



**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: Gilbert Jean**

Heard: March 30, 2017 in Toronto, Ontario

Decision: March 30, 2017

Reasons for Decision: June 15, 2017

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.

Guenther K. Kleberg

Joan Smart

Chair

Industry Representative

Industry Representative

Appearances:

Sarah Glickman

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Counsel for the Mutual Fund Dealers  
Association of Canada

Gilbert Jean

Respondent, In Person

## **Settlement Agreement**

1. The Hearing Panel accepted the settlement agreement dated December 15, 2016 (the “Settlement Agreement”) between the staff of the MFDA and Gilbert Jean (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 March 17, 2015, he processed a redemption in a client account at the request of someone other than the client, contrary to MFDA Rule 2.1.1;
- b) on or about March 5, 2015, he failed to keep an adequate record of a trade, thereby failing to comply with his Member’s Policies and Procedures, contrary to MFDA Rules 1.1.2, 2.5.1 and 2.1.1; and
- c) between December 2009 and August 2015, he obtained, possessed, and in some instances, used to process transactions, 18 pre-signed account forms, contrary to MFDA Rule 2.1.1.

## **Agreed penalties**

3. The agreed penalties were: i) a 6 months prohibition from transacting securities related business in any capacity while with any Member of the MFDA; and ii) a costs award of \$3,000.

## **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. The Respondent accepted instructions to process the redemption from the client's wife because, he stated, the client had previously advised him that he could accept instructions from her in respect of the Registered Account of which she was the beneficiary. He acknowledged that he ought not to have accepted the instructions from her.

6. The Respondent processed a purchase of securities of a mutual fund but failed to keep a written or electronic note recording the mutual fund so purchased.

7. Pre-signed account forms were prohibited by the Policies and Procedures of the Respondent's Member as well as MFDA Rule 2.1.1.

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

8. There was no evidence of client loss.

9. 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.

10. 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.

11. The Respondent has not previously been subject to MFDA disciplinary proceedings. However, in January 2014, his Member issued a warning letter to the Respondent regarding his failure to maintain a record of an order. On January 29, 2016 his Member issued a warning letter to the Respondent in regard to the conduct that is the subject matter of the Settlement Agreement and imposed a fine of \$2,000; as well the Member placed the Respondent in an educational program to assist the Respondent in meeting his regulatory requirements for proper documentation.

12. The Respondent is no longer registered in the securities industry in any capacity.

13. 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.

14. The MFDA penalty guidelines contemplate a prohibition from registration with any MFDA Member in situations where the Respondent's conduct violates MFDA Rules 1.1.2, 2.5.2 and 2.1.1.

15. 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.

### **Costs**

16. The parties have agreed to a costs award of \$3,000, which we are not prepared to reject as inappropriate.

### **Conclusion**

17. 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 15<sup>th</sup> day of June, 2017.

“Paul M. Moore”

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Paul M. Moore, Q.C.  
Chair

“Guenther K. Kleberg”

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Guenther K. Kleberg  
Industry Representative

“Joan Smart”

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Joan Smart  
Industry Representative

DM 554177 v1

**Schedule “1”**

**Settlement Agreement**

**File No. 2016114**



**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: Gilbert Jean**

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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, Gilbert Jean (the “Respondent”), consent and agree to settlement of this matter by way of this agreement (the “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 March 17, 2015, the Respondent processed a redemption in a client account at the request of someone other than the client, contrary to MFDA Rule 2.1.1;
- b) on or about March 5, 2015, the Respondent failed to keep an adequate record of a trade, thereby failing to comply with the Member's Policies and Procedures, contrary to MFDA Rules 1.1.2, 2.5.1 and 2.1.1; and
- c) between December 2009 and August 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, 18 pre-signed account forms, contrary to MFDA Rule 2.1.1.

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

- a) the Respondent shall be prohibited from conducting securities related business in any capacity in the employ of or associated with a Member of the MFDA for a period of 6 months, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$3,000 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rules, 2.5.1, 1.1.2 and 2.1.1; and
- d) 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. Between 1995 and 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA. Between 2013 and 2016, the Respondent was also registered as a Dealing Representative in British Columbia.

