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: Christopher Andrew Nivet

Heard: May 6, 2010 in Toronto, Ontario
Reasons for Decision: May 11, 2010

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
Cheryl Hamilton (by telephone attendance)	Industry Representative
Anne Traczuk	Industry Representative

Appearances:

H. C. Clement Wai	)	For the Mutual Fund Dealers Association of Canada
Christopher Andrew Nivet	)	Unrepresented

1. The Panel was convened to hear submissions as to a Settlement Agreement reached between the Respondent, Christopher Andrew Nivet, and Staff of the MFDA on February 8, 2010. The Panel was required to consider whether, pursuant to section 24.4 of the MFDA By-law No. 1, the Panel should accept the Settlement Agreement.

2. At the outset of the proceedings, we considered a joint motion by Staff and the Respondent to move the proceedings *in camera*. We granted that motion. We then considered, in detail, the provisions of the Settlement Agreement itself. We heard submissions as to the applicable law that should guide this Panel in determining whether to accept or reject the Settlement Agreement. We next heard submissions as to why this particular Settlement Agreement met the appropriate criteria. We then retired to consider both the Settlement Agreement and the applicable legal principles. After deliberation, we unanimously concluded that it was appropriate to accept the Settlement Agreement.

3. The investigation by Staff of the Respondent's activities disclose that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to section 24.1 of By-law No. 1. The specific allegation was that in October 2007, the Respondent falsified the Know Your Client ("KYC") information and client signatures on 11 KYC update forms, contrary to MFDA Rule 2.1.1. The facts supporting this allegation are found in paragraphs 6 to 18, inclusive, of the Settlement Agreement.

4. As Cartier Partners Financial Services ("Cartier") had become combined with Dundee Private Investors Inc. ("Dundee") in February 2002, a review of matters within the new entity revealed that certain accounts were missing KYC information. The Respondent was responsible for a number of accounts and was required to update the KYC forms. He conducted that exercise during the month of October 2007 as he was planning to leave on vacation. On October 26, 2007, he submitted updated KYC forms for a number of clients to the branch manager prior to leaving on his vacation. Of these KYC forms, the Respondent had completed eleven without contacting the clients and had falsified the clients' signature.

5. The branch manager of Dundee became concerned as to the sudden production of

the KYC forms and made an internal review of the files resulting in a conversation on November 12, 2007 at which time he learned that the Respondent had falsified information. The Respondent readily admitted he had taken the step prior to leaving on vacation. The Respondent resigned from Dundee shortly after this revelation.

6. In essence, the Respondent falsified the clients' updated KYC forms by repeating the clients' previously stated KYC information as recorded on the KYC forms maintained in the files without consulting or verifying with the client whether the KYC information had changed since last collected and then falsifying the client signatures on the updated forms.

7. It is important to note that no trades were executed on the basis of the falsified KYC information nor did the Respondent receive any monetary or other benefit with respect to the falsifications. The Respondent on December 7, 2007 provided the Ontario Securities Commission with an affidavit in which he admitted the falsification, as well as attending an interview with the MFDA on October 7, 2008 at which time he identified the falsified forms.

8. Considering whether the proposed Settlement Agreement should be accepted, we have considered the principles as to whether it would be in the public interest and whether the penalties imposed will protect investors. We have also considered whether it is reasonable and proportionate having reference to the conduct of the Respondent.

9. We believe that the Settlement Agreement fairly addresses the concerns that we have, including the public interest, reasonableness, specific and general deterrence and the prevention of this type of conduct in the future. We believe that the Settlement Agreement will also foster confidence in the integrity of the Canadian capital markets, the MFDA and the regulatory process itself. We believe that each and every one of these factors was dealt with in an appropriate fashion by the Settlement Agreement.

10. In addition, we have carefully reviewed the MFDA Penalty Guidelines and the effect of these Penalty Guidelines on this type of conduct. The proposed penalty in the amount of $5,000.00 by way of a fine is entirely within a reasonable amount for a matter

of this nature and should not be disturbed, notwithstanding the fact that this particular activity involves a matter of forgery.

11. In the decision of *Lamontagne (Re)*, [2009] IIROC No. 6, Alberta District Council, Panel Decision dated January 27, 2009, the hearing panel distinguished between serious versus less egregious instances of forgery:

> Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. The trust and confidence between the registrant and the client is very often destroyed by the deceptive conduct on the part of the registrant. Forgery harms the Member firm as well. As a result, forgery often attracts severe sanctions. *While there is no such thing as a "minor case" of forgery, hearing panels may distinguish between more and less egregious examples of forgery*. [emphasis in text]

12. Enforcement counsel, quite properly, submitted that this was a less egregious example of forgery.

13. We have considered other matters, such as the fact that the Respondent has not been the subject of any previous MFDA disciplinary hearings. His admission was prompt and full as to the misconduct and his entering into the Settlement Agreement has accepted full responsibility for his misconduct. This, of course, has eliminated the necessity of a full investigation and hearing. Enforcement counsel takes the position that the Respondent is truly remorseful when one considers his cooperation and his resignation from the industry. There is no evidence of any client complaints, losses or harms in this case.

14. We are of the view that a negotiated settlement should not be disturbed provided that the penalties are within the reasonable range of appropriateness. In that regard, we have considered the remarks of the panel of the District Council in *Re Milewski*, [1999] I.D.A.C.D. No. 17, decided on July 28, 1999. The Panel made these comments at page 9:

> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. 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. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

15. In addition, we find that the fact situation in this case is very much akin to the fact situation in the *Griffiths* decision, reported at [2009] MFDA Prairie Regional Council, File No. 200916.

16. For all of the above reasons, we accepted the Settlement Agreement and signed the appropriate Order presented to us at the hearing.

17. We agreed to provide reasons for our decision after the hearing. These are our reasons.

DATED this 11th day of May, 2010.

"John Webber"
The Hon. John B. Webber, Q.C.,
Chair

"Cheryl Hamilton"
Cheryl Hamilton,
Industry Representative

"Anne Traczuk"
Anne Traczuk,
Industry Representative

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