



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Ping-Chung Peter Chiu**

Heard: August 31, 2017 in Toronto, Ontario

Decision: August 31, 2017

Reasons for Decision: October 20, 2017

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.

Chair

Guenther W. K. Kleberg

Industry Representative

Joseph Yassi

Industry Representative

Appearances:

Sarah Glickman

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Counsel for the Mutual Fund Dealers  
Association of Canada

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Justin Papazian

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Counsel for the Respondent

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Ping-Chung Peter Chiu

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Respondent, In Person

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## **Settlement Agreement**

1. The Hearing Panel accepted the settlement agreement dated May 10, 2017 (the “Settlement Agreement”) between the staff of the MFDA and Ping-Chung Peter Chiu (the “Respondent”). A copy of the Settlement Agreement is attached to these reasons as Schedule “1”. The agreed facts are set out in Section III of the Settlement Agreement.

## **Contraventions**

2. The Respondent admitted that:

- a) on or about December 16, 2015, he changed a client’s banking information based upon email instructions received from a third party who, without the Respondent’s knowledge, had gained unlawful access to the client’s email, without first obtaining a signed account form from the client authorizing the change, contrary to the Member’s policies and procedures and MFDA Rules 2.2.4, 1.1.2, 2.5.1, and 2.1.1.
- b) on or about December 31, 2015 and January 18, 2016, he processed 2 redemptions in a client account based upon email instructions received from a third party who, without the Respondent’s knowledge, had gained access to the client’s email, without taking steps to verify that he was communicating with the client as required by the Member’s policies and procedures, contrary to MFDA Rule 2.1.1, 1.1.2 and 2.1.1.
- c) on January 18, 2016, he processed a redemption in a client’s account without obtaining instructions in respect of which mutual funds to redeem and in what amounts, thereby engaging in discretionary trading, contrary to MFDA Rules 2.3.1, 2.5.1, 1.1.2, and 2.1.1.

### **Agreed penalties**

3. The agreed penalties were: i) a fine of \$12,500; ii) a 3 month suspension from acting in the capacity of a branch manager; and iii) costs award of \$2,500.

### **Considerations**

4. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on him of the agreed penalty.

### **Nature of the Misconduct**

5. There was no fraud or malicious intent on the part of the Respondent. He thought he was acting on the instructions of his client. However, he was careless in not following the Member's policies and procedures that are designed, among other things, to protect against computer fraud and identity theft, such as that which took place in this case. Consequently, he contravened the MFDA Rules referred to above.

6. Furthermore, he contravened the MFDA Rule referred to above against discretionary trading when he acted on the second redemption request referred to in the agreed facts because he used his discretion to select which mutual funds to redeem and in what amounts.

### **Other considerations in determining acceptability of agreed penalties**

7. The Respondent's Member had designated him as a branch manager.
8. On May 30, 2016 the Member issued a warning letter to the Respondent
9. The Respondent has not been the subject of previous MFDA disciplinary proceedings.
10. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond any commissions and fees that he would normally be entitled to receive if the transactions had been carried out in the proper manner.
11. The agreed penalties are significant and help the MFDA to send a message to the Respondent and others in the capital markets about the seriousness of the misconduct.
12. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.
13. The agreed penalties are within the reasonable range of appropriateness with regard to MFDA decisions submitted to us by staff, made by MFDA Hearing Panels in similar circumstances and are in accordance with the MFDA penalty guidelines.

### **Costs**

14. The costs award is reasonable and appropriate.

## Conclusion

15. We concluded that the agreed penalties were within an acceptable range based on precedents, would serve as a specific and general deterrent, and were fair and reasonable. We concluded, therefore, that the Settlement Agreement was in the public interest and, consequently, we accepted it.

**DATED** this 20<sup>th</sup> day of October, 2017.

“Paul M. Moore”

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Paul M. Moore, Q.C.  
Chair

“Guenther W. K. Kleberg”

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Guenther W. K. Kleberg  
Industry Representative

“Joseph Yassi”

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Joseph Yassi  
Industry Representative

**Schedule “1”**

**Settlement Agreement**

**File No. 201757**



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Ping-Chung Peter Chiu**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Ping-Chung Peter Chiu (“Respondent”), consent and agree to settlement of this matter by way of this agreement (“Settlement Agreement”).

