



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: Heather Nicola Churchill

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By News Release, 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 (the “Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Heather Nicola Churchill (the “Respondent”).

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 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. ACKNOWLEDGMENT

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 IX) 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. The Respondent was registered as a mutual fund salesperson (now known as a dealing representative) in Ontario from December 8, 2014 to September 14, 2016, and in Quebec from April 28, 2015 to September 14, 2016, with Scotia Securities Inc. (“Scotia”), a Member of the MFDA.

7. From September 3, 2014 to October 20, 2014, and from November 2, 2004 to March 20, 2009, the Respondent was registered as a mutual fund salesperson in Ontario with PFSL Investments Canada Ltd., a Member of the MFDA.

8. From March 24, 2010 to June 29, 2013, and from June 21, 1999 to August 14, 2004, the Respondent was registered as a mutual fund salesperson in Ontario with TD Investment Services Inc., a Member of the MFDA, and its predecessors TD Asset Management Inc. and CT Investment Management Group.

9. At all material times, the Respondent conducted business in the greater Ottawa region.

Misconduct

10. At all material times, Scotia maintained a policies and procedures manual (“PPM”) which prohibited discretionary trading by its Approved Persons.

11. Scotia’s PPM also stipulated that customer instructions must be received at the time of the trade, and that when taking telephone trade instructions from a client the Approved Person must document those instructions by recording the following information on an Investment Directions account form:

- i. the time and date when instructions were obtained;
- ii. the name of the person providing the instructions;
- iii. the transaction type – purchase, redemption, switch, other;
- iv. the fund name;
- v. the dollar amount or number of units;
- vi. a summary of any discussions with the customer, including any MFR/Personal Banking Advisor/Small Business Banking Advisor recommendation, regardless of whether the customer acted on the recommendation and any alternatives discussed; and
- vii. for mutual fund purchases, transfers and switches, the check boxes on the Investment Directions form must be completed to confirm the required verbal disclosures have been made, understood and acknowledged by the customer.

12. On April 1, 2016, the Respondent met with client JB to review the status of client JB’s Registered Retirement Savings Plan (“RRSP”) and Tax Free Savings Account (“TFSA”).

13. During the meeting, client JB informed the Respondent that he intended to retire in approximately two to three years. The Respondent updated the Know-Your-Client form (“KYC Form”) that Scotia had on file for client JB’s RRSP to reflect this new information and a change in client JB’s investment objectives. The Respondent also completed a new KYC Form for client JB’s TFSA but no changes were made to the investment objectives listed for client JB’s TFSA.

14. The Respondent and client JB also discussed changes to the current account holdings for both his RRSP and TFSA as a result of client JB’s intention to retire in the near future. The Respondent provided client JB with documentation relating to certain investments for client JB to consider. However, client JB did not agree to make any changes to the holdings in either of his accounts.

15. On April 2, 2016, an “Unsuitable Holdings Report” (the “Report”) was generated by Scotia’s compliance monitoring systems for client JB’s RRSP account because the holdings in his portfolio were not consistent with client JB’s updated KYC information and the existing account holdings were therefore flagged as unsuitable.

16. After observing the Report, Branch Manager MM discussed options with the Respondent for addressing the suitability concerns that had been flagged in client JB’s RRSP account, and directed her to contact client JB to review those options and obtain instructions.

17. On April 4, 2016, the Respondent disregarded the directive that she had received from Branch Manager MM and processed switches in client JB’s RRSP and his TFSA prior to obtaining any instructions from client JB.

18. Prior to the switches being completed by the Respondent, the only product held by client JB in both his RRSP and his TFSA was the Scotia Diversified Monthly Income Fund, a medium risk fund. The Respondent switched the entirety of client JB’s RRSP holdings, approximately \$269,505.15, to the Scotia Innova Balanced Income Portfolio Fund, a low risk fund. The

Respondent switched the entirety of client JB's TFSA holdings, approximately \$27,902.20, to the Scotia Partners Growth Portfolio Fund, a medium risk fund.

