



1. On March 7, 2018, after hearing representations from counsel, we approved a settlement agreement dated January 12, 2018 (“Settlement Agreement”) between the Mutual Fund Dealers Association of Canada (“MFDA”) and Gregory Shearing (“Respondent”).

2. The Order provides that the Respondent shall pay a fine of \$2,500 and costs of \$2,500. The aggregate of \$5,000 is to be paid in instalments: \$1,000 upon acceptance of the Settlement Agreement, and \$1,000 monthly commencing March 30, 2018.

### **Agreed Facts**

3. The Respondent has been registered in the securities industry since 2008. He has been registered in British Columbia as a dealing representative with HUB Capital Inc. (“HUB”), a member of the MFDA, since April 22, 2013, and carries on business in Victoria, British Columbia.

4. Between September 25, 2015 and February 27, 2017, the Respondent obtained, possessed, and in some instances used to process transactions, 16 pre-signed purchase and redemption account forms in respect of four clients, contrary to HUB’s policies and procedures.

5. HUB made inquiries of the clients to determine whether the Respondent engaged in any unauthorized trading activity. None of the clients reported any concerns. On September 28, 2016, HUB placed the Respondent on close supervision for a period of one year, and on November 8, 2016, sent a warning letter to the Respondent regarding his conduct.

6. HUB has imposed fines of \$5,000 on the Respondent. The fines have been paid. A fine of \$2,000 was imposed when HUB first discovered the possession and/or use of the pre-signed account forms. A second fine of \$3,000 was imposed after the warning letter had been sent and the Respondent was under close supervision. HUB discovered that the Respondent had inserted a client’s banking information on a form at the client’s request. The client had been unwilling to use a public fax line to transmit a form containing the banking information to the Respondent.

## **Analysis**

7. This is yet another incident in which, notwithstanding regular communications to industry members from the MFDA reminding members that the use of pre-signed forms is prohibited, a member disregards the directions and engages in the use of pre-signed forms. 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 may adversely affect the integrity and reliability of documents; destroy the audit trail; impact the ability of Approved Persons to produce valid documentation to support transactions that come into question; mislead Member supervisory personnel; negatively affect the credibility of the Approved Person; negatively affect Member complaint handling; and facilitate other misconduct such as unauthorized trading, fraud and the misappropriation of funds: see MFDA Staff Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017).

9. The prohibition regarding the use of pre-signed account forms applies whether or not the client was aware, 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. Having regard for the factors described in *Re: Jacobson*, 2007 MFDA 27, and the MFDA penalty guidelines which recommend a minimum fine of \$5,000 in relation to the use of pre-signed forms, the panel considers the penalty imposed by the settlement agreement to fall within the reasonable range. The Respondent has not been the subject of prior discipline proceedings, he has not inappropriately benefitted from the misconduct, and no client has suffered harm. However, he has been engaged in the securities industry for a lengthy period of time and must be taken to have known that the use of pre-signed forms is prohibited. The principal consideration in this case is deterrence. In that regard, the fine, coupled with the fines imposed by HUB, total \$7,500 which is an amount consistent with other recently accepted and approved penalties: see *Re: Kent*, MFDA File No. 201554, April 4, 2016 (fine of \$6,000); *Re: Kakkar*, MFDA File No. 2017108, December 8, 2017 (fine of \$7,500).

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

**DATED** this 21<sup>st</sup> day of March, 2018.

“Ian H. Pitfield”

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Ian H. Pitfield  
Chair

“Holly A. Millar”

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Holly A. Millar  
Industry Representative

“Robert Sokugawa”

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Robert Sokugawa  
Industry Representative