

# Re VanAmburg

IN THE MATTER OF:

**The Mutual Fund Dealer Rules**

**and**

**Gilbert VanAmburg**

2023 CIRO 49

Canadian Investment Regulatory Organization  
Hearing Panel (Nova Scotia District)

Heard: February 9, 2023, in Halifax, Nova Scotia (via videoconference)

Decision: February 9, 2023

Reasons for Decision: December 22, 2023

**Hearing Panel:**

Noella Martin, K.C., Chair

Darrell Bing, Industry Representative

Joshua Martin, Industry Representative

**Appearances:**

Molly McCarthy, CIRO Enforcement Counsel

Joey Palov, Counsel for the Respondent

Gilbert VanAmburg, the Respondent (present)

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## REASONS FOR DECISION

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### I. INTRODUCTION

¶ 1 At a Settlement Hearing by videoconference on February 9, 2023, this Hearing Panel was asked to accept a settlement agreement dated December 12, 2022 (“Settlement Agreement”) negotiated between Staff of the Mutual Fund Dealers Association of Canada (“MFDA”) and Gilbert VanAmburg (“Respondent”).

¶ 2 Mr. VanAmburg was present before us and was represented by counsel, Joey Palov.

¶ 3 In accordance with section 24.4.3 of By-law No. 1 of the MFDA, the Settlement Agreement was referred to this Hearing Panel for acceptance or rejection. After hearing counsel for the MFDA, considering the exhibits filed and the written submissions of Staff of the MFDA, and deliberating, we concluded that we should accept the Settlement Agreement. These are our written reasons for so doing.

### II. THE SETTLEMENT AGREEMENT

¶ 4 The Settlement Agreement is attached as Schedule “A” to these Reasons for Decision.

¶ 5 The key portions of the Settlement Agreement entered into with the MFDA by the Respondent are as follows:

### III. AGREED FACTS

#### Registration History

¶ 6 Since February 1985, the Respondent has been registered in the securities industry.

¶ 7 Commencing on September 28, 2008, the Respondent has been registered in Nova Scotia as a dealing representative with Investia Financial Services Inc. (the "Member"), a Member of the MFDA.

¶ 8 At all material times, the Respondent conducted business in Halifax, Nova Scotia.

#### **Pre-signed Account Forms**

¶ 9 At all material times, the Member's policies and procedures prohibited its dealing representatives from using pre-signed account forms.

¶ 10 Between January 23, 2017 and December 14, 2020, the Respondent obtained, possessed and used to process transactions, 7 pre-signed account forms in respect of 9 clients.

¶ 11 The pre-signed account forms include New Client Application Forms, and Know Your Client ("KYC") Update Forms.

#### **Altered Account Forms**

¶ 12 Between November 6, 2016 and January 6, 2021, the Respondent altered and used to process transactions, 16 account forms in respect of 14 clients, by altering information on the account forms without having the client initial the alterations.

¶ 13 The account forms that the Respondent altered include KYC Update forms, TFSA application forms, transfer authorization forms, order instruction forms, and transfer forms.

¶ 14 The information that the Respondent altered on the account forms included the fund names, investment amount, plan type, transaction details and relinquishing institution.

#### **Member's Investigation**

¶ 15 In July 2021, the Member completed a full file review of the client files maintained by the Respondent and discovered the account forms that are described above.

¶ 16 Between July 28, 2021 and December 7, 2021, the Member placed the Respondent on strict supervision.

¶ 17 As part of its investigation into the Respondent's conduct, the Member sent letters to all clients whose accounts the Respondent serviced. The letters provided the clients with three years of transaction history to determine that the trading activity was executed accurately and according to the clients' instructions. Where the Respondent used altered or pre-signed forms containing KYC information, the clients were also provided with a copy of their KYC information to determine that it was accurate. No clients responded to the Member's letters with any concern.

¶ 18 On December 7, 2021, the Member issued the Respondent a Warning Letter for his use of the account forms described above.

