IN THE MATTER OF AN APPEAL TO THE APPEAL COMMITTEE OF THE CANADIAN INVESTOR PROTECTION FUND

RE: [redacted] **and** [redacted]

Heard: September 16, 2015, by teleconference

PANEL:

PATRICK J. LESAGE	)	Appeal Committee Member

APPEARANCES:

[redacted]	)	Appellant, on his own behalf and on behalf of [redacted]
Nicholas Businger	)	Counsel for the Canadian Investor Protection Fund Staff

DECISION AND REASONS

1. [redacted] ("the Appellants") were clients of First Leaside Securities Inc. ("FLSI"), an investment dealer through which over 1,200 customers made investments in various affiliated companies, trusts and limited partnerships (collectively the "First Leaside Group"). FLSI was registered with the Ontario Securities Commission ("OSC") and was a member of the Investment Industry Regulatory Organization of Canada ("IIROC"). It was also a member of the Canadian Investor Protection Fund ("CIPF" or the "Fund") until its suspension by IIROC on February 24, 2012, being the same date that FLSI was declared to be insolvent and the day after FLSI sought protection under the *Companies' Creditors Arrangement Act*. The relevant history

leading up to these events and the role of CIPF with respect to claims to the Fund are set out in detail in the Appeal Committee's decision in relation to an appeal heard on October 27, 2014.[1]

2. The Appellants claim the amount of $26,109.66 with respect to their purchase of First Leaside Global Limited Partnership on July 29, 2011.

3. In the October 27, 2014 decision, the Appeal Committee determined that CIPF's scope of coverage compensated only for missing customer property that ought to have been held by the investment dealer on the date of insolvency. In this case the Appellants' securities were "off book" having been returned to them in August 2011. The cash in the hands of FLSI was transferred to Fidelity by the receiver.

4. The Appellants submit that FLSI and the First Leaside Group entity, in which the Appellants investment was made, should be treated as one legal entity because they were operated by the same individuals. In other words, I should pierce the corporate veil and treat the acts of the investment entity as one and the same as those of FLSI. As I stated in the [redacted] decision dated June 19, 2015, at para 16, and I paraphrase,

> "16. An order 'piercing the corporate veil' is not within this Committee's jurisdiction. Even if the corporate veil were pierced…it would be a claim of fraud, misleading and/or fraudulent misrepresentation…none of which are covered by the CIPF policy."

5. The Appellants also submitted that in making their investment, they relied heavily on the scope of the CIPF coverage as they understood it to be from the representations of FLSI. However, any misrepresentations that may have been made were made by FLSI and/or the promoters of the First Leaside Group products, not by CIPF. There is no recourse for the Appellants under the CIPF policy regarding deceit or misrepresentations made by the investment dealer or the promoters of First Leaside Group. This is excluded from CIPF coverage.

[1] This decision is available on the CIPF website and will be referenced throughout as the "October 27, 2014 decision".

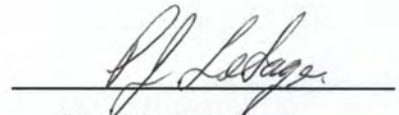
6. The Appellants wished also to express their view as to how CIPF has been handling their claim. They said in part:

> "In making our investment in the FLGLP, we based our decision largely on (a) investor protection provided by the CIPF which was heavily promoted by the FLG representatives and (b) a respected executive, Leo de Bever being a member of the Board of Directors. The circumstances applicable to the insolvency of FLSI and the deceitful and fraudulent actions of the key executives of the firm clearly fell into our understanding of what protections should be provided to investors by an organization such as CIPF and we are most disappointed at the aggressive effort CIPF is making to deny any and all claims made by affected investors."

7. The Appellants also advised that when they invested on July 29, 2011, they were told that their certificates could only be transferred after a four-month waiting period, which should have ended on November 30, 2011, but at that time a cease trading order was in effect.

8. While I hear the Appellants' comments on these points, they unfortunately do not assist them in legally validating their claim. The Appellants' losses of $26,109.66 flow from the decline in the value of the FL entities in which they invested. Such losses are not covered by the CIPF policy. The appeals must therefore be dismissed. The decisions of the CIPF Staff are upheld.

Dated at Toronto, this 19th day of October, 2015



Patrick J. LeSage