

THE SECURITIES ACT ) Order No. 3724  
 )  
Subsections 19(5) and 148.1(1) ) April 18, 2002

MICHAEL ROBERT FISCHER

WHEREAS:

(A) On February 12, 2002, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("Notice") giving notice of its intention to hold a hearing to consider, inter alia, whether or not it was in the public interest to grant an order pursuant to subsection 19(5) of The Securities Act ("Act") and an order pursuant to subsection 148.1(1) of the Act with respect to Michael Robert Fischer ("Fischer");

(B) Staff of the Commission and Fischer entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated April 12, 2002 ("Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

(C) Fischer has consented to the issuance of this Order and has waived his right to a full hearing;

(D) On April 17, 2002, the Commission held a hearing ("Settlement Hearing") to consider whether or not to approve the Settlement Agreement;

(E) At the Settlement Hearing the Commission approved the Settlement Agreement and is of the opinion that it is in the public interest to make this order.

IT IS ORDERED:

1. **THAT** the Settlement Agreement, Schedule "A", be and the same is hereby approved.

2. **THAT**, pursuant to subsection 19(5) of the Act:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those subsections, apply to Fischer; and

(b) subsection 19(2) of the Act does not, with respect to such securities referred to in that subsection, apply to Fischer,

indefinitely.

3. **THAT**, pursuant to subsection 148.1(1) of the Act, Fischer pay an administrative penalty of \$1,000.00 payable forthwith.

**4. THAT** Fischer pay to the Commission as a contribution to costs the amount of \$500.00 payable forthwith.

BY ORDER OF THE COMMISSION

Director, Legal and Enforcement

Settlement Agreement

Michael Robert Fischer

and

The Staff of The Manitoba Securities Commission

The Manitoba Securities Commission  
1130 - 405 Broadway  
Winnipeg, Manitoba  
R3C 3L6

#### SETTLEMENT AGREEMENT

##### A. Introduction

A1. On February 11, 2002, The Manitoba Securities Commission (the "Commission") issued a notice of hearing (the "Notice of Hearing") giving notice of its intention to hold a hearing under The Securities Act (the "Act") in respect of Michael Robert Fischer ("Fischer") to consider:

1. whether or not it is in the public interest to order, pursuant to section 19(5) of The Securities Act (the "Act"), that:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those subsections, apply to Fischer;  
and

(b) subsection 19(2) of the Act does not, with respect to such securities referred to in that subsection, apply to Fischer;

2. whether or not it is in the public interest to order that the respondent pay the costs of and incidental to the hearing;

3. whether or not it is in the public interest to order, pursuant to subsection 148.1(1) of the Act, that Fischer pay an administrative penalty;

4. such further and other matters and the making of such further and other orders as the Commission may deem appropriate.

A2. Discussions have been held between the respondent and staff of the Commission ("Staff") in an effort to settle the matters set out in the Notice of Hearing and Statement of Allegations (the "Proceedings"). The Respondent has been advised of his right to legal counsel and has waived that right. A settlement (the "Settlement") has been reached based on the terms and conditions set forth in this agreement (the "Settlement Agreement").

A3. Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against the respondent be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement. The respondent consents to the Settlement and to the making of the consent order referred to in paragraph D. below, on the terms and conditions set forth in this Settlement Agreement.

#### B. Statement of Facts

B1. Fischer was first registered as a salesman under the Act on June 2, 1992.

B2. At all material times, Fischer was registered as a salesman with Investors Group Financial Services Inc. ("Investors Group").

B3. On May 15, 2001, Fischer's employment with Investors Group was terminated and his registration was suspended.

B4. On January 1, 2002, his registration expired without having been transferred or renewed.

B5. While in the employ of Investors Group, Fischer misappropriated funds from three clients in the total amount of \$113,000.00.

B6. The misappropriated funds were deposited by Fischer into accounts at Investors Group held by either Fischer, his wife, or the two jointly.

B7. Fischer for himself states that his wife was unaware of his misappropriating funds at the time of the misappropriations.

#### Patrick A. Morand

B8. Father Patrick A. Morand ("P. Morand") was a client of Fischer's. Fischer managed P. Morand's investment portfolio at Investors Group for several years. Fischer knew P. Morand personally and visited him weekly. During several of these visits, Fischer brought cheques referred to below for endorsement by P. Morand.

B9. In one instance, a redemption cheque was sent to P. Morand via Fischer's office. Fischer took the cheque to P. Morand, explaining that there was a redemption and that he would be putting the money back into the client's account, and had him endorse it. On other occasions,

Fischer states that when P. Morand was not around to endorse a cheque, P. Morand's assistant Nora Trudell ("Trudell") endorsed the cheques as a result of the requests of Fischer.

