

**THE SECURITIES ACT** ) **Order No. 3930**  
)  
**Subsections 8(1) and 148.1(1)** ) **October 23, 2002**

**FRANKLIN MARK CAMERON SAGERT**

**WHEREAS:**

(A) On July 19, 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 8(1) of The Securities Act ("Act") and an order pursuant to subsection 148.1(1) of the Act with respect to Franklin Mark Cameron Sagert ("Sagert");

(B) Staff of the Commission and Sagert entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated October 18, 2002 ("Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

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

(D) On October 23, 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 8(1) of the Act, a written reprimand be placed on Sagert's registration file with the Commission relating to the matters set out in the Settlement Agreement, with a copy of the Settlement Agreement to be attached as Schedule "A" to the reprimand.
- 3. THAT** pursuant to subsection 148.1(1) of the Act, Sagert pay an administrative penalty of \$5,000.00, to be paid within 60 days of the date of this Order.
- 4. THAT** Sagert's conduct and practices as a salesman registered under the Act be closely supervised by an individual acceptable to and upon such terms as are deemed appropriate by the Director, Registrations of the Commission for a period of six months from the date of this Order.
- 5. THAT** Sagert enroll in and successfully complete the Canadian Securities Institute Conduct & Practices Handbook course within 6 months of the date of this Order.

**6. THAT** Sagert pay to the Commission costs in the amount of \$1,000.00 forthwith.

**BY ORDER OF THE COMMISSION**

**Director, Legal and Enforcement**

Schedule "A"

Settlement Agreement

**Franklin Mark Cameron Sagert**

**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 July 19, 2002, The Manitoba Securities Commission ("Commission") issued a notice of hearing ("Notice of Hearing") giving notice of its intention to hold a hearing under The Securities Act to consider:

1. whether or not it is in the public interest to order, pursuant to subsection 8(1) of The Securities Act ("Act"), that the registration of Franklin Mark Cameron Sagert ("Sagert") as a salesman under the Act be suspended or cancelled;
2. whether or not it is in the public interest to order, pursuant to subsection 148.1(1) of the Act, that Sagert pay an administrative penalty;
3. whether or not it is in the public interest to order that Sagert pay the costs of the investigation and the hearing;

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 dated July 19, 2002 ("Proceedings"). A settlement ("Settlement") has been reached based on the terms and conditions set forth in this agreement ("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 as set forth below. 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. Franklin Mark Cameron Sagert ("Sagert") was first registered as a salesman under The Securities Act ("Act") on February 20, 1990.

B2. From February 20, 1990 to present, Sagert has been registered as a salesman as follows:

(a) from February 20, 1990 to March 23, 1990;

(b) from December 13, 1991 to May 28, 1992;

(c) from June 5, 1992 to present.

B3. The registration of Sagert under his current Certificate will expire on December 31, 2002, unless renewed.

B4. At all material times, Sagert's employer was CIBC Wood Gundy Securities Inc. or its predecessor.

B5. Mr. Szocs had been a client of Sagert's since 1994.

B6. Mr. Szocs had a grade 12 GED and an electrical apprenticeship and worked for Hudson Bay Mining & Smelting Co. Limited (HBM&S) since about 1963.

B7. At the time that Mr. Szocs first became a client of Sagert's, he was an electrician employed with HBM&S, with an approximate gross annual income of \$46,000.00. Mr. Szocs resided in Flin Flon, Manitoba.

B8. In or about February of 1994, Mr. Szocs opened two accounts with Sagert: a Cash Account and an RRSP Account ("1994 Accounts").

B9. For both of the 1994 Accounts, the risk factors were stated to be 50% Low Risk and 50% Medium Risk.

B10. Mr. Szocs's past investing experience had been in bonds and mutual funds.

B11. In late 1996, Mr. Szocs was being offered a retirement package. Mr. Szocs decided to take a pension for approximately 2 years and a lump sum locked-in RRSP.

B12. Mr. Szocs discussed with Sagert the lump sum locked-in RRSP funds ("retirement funds") he would be receiving.