2. Staff conducted an investigation of the Respondent’s activities which disclosed activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

**II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) on or about December 16, 2015, the Respondent changed a client's banking information based upon email instructions received from a third party who, without the Respondent's knowledge, had gained unlawful access to the client's email, without first obtaining a signed account form from the client authorizing the change, contrary to the Member's policies and procedures and MFDA Rules 2.2.4, 1.1.2, 2.5.1, and 2.1.1;
- b) on December 31, 2015 and January 18, 2016, the Respondent processed two redemptions in a client account based upon email instructions received from a third party who, without the Respondent's knowledge, had gained unlawful access to the client's email, without taking adequate steps to verify that he was communicating with the client as required by the Member's policies and procedures, contrary to MFDA Rules 2.5.1, 1.1.2 and 2.1.1; and
- c) on January 18, 2016, the Respondent processed a redemption in a client account without obtaining instructions in respect of which mutual funds to redeem and in what amounts, thereby engaging in discretionary trading, contrary to MFDA Rules 2.3.1, 2.5.1, 1.1.2, and 2.1.1.

5. Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$12,500 pursuant to s. 24.1.1.(b) of MFDA By-law No. 1;
- b) the Respondent shall be suspended for a period of 3 months from acting in the capacity of branch manager pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rules 2.3.1, 2.2.4, 2.5.1, 1.1.2 and 2.1.1; and
- e) the Respondent will attend in person, on the date set for the Settlement Hearing.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule “A”.

### **III. AGREED FACTS**

#### **Registration History**

7. Since 1997, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative).

8. Since 2006, the Respondent has been registered with Desjardins Financial Security Investment Inc. (“Desjardins”), a Member of the MFDA and Desjardins has designated him as a branch manager.

9. At all material times, the Respondent conducted business in the Richmond Hill, Ontario area.

#### **Client GS’s Account**

10. At all material times, client GS was a client of the Member whose account was serviced by the Respondent.

11. At all material times, Desjardins’ policies and procedures permitted clients to sign a Limited Trade Authorization (“LTA”), a document that authorizes Approved Persons to accept verbal or email instructions and conduct transactions without written instructions from a client in certain circumstances.

12. On January 5, 2015, client GS signed an LTA.

13. Commencing on or about December 8, 2015, unbeknownst to client GS and unbeknownst to the Respondent, an unknown individual (the “Third Party”) gained unlawful access to client GS’s email account and proceeded to correspond with the Respondent, purporting to be GS. As a result of the email communications, the Respondent processed redemptions in client GS’s account that were deposited into a bank account that, unbeknownst to the Respondent, did not belong to client GS.

### **Contravened Member’s Policies and Procedures in Changing Banking Information**

14. At all material times, the Member’s policies and procedures required that upon receiving a client request to change the banking information on record, its Approved Persons, including the Respondent, obtain a signed account form from the client authorizing the change.

15. On December 16, 2015, the Third Party, posing as client GS, sent an email to the Respondent and requested that the Respondent change client GS’s bank account information to an account at TD Canada Trust (the “TD Account”).

16. The Respondent believed the said email instructions were those of client GS. In contravention of Desjardins’ policies and procedures, however, the Respondent changed the banking information on Desjardins’ back office system without having asked for and obtained a signed account form from client GS authorizing the change in information.

### **Processed Trades without Verifying Communicating with Client**

17. At all material times, Desjardins’ policies and procedures stated that where a client has signed a LTA and therefore may provide instructions via telephone, fax or email, it is still incumbent on the Approved Person to ensure that he or she is communicating with the client and not a different person.

18. Commencing on December 21, 2015, the Third Party, posing as client GS (which was unbeknownst to the Respondent), sent the Respondent a series of emails requesting that the

Respondent redeem \$30,000 from client GS's accounts at Desjardins and deposit the monies into the TD Account.

19. On December 31, 2015, the Respondent processed the redemption from client GS's Tax Free Savings Account ("TFSA) by redeeming monies from the sale of the only mutual fund held in the account, and the monies were deposited into the TD Account (the "First Redemption").

20. On January 18, 2016, the Third Party sent the Respondent another email, posing as client GS (again, unbeknownst to the Respondent), and requested that the Respondent process another \$30,000 (net) redemption from client GS' Registered Retirement Savings Plan account (the "RRSP Account") and deposit the monies into the TD Account (the "Second Redemption").