#### **Additional Factors**

¶ 19 There is no evidence that the Respondent received any financial benefit from the misconduct described above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

¶ 20 There is no evidence of client loss, client complaints, or lack of authorization for the underlying transactions.

¶ 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 contested hearing on the allegations.

#### **IV. GENERAL PRINCIPLES ON THE ACCEPTANCE OF A SETTLEMENT AGREEMENT**

¶ 23 At a settlement hearing the role of a Hearing Panel is fundamentally different than its role at a contested hearing. The often-cited reasoning from the I.D.A. decision of *Milewski (Re)* succinctly sets out the role of the Hearing Panel at a settlement hearing:

"We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "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."

*Milewski (Re)* [1999] I.D.A.C.D. No.17 at p. 10, Ontario District Council Decision dated July 28, 1999.

¶ 24 A Hearing Panel, pursuant to section 24.4.3 of MFDA By-law No. 1, has two options with respect to a settlement agreement; it can only accept or reject the settlement agreement.

¶ 25 It is clear from the jurisprudence emanating from the Courts and previous MFDA hearing panels that this Hearing Panel's task is not to decide whether we would have arrived at the same decision as that reached by the parties in this case. Rather, it is this Hearing Panel's responsibility to determine whether the penalty agreed upon falls within a reasonable range of appropriateness having regard to the conduct of the Respondent. If the negotiated settlement maintains the integrity of the investment industry, it is our duty to accept it.

¶ 26 In deciding whether to accept or reject the proposed Settlement Agreement in this matter, we have taken into account the following considerations as set out by previous decisions of Courts and MFDA hearing panels:

- (a) Whether acceptance of the Settlement Agreement would be in the public interest;
- (b) Whether the Settlement Agreement is reasonable in proportion to the conduct of the Respondent as set out in the Settlement Agreement;
- (c) Whether the Settlement Agreement addresses the issues of both specific and general deterrents;
- (d) Whether the proposed Settlement Agreement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- (e) Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- (f) Whether the Settlement Agreement will foster confidence in the integrity of the MFDA; and
- (g) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

*Re: Professional Investments (Kingston) Inc. (Re)*, [2009] MFDA, Ontario Regional Council, File No. 200836, Hearing Panel Decision dated March 24, 2009 at page 9.

*Re: Melvin Robert Penny (Re)*, [2009] MFDA, Atlantic Regional Council, File No. 200831, Hearing Panel Decision dated May 13, 2009, at page 8.

*Re: Alden M. Kaley (Re)*, MFDA, Atlantic Regional Council, File No 200911, Hearing Panel Decision dated August 21, 2009, at page 6.

¶ 27 We have also considered the factors that previous Hearing Panels have stated should be considered in determining whether a penalty is appropriate. These factors include the following:

- (a) The seriousness of the allegations proven against the Respondent;
- (b) The Respondent's past conduct, including prior sanctions;
- (c) The Respondent's experience and level of activity in the capital markets;
- (d) Whether the Respondent recognizes that the conduct was improper and has demonstrated remorse;
- (e) The harm suffered by investors as a result of the Respondent's conduct;
- (f) The benefits received by the Respondent as a result of the improper activity;

- (g) The risk to investors and the capital markets in the jurisdiction were the Respondent to continue to operate in the capital markets in the jurisdiction;
- (h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- (i) The need to determine whether not only those involved in the case being considered, but also any others participating in the capital markets engaged in a similar improper activity;
- (j) The need to alert others to the consequences of inappropriate activity to those who are permitted to participate in the capital markets; and
- (k) Previous decisions made in similar circumstances.

*Re: Lamoureux (Re)*, [2002] A.S.C.D. No. 125 at para 11.

*Re: In the matter of Robert Roy Parkinson* [2005] MFDA Ontario Regional Council, File No. 200509, Hearing Panel Decision dated February 21, 2006, at pp 25-26.

*Re: Alden M. Kaley (Re)*, [2009] MFDA Atlantic Regional Council, File No. 200911, Hearing Panel Decision dated September 28, 2009 at page 7.

