



**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: Philip Anthony Lewin**

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

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Association of Canada

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Keir Turner

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Counsel for the Respondent

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Philip Anthony Lewin

)

Respondent, In Person

## **Settlement Agreement**

1. The Hearing Panel accepted the settlement agreement dated October 26, 2016 (the “Settlement Agreement”) between the staff of the MFDA and Philip Anthony Lewin (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) between October 2012 and January 2015, the Respondent obtained and used to process transactions, 22 pre-signed account forms in respect of 5 clients , contrary to MFDA Rule 2.1.1; and
  - b) between October 2012 and January 2015, the Respondent, acting in the capacity as branch manager, reviewed and approved the use of 22 pre-signed account forms, contrary to MFDA Rules 2.5.5(f) and 2.1.1.

## **Agreed penalties**

3. The agreed penalty was: i) a fine of \$8,000; ii) a 3 month prohibition from acting in a supervisory capacity with a Member of the MFDA; iii) an order that the Respondent shall successfully complete the branch manager course offered by the Canadian Securities Institute within one year from March 30, 2017; and iv) a 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. The obtaining and/or use of pre-signed account forms is a serious breach of MFDA Rule 2.1.1.

6. The review and approval of pre-signed account forms by a branch manager, even where the forms were used by himself and no one else to process transactions, is a separate violation of MFDA Rules 2.5.5(f) and 2.1.1.

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

7. There was no evidence of client harm, nor evidence that any of the transactions with the account forms were unauthorized.

8. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct.

9. The agreed penalty is significant and helps the MFDA to send a message to the Respondent and others in the capital markets about the seriousness of the misconduct.

10. The Respondent has not previously been subject to MFDA disciplinary proceedings.

11. 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.

12. The MFDA penalty guidelines recommend one or more of the following sanctions where a person fails to adhere to the standard of conduct set out in the rules: a minimum fine of \$5,000; writing or re-writing an appropriate industry course; suspension; a permanent prohibition in egregious cases.

13. In addition, the penalty guidelines for a person who fails to meet his or her supervisory responsibilities recommend one or more of the following: a minimum fine of \$10,000; writing or rewriting an appropriate industry course; conditions on registration or suspension; a permanent prohibition in egregious cases.

14. The guidelines are not mandatory but are intended to assist hearing panels, MFDA staff and respondents in considering the appropriate penalties in MFDA disciplinary proceedings.

## **Conclusion**

15. The agreed penalty is close to the suggested minimum fine and is appropriate in the circumstances. It is within the reasonable range of appropriateness with regard to other decisions, submitted to us by staff, made by MFDA hearing panels in similar circumstances. It will serve as a specific and general deterrent, and is fair and reasonable. The costs award is reasonable in the circumstances.

16. 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”

Paul M. Moore, Q.C.  
Chair

“Guenther K. Kleberg”

Guenther K. Kleberg  
Industry Representative

“Joan Smart”

Joan Smart  
Industry Representative

DM 554179 v1

## Schedule “1”

Settlement Agreement

File No. 201656



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

**IN THE MATTER OF A SETTLEMENT HEARING  
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**Re: Philip Anthony Lewin**

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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, Philip Anthony Lewin (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) between October 2012 and January 2015, the Respondent obtained and used to process transactions, 22 pre-signed account forms in respect of 5 clients, contrary to MFDA Rule 2.1.1; and
- b) between October 2012 and January 2015, the Respondent, acting in the capacity as branch manager, reviewed and approved the use of 22 pre-signed account forms, contrary to MFDA Rules 2.5.5(f)<sup>1</sup> 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 \$8,000 pursuant to s. 24.1.1(b) of MFDA By-law No.1 (the “Fine”);
- b) the Fine shall be paid in 9 installments of \$888.88 each, payable on the last business days of the 9 months following the date of acceptance of the Settlement Agreement by the Hearing Panel;
- c) if the Respondent fails to make any of the installment payments described above in subparagraph (b) when the installments become due, then without further notice to the Respondent, the Respondent shall summarily be suspended from conducting securities related business while in the employ of, or associated with, any MFDA Member until the full amount of the Fine has been paid;
- d) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1 (“Costs”);
- e) the Respondent shall be prohibited from acting in a supervisory capacity for a period of 3 months while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

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<sup>1</sup> Rule 2.5.5(f) has been re-numbered during the period of the Respondent’s conduct described in this Settlement Agreement. Prior to September 2013, the Respondent’s conduct was contrary to MFDA Rule 2.5.5(d).