21. The Respondent processed the redemption from client GS's RRSP Account by redeeming \$30,000 (\$37,450 gross) and the monies were deposited into the TD Account..

22. Prior to processing the First and Second Redemptions, it was incumbent on the Respondent to take steps to verify that that he was communicating with client GS, particularly given the fact that the Respondent had failed to obtain a signed document authorizing the change in banking information leading up to the First and Second Redemptions.

### **Discretionary Trading**

23. At all material times, Desjardins' policies and procedures prohibited its Approved Persons, including the Respondent, from engaging in discretionary trading.

24. Unlike the First Redemption from client GS's TFSA, where the monies were invested in one mutual fund, client GS's monies were invested in several funds in his RRSP Account.

25. In respect of the Second Redemption, the Respondent used his discretion to select which mutual funds to redeem and in what amount.

## **Desjardins' Investigation**

26. On or about February 1, 2016, Desjardins' compliance department became aware of the conduct that is the subject of this Settlement Agreement, when client GS advised Desjardins that he had not authorized the First and Second Redemptions.

27. As part of its investigation, Desjardins reviewed all banking change forms and selection of address change forms submitted by the Respondent over a two year period and all trades over a three year period and identified no other issues.

28. On May 30, 2016, Desjardins issued a warning letter to the Respondent..

29. By on or around February 1, 2016, when the TD Account was frozen by the financial institution, only \$14,000 of the proceeds of the First and Second Redemptions remained in the TD Account. Desjardins reversed the First and Second Redemptions in client GS's account.

## **Additional Factors**

30. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above other than the commissions or fees he would ordinarily be entitled to had the transactions been completed in the proper manner.

31. There is no evidence that the Respondent had any actual knowledge that he was dealing with anyone other than client GS in respect of the transactions described above.

32. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

33. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

#### **IV. ADDITIONAL TERMS OF SETTLEMENT**

34. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

35. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (“Settlement Hearing”). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at [www.mfda.ca](http://www.mfda.ca).

36. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

37. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- b) the Respondent waives any rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;

- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in this Settlement Agreement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1; and
- e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

38. If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

39. Staff and the Respondent agree that the terms of the Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

40. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 10<sup>th</sup> day of May, 2017.

“Ping-Chung Peter Chiu”

\_\_\_\_\_  
Ping-Chung Peter Chiu

“DV”

\_\_\_\_\_  
Witness – Signature

DV

\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”

\_\_\_\_\_  
Shaun Devlin  
Staff of the MFDA  
Per: Shaun Devlin  
Senior Vice-President,  
Member Regulation – Enforcement



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**Re: Ping-Chung Peter Chiu**

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**ORDER**

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of [Respondent] ("Respondent");

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] ("Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

**AND WHEREAS** the Hearing Panel is of the opinion that;

- a) on or about December 16, 2015, the Respondent changed a client's banking information based upon email instructions received from a third party who, without the Respondent's knowledge, had gained unlawful access to the client's email, without first obtaining a signed account form from the client authorizing the change,

- contrary to the Member's policies and procedures and MFDA Rules 2.2.4, 1.1.2, 2.5.1, and 2.1.1;
- b) on December 31, 2015 and January 18, 2016, the Respondent processed two redemptions in a client account based upon email instructions received from a third party who, without the Respondent's knowledge, had gained unlawful access to the client's email, without taking adequate steps to verify that he was communicating with the client as required by the Member's policies and procedures, contrary to MFDA Rules 2.5.1, 1.1.2 and 2.1.1; and
  - c) on January 18, 2016, the Respondent processed a redemption in a client account without obtaining instructions in respect of which mutual funds to redeem and in what amounts, thereby engaging in discretionary trading, contrary to MFDA Rules 2.3.1, 2.5.1, 1.1.2, and 2.1.1.

**IT IS HEREBY ORDERED THAT** the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent shall pay a fine in the amount of \$12,500 pursuant to s. 24.1.1.(b) of MFDA By-law No. 1;
2. The Respondent shall be suspended for a period of 3 months from acting in the capacity of branch manager pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
3. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
4. The Respondent shall in the future comply with MFDA Rules 2.3.1, 2.2.4, 2.5.1, 1.1.2 and 2.1.1; and
5. if at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the

MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

**DATED** this [day] day of [month], 20[ ].

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]

DM 575164