B10. In total, Fischer presented for endorsement eight cheques, made payable to P. Morand, on or shortly after the following dates involving the following amounts:

- (i) August 4, 1998, for \$10,000;
- (ii) January 29, 1999, for \$20,000;
- (iii) July 5, 1999, for \$12,000;
- (iv) November 12, 1999, for \$5,000;
- (v) a second cheque was endorsed on or after November 12, 1999, for \$5,000;
- (vi) July 27, 2000, for \$10,000;
- (vii) November 6, 2000, for \$8,000;
- (viii) November 7, 2000, for \$5,000;

for a total amount of \$75,000.00.

B11. Upon endorsement, Fischer took the cheques to his Royal Bank branch and converted the cheques into money orders or similar instruments. Upon receiving the money orders, Fischer deposited the funds, without the express or implied consent or knowledge of P. Morand, into accounts at Investors Group held by either Fischer, his wife, or the two jointly.

#### Edward U. Morand

B12. Father Edward U. Morand ("E. Morand"), brother of P. Morand, was also a client of Fischer's. Fischer managed E. Morand's Investors Group account for several years. Fischer also presented cheques payable to E. Morand for endorsement, which were endorsed by someone on behalf of E. Morand as a result of the requests of Fischer.

B13. In total, Fischer presented for endorsement two cheques, involving E. Morand's funds. The cheques were dated as follows for the following amounts:

- (i) April 9, 1998, for \$8,000;
- (ii) September 16, 1999, for \$20,000

for a total amount of \$28,000.00.

B14. Upon endorsement, Fischer took the cheques to his Royal Bank branch and converted the cheques into money orders or similar instruments. Upon receiving the money orders, Fischer deposited the funds, without the express or implied consent or knowledge of E. Morand, into accounts at Investors Group held by either Fischer, his wife, or the two jointly.

#### Helen Ritchie

B.15 Fischer managed the account of Helen Ritchie ("Ritchie") for several years. Fischer had Ritchie endorse a cheque dated April 8, 1998 in the amount of \$10,000, made payable to her.

Upon endorsing the cheque, Fischer took the cheque and exchanged it for a money order for the same amount, which he then deposited into his personal investment account at Investors Group, without the implied or express consent or knowledge of Ritchie.

#### C. Acknowledgements

C1. Fischer acknowledges and agrees that he misappropriated funds of his three clients, P. Morand, E. Morand and Ritchie in the total amount of \$113,000.00 and that such conduct was contrary to the best interests of his clients and is contrary to the best interests of the public.

C2. Staff acknowledge that Fischer has cooperated in the investigation of this matter. During the investigation, Fischer contacted staff and arranged for a voluntary interview which he provided.

#### D. Terms of Settlement

D1. In order to effect a resolution of the issues raised by the Notice of Hearing, Staff and the respondent have entered into this Settlement Agreement. Upon this basis, Staff seek an order (the "Consent Order") from the Commission that:

1. The Settlement Agreement be approved.

2. Pursuant to subsection 19(5) of the Act:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those subsections, apply to Fischer; and

(b) subsection 19(2) of the Act does not, with respect to such securities referred to in that subsection, apply to Fischer,

indefinitely.

3. Pursuant to subsection 148.1(1) of the Act, Fischer pay an administrative penalty of \$1,000.00 payable forthwith.

4. Fischer pay to the Commission as a contribution to costs the amount of \$500.00 payable forthwith.

D2. Staff have received information that Investors Group reimbursed the three clients the amount of the misappropriated funds as well as growth and appreciation and income distribution and service fee rebates as applicable and that Fischer authorized redemptions from his account(s) with Investors Group in connection with the reimbursement.

#### E. Procedure for Approval of Settlement

E1. The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at a public hearing pursuant to the Notice of Hearing.

E2. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings and the respondent hereby waives his right to a full hearing and appeal of this matter.

E3. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in paragraph D. above is not made by the Commission, Staff will be entitled to proceed with the hearing commenced by the Notice of Hearing unaffected by this Settlement Agreement or the settlement discussions. If this Settlement Agreement is not approved or the Consent Order set out in paragraph D. above is not made by the Commission, the terms of this Settlement Agreement will not be raised in the Proceedings or in any other proceeding.

E4. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.

E5. The respondent agrees that he will not raise in any proceeding this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as a basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other challenge that may be available.

E6. The respondent further agrees that if this Settlement Agreement is approved by the Commission and the Consent

Order is made upon the terms set out in this Settlement Agreement, the respondent will not make any statements inconsistent with the terms of this Settlement Agreement.

DATED at Winnipeg, Manitoba, this "10<sup>th</sup>" day of "April", 2002.

"Allison Fischer"  
Witness

"Michael Fischer"  
Michael Robert Fischer

DATED at Winnipeg, Manitoba, this "12" day of "April", 2002.

Staff of the Manitoba Securities Commission  
per: "Douglas R. Brown"  
Director, Legal and Enforcement