dated October 19, 2000 and revealed that Heritage had 17 salespersons who were not registered in New Brunswick but who had traded on behalf of New Brunswick clients.
- 2.7 A review of the company manual revealed a company directive to salespersons (Administrative Procedures at C-18) which reads as follow:

"If a client moves to a province where the current Associate is not registered with that Provincial Securities Commission, the client must sign an out-of-province Rep form."
- 2.8 Heritage has permitted unregistered salespersons to trade on behalf of New Brunswick clients over a period of years.
- 2.9 By permitting such unregistered trading, Heritage has saved approximately \$10,000 in registration fees and may have further benefited from the commissions earned on trades executed for its New Brunswick clientele by unregistered representatives.
- 2.10 In addition, Heritage's administrative procedures actually condoned such unregistered trading.
- 2.11 The investigation of unregistered trading activities by Heritage and its staff has cost the Branch approximately \$1,000.

III POSITION OF THE RESPONDENT

- 3.1 BRM Capital Corporation ("BRM") has acquired Heritage.
- 3.2 Since acquiring Heritage, BRM has and continues to implement changes in the compliance procedures of Heritage. Among the changes implemented, the company manual has been amended by deleting the directive referred to in paragraph 2.7 above.
- 3.3 There have been no client complaints or harm and no adverse impact upon the capital markets of New Brunswick as a result of the facts referred to in Part II of this agreement.
- 3.4 Heritage has co-operated throughout with staff in the investigation of the activities referred to in Part II of this agreement.

IV JOINT SETTLEMENT RECOMMENDATION

- 4.1 Staff agree to recommend settlement in accordance with the terms and conditions set out below.
- 4.2 Heritage agrees to the settlement based on the facts set out in Part II and consents to the making of an order on the basis of those facts.

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4.3 This Settlement Agreement will be released to the public only if and when the settlement is approved by the Administrator.

V TERMS OF SETTLEMENT

6.1 Heritage agrees to:

- a) not make any statement which is inconsistent with the Statement of Facts, after the settlement is approved;
- b) ensure that no salesperson, sponsored by Heritage, trades on behalf of New Brunswick residents, without being registered in New Brunswick;
- c) submit applications, by February 28, 2001, for registration of all salespersons who continue to trade on behalf of New Brunswick residents;
- d) submit confirmation by February 28, 2001, of the transfer, to a registered salesperson, of any clients whose salesperson has chosen to not be registered in New Brunswick;
- e) revise the directive in the company manual to require that a salesperson must be registered in every province where he manages accounts if such registration is required by such province;
- f) voluntarily pay an amount of \$15,000 for the purposes of investor education to Public Legal Education and Information Service of New Brunswick Inc. (P.L.E.I.S. - N.B.);
- g) pay, pursuant to section 25(2) of the *Security Frauds Prevention Act*, an amount of \$1,000 to the Minister of Finance for the Province of New Brunswick for the costs of the investigation; and

VI STAFF COMMITMENT

6.1 Staff agree to:

- a) not seek suspension, cancellation or any other disciplinary order in respect of Heritage's registration, in relation to the facts set out in Part II;
- b) not take any separate action against Heritage, nor any of Heritage's unregistered representatives, nor any of the company's officers or directors;
- c) accept and review each non-resident representative's application on its own merits, separate and apart from any illegal activities identified in this settlement agreement with Heritage.

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VII PROCEDURE FOR APPROVAL OF SETTLEMENT

7.1 Upon execution of this agreement by staff and by Heritage, staff will apply to the Administrator for an order approving the terms set out herein.

7.2 If this Settlement Agreement is approved by the Administrator, it will constitute the entirety of the evidence to be submitted respecting Heritage in this matter and Heritage agrees to waive any right to a hearing and/or appeal with respect to this matter.

7.3 If, for any reason whatsoever, this settlement is not approved by the Administrator, or the order set forth in Schedule "A" is not made by the Administrator:

- a) staff and Heritage will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing, unaffected by the Settlement Agreement or the settlement negotiations;
- b) the terms of this agreement will not be referred to in any subsequent proceeding or disclosed to any person, except with the written consent of both staff and Heritage or as may be required by law; and
- c) Heritage further agrees that it will not raise, in any proceeding, the Settlement Agreement or the negotiation or process of approval thereof, as a basis for any attack on the jurisdiction of the Administrator, alleged bias, appearance of bias, alleged unfairness or any other challenge that may otherwise be available.

VIII DISCLOSURE OF SETTLEMENT AGREEMENT

8.1 The terms of the Settlement Agreement will be treated as confidential by the parties hereto until approved by the Administrator and forever if, for any reason, the Settlement agreement is not approved by the Administrator.

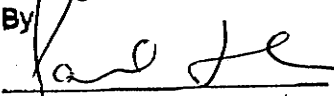
8.2 Any obligation as to confidentiality shall terminate upon the approval of this Settlement Agreement by the Administrator and it will become public information.

IX EXECUTION OF SETTLEMENT AGREEMENT


9.1 This Settlement Agreement shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

DATED this 23rd day of February, 2001.

SIGNED, SEALED AND DELIVERED
Heritage Financial Services Limited
By


Patricia Lincoln
Director

Staff of the Securities Administration Branch
By


Ed LeBlanc
Deputy Administrator
Compliance and Enforcement


26/02/01

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TEL:506 658 3059

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Schedule "A"
to Settlement Agreement

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- 7.3 If, for any reason whatsoever, this settlement is not approved by the Administrator, or the order set forth in Schedule "A" is not made by the Administrator:
 - a) staff and Heritage will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing, unaffected by the Settlement Agreement or the settlement negotiations;
 - b) the terms of this agreement will not be referred to in any subsequent proceeding or disclosed to any person, except with the written consent of both staff and Heritage or as may be required by law; and
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Deputy Administrator
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