



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen oust
Toronto ON M5H 3S8

Citation: Sentry, 2017 ONSEC 7
Date: 2017-04-05

**IN THE MATTER OF
SENTRY INVESTMENTS INC. AND SEAN DRISCOLL**

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

Hearing: April 5, 2017

Decision: April 5, 2017

Panel: Philip Anisman Commissioner and Chair of the Panel

Appearances: Michelle Vaillancourt For Staff of the Commission

Jennifer Lynch

Evan Rankin (Student-at-law)

Linda Fuerst For Sentry Investments Inc.

Laura Paglia For Sean Driscoll

ORAL REASONS AND DECISION

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing as edited and approved by the panel, to provide a public record.

- [1] I shall approve this Settlement Agreement and make an order in the terms it contemplates.
- [2] The Settlement Agreement resolves a proceeding that raises serious regulatory issues of two types. The first is sales practices that may adversely affect investors and investor confidence in the integrity of our markets. The proceeding is based on failures to comply with National Instrument 81-105 – *Mutual Fund Sales Practices*, (1998) 21 OSCB 2713 (“National Instrument 81-105”), which limits payments and gifts by mutual funds to registered dealers and their representatives who sell the funds’ securities. Such payments and gifts may influence registered representatives to consider factors other than the best interests of their clients when recommending investments to them. National Instrument 81-105 was adopted to prohibit payments and gifts that are likely to have this effect in an attempt to ensure that registered representatives who sell mutual funds act in the best interests of their clients on the basis of the clients’ investment objectives and circumstances and the merits of the investments they recommend, without being influenced by conflicting monetary or other inducements.
- [3] The second issue addressed in this proceeding is the obligation of all registrants to ensure that their business is operated in compliance with their regulatory obligations by establishing internal supervisory procedures, controls and recordkeeping practices that are appropriate to their business.
- [4] This is the first Commission proceeding that addresses sales practices involving prohibited payments and gifts made by an investment fund manager and the systemic supervisory failures that permitted them. The seriousness of the conduct admitted by the respondents in the Settlement Agreement is reflected in the sanctions they agreed to. These include a significant administrative fine paid by Sentry Investments Inc. and a ban on acting in a senior position with a registrant agreed to by Mr. Driscoll.
- [5] These sanctions, albeit serious, are not necessarily the sanctions that might have been imposed by a panel, had this matter proceeded to a hearing on the merits in which Commission Staff were successful in proving their case. A settlement is based on the facts admitted by the respondents and agreed to by Staff, which may or may not be the facts that a Commission panel would find after a contested hearing on the merits. Even on the same facts, a panel might impose a different sanction, as in a sanctions hearing a panel must impose the sanction it considers to be correct.
- [6] But this is a settlement hearing convened to consider a settlement agreement. A settlement will be approved if the sanctions agreed to by the parties are within a reasonable range of appropriateness in light of the

admitted facts, recognizing and taking into account the settlement process and its benefits. A settlement reached early in a proceeding reduces the costs required to conduct a lengthy hearing and permits the Commission's resources, including Staff time, that would otherwise have been expended to be directed to other matters, increasing the Commission's overall enforcement capabilities.

