

Decision of the Alberta Securities Commission (Commission)

Millennium Financial Group Inc.

Section 214(1) of the Securities Act (RSA 2000, c. S-4) (the Act) Hearing

Panel: Glenda A. Campbell, Q.C., Vice-Chair
Stephen R. Murison, Vice-Chair

Appearing: Teresa Foley,
For Commission Staff (Staff)

Date of Hearing: June 23, 2003

Date of Decision: June 23, 2003

Reasons for Decision
(delivered orally on June 23, 2003)

Introduction

1. On April 29, 2003, Millennium Financial Group Inc. (Millennium) appealed under sections 35 and 36 of the Act a decision of the Executive Director made on April 11, 2003, for which written Reasons for Decision were rendered on April 22, 2003 (the Decision), and applied for a stay of the decision under section 36(5) of the Act until disposition of the appeal. On April 30, 2003 we heard submissions from counsel for D. Forbes Investment Corp. (D. Forbes), an entity proposing to acquire a controlling interest in Millennium who appeared on behalf of Millennium, and from Staff counsel.

2. On April 30, 2003 at the conclusion of the hearing we delivered our decision and reasons orally. We decided that it would not be in the public interest to order under section 35(6) of the Act that the Decision of the Executive Director be stayed until disposition of the appeal. We ordered, however, pursuant to section 35(6) of the Act, that the Decision be stayed until June 30, 2003 on three conditions:

- Millennium and its salespersons shall not receive or hold any funds in trust for any client in Alberta; and
- all purchases of mutual fund securities on behalf of clients by Millennium and its salespersons must be registered in client name only; and
- Millennium notifies the Commission's Manager, Registration and Compliance, of any significant events occurring with respect to Millennium (examples being: any significant changes in its net free capital position, whether by virtue of loans or otherwise; any significant changes in management; and any changes to its bond status).

3. Staff of the Commission on June 23, 2003 applied under section 214(1) of the Act for an order revoking our decision of April 30, 2003 (the "Stay") and a hearing was held on that date. Counsel for Staff advised that notice of this application and hearing had been given to Millennium on June 19, 2003 and to counsel for D. Forbes on June 20, 2003. No communication was received from Millennium. Counsel for D. Forbes advised Staff that they would not oppose Staff's application. Counsel for D. Forbes did not attend this hearing. We are satisfied that notice of these proceedings has been given to Millennium in accordance with the Act.

4. We heard submissions from counsel for Staff and evidence was given by David McKellar, Manager, Registration and Compliance for the ASC. Mr. McKellar testified that on March 20, 2003 Staff received written notice from the Guarantee Company of

North America of the latter's intention to terminate Millennium's surety bond (required to be maintained by Millennium as a mutual fund dealer pursuant to section 25(2)(b) of the Rules and identified by the surety as a "Securities Act Bond") 90 days after receipt of that notification. Mr. McKellar testified that on April 14, 2003, May 12, 2003, May 27, 2003, June 17, 2003 and June 19, 2003 he wrote to Millennium advising among other things of the impending cancellation of the surety bond. He further testified that the surety bond expired on June 20, 2003, that as of today's date the bond had not been extended or replaced, and that Staff have received no response from Millennium concerning that deficiency.

Issue

5. The issue before us is whether there has occurred such a significant event or change in the affairs of Millennium that it would be prejudicial to the public interest for the Stay to continue in effect.

Analysis

6. Section 25(2)(b) of the Rules requires that every mutual fund dealer maintain a surety bond in the amount of not less than \$25 000. The purpose of the surety bond is to protect the investing public by ensuring the due application of all securities and money received by the registrant/dealer from persons on whose behalf the dealer receives the securities or money in anticipation of buying or as a result of selling securities from, to or through the dealer. The surety bond also serves to indemnify clients of the registrant/dealer against certain losses arising from the refusal or inability of the dealer to return securities or money received from or on behalf of those clients, for damages based on the non-return of such money or securities, or for theft, fraud or other offence under the Act or under the Criminal Code of Canada.

7. A surety bond is not an option. It is a requirement, and an important one. A surety bond is one of the key protections afforded investors under the Act.

8. For the reasons set out above, we are persuaded that the absence of a surety bond, even if temporary, coupled with the recent history of Millennium and its registration as brought to light in the proceedings leading to and following the Decision of the executive director and the Stay, exposes the public to unacceptable risk.

9. In reaching our decision, we weighed the balance of interests and convenience of Millennium and D. Forbes, on the one hand, and that of the public on the other. We understand that revocation of the Stay could result in harm to the reputation of Millennium in the Alberta capital markets. That harm, we believe, is outweighed by the potential exposure of investors, in the absence of a surety bond, to losses that might arise in the event of a refusal or inability on the part of Millennium to return securities or money that it received from or on behalf of its clients.

10. In the event that D. Forbes successfully completes the acquisition of Millennium and obtains a new surety bond, Millennium may apply or reapply for registration as a mutual fund dealer under the Act.

Decision

11. We therefore order under section 214(1) that the Stay granted April 30, 2003 is revoked, with immediate effect.

12. June 23, 2003.

13. **For The Commission**

“Original Signed By”
Glenda A. Campbell, Q.C., Vice-Chair

“Original Signed By”
Stephen R. Murison, Vice-Chair