



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: Jeffrey Dunlop

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council of the MFDA (the “Hearing Panel”) should accept the settlement agreement entered into between Staff of the MFDA (“Staff”) and the Respondent, Jeffrey Dunlop (the “Settlement Agreement”).

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed 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 s. 24.1 of MFDA By-law No. 1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees

to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this 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.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part X) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. From August 9, 2010 to present, the Respondent has been registered in Ontario as a dealing representative with TD Investment Services Inc. (“TDIS” or the “Member”), a Member of the MFDA.

7. At all material times, the Respondent carried on business from a branch located in Etobicoke, Ontario (the “Branch”).¹

¹ On June 22, 2018, the Branch closed and merged with another branch in Etobicoke, with which the Respondent remains registered.

Respondent Engaged in Discretionary Trading

8. At all material times, TDIS policies and procedures prohibited placing a mutual fund trade in a client's account without the client's authorization.

9. In or about January 2015, the Respondent started servicing the accounts of client MC and his spouse. Client MC advised the Respondent that he was being severed by his employer, and anticipated receiving monies from his employer-sponsored retirement savings plan ("**RSP**") and locked-in pension plan.

10. On April 10, 2015, the Respondent met with client MC, collected his Know-Your-Client ("**KYC**") information, and opened an RSP account for client MC with client MC's knowledge and authorization ("**RSP Account**").

11. On April 13, 2015, with client MC's knowledge and authorization, and using funds transferred in from client MC's employer-sponsored RSP, the Respondent processed a purchase of mutual funds in the amount of \$48,450 in client MC's RSP Account.

12. On April 30, 2015, with client MC's knowledge and authorization, and using funds transferred in from client MC's employer-sponsored RSP, the Respondent processed a purchase of mutual funds in the amount of \$61,151 in client MC's RSP Account.

13. In or about March to May 2015, the Respondent discussed diversification of client MC's portfolio with client MC and his spouse, including investment options for client MC's anticipated incoming employer pension rollover. However, as the pension funds had not yet been rolled over, they could not be invested in accordance with these discussions at that time.

14. On May 7, 2015, the amount of \$104,026 was credited to an RSP daily interest savings account for client MC at TDIS. On July 3, 2015, the amount of \$364,217 was credited to a second RSP daily interest savings account for client MC at TDIS. These monies were client MC's employer pension rollover.

15. In or about July 2015, the Respondent attempted to arrange meetings with client MC to invest the pension funds; however, due to vacation and other scheduling issues, this was not possible. Client MC advised the Respondent that he and his spouse would be away all summer, and would meet with the Respondent upon their return and that at that time they would discuss how to invest the pension monies.

16. At all material times, TDIS employed an arrangement whereby account openings and trades were submitted electronically by an Approved Person, and original hard copy trade forms remained at the branch in a centralized file for tier-one review.

17. On July 29, 2015, the Respondent sent an email to client MC stating,

“I know we have been meaning to all get together over the last few weeks to process the other stuff. I have it all ready to go and we have been missing out on some gains for the last month. I am going to move it over today and then when you and [spouse] are back from the cottage we can massage anything that needs to be.”

18. Client MC does not recall reviewing the Respondent’s email and did not reply to the Respondent in any manner.

19. On or about July 29, 2015, the Respondent used the April 2015 KYC information from the opening of client MC’s RSP Account for the purpose of opening a new account and completing the KYC information for a Locked-In RSP account (“LIRA Account”) for client MC.

20. Client MC was not present when the Respondent opened the LIRA Account using the April 2015 KYC information, client MC did not provide any input regarding the KYC information, and client MC did not sign the required documents authorizing the LIRA account opening.

21. On July 29, 2015, the Respondent submitted two purchases electronically totalling approximately \$468,423 in client MC’s RSP Account (\$104,206) and LIRA Account (\$364,217) without the signature of client MC, and without the knowledge or authorization of client MC

(the “Purchases”). The Respondent states that he believed that the Purchases were in accordance with the discussions he had had with client MC and his spouse in the spring of 2015.

22. On July 30, 2015, the Branch Manager of the Branch was reviewing the daily *Branch Manager Supervisory Report* (the “Report”) in order to conduct the tier-one review of the July 29, 2015 trades in the Branch. The Branch Manager saw the Purchases on the Report, but could not locate the supporting trade forms for the Purchases.

23. On July 30, 2015, the Branch Manager questioned the Respondent as to where the trade forms were for the Purchases. The Respondent advised the Branch Manager that he (the Respondent) would be getting the trade forms “soon”.²

24. In or about August 2015, the Branch Manager again questioned the Respondent as to where the trade forms were, and the Respondent advised the Branch Manager that he (the Respondent) would be getting the trade forms “soon”.