B13. The retirement funds were to be invested for approximately 2 years at which time Mr. Szocs would be drawing down on them.

B14. In accordance with discussions with Mr. Szocs, Sagert completed and forwarded a New Account Application in or about January 1997 to Mr. Szocs ("Jan 97 New Account Application"), which Mr. Szocs signed and returned to Sagert as requested.

B15. The Jan 97 New Account Application specified the following objectives and risk factors:

Objectives	Risk Factors
Income 20%	Low Risk 50%
Gain (Short Term) --	Medium Risk 50%
Gain (Inter. Term) 40%	High Risk --
Gain (Long Term) 40%	

B16. The Risk Factors as specified in the Jan 97 New Account Application were the same as they had been for Mr. Szocs's two previous New Account Application forms, for the 1994 Accounts, and as they had remained since – 50% low and 50% medium. The Risk Factors of 50% low and 50% medium had been discussed with and acknowledged by Mr. Szocs.

B17. The Jan 97 New Account Application resulted in the opening of a new account for Mr. Szocs ("LIRA Account").

B18. Mr. Szocs was now retired from his position at HBM&S, approximately 55 years of age, and no longer in receipt of an annual income of \$46,000.00. Mr. Szocs owned a trailer worth about \$20,000.00. His total net worth, including the lump sum retirement funds of approximately \$130,000.00 and the trailer worth \$20,000.00, was approximately \$350,000.00.

B19. In March and April of 1997, the retirement funds were transferred into the LIRA Account by way of two lump sum amounts as follows:

Date of Transfer	Amount of Lump Sum Pension Transfer
March 3, 1997	\$118,699.85

April 21, 1997	\$ 8,505.88
Total =	\$127,205.73

B20. The retirement funds, in the total amount of \$127,205.73, were invested by Sagert as follows:

Date of transaction	Lump sum transfer (\$)	Interest earned	Bought /sold	Security	Amount (\$)
March 3	118,699.85				
March 11			Bought	Cambridge Precious Metals	20,000.00
March 11			Bought	Cambridge Growth Fund	20,000.00
March 11			Bought	C.I. Emerging Markets Fund	8,700.00
March 11			Bought	Fidelity Japanese Growth	5,000.00
March 11			Bought	AGF 20/20 India Fund	10,000.00
March 17		8.39			
March 19			Bought	*Applied Magnetics Corp	16,414.38
April 15			Bought	*Northland Power Income Fd Trust Units (quantity = 2,500)	15,000.00
April 16		8.43			
April 21	8,505.88				
				Total =	95,114.38
				* = equities	

with approximately \$32,000.00 retained as cash in the LIRA account.

B21. By April 30, 1997, the market value of the LIRA Account was down to \$113,284.04, including cash of \$32,108.17 and equities and mutual funds of \$81,175.87.

B22. Between April 15 and August 7, the following changes to the assets held in the LIRA Account occurred:

Date of transaction	Bought /sold	Security	Amount Units	Amount (\$)
May 20	Sold	*Northland Power Income Fund Trust Units	2,500	
June	Bought	*ARC Energy Trust	1,400	
July 31	Sold	*ARC Energy Trust	1,400	

June 17	Bought	*Pegasus Gold Inc.	1,000	
July 8	Bought	Fidelity Capital Builder		6,176.47
July 8	Sold	Fidelity Japanese Growth		6,176.47
July 10	Bought	CI Canadian Growth Fund		8,200.00
July 10	Sold	CI Emerging Markets Fund		8,200.00
July	Bought /sold	CI Canadian Growth /CI Emerging Markets	.473 /.413	
August 7	Bought	*Enervest Diversified Income Trust Units	3,980	39,800.00
		* = equities		

with the sales resulting in gains in the LIRA account of approximately \$4,600.00.

