

New
Nouveau  Brunswick

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

AND

IN THE MATTER OF
AEGON DEALER SERVICES CANADA INC. ("AEGON")

ORDER

WHEREAS on June 18, 2003, the Administrator of the Securities Administration Branch issued a Notice of Hearing in respect of AEGON DEALER SERVICES CANADA INC.

AND WHEREAS AEGON entered into a Settlement Agreement dated September 29, 2003 (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;

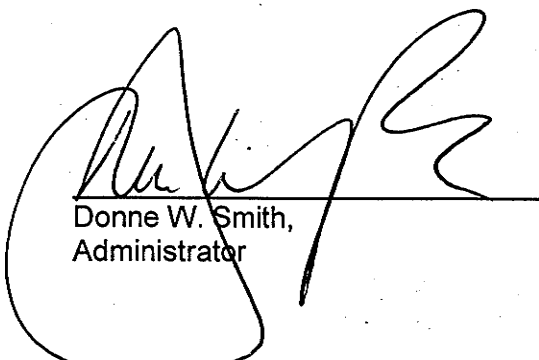
AND WHEREAS the Administrator is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

The Agreement, a copy of which is attached to this Order, is hereby approved; and

AEGON pay by October 15, 2003, 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 at Saint John, New Brunswick this 30th day of September, 2003.


Donne W. Smith,
Administrator

Tel./Téléphone:
(506) 658-3060
Fax/Télécopieur:
(506) 658-3059

P.O. Box 5001
133 Prince William St.
Suite 606
Saint John
New Brunswick
Canada E2L 4Y9

Case postale 5001
133, rue Prince William
Suite 606
Saint John
Nouveau-Brunswick
Canada E2L 4Y9



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

AND

IN THE MATTER OF
AEGON DEALER SERVICES CANADA INC. ("AEGON")

SETTLEMENT AGREEMENT

1. INTRODUCTION

- 1.1. AEGON is a broker registered in New Brunswick to trade in securities, restricted to distributing mutual funds approved for distribution in New Brunswick and named hedge funds.
- 1.2. In the course of a compliance review, Staff of the New Brunswick Securities Administration Branch ("Staff") discovered that AEGON employed 12 non-resident salespersons who were not registered in New Brunswick, but who had traded on behalf of 27 New Brunswick residents.
- 1.3. On August 10, 2001 The New Brunswick Securities Administration Branch issued Notice No. 7 – Trading by Unregistered Salespersons. ("Notice No. 7")

2. STATEMENT OF FACTS

2.1. AEGON acknowledges the following facts as correct:

2.1.1. Aegon Dealer Services Canada Inc is a body corporate, incorporated under the Canadian Business Corporation Act as Money Concepts Group Capital Corp ("Money Concepts") on October 16, 1984, and

- Registered as Ontario Corporation Number 6614355 on April 3, 1986 under the name Money Concepts;
- Amended its registration on October 9, 2001 to change the name to AEGON;
- Registered under the name Money Concepts in New Brunswick as an Extra Provincial Corporation, certificate # 071348 on March 29, 1988; and
- Amended its registration November 1, 2001 to change the name to AEGON.

- 2.1.2. On May 2 1988 Money Concepts was registered as a broker under the Security Frauds Prevention Act (the "Act"), restricted to the distribution of mutual funds, with the Securities Administration Branch, certificate # 88-44, and has been registered continuously since that date except that:
- Registration was amended on October 9, 2001 to change the name to AEGON;
 - Registration was amended on March 25, 2002 to permit the distribution of mutual funds and named hedge funds.
- 2.1.3. By permitting non-resident, non-registered salespersons to trade on behalf of New Brunswick clients, in breach of the Act, AEGON acted contrary to the public interest.
- 2.1.4. By permitting such unregistered trading, AEGON has saved registration fees and may have further benefited from the commissions earned on trades executed for its New Brunswick clientele by unregistered representatives.
- 2.1.5. AEGON has either submitted applications for the registration of these salespersons or provided confirmation that they have transferred the accounts to a registered salesperson, to ensure compliance with New Brunswick's legislation.

