

**THE SECURITIES ACT**  
**Subsections 8(1) and 148.1(1)**

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**Order No. 3881**  
**September 11, 2002**

**PRO-FUND DISTRIBUTORS LTD.**

**WHEREAS:**

(A) On August 29, 2002, The Manitoba Securities Commission (the "Commission") issued a Notice of Hearing (the "Notice") giving notice of its intention to hold a hearing (the "Hearing") to consider whether or not it was in the public interest to grant an order pursuant to subsections 8(1) and 148.1(1) of The Securities Act (the "Act") with respect to Pro-Fund Distributors Ltd. ("Pro-Fund");

(B) Staff of the Commission and Pro-Fund entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated August 26, 2002 (the "Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

(C) Pro-Fund has consented to the issuance of this Order and has waived its rights to a full hearing;

(D) The Commission has reviewed 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** Pro-Fund will make a one time payment of \$30,000.00 to the Treasury of the Province of Manitoba.
3. **THAT** Pro-Fund will make a payment of \$5,000.00 to the Commission as its contribution to the Commission's costs with respect to the investigation of this matter and the costs of the hearing.
4. **THAT** a written reprimand be placed in the registration file of Pro-Fund.

**BY ORDER OF THE COMMISSION**

**Director, Legal and Enforcement**

Schedule "A"

**In the Matter of the Securities Act,  
S.M. 1988, c. S50 as amended  
- and -  
In the Matter of Pro-Fund Distributors Ltd.**

**SETTLEMENT AGREEMENT**

**A. INTRODUCTION**

A.1 Staff of the Commission ("Staff") has advised Pro-Fund Distributors Ltd. ("Pro-Fund") of the intention of the Manitoba Securities Commission (the "Commission") to issue a Notice of Hearing and a Statement of Allegations (collectively the "Notice of Hearing") giving notice of its intention to hold a hearing under the Securities Act (the "Act") to consider:

(a) whether or not it is in the public interest to order, pursuant to subsection 8(1) of the Act:

(i) Pro-Fund be reprimanded;

(ii) terms and conditions be imposed on the registration of Pro-Fund; or

(iii) the registration of Pro-Fund as a Broker-Dealer be suspended or cancelled.

(b) whether or not it is in the public interest to order that Pro-Fund pay the costs of or incidental to this Hearing;

(c) whether or not it is in the public interest to order that Pro-Fund pay an administrative penalty pursuant to subsection 148.1(1) of the Act; and

(d) whether or not it is in the public interest to make any other order or orders.

A.2 Discussions have been held amongst Pro-Fund and Staff in an effort to settle all issues in connection with the matters set out in the Notice of Hearing (the "Proceedings") and this Agreement. A Settlement (the "Settlement") has been reached based on the terms and conditions set forth in this Agreement (the "Settlement Agreement").

A.3 Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against Pro-Fund be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. Pro-Fund consents to the

Settlement and to the making of the Consent Order referred to in paragraph D1 below, on the terms and conditions set forth in this Settlement Agreement.

## **B. STATEMENT OF FACTS**

B.1 Pro-Fund agrees with the facts set out in this Part B.

B.2 Bernard Bohemier ("Bohemier") was registered as a Salesman with Pro-Fund continuously from October 6, 1994 until January 13, 1999 when his registration was suspended by virtue of his no longer being employed by Pro-Fund as of that date. At all material times, Bohemier's registration was restricted to the offering in sale of mutual funds authorized for distribution under the Certificate of Registration of Pro-Fund. Bohemier has not been registered nor has applied to be registered under the Act since January 13, 1999.

B.3 At all material times, Bohemier was not registered to sell securities in any jurisdiction except Manitoba.

B.4 Pro-Fund was, and continues to be, registered as a Broker-Dealer (Restricted). Pro-Fund's registration was, at all material times, restricted to the sale of securities and mutual funds qualified for distribution in Manitoba by way of prospectus for which a final receipt had been issued by The Manitoba Securities Commission. Neither Bohemier's nor Pro-Fund's registration with the Commission allowed for the opening of discretionary or managed accounts.

B.5 During his employment with Pro-Fund, Bohemier was able to build a client base of approximately three hundred clients.

B.6 Bohemier held himself out to be a "contrarian" and represented to clients and potential clients he could market time the price of gold and thereby minimize the risk in his client portfolios by getting in and out of gold/precious metals securities as his predictions dictated.

B.7 Bohemier, when approaching clients, would have them sign a Power of Attorney which Bohemier used to trade on clients accounts without their prior authorization, consent or knowledge.

B.8 Bohemier developed a "newsletter" which would be forwarded to his clients on a monthly basis. In these communications, Bohemier would indicate he would switch clients investments unless the client gave him instructions otherwise.