- [7] The resolution of proceedings through settlements thus benefits the Commission, the regulatory process, investors, and the securities markets generally, as well as respondents who are able to put a matter of this nature behind them and move on with their business.
- [8] Settlement agreements also enable enforcement Staff to obtain resolutions that include remediation and establish procedures to ensure that respondents conduct their business in compliance with their regulatory obligations. Both further the Commission's mandate; it has long been accepted that the purpose of the Commission's sanctioning authority is not to punish, but to protect investors and our markets. Sanctions imposed by the Commission are intended to deter, both specifically and generally, future conduct that may contravene Ontario securities law or be inconsistent with the public interest.
- [9] Although the conduct admitted in this Settlement Agreement was serious, there is no need to describe it in detail here. The Settlement Agreement will become a public document and will speak for itself. It may be useful, however, to address from the perspective of the Commission's protective role the reasons that approval of this settlement and imposition of the agreed sanctions are in the public interest.
- [10] Neither respondent has a disciplinary history with the Commission and both cooperated with Staff's investigation of the conduct described in the Settlement Agreement.
- [11] Sentry's acceptance of responsibility for its sales and supervisory practices is reflected in the fine to which it has agreed, which in light of our precedents is significant. More important, although it did not self-report, Sentry's response to these issues, once identified by Commission Staff, has been proactive. It supported the appointment of a special committee of the independent directors of its parent corporation, Sentry Investments Corp., who conducted their own investigation, reported the results to Commission Staff, and retained an independent compliance consultant approved by Staff to review Sentry's sales and supervisory practices, procedures and controls, subject to Staff oversight. Sentry has committed to adopt the consultant's recommendations, again subject to Staff approval and oversight.
- [12] The Sentry organization has made other changes to its governance structure, which will continue to be monitored by the independent directors of Sentry's parent corporation, as provided in the Settlement Agreement and the Undertaking of Sentry that is attached to it, which Undertaking will become a part of the Commission's Order. Such remediation is an important component of this Settlement Agreement, as it institutionalizes a process to ensure compliance as part of Sentry's

organizational structure. This is a significant reason for finding that approval of the Settlement Agreement is in the public interest.

- [13] The sanctions agreed to by Mr. Driscoll serve the same purposes. His payment of \$100,000 to Sentry as reparation for his conduct and the orders prohibiting him from acting as a director or officer of Sentry and its affiliates until he has satisfactorily completed courses on regulatory compliance should serve to prevent repetition of his conduct. They may also deter others who are in similar positions from engaging in such conduct.
- [14] The orders to be made today include a reprimand of both Sentry and Mr. Driscoll. In some circumstances, a reprimand may be the mildest form of sanction available to the Commission. In others, a reprimand can reflect recognition and acceptance of responsibility by the parties who receive it. This is such a case.
- [15] Mr. Driscoll's agreement to be reprimanded demonstrates a recognition of his responsibilities as a registrant and as an officer of a registrant in that it goes beyond a mere payment of money and requires him to stand and publicly acknowledge responsibility for his conduct. Mr. Driscoll, please stand. With that in mind, Mr. Driscoll, I have asked you to stand to receive this reprimand, which you may consider administered. Thank you, Mr. Driscoll, you may be seated.
- [16] A reprimand for Sentry raises more difficult issues in view of the fact that Sentry is a corporation, which, while having responsibilities as a registrant, is a fictional person. As Lord Chancellor Thurlow said in the eighteenth century, it "has no soul to be damned, and no body to be kicked." But the Commission's enforcement goals are not to damn or otherwise punish.
- [17] The activities of corporations are conducted by individuals. A reprimand administered to a person who is responsible for the conduct of a corporation may reflect an acknowledgement of organizational responsibility that contributes to a culture of compliance, which, it is trite to say, begins at the top of an organization and only then may permeate the procedures and practices that the organization adopts to ensure regulatory compliance and fairness for investors. With this in mind, I ask the representative of Sentry to stand and identify himself and his position.
- [Philip Yuzpe, Chief Executive Officer and Ultimate Designated Person of Sentry Investments Inc.]
- [18] Mr. Yuzpe, I understand you were recently appointed to your position as CEO and UDP of Sentry and were not personally responsible for the conduct described in the Settlement Agreement. You are neither named in it nor a party to these proceedings. As a result, your receipt of Sentry's reprimand has a symbolic aspect that, I suggest, is important for an effective culture of compliance. Mr. Yuzpe, I am obligated to and I now administer to you, as the chief executive officer of Sentry, the reprimand required by the order to which Sentry agreed.

- [19] I have approved the Settlement Agreement. I shall sign the Order, with the change agreed by the parties in the hearing. The Registrar will provide copies to the parties.
- [20] With that, I thank both respondents' counsel and Staff counsel for achieving this Settlement Agreement and for your very helpful submissions in the two settlement conferences that preceded this hearing and in this hearing. The hearing is now concluded.

Dated at Toronto this 5th day of April, 2017.

"Philip Anisman"

Philip Anisman