Respondent Failed to Report the Complaint and Made Incorrect Representations to the Client Regarding the Complaint

25. On or about September 10, 2015, client MC met with the Respondent and raised concerns with the Respondent that he had not authorized the Purchases, he was upset that the funds had been invested without his and his spouse’s input, and that the arrangement had been that they would meet in the Fall 2015 to discuss how the pension funds were to be invested.

26. On September 11, 2015, client MC left the Respondent a voicemail and sent an email to the Respondent, stating that the Purchases had been conducted without client MC’s input or authorization. Client MC requested that the situation be rectified, including that the trades be reversed and the funds be returned to their full value. The Respondent did not notify the Member of client MC’s complaint.

² On August 21, 2018, an MFDA Hearing Panel accepted the settlement agreement entered into between the Branch Manager and Staff of the MFDA regarding the events referenced herein. See MFDA Case No. 201760.

27. On or about September 11, 2015, the Respondent advised the Branch Manager that he had received an email from client MC. The Respondent did not present a copy of the email to the Branch Manager. When discussing the matter with the Branch Manager, the Respondent was visibly upset and advised the Branch Manager that client MC was asking about the trades.

28. On September 21, 2015, client MC sent an email to the Respondent, requesting that the situation be rectified. Client MC requested that the Respondent send him a response regarding his progress in having the trades reversed.

29. On September 21, 2015, the Respondent sent client MC an email stating:

“I am hoping to have an answer this week on the time for reversal. There is more to it than I had originally thought and we are making sure it is done correctly. I will advise you the moment I hear.”

30. The Respondent did not advise the Branch Manager or notify the Member of client MC’s email, or of his own response to client MC.

31. On October 1, 2015, client MC sent an email to the Respondent, requesting that the situation be rectified and seeking an update.

32. On October 3, 2015, the Respondent sent client MC an email advising as follows:

“I have been told that it should be processed this week coming. I will touch base with you later this week.”

33. The information in the Respondent’s October 3, 2015 email to client MC was inaccurate and misleading, as it gave the impression that the Respondent had reported the matter to the Member and that it was being dealt with, when in fact the Respondent had not reported the matter to the Member and it was not being dealt with.

34. The Respondent did not advise the Branch Manager or notify the Member of client MC's email or of his own response to client MC.

35. On October 18, 2015, client MC sent an email to the Respondent, seeking confirmation that the Purchases had been reversed. Client MC requested that the Respondent and the manager of the bank (a different individual than the Branch Manager) meet with client MC and his spouse.

36. The Respondent did not advise the Branch Manager or the manager of the bank of client MC's email, nor did he notify the Member.

37. On October 22, 2015, client MC telephoned the manager of the bank directly and advised him of his concerns. On October 23, 2015, the manager of the bank met with client MC and arranged to have the Purchases reversed and the client's monies restored to their original pre-trade values.

38. When the manager made inquiries of the Respondent, the Respondent cooperated fully and provided a candid explanation of all relevant facts. The Respondent states that he intended to bring these matters to the manager's attention but did not do so prior to client MC's telephone call to the manager.

V. MITIGATING FACTORS

39. The Respondent has no prior history of regulatory misconduct, including breaches of Ontario securities law.

40. The Respondent has fully cooperated with Staff's investigation.

VI. CONTRAVENTIONS

41. The Respondent admits that:

- i. On July 29, 2015, the Respondent opened a new account using KYC information that had previously been provided by client MC in April 2015, and processed two trades totalling approximately \$468,423 in the accounts of client MC without the knowledge or authorization of client MC thereby engaging in discretionary trading, contrary to MFDA Rules 1.1.2, 2.5.1, 2.3.1(b) and 2.1.1;
- ii. Between about September 11, 2015 and October 22, 2015, the Respondent failed to report a complaint from client MC regarding two unauthorized trades to the Member, contrary to MFDA Rules 1.4(b) and 2.1.1, and section 4 of MFDA Policy No. 6; and
- iii. Between about September 21, 2015 and October 3, 2015, the Respondent represented to client MC that steps were being taken by the Member to have the trades reversed in response to his complaint, when such steps were not underway, contrary to MFDA Rule 2.1.1.

