



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: Glen Stuart Kirkwood

Heard: May 15, 2018 in Edmonton, Alberta

Decision: May 15, 2018

Reasons for Decision: June 13, 2018

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC

Chair

Kathleen Jost

Industry Representative

Greg Wiebe

Industry Representative

Appearances:

Sakeb Nazim

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Counsel for the Mutual Fund Dealers
Association of Canada

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Maureen Doherty

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Counsel for the Respondent

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Glen Stuart Kirkwood

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Respondent, by teleconference

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Background

1. This is a settlement hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (“MFDA”). The hearing was held on May 15, 2018. The Respondent appeared by telephone, however his counsel appeared in person. These appearances constituted a variation from the terms of the settlement agreement dated January 18, 2018 (“Settlement Agreement”) presented to this Hearing Panel prior to the hearing, but it was stated during the hearing that the variation as to the terms of the appearances was agreed to by all parties at the time of the hearing. The full Settlement Agreement entered into between Glen Stuart Kirkwood (“Respondent”) and the MFDA signed by its Staff is attached as Appendix “1” and its relevant provisions will not be repeated in detail here.

2. The Respondent was registered as a mutual fund sales person (now known as a dealing representative) since June 2007.

3. This Hearing Panel accepted the proposed Settlement Agreement at the conclusion of the May 15, 2018 hearing, with reasons to follow, which are set out below.

Contraventions

4. The Respondent has admitted that:

- a) between October 2010 and December 2015, he obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1; and
- b) in April 2013 and in May 2015, he altered two account forms in respect of one client by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

Terms of Settlement

5. In paragraph 5 of the Settlement Agreement, the Respondent agreed to the following penalties:

- a) Respondent shall pay a fine in the amount of \$7,500 pursuant to section 24.1.1(b) of By-law No. 1;
- b) The Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
- c) the payment by the Respondent of the Fine and Costs shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$2,500 on or before the last business day of the first month following the date of Settlement Agreement;
 - iii. \$2,500 on or before the last business day of the second month following the date of Settlement Agreement;
 - iv. \$2,500 on or before the last business day of the third month following the date of Settlement Agreement;

Acceptance of the Settlement Agreement

6. In determining if it was appropriate to accept the terms of the Settlement Agreement, this Hearing Panel took into consideration the following factors:

Nature of the Misconduct: Pre-signed Account Forms and Altered or Falsified Account Forms

7. The Respondent's misconduct is serious and he admitted that he obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 11 clients and he altered two account forms in respect of one client by altering information on the account forms without having the client initial the alterations.

8. The Respondent is an experienced dealing representative who knew or ought to have known and respected the MFDA's and the Member's compliance requirements.

9. There were certain mitigating factors applicable to the instant case, including:
 - a) There is no evidence of client harm.
 - b) There is no evidence that the Respondent received any financial or other benefit through his conduct, and there was no client complaint.
 - c) The Respondent has not previously been disciplined by the MFDA.
 - d) 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.

10. MFDA Staff sought a penalty which exceeds the minimum fine recommended by the Penalty Guidelines for an Approved Person's breach of the standard of conduct but which was consistent with previous decisions in similar cases, for an Approved Person's breach of the standard of conduct.

11. MFDA Staff cited in support of his submission the penalties imposed in a number of recent cases, including.
 - a) *Nguyen (Re)*, MFDA File No. 2016105, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated April 18, 2017
 - b) *Holowaty (Re)*, MFDA File No. 201680, Hearing Panel of the Central Regional Council, Decision and Reasons dated March 29, 2017
 - c) *Varteresian (Re)*, MFDA File No. 201660, Hearing Panel of the Atlantic Regional Council, Decision and Reasons dated January 1, 2017
 - d) *Gibson (Re)*, MFDA File No. 201620, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated May 4, 2016

12. In the above-cited decisions, Approved Persons used a range of 12 - 24 pre-signed/altered forms with respect to 6 - 22 clients. Their penalties ranged from \$7,500 - \$10,000 and each had costs of \$2,500. In the case at hand, the Respondent used a total of 17 pre-signed/altered forms with respect to 12 clients, and the agreed penalty is \$7,500 plus costs of \$2,500. In the view of

this Hearing Panel, the penalty and cost for this current case are comparable to these previous decisions.

Appropriateness of the Proposed Penalty

13. Accordingly, this Hearing Panel concludes that the penalties proposed in the Settlement Agreement are reasonable and proportionate and will deter the Respondent and other Approved Persons from engaging in similar misconduct.

14. Further, this Hearing Panel concludes that acceptance of this Settlement Agreement will advance the public interest and the objective of the MFDA to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

15. This Hearing Panel accordingly approves its terms.

16. This Hearing Panel thanks MFDA Staff for his helpful presentation and the Respondent and his counsel for their cooperation during the hearing.

DATED this 13th day of June, 2018.

“Shelley L. Miller”

Shelley L. Miller, QC
Chair

“Kathleen Jost”

Kathleen Jost
Industry Representative

“Greg Wiebe”

Greg Wiebe
Industry Representative



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**IN THE MATTER OF A SETTLEMENT HEARING
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Re: Glen Stuart Kirkwood

SETTLEMENT AGREEMENT¹

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and Glen Stuart Kirkwood, (“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.

