Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

**IN THE MATTER OF**

**THE MUTUAL FUND DEALER RULES**

## Re: Tyler Justin Comrie

Heard: January 27, 2023 by electronic hearing in Toronto, Ontario
Decision January 27, 2023
Reasons for Decision: June 6, 2023

# REASONS FOR DECISION

Hearing Panel of the Ontario District Hearing Committee:

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| Martin L. Friedland, C.C., K.C. | Chair |
| Robert Christianson | Industry Representative |
| Joseph Yassi | Industry Representative |

Appearances:

| | | |
|---|---|---|
| Jennifer Galarneau | ) | Enforcement Counsel for the New Self-Regulatory Organization of Canada (Mutual Fund Division) |
| Tyler Justin Comrie | ) | Respondent |

**Background**

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"), now consolidated with the Investment Industry Regulatory Organization of Canada to form the New Self-Regulatory Organization of Canada (the "New SRO").

2. The Hearing was held by videoconference on Friday, January 27, 2023. The full Settlement Agreement, dated January 24, 2023, entered into between Staff of the MFDA and Tyler Justin Comrie (the "Respondent") is available on the New SRO website. The Respondent appeared at the Hearing without counsel.

3. The Panel accepted the proposed Settlement Agreement at the conclusion of the Hearing, with reasons to follow. These are our reasons for our decision to accept the Settlement Agreement.

4. From January 13, 2021, the Respondent was registered in the securities industry in Ontario as a dealing representative with TD Investment Services Inc. (the "Member"), a Member of the MFDA.

5. On September 27, 2021, the Respondent resigned from the Member.

6. At all material times, the Respondent conducted business in the Mississauga, Ontario area.

**The Settlement Hearing**

7. A Notice of Settlement Hearing was issued by the MFDA on November 29, 2022.

8. Staff of the New SRO and the Respondent entered into a Settlement Agreement, dated January 24, 2023, in which the Respondent admits in paragraph 4 to the following contraventions of the MFDA Rules:

> "Between May 14, 2021, and May 18, 2021, the Respondent cut and pasted a client's signature from copies of account forms previously signed by the client onto two new account forms and submitted the account forms to the Member for processing, contrary to MFDA Rule 2.1.1."

9. The account forms consisted of an Internal Transfer Form and a Transaction and Account Maintenance Form.

10. MFDA Rule 2.1.1, subsections (a) to (c), provides:

> "Each Member and each Approved Person of a Member shall: (a) deal fairly, honestly and in good faith with its clients; (b) observe high standards of ethics and conduct in the transaction of business; (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest."

11. On September 21, 2021, during a review of client files maintained by the Respondent, the Branch Manager discovered that the Respondent cut and pasted the signature of a client on account forms.

12. The Branch Manager met with the affected client and confirmed the transactions processed by the respondent were authorized. The Member also reviewed a sample of trades that the Respondent completed during the period that Respondent was registered with the Member. The Member did not find any additional concerns related to client signatures.

13. In Paragraph 5 of the Settlement Agreement, Staff and the Respondent agree and consent to the following terms of settlement:

a) the Respondent shall pay a fine in the amount $10,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
b) the Respondent shall pay costs in the amount of $2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
d) the Respondent will attend in person or by videoconference, on the specified date set for the Settlement Hearing

**The Misconduct**

14. At all material times, the Member's policies and procedures prohibited the falsification of client signatures.

15. MFDA Hearing Panels have consistently held that photocopying and reusing a client signature (see, e.g., *Re Ajin* [2022] MFDA Hearing No. 202178; *Re Singh* [2017] MFDA Hearing No. 2017110; and *Re Armstrong* [2021] MFDA File No. 202161), altering information on an account form without having the client initial the form (see, e.g., *Re Hillsdon* [2022] MFDA File No. 202124 and *Re Geng (Marshal) Liu* [2022] MFDA File No. 202218), and using pre-signed

forms (see, e.g., *Re Price* [2011] MFDA File No. 200814 and *Re Rolland* [2022] MFDA File No. 202174) is a contravention of the standard of conduct prescribed under MFDA Rule 2.1.1.

16. Using these forms are proscribed because their use adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud, and misappropriation. See *Re Wong* [2021] MFDA File No. 201943; *Re Brenchley* [2019] MFDA File No. 2018102; and *Re Price* [2011] MFDA File No. 200814.

17. For a number of years, the MFDA has been warning Approved Persons against the use of pre-signed, altered, and re-used account forms. See MFDA Staff Notice, MSN-0066, dated October 31, 2007 (updated January 26, 2017); and MFDA Staff Notice MSN-035, dated December 10, 2004 (updated March 4, 2013); and MFDA Bulletin #0661-E (October 2, 2015).

**Acceptance of the Settlement Agreement**

18. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

19. The conduct in the present case is serious. The contraventions occurred after the 2015 MFDA Bulletin #0661 relating to pre-signed and altered forms.

20. There are a number of mitigating factors. There is no evidence of any client loss, client complaints, or lack of client authorization resulting from the Respondent's conduct.

21. There is also no evidence that the Respondent received any benefit from the conduct set out above.

22. The Respondent cooperated with the Member and the MFDA.

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

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

25. The penalty of $10,000 is not out-of-line with the Sanctions Guidelines as well as recent cases: see *Re Ajin* [2022] MFDA File No. 202178; *Re Laskey* 2022 MFDA File No. 202237; *Re Hillsdon* [2022] MFDA File No. 202124; *Re Kwak* [2022] MFDA File No. 202224; *Re Armstrong*

[2021] MFDA File No. 202161; *Re Yu* [2021] MFDA File No. 202170; and *Re Lebel* [2021] MFDA File No. 202055.

26. The monetary penalty provides a significant measure of specific and general deterrence.

27. Settlements can be important and useful in achieving outcomes which further the goals of securities regulation. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

> "Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation."

28. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel. See *Re Fike* [2017] MFDA File No. 2017102.

29. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: "It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness." There are many similar statements by MFDA Panels, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated:

> "A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

30. The penalty and the costs agreed to in this case fall within "a reasonable range of appropriateness."

31. For the above reasons the Panel accepted the Settlement Agreement.

**DATED** this 6th day of June, 2023.

"Martin L. Friedland"

Martin L. Friedland, C.C., K.C.
Chair

"Robert Christianson"

Robert Christianson
Industry Representative

"Joseph Yassi"

Joseph Yassi
Industry Representative

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