B23. By August 7, the portfolio of assets held in the LIRA Account was established as shown below and remained as such through to the end of the 1997 year:

Equities
*Applied Magnetics Corp
*Pegasus Gold Inc.
*Enervest Diversified Income Trust Units
Mutual Funds
Cambridge Precious Metals Fund
Cambridge Growth Fund
C.I. Canadian Growth Fund
C.I. Emerging Markets Fund
Fidelity Capital Builder
AGF 20/20 India Fund

B24. In or about November of 1997, Sagert prepared a second KYC Form, in respect of the LIRA Account, dated November 18, 1997 ("Nov 97 KYC").

B25. The Nov 97 KYC now showed the risk factors as having increased to 50% Medium Risk and 50% High Risk.

B26. Mr. Szocs received the Nov 97 KYC in the mail, tagged as to where to sign. Mr. Szocs signed and returned the Nov 97 KYC as requested.

B27. By November 28, 1997, the market value of the LIRA Account was down to \$85,997.49.

B28. In early 1998, Mr. Szocs contacted Sagert to make arrangements in order to commence drawing out monthly amounts from the retirement funds.

B29. In the spring of 1998, a LIF Account was opened for Mr. Szocs in order for him to receive the monthly payments ("LIF Account").

B30. In June of 1998, except for approximately \$300.00 in cash, all of the assets from the LIRA Account were transferred to the LIF Account.

B31. In June of 1998, the market value of the LIF Account was \$74,661.78, comprised of 57% mutual funds and 40% equities.

B32. Thereafter, Mr. Szocs began receiving monthly payments of approximately \$371.00.

B33. Based upon retirement funds of about \$130,000.00, the monthly payments were lower than what Mr. Szocs had expected.

B34. In or about the fall of 1998, Mr. Szocs contacted Sagert's office inquiring as to why the monthly payments were so low and was advised that the market value of his investments at that time was approximately \$63,000.00.

B35. In the spring of 1999, Mr. Szocs transferred to another broker.

B36. In general, some of the investments which had been recommended by Sagert were riskier than the risk tolerance of Mr. Szocs.

B37. At all material times, Mr. Szocs had relied upon Sagert's expertise, advice and recommendations.

### **C. Acknowledgements**

C1. Sagert acknowledges and agrees that he acted contrary to the public interest in that he:

(a) recommended investments and provided investment advice to Mr. Szocs some of which was unsuitable in all of the circumstances, including investment knowledge, experience and objectives, risk tolerance, age, and financial position of the client;

(b) failed to follow the Know Your Client Rule thereby exposing Mr. Szocs to unsuitable risk, in the selection of some of the investments within the LIRA Account.

### **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

("Consent Order") from the Commission pursuant to subsections 8(1) and 148.1(1) of the Act that:

- (a) the Settlement Agreement be approved;
- (b) pursuant to subsection 8(1) of the Act, a written reprimand be placed on Sagert's registration file with the Commission relating to the matters set out in this Settlement Agreement, with a copy of this Settlement Agreement to be attached as Schedule "A" to the reprimand;
- (c) pursuant to subsection 148.1(1) of the Act, Sagert pay an administrative penalty of \$5,000.00, to be paid within 60 days of the date of the Order;
- (d) Sagert's conduct and practices as a salesman registered under the Act be closely supervised by an individual acceptable to and upon such terms as are deemed appropriate by the Director, Registrations of the Commission for a period of six months from the date of the Order;
- (e) Sagert enroll in and successfully complete the Canadian Securities Institute Conduct & Practices Handbook course within 6 months of the date of the Order;
- (f) Sagert pay to the Commission costs in the amount of \$1,000.00 to be paid forthwith upon approval of the Settlement Agreement.

#### **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 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. If this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, neither Staff nor the respondent will make any statement inconsistent with this Settlement Agreement.

DATED at Winnipeg, Manitoba, this "17<sup>th</sup>" day of October, 2002.

Witness

Franklin Mark Cameron Sagert

ATED at Winnipeg, Manitoba, this "18<sup>th</sup>" day of October, 2002.

Witness

Staff of the Manitoba Securities Commission  
per: "Douglas R. Brown"