¹ The initial Settlement Agreement has been replaced by this Settlement Agreement to correct a clerical error identified in paragraph 8 on page 3 (under Agreed Facts).

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

- a) between October 2010 and December 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1; and
- b) in April 2013 and in May 2015, the Respondent altered 2 account forms in respect of 1 client by altering information on the account forms without having the client initial the alterations, 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 pay a fine in the amount of \$7,500 pursuant to section 24.1.1(b) of By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
- c) the payment by the Respondent of the Fine and Costs shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$2,500 on or before the last business day of the first month following the date of Settlement Agreement;
 - iii. \$2,500 on or before the last business day of the second month following the date of Settlement Agreement;
 - iv. \$2,500 on or before the last business day of the third month following the date of Settlement Agreement;
- d) if the Respondent fails to make any of the payments described in subparagraph 5(c):
 - i. any outstanding balance of the Fine and Costs owed by the Respondent shall become immediately due and payable to the MFDA; and
 - ii. the Respondent shall be suspended from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding of the Fine and Costs owed by the

Respondent is paid to the MFDA, pursuant to s. 24.3.13(c) of MFDA By-law No. 1;

- e) the Respondent shall in the future comply with MFDA Rules 2.1.1; and
- f) The Respondent will attend the Settlement Hearing in person.

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 June 2007, the Respondent has been registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc.² (“Sun Life”), a Member of the MFDA.

8. At all material times, the Respondent carried on business in Edmonton, Alberta area.

Pre-Signed Account Forms

9. At all material times, Sun Life’s policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining, or using pre-signed account forms.

10. Between October 2010 and December 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 11 clients.

11. The pre-signed account forms consisted of Know-Your-Client, pre-authorized chequing, and transfer authorization forms.

12. The Respondent submitted 10 of the pre-signed account forms to Sunlife to process transactions in client accounts.

² Between August 1997 and March 2003, the Respondent was registered as a mutual fund salesperson with Mutual Investco Inc., which underwent a name change to Clarica Investco Inc. In June 2005, Clarica Investco Inc. underwent a name change to Sun Life Financial Services (Canada) Inc.

Altered Account Forms

13. At all material times, Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining, or using falsified account forms.

14. In April 2013 and in May 2015, the Respondent altered 2 account forms in respect of 1 client by altering the date and the investment amount on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

Sun Life's Investigation

15. In August 2016, Sun Life identified 13 of the pre-signed forms described above in paragraph 10 during an onsite branch review. Sun Life subsequently commenced a review of all of the client files serviced by the Respondent and identified the remaining pre-signed and altered account forms that are the subject of this Settlement Agreement.

16. On September 15, 2016, Sun Life placed the Respondent under close supervision.

17. On October 14, 2016, as part of its investigation, Sun Life sent audit letters to all of the Respondent's mutual fund clients to determine if they had any unauthorized transactions on their accounts. The clients did not report any concerns.

18. On November 14, 2016, Sun Life issued a warning letter to the Respondent for possessing and using pre-signed and altered account forms, and placed him under continued close supervision for a period of 12 months.

Additional Factors

19. 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.

20. There is no evidence of any client harm or that the transactions were unauthorized.

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

22. 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

23. 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.

24. 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.

25. 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.

26. 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 contraventions described in this Settlement

Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any 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.

27. 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.

28. 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

29. 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 18th day of January, 2018.

“Glen Stuart Kirkwood”

Glen Stuart Kirkwood

“LK”

Witness – Signature

LK

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. 201810



Mutual Fund Dealers Association of Canada
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**IN THE MATTER OF A SETTLEMENT HEARING
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Re: Glen Stuart Kirkwood

ORDER

(ARISING FROM SETTLEMENT HEARING ON MAY 15, 2018)

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 Glen Stuart Kirkwood (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 the Respondent:

- a) between October 2010 and December 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1; and

- b) in April 2013 and in May 2015, the Respondent altered 2 account forms in respect of 1 client by altering information on the account forms without having the client initial the alterations, 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 pay a fine in the amount of \$7,500 pursuant to section 24.1.1(b) of By-law No. 1;
2. the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
3. the payment by the Respondent of the Fine and Costs shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$2,500 on or before the last business day of the first month following the date of Settlement Agreement;
 - iii. \$2,500 on or before the last business day of the second month following the date of Settlement Agreement;
 - iv. \$2,500 on or before the last business day of the third month following the date of Settlement Agreement;
4. If the Respondent fails to make any of the payments described in paragraph 3:
 - i. any outstanding balance of the Fine and Costs owed by the Respondent shall become immediately due and payable to the MFDA; and
 - ii. the Respondent shall be suspended from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding of the Fine and Costs owed by the Respondent is paid to the MFDA, pursuant to s. 24.3.13(c) of MFDA By-law No. 1.
5. the Respondent shall in the future comply with MFDA Rules 2.1.1; and

6. 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]