B.9 Bohemier would also execute trades in the form of "block trades" which would be submitted to mutual fund companies in the form of client list indicating how much a particular fund a client would buy.

B.10 While employed by Pro-Fund, Bohemier would put clients into precious metal funds, some as high as 100% of their portfolios without adequately disclosing the risks associated with his recommendations or without their instructions. With several clients he put all or a substantial

amount of the client's assets into a single speculative sector of the market notwithstanding the client's instructions to the contrary.

B.11 With several clients, Bohemier did not make adequate enquiries regarding the personal circumstances, financial resources and investment objectives of the clients thereby failing to adequately comply with a representative's "know your client" and "suitability" obligations.

B.12 In or about October, 1997, the price of gold dropped dramatically leading to losses in many clients accounts. Several clients questioned Bohemier about their accounts and provided instructions to sell their precious metal funds which instructions Bohemier resisted.

B.13 During the time Bohemier was employed by Pro-Fund, Pro-Fund did not have adequate controls in place to supervise the activities which are described in paragraphs B.6 to B 12.

### **C.ACKNOWLEDGMENTS OF PRO-FUND**

C.1 Pro-Fund admit that the following actions were contrary to the public interest:

(a) the failure of Pro-Fund to detect on a timely basis the extent of unsuitable securities and over-concentration of securities in certain of Bohemier's clients' accounts;

(b) the failure of Pro-Fund to adequately review required new client forms sufficiently to assess whether Bohemier had obtained information required to satisfy the "know your client" obligation;

(c) the failure of Pro-Fund to review new client applications with respect to Bohemier's clients to assess the appropriateness of investment objectives set forth;

(d) the failure of Pro-Fund to detect that Bohemier was engaged in block trading and discretionary trading;

C.2 Staff acknowledges that Pro-Fund has co-operated and assisted in the investigation of these matters.

C.3 Prior to discontinuance of Pro-Fund's business operations, remedial actions were taken to improve compliance and supervision programs and procedures in order to address the supervisory deficiencies referred to in this Agreement.

### **D. TERMS OF SETTLEMENT**

D.1 Staff seek an Order (the "Consent Order") from the Commission consistent with the terms contained in section D.2 of this Settlement Agreement, pursuant to the provisions of the Act.

D.2 The Consent Order sought by Staff is as follows:

- (a) That this Settlement Agreement be approved;
- (b) Upon approval of this Settlement, Pro-Fund will be assessed an administrative penalty in the amount of \$30,000.00; and
- (c) Upon approval of this Settlement, Pro-Fund will make a payment of \$5,000.00 as its contribution to the Commission's costs with respect to the investigation of this matter and the costs to the hearing; and
- (d) A written reprimand be placed in the registration file of Pro-Fund.

## **E. PROCEDURE**

E.1 The approval of this Settlement Agreement shall be sought at a public hearing.

E.2 If this Settlement Agreement is approved by the Commission, and if a Consent Order issues in accordance with this Settlement Agreement, this Settlement Agreement will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings and, upon the making of the order contemplated by this Settlement Agreement, Pro-Fund waives its right to a full hearing and appeal of this matter.

E.3 Notwithstanding any other provision of this Settlement Agreement, if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in section D above is not made by the Commission, Staff will be entitled to proceed with whatever steps it is entitled by law to take, including but not restricted to, the commencement of a hearing before the Commission, unaffected by this Settlement Agreement or the settlement discussions. In the event that such steps are taken, Pro-Fund shall have all the usual rights of a person subject to such proceedings.

E.4 If the Settlement Agreement is not approved or the Consent Order set out in section D above is not made by the Commission, the terms of this Settlement Agreement shall remain confidential and shall not be raised in this or any other proceeding, and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications and furtherance of settlement discussions which will not be binding upon the parties and which will be inadmissible in any proceeding whatever.

E.5 If this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.

E.6 Pro-Fund 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, Pro-Fund will not raise as a basis for attack on the Order this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement, alleged bias, alleged unfairness, or any such other challenges of the validity of the Consent Order.

E.7 Pro-Fund further agrees, if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, Pro-Fund agrees not to make any statements inconsistent with the terms of this agreement.

Dated at Winnipeg, Manitoba this "12th" day of "August" 2002

PRO-FUND DISTRIBUTORS LTD.

Per: "Stephen Ellis, President"

Per: "Tim Pryor, Secretary"

Dated at Winnipeg, Manitoba this "26th" day of "August" 2002

STAFF OF THE MANITOBA SECURITIES  
COMMISSION

Per: "Douglas R. Brown"