8. At all material times, the Respondent conducted business in the Sarnia, Ontario area.

#### **Processing a Trade Requested by Someone Other than the Client**

9. At all material times, client PM was a client of Investors Group whose registered account was serviced by the Respondent (the “Registered Account”).

10. At all material times, client PM’s wife was the beneficiary of the Registered Account.

11. On or around March 17, 2015, client PM’s wife instructed the Respondent to redeem monies from the Registered Account.

12. Subsequently, the Respondent processed the redemption without receiving instructions from client PM.

13. The Respondent states that he accepted instructions to process the redemption from client PM’s wife because client PM had previously advised the Respondent that he could accept instructions from client PM’s wife in respect of the Registered Account. The Respondent acknowledges that he ought not to have accepted instructions from client PM’s wife.

### **Failing to Keep Adequate Records**

14. At all material times, client CG was a client of Investors Group whose account was serviced by the Respondent.

15. At all material times, Investors Group's PPM required that its Approved Persons, including the Respondent, maintain written documentation in the client file or electronic notes of the details of any trade.

16. On or about March 5, 2015, client CG instructed the Respondent to purchase a mutual fund. The Respondent processed a trade on the request of client CG, but failed to keep a written or electronic note recording the mutual fund purchased by client CG.

### **Pre-Signed Account Forms**

17. At all material times, Investors Group's policies and procedures prohibited its Approved Persons, including the Respondent, from using pre-signed account forms.

18. Between December 2009 and August 2015, the Respondent obtained, possessed, and in 4 instances, used to process transactions, 18 pre-signed account forms (the "Forms").

19. The Forms included client update forms, pre-authorized contribution agreement forms, and Know-Your-Client forms.

### **Previous Discipline History**

20. In January 2014, Investors Group issued a warning letter to the Respondent regarding his failure to maintain a record of an order.

### **Investors Group's Investigation**

21. On or about September 17, 2015, during the course of a branch review, and in the subsequent follow up investigation, Investors Group identified the conduct that is the subject of this Settlement Agreement.

22. As part of its investigation, Investors Group reviewed all the client files serviced by the Respondent, which revealed no further concerns.

23. On January 29, 2016, Investors Group issued a warning letter to the Respondent and imposed a \$2,000 fine. Investors Group also placed the Respondent in an educational program to assist the Respondent in meeting his regulatory requirements for proper documentation.

### **Additional Factors**

24. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

25. There is no evidence of any client loss.

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

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

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

28. 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.

29. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the “Settlement Hearing”). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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 15<sup>th</sup> day of December, 2016.

“Gilbert Jean”  
\_\_\_\_\_  
Gilbert Jean

“CJ”  
\_\_\_\_\_  
Witness – Signature

CJ  
\_\_\_\_\_  
Witness – Print Name

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

**Schedule “A”**

**Order**

**File No. 2016114**



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

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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
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**Re: Gilbert Jean**

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**ORDER**

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

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the “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 March 17, 2015, the Respondent processed a redemption in a client account at the request of someone other than the client, contrary to MFDA Rule 2.1.1;

- b) on or about March 5, 2015, the Respondent failed to keep an adequate record of a trade, thereby failing to comply with the Member's Policies and Procedures, contrary to MFDA Rules 1.1.2, 2.5.1 and 2.1.1; and
- c) between December 2009 and August 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, 18 pre-signed account forms, contrary to MFDA Rule 2.1.1.

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

1. the Respondent shall be prohibited from conducting securities related business in any capacity in the employ of or associated with a Member of the MFDA for a period of 6 months, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. the Respondent shall pay costs in the amount of \$3,000 pursuant to s. 24.2 of MFDA By-law No. 1;
3. the Respondent shall in the future comply with MFDA Rules 2.5.1, 1.1.2 and 2.1.1; and
4. 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]