

# 2010 BCSECCOM 257

## Settlement Agreement

### Heritage Education Funds Inc.

#### *Securities Act, RSBC 1996, c. 418*

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Heritage Education Funds Inc. (Heritage) agree as follows:

#### **Agreed Statement of Facts**

1. Heritage was previously known as Canadian American Financial Corporation (Canada) Limited (CAFC), a federally incorporated company which obtained registration as an extra-provincial company in British Columbia on December 24, 1975.
2. CAFC changed its name in 2001, and then on October 21, 2004, changed it to Heritage.
3. At all material times to this agreement, Heritage was registered with the British Columbia Securities Commission as a scholarship plan dealer under the *Securities Act*, RSBC 1996, c. 418.

#### **Misconduct**

4. Staff of the Commission conducted compliance examinations of Heritage in March 2000, June 2003 and 2008. In 2008, staff found numerous repeat deficiencies which were not corrected from previous examinations. The deficiencies found included:

##### *Written Prudent Business Practices*

- (a) Heritage's actual business procedures were not consistent with its written business procedures for dealing with clients, contrary to section 44 of the *Securities Rules*, BC Reg. 194/97.

##### *Registration of Branches*

- (b) Heritage failed to properly maintain registration details of branches, sub-branches and sales representatives in the National Registration Database as required by section 3.2 of National Instrument 33-109.

##### *Records*

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- (c) Heritage failed to provide certain records to staff, preventing staff from examining them or to determine their adequacy under section 142.2(2)(2) of the Act.

### *Compliance system*

- (d) Heritage designated a compliance officer and branch managers as required under sections 65 and 66 of the Rules. Heritage however failed to ensure that its branches and sub-branches were subjected to regular periodic on-site examinations by its compliance staff and failed to adequately supervise:
  - (i) its compliance officer to ensure that Heritage and its employees were in compliance with Heritage's policies and procedures manual and regulations under the Act; and
  - (ii) its branch managers to ensure that its branches were in compliance with Heritage's policies and procedures manual and regulations under the Act;

contrary to sections 65 and 66 of the Rules.

### *Public Interest*

- 5. Heritage acted contrary to the public interest by engaging in the conduct set out above.

### *Mitigating Factors*

- 6. Heritage has retained an independent consultant to assist in improving its compliance structure.
- 7. After staff's 2008 compliance examination, Heritage made its compliance function the responsibility of its chief executive officer, and hired an additional compliance person for its operations British Columbia.

### *Aggravating Factors*

- 8. Heritage's predecessor, CAFC, entered into a settlement agreement in December 2000 relating to a number of deficiencies following a Commission compliance examination. Some of those deficiencies were repeated in the June 2003 and July 2008 compliance examinations.
- 9. Commission staff required significant resources to conduct their compliance examination of Heritage. There were two instances where Heritage representatives claimed they were unaware of staff's powers and duties under

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securities legislation, and were uncooperative with Commission staff during the 2008 examination process.

10. Heritage has previous client complaints.

### *Undertaking*

#### *Monetary Payments*

11. Heritage undertakes to pay \$50,000 to the Commission, which is due and payable immediately without further demand, of which \$25,000 represents the cost of the Commission's compliance examination.

#### *Audit of Heritage's Compliance and Supervision Practices*

12. Heritage will engage an independent person, approved by the Executive Director, as compliance monitor to perform an annual review of Heritage's compliance and supervision systems and practices for two successive years, commencing in 2010.
13. The purpose of the reviews will be to determine whether, in the compliance monitor's opinion, Heritage in British Columbia:
- (a) has rectified all its compliance deficiencies listed in paragraph 4 above (the deficiencies); and
  - (b) maintains and applies policies and procedures that establish a system of controls and supervision that have been reasonably designed to ensure compliance with securities laws relating to the areas of concern raised by staff in its July 22, 2008 compliance report (collectively, the requirements).
14. Heritage will provide the compliance monitor with access to its premises, directors, officers, employees and consultants, and all records and other information, except records and information subject to solicitor-client privilege, the compliance monitor may require, and will otherwise co-operate fully with the compliance monitor in every respect.
15. Heritage will require the compliance monitor to provide a written report to the Executive Director not more than 90 days following the end of Heritage's fiscal year. The report will identify the period covered and report the compliance monitor's observations about Heritage's progress on rectifying the deficiencies and the steps that Heritage has taken to:
- (a) resolve the deficiencies; and

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(b) create systems to ensure compliance with the requirements.

16. Heritage will pay all costs associated with the reviews and the engagement of the compliance monitor.

**Order**

¶ 2 The Executive Director will issue an order (the Order) that:

1. under section 161(1)(a) of the Act, Heritage comply fully with the Act, the *Securities Rules*, BC Reg. 194/97, the requirements, and any applicable regulations; and
2. under section 161(1)(j), Heritage be reprimanded.

**Consent to Reciprocal Orders**

¶ 3 Any securities regulator in Canada may rely on the facts admitted in this agreement solely for the purpose of making an order similar to the one contemplated above.

**Waiver**

¶ 4 Heritage waives any right it may have under the Act, or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

**Counterpart**

¶ 5 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

¶ 6 May 13, 2010

¶ 7 Heritage Education Funds Inc.

“O. Loduca”  
\_\_\_\_\_  
(Signing Authority)

“S. Syed” \_\_\_\_\_ )  
Witness Signature \_\_\_\_\_ )  
\_\_\_\_\_ )  
Salman Syed \_\_\_\_\_ )  
Witness Name (please print) \_\_\_\_\_ )

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Vice President, Finance )  
Occupation )

¶ 8 May 14, 2010

“Martin D. Eady”

¶ 9 Martin D. Eady  
Acting Executive Director