VII. TERMS OF SETTLEMENT

42. The Respondent agrees to the following terms of settlement:

- i. the Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of three (3) months commencing from the date of the final Order herein, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
- ii. the Respondent shall pay a fine in the amount of \$20,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- iii. the Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
- iv. the payment by the Respondent of the fine and costs described above shall be made to and received by MFDA Staff in certified funds or lawyers cheques as follows:
 - i. \$2,500 (attributable to the costs) shall be paid upon acceptance of the Settlement Agreement by the Hearing Panel;

- ii. \$2,500 (attributable to the costs) shall be paid on or before the last business day of the first (1st) month following the acceptance of the Settlement Agreement by the Hearing Panel;
- iii. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the second (2nd) month following the acceptance of the Settlement Agreement by the Hearing Panel;
- iv. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the third (3rd) month following the acceptance of the Settlement Agreement by the Hearing Panel;
- v. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the fourth (4th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
- vi. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the fifth (5th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
- vii. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the sixth (6th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
- viii. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the seventh (7th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
- ix. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the eighth (8th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
- x. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the ninth (9th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
- xi. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the tenth (10th) month following the acceptance of the Settlement Agreement by the Hearing Panel;

- xii. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the eleventh (11th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
- v. If the Respondent fails to make any of the payments described above:
 - i. any outstanding balance of the fine and costs owed by the Respondent shall immediately become due and payable to the MFDA; and
 - ii. the Respondent shall continue to be prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total outstanding amount 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;
- vi. the Respondent shall in the future comply with MFDA Rules 1.1.2, 1.4(b), 2.2.1, 2.5.1, 2.3.1(b) and 2.1.1; and
- vii. the Respondent shall attend in person on the date scheduled for the MFDA settlement hearing.

VIII. STAFF COMMITMENT

43. If this Settlement Agreement is accepted by the Hearing Panel, 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, subject to the provisions of Part X below. 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 or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions 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.

IX. PROCEDURE FOR APPROVAL OF SETTLEMENT

44. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent. MFDA Settlement Hearings are typically held in the absence of the public pursuant to s. 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.

45. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his 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.

46. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.1 of MFDA 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.

47. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff or 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 him.

X. FAILURE TO HONOUR SETTLEMENT AGREEMENT

48. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

XI. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

49. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made 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 s. 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

50. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XII. DISCLOSURE OF AGREEMENT

51. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

52. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XIII. EXECUTION OF SETTLEMENT AGREEMENT

53. This Settlement Agreement may be signed in one or more counterparts, which together, shall constitute a binding agreement.

54. A facsimile copy of any signature shall be effective as an original signature.

DATED this 3rd day of September, 2018.

“Jeffrey Dunlop”

Jeffrey Dunlop

“RA”

Witness – Signature

RA

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. 201759



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: Jeffrey Dunlop

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing in respect of Jeffrey Dunlop (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated August __, 2018 (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 the Hearing Panel is of the opinion that the Respondent:

- i. On July 29, 2015, the Respondent opened a new account using KYC information that had previously been provided by client MC in April 2015, and processed two trades totalling approximately \$468,423 in the accounts of client MC without the knowledge or authorization of client MC thereby engaging in discretionary trading, contrary to MFDA Rules 1.1.2, 2.5.1, 2.3.1(b) and 2.1.1;

- ii. Between about September 11, 2015 and October 22, 2015, the Respondent failed to report a complaint from client MC regarding two unauthorized trades to the Member, contrary to MFDA Rules 1.4(b) and 2.1.1, and section 4 of MFDA Policy No. 6; and
- iii. Between about September 21, 2015 and October 3, 2015, the Respondent represented to client MC that steps were being taken by the Member to have the trades reversed in response to his complaint, when such steps were not underway, contrary to MFDA Rule 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

- i. the Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of three (3) months commencing from the date of the final Order herein, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
- ii. the Respondent shall pay a fine in the amount of \$20,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- iii. the Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
- iv. the payment by the Respondent of the fine and costs described above shall be made to and received by MFDA Staff in certified funds or lawyers cheques as follows:
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- iv. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the third (3rd) month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - v. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the fourth (4th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - vi. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the fifth (5th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - vii. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the sixth (6th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - viii. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the seventh (7th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - ix. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the eighth (8th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - x. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the ninth (9th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - xi. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the tenth (10th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - xii. \$2,000 (attributable to the fine) shall be paid on or before the last business day of the eleventh (11th) month following the acceptance of the Settlement Agreement by the Hearing Panel;
- v. if the Respondent fails to make any of the payments described above:
- i. any outstanding balance of the fine and costs owed by the Respondent shall immediately become due and payable to the MFDA; and

- ii. the Respondent shall continue to be prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total outstanding amount 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;
- vi. the Respondent shall in future comply with MFDA Rules 1.1.2, 1.4(b), 2.5.1, 2.3.1(b) and 2.1.1, and section 4 of MFDA Policy No. 6.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

DM 634346