3. POSITION OF THE RESPONDENT

- 3.1. AEGON has co-operated with staff throughout the investigation of the activities referred to in Part II of this agreement.
- 3.2. AEGON asserts that upon receipt of Notice No. 7 in August 2001, it began to develop a program to address the issue of registration of extra-provincial salespersons:
- 3.2.1. In August and September of 2001, AEGON attempted to allocate a new servicing salesperson for New Brunswick clients or have the salesperson obtain non-resident registration.
- 3.2.2. On October 10, 2001, the AEGON Registrations Unit notified the AEGON Compliance Department of salespersons that had not obtained non-resident registration in New Brunswick. Those salespersons were then notified that Fund companies would be requested to transfer assets to the New Brunswick house account if the salespersons did not obtain non-resident registration in New Brunswick.
- 3.2.3. On October 15, 2001 the AEGON Registrations Unit notified all applicable Fund companies requesting the assets of the applicable clients to be transferred to the New Brunswick AEGON house account.

3.2.4. As a result of these efforts AEGON believed that all of the persons affected had been transferred to either a new agent or to a house account.

3.2.5. AEGON has set up a back office system (effective October 1, 2003), which will be able to monitor client addresses and compare the client address to the salesperson's address of registration. The effect of this system change will be that no trading in the account can take place until the salesperson obtains non-resident registration.

3.3. The Respondent asserts that salespersons did not solicit clients in jurisdictions in which they were not registered, but rather maintained client relationships due to family ties or as a result of mobility.

4. POSITION OF STAFF

4.1. Trading by non-resident non-registered salespersons on behalf of New Brunswick residents took place between 1996 and 2003. Some New Brunswick resident accounts were held by non-resident salespersons for that entire period and some for a lesser period.

4.2. Despite its efforts from August 2001 to February 2003, AEGON did not ensure that only salespersons registered in New Brunswick traded on behalf of New Brunswick residents.

5. JOINT SETTLEMENT RECOMMENDATION

5.1. Staff agree to recommend settlement in accordance with the terms and conditions set out below:

5.1.1. AEGON 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.

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

6. TERMS OF SETTLEMENT

6.1. AEGON undertakes to:

6.1.1. not make any statement which is inconsistent with the Statement of Facts, after the settlement is approved;

- 6.1.2. ensure that no salesperson, sponsored by AEGON, trades on behalf of New Brunswick residents, without being registered in New Brunswick;
- 6.1.3. voluntarily pay by October 15, 2003 an amount of \$18,000 for the purposes of investor education to the Public Legal Education and Information Service New Brunswick ("PLEIS-NB"); and
- 6.1.4. pay by October 15, 2003, 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.

7. STAFF COMMITMENT

7.1. Staff agree to:

- 7.1.1. not seek suspension, cancellation or any other disciplinary order in respect of the registration of AEGON , in relation to the facts set out in Part II;
- 7.1.2. not take any separate action against AEGON, any of the unregistered representatives of AEGON, or any of the company's officers or directors, in relation to the facts set out in Part II;
- 7.1.3. accept and review the application of each non-resident representative on its own merits, separate and apart from any illegal activities identified in this settlement agreement with AEGON .

8. PROCEDURE FOR APPROVAL OF SETTLEMENT

- 8.1. Upon execution of this agreement by Staff and by AEGON, Staff will apply to the Administrator for an order approving the terms set out herein.
- 8.2. If this Settlement Agreement is approved by the Administrator, it will constitute the entirety of the evidence to be submitted respecting AEGON in this matter and AEGON agrees to waive any right to a hearing and/or appeal with respect to this matter.
- 8.3. 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:
 - 8.3.1. Staff and AEGON will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing, unaffected by the Settlement Agreement or the settlement negotiations;

8.3.2. 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 AEGON or as may be required by law; and

8.3.3. AEGON 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.

9. DISCLOSURE OF SETTLEMENT AGREEMENT

9.1. 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.

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

10. EXECUTION OF SETTLEMENT AGREEMENT

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

DATED at Saint John, New Brunswick this 29th day of September, 2003.

SIGNED, SEALED AND DELIVERED

Aegon Dealer Services Canada Inc.
By

Staff of the Securities Administration Branch
By


Christina Taylor
Deputy Administrator,
Policy and Hearings