



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: Andrew Thomas Gilchrist

Heard: June 5, 2018 in Vancouver, British Columbia

Decision: June 5, 2018

Reasons for Decision: July 6, 2018

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Ian H. Pitfield	Chair
Barbara E. Fraser	Industry Representative
Kathleen Jost	Industry Representative

Appearances:

Sakeb Nazim)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
David Di Paolo)	Counsel for the Respondent
)	
Andrew Thomas Gilchrist)	Respondent, in person
)	

1. On June 5, 2018, after hearing representations from counsel, the Hearing Panel approved a Settlement Agreement dated April 30, 2018 (“Settlement Agreement”) between the Mutual Fund Dealers Association of Canada (“MFDA”) and Andrew Thomas Gilchrist (“Respondent”).

2. The Order provides that the Respondent shall pay a fine of \$8,000 and costs of \$2,500. The due date for payment was not stipulated in the agreement, nor stated by counsel in the course of submissions. The panel assumes payment will be made forthwith.

Agreed Facts

3. The Respondent has been registered in British Columbia as a mutual fund salesperson (now known as a dealing representative) since January 2011. He carries on business in Kelowna, British Columbia, with Sun Life Financial Investment Services (Canada) Inc., a Member of the MFDA.

4. Between April 2013 and December 2015, the Respondent obtained, possessed, or used to process transactions, 25 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1, and Sun Life’s policies and procedures. The pre-signed forms consisted of know your client, pre-authorized chequing, and order ticket forms. The Respondent submitted the forms to Sun Life to process transactions in client accounts.

5. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.

6. There is no evidence that any client suffered harm through use of the forms, or that the Respondent benefitted beyond the receipt of commissions in the ordinary course.

Analysis

7. This is another instance in which a dealing representative engages in the use of pre-signed forms notwithstanding regular communications to industry members and dealing representatives from the MFDA reminding and cautioning that their use is prohibited. The use of such forms

constitutes a violation of MFDA Rule 2.1.1 prescribing the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each Member and Approved Person deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business, and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

8. The use of pre-signed forms is prohibited because they present a legitimate risk that they may be used to engage in discretionary trading; they provide a mechanism by which one may engage in acts of fraud, theft or other forms of conduct harmful to the client; and they subvert the ability of a Member to properly supervise trading activity: *Re Price*, MFDA File No. 200814, Central Regional Council, Reasons dated April 18, 2011, at paras. 118-121.

9. The prohibition applies whether or not the client was aware of or authorized the use of the pre-signed forms, and whether or not the forms were actually used by the approved person for discretionary trading or other improper purposes.

10. Hearing panels have continually held that obtaining or using pre-signed account forms is a contravention of the standard of conduct demanded under MFDA Rule 2.1.1.

11. The accepted principle is that a hearing panel will not reject a settlement agreement unless the proposed penalty falls outside the reasonable range of appropriateness. As stated by counsel, settlements advance the MFDA's regulatory objective of protecting the public by proscribing activities that are harmful to the public while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent: see *British Columbia Securities Commission v. Seifert*, 2007 BCCA 484, at paras. 31 and 49.

12. The MFDA submits that a fine of \$8,000 is appropriate having regard for the notice given to the industry that fines in excess of the \$5,000 minimum would be imposed. The principal consideration in this case is deterrence. In that regard, the proposed fine is an amount consistent with other recently accepted and approved penalties in similar circumstances: see *Re Georgijev*, MFDA File No. 201721, July 10, 2017 (fine of \$10,000); *Re Lewin*, MFDA File No. 201656, June

15, 2017 (fine \$8,000); and *Re Estabrooks*, MFDA File No. 201638, August 31, 2016 (fine \$7,500). The first two cases are decisions of the Central Regional Council. The third is a decision of the Prairie Regional Council.

13. The Hearing Panel considers the penalty imposed by the Settlement Agreement to fall within the reasonable range of appropriateness having regard for the authorities cited by counsel; the factors articulated in *Re Breckenridge*, MFDA File No. 200718, Central Regional Council, Reasons dated November 14, 2007 and numerous other decisions; the MFDA penalty guidelines which recommend a minimum fine of \$5,000 in relation to the use of pre-signed forms; and MFDA Bulletin No. 0661-E dated October 2, 2015 wherein the MFDA advised that it would be seeking increased penalties in cases involving the use of pre-signed forms.

14. For the foregoing reasons, the Settlement Agreement is approved.

DATED this 6th day of July, 2018.

“Ian H. Pitfield”

Ian H. Pitfield
Chair

“Barbara E. Fraser”

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Industry Representative

“Kathleen Jost”

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Industry Representative

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