¶ 28 We have also been guided by the MFDA Sanction Guidelines, which came into effect on November 15, 2018.

#### **Standard of Conduct**

¶ 29 MFDA Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires, among other things, that:

“Each Member and Approved Person of a Member shall: deal fairly, honestly and in good faith with its clients; observe high standards of ethics and conduct in the transaction of business; and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.”

#### **Applicable Rules and Provisions**

¶ 30 The following rules and provisions are applicable in this matter:

Provision	Description
MFDA Rule 2.1.1	Standard of Conduct
MFDA By-law No. 1, Section 24.1.1	Powers of Hearing Panels to Discipline Approved Persons
MFDA By-law No. 1, Section 24.2	Costs
MFDA By-law No. 1, Section 24.4	Settlement Agreements
Rules 14 and 15 of the Rules of Procedure	Settlement Agreements and Settlement Hearings

¶ 31 MFDA Rule 2.1.1 is a rule of general application which prescribes the standard of conduct applicable to Members and Approved Persons. The Rule is designed to protect the public interest by requiring registrants in the mutual fund industry to adhere to a high standard of conduct in the transaction of business.

#### **Admission**

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

- (a) between January 23, 2017 and December 14, 2020, the Respondent obtained, possessed and

used to process transactions, 7 pre-signed account forms in respect of 9 clients, contrary to MFDA Rule 2.1.1; and

- (b) between November 6, 2016 and January 6, 2021, the Respondent altered and used to process transactions, 16 account forms in respect of 14 clients, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

### **The Seriousness of the Violation in this Matter**

¶ 33 The conduct in this matter is serious.

¶ 34 The Respondent obtained, possessed and used to process transactions 7 pre-signed forms in respect of 9 clients and altered and used to process transactions 16 account forms in respect of 14 clients, by altering information on the account forms without having the client initial the alterations.

¶ 35 The Respondent and Staff have agreed to the following penalties if the Settlement Agreement is accepted by the Hearing Panel:

- (a) the Respondent shall pay a fine in the amount of \$17,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- (b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
- (c) the Respondent shall in the future comply with MFDA Rule 2.1.1;
- (d) the Respondent will attend in person or by videoconference, on the date set for the Settlement Hearing; and
- (e) 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".

¶ 36 The Hearing Panel agrees that the penalties proposed in the Settlement Agreement are consistent with those issued in previous MFDA decisions under similar circumstances.

¶ 37 After considering the submissions and upon reviewing the relevant authorities, in our opinion the Settlement Agreement negotiated between the parties is in keeping with the purpose of the MFDA Rules which are intended to enhance investor protection and to promote public confidence in the Canadian Mutual Fund Industry.

¶ 38 We believe that the penalties provided for in the Settlement Agreement are within the range of reasonableness under the circumstances, will specifically deter the Respondent, Mr. VanAmburg, and will also deter others from engaging in similar misconduct, thereby protecting the investing public and fostering confidence in the Mutual Fund Industry in Canada.

¶ 39 After considering all of the above, we unanimously agree that the Settlement Agreement reached in this case was reasonable in the circumstances, is in the public interest, and is hereby accepted by this Hearing Panel pursuant to section 24.4.3 of the MFDA By-law.

Dated at Halifax, Nova Scotia this 22 day of December 2023.

“Noella Martin” \_\_\_\_\_

Noella Martin, K.C., Chair

“Darrell Bing” \_\_\_\_\_

Darrell Bing, Industry Representative

“Joshua Martin” \_\_\_\_\_

Joshua Martin, Industry Representative

## Schedule “A”

### Settlement Agreement

File No. 202253

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: Gilbert VanAmburg**

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## SETTLEMENT AGREEMENT

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### I. INTRODUCTION

¶ 1 Staff of the Mutual Fund Dealers Association (“Staff”) and the Respondent, Gilbert VanAmburg (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 By-law No. 1.