- f) the Respondent shall successfully complete the branch manager course offered by the Canadian Securities Institute within 1 year of the settlement hearing date, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
- g) the Respondent shall in the future comply with MFDA Rules 2.5.5(f) and 2.1.1; and
- h) 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**

7. Since February 1998, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with PFSL Investments Canada Inc. (“PFSL”), a Member of the MFDA.

8. PFSL designated the Respondent as a branch manager in March 2006.

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

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

10. At all material times, PFSL’s policies and procedures prohibited its Approved Persons, including the Respondent, from having clients complete pre-signed account forms.

11. Between October 2012 and January 2015, the Respondent obtained and used to process transactions, 22 pre-signed account forms in respect of 5 clients.

12. The pre-signed account forms consisted of redemption forms and pre-authorized contribution agreement forms.

### **Approval of Pre-Signed Account Forms**

13. Between October 2012 and January 2015, the Respondent, acting in the capacity of branch manager, reviewed and approved the use of the 22 pre-signed account forms described above in paragraphs 11 and 12.

### **PFSL's Investigation**

14. PFSL's compliance staff detected the conduct that is the subject of this Settlement Agreement as a result of a routine branch audit on March 15, 2015, and subsequent follow-up investigation.

15. As part of its investigation, PFSL sent letters to the clients serviced by the Respondent from whom the Respondent had obtained the pre-signed account forms in order to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns.

16. On July 20, 2015, PFSL issued a disciplinary letter to the Respondent.

### **Additional Factors**

17. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above.

18. There is no evidence of client loss or lack of authorization.

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

20. 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**

21. 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.

22. 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.

23. 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.

24. 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 the 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.

25. 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.

26. 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.

27. 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 26<sup>th</sup> day of October, 2016.

“Philip Anthony Lewin”

Philip Anthony Lewin

“SR”

Witness – Signature

SR

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. 201656**



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**Re: Philip Anthony Lewin**

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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 Philip Anthony Lewin (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 between October 2012 and January 2015, the Respondent obtained and used to process transactions, 22 pre-signed account forms in respect of 5 clients contrary to MFDA Rule 2.1.1, and, acting in the capacity as branch

manager, reviewed and approved the use of 22 pre-signed account forms, contrary to MFDA Rules 2.5.5(f)<sup>2</sup> 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 \$8,000 pursuant to s. 24.1.1(b) of MFDA By-law No.1 (the “Fine”);
2. the Fine shall be paid in 9 installments of \$888.88 each, payable on the last business days of the 9 months following the date of acceptance of the Settlement Agreement by the Hearing Panel;
3. if the Respondent fails to make any of the installment payments described above when the installments become due, then without further notice to the Respondent, the Respondent shall summarily be suspended from conducting securities related business while in the employ of, or associated with, any MFDA Member until the full amount of the Fine has been paid;
4. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No.1 (“Costs”);
5. The Respondent shall be prohibited from acting in a supervisory capacity for a period of 3 months while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
6. The Respondent shall successfully complete the branch manager course offered by the Canadian Securities Institute within 1 year of the settlement hearing date, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;

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<sup>2</sup> Rule 2.5.5(f) has been re-numbered during the period of the Respondent’s conduct described in this Settlement Agreement. Prior to September 2013, the Respondent’s conduct was contrary to MFDA Rule 2.5.5(d).

7. The Respondent shall in the future comply with MFDA Rules 2.5.5(f) and 2.1.1; and;

8. 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]