### II. JOINT SETTLEMENT RECOMMENDATIONS

¶ 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 Mutual Fund Dealers Association of Canada (“MFDA”):

- a) between January 23, 2017 and December 14, 2020, the Respondent obtained, possessed and used to process transactions, 7 pre-signed account forms in respect of 9 clients, contrary to MFDA Rule 2.1.1; and
- b) between November 6, 2016 and January 6, 2021, the Respondent altered and used to process transactions, 16 account forms in respect of 14 clients, 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 \$17,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1;
- d) the Respondent will attend in person or by videoconference, on the date set for the Settlement Hearing; and
- e) 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

¶ 6 Since February 1985, the Respondent has been registered in the securities industry.

¶ 7 Commencing on September 28, 2008, the Respondent has been registered in Nova Scotia as a dealing representative with Investia Financial Services Inc. (the “Member”), a Member of the MFDA.

¶ 8 At all material times, the Respondent conducted business in Halifax, Nova Scotia.

#### Pre-signed Account Forms

¶ 9 At all material times, the Member’s policies and procedures prohibited its dealing representatives from using pre-signed account forms.

¶ 10 Between January 23, 2017 and December 14, 2020, the Respondent obtained, possessed and used to process transactions, 7 pre-signed account forms in respect of 9 clients.

¶ 11 The pre-signed account forms include New Client Application Forms, and Know Your Client (“KYC”) Update Forms.

#### Altered Account forms

¶ 12 Between November 6, 2016 and January 6, 2021, the Respondent altered and used to process transactions, 16 account forms in respect of 14 clients, by altering information on the account forms without having the client initial the alterations.

¶ 13 The account forms that the Respondent altered include KYC Update forms, TFSA application forms, transfer authorization forms, order instruction forms, and transfer forms.

¶ 14 The information that the Respondent altered on the account forms included the fund names, investment amount, plan type, transaction details and relinquishing institution.

#### Member’s Investigation

¶ 15 In July 2021, the Member completed a full file review of the client files maintained by the Respondent and discovered the account forms that are described above.

¶ 16 Between July 28, 2021 and December 7, 2021, the Member placed the Respondent on strict supervision.

¶ 17 As part of its investigation into the Respondent’s conduct, the Member sent letters to all clients whose accounts the Respondent serviced. The letters provided the clients with three years of transaction history to determine that the trading activity was executed accurately and according to the clients’ instructions. Where the Respondent used altered or pre-signed forms containing KYC information, the clients were also provided with a copy of their KYC information to determine that it was accurate. No clients responded to the Member’s letters with any concern.

¶ 18 On December 7, 2021, the Member issued the Respondent a Warning Letter for his use of the account forms described above.

#### Additional Factors

¶ 19 There is no evidence that the Respondent received any financial benefit from the misconduct described above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

¶ 20 There is no evidence of client loss, client complaints, or lack of authorization for the underlying transactions.

¶ 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 contested hearing on 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 (the "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](http://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 agrees to waive any rights to a full hearing, a review hearing or appeal 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) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts and 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, whether known or unknown at the time of settlement. 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 section 24.1.1 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of MFDA 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 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 or electronic copy of any signature shall be as effective as an original signature.

¶ 30 DATED this 12th day of December, 2022.

“Gilbert VanAmburg”

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Gilbert VanAmburg

“BV”

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Witness – Signature

BV

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Witness – Print name

“Charles Toth”

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Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement

Schedule “A”

Order

File No. 202253

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: Gilbert VanAmburg

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ORDER

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) provided notice to the public of a Settlement Hearing in respect of Gilbert VanAmburg (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 MFDA By-law No. 1;

**AND WHEREAS** based upon the admissions of the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that:

- a) between January 23, 2017 and December 14, 2020, the Respondent obtained, possessed and used to process transactions, 7 pre-signed account forms in respect of 9 clients.
- b) between November 6, 2016 and January 6, 2021, the Respondent altered and used to process transactions, 16 account forms in respect of 14 clients, by altering information on the account forms without having the client initial the alterations.

**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 \$17,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

¶ 2 The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;

¶ 3 The Respondent shall in the future comply with MFDA Rule 2.1.1; and

¶ 4 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]

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