19. The switch that the Respondent processed in client JB's RRSP account addressed the suitability concerns described above that had been flagged in the RRSP account.

20. In order to process the switch trades, the Respondent signed and submitted Investment Directions account forms that falsely indicated that, at 1:00 PM on April 4, 2016, the Respondent had discussed and obtained instructions from client JB to proceed with the switch transactions requested on the forms.

21. The Respondent informed client JB that the switches had been processed in his accounts by leaving him a voicemail message. Client JB did not receive the voicemail message that day.

22. On or about April 5, 2016, the Respondent falsely reported to Branch Manager MM that client JB had decided to change the composition of his portfolio by switching his existing holdings.

23. On April 11, 2016, client JB contacted the Respondent and requested that the transactions be reversed as he had not authorized the switches processed in his RRSP and TFSA.

24. On the same day, the Respondent prepared and submitted an "SSI Dealer Account Investment Adjustment Request" ("Adjustment Request Form") to reverse the switches that had been processed in client JB's accounts. On the Adjustment Request Form, the Respondent indicated that the reason for processing the adjustment transaction was to reverse a "switch without client consent".

25. On or about April 12, 2016, client JB advised staff of Scotia that he had not authorized the switches processed in his RRSP and TFSA. Scotia reversed the switches in May 2016.

Additional Factors

26. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described in this Settlement Agreement.
27. In July 2016, the Respondent was placed on medical leave while she was registered with Scotia. The Respondent subsequently resigned from Scotia effective September 14, 2016.
28. The Respondent states that she is impecunious and unable to pay any amount towards either a fine or costs, and she has provided documentary evidence in that regard to MFDA Staff.
29. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
30. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

V. CONTRAVENTIONS

31. The Respondent admits that:
 - a) on April 4, 2016, the Respondent processed two switches totaling approximately \$297,407.35 in the investment accounts of client JB without the knowledge or authorization of the client, thereby engaging in unauthorized discretionary trading, contrary to MFDA Rules 2.3.1 and 2.1.1, and the policies and procedures of the Member; and
 - b) on or about April 5, 2016, the Respondent falsely reported to her Branch Manager, in response to the Branch Manager's supervisory inquiries, that client JB had authorized two switches totaling approximately \$297,407.35 in the investment accounts of client JB, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of one year commencing from the date of the Hearing Panel's final Order herein, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall in the future comply with MFDA Rules 2.3.1 and 2.1.1; and
- c) the Respondent will attend by teleconference on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

33. 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 contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part V, 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.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

34. 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 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.

35. 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 her 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.

36. 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 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.

37. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, 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 her.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

38. 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.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

39. 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 sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

40. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that she 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.

XI. DISCLOSURE OF AGREEMENT

41. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 21st day of May, 2018.

“Heather Nicola Churchill”

Heather Nicola Churchill

“CH”

Witness – Signature

CH

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. 201823



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**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: Heather Nicola Churchill

ORDER

WHEREAS on February 13, 2018, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to ss. 20 and 24 of By-law No. 1 in respect of Heather Nicola Churchill (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:

- a) on April 4, 2016, the Respondent processed two switches totaling approximately \$297,407.35 in the investment accounts of client JB without the knowledge or authorization of the client, thereby engaging in unauthorized discretionary trading, contrary to MFDA Rules 2.3.1 and 2.1.1, and the policies and procedures of the Member; and

- b) on or about April 5, 2016, the Respondent falsely reported to her Branch Manager, in response to the Branch Manager's supervisory inquiries, that client JB had authorized two switches totaling approximately \$297,407.35 in the investment accounts of client JB, contrary to MFDA Rule 2.1.1.

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

1. the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of one year commencing from the date of this Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. the Respondent shall in the future comply with MFDA Rules 2.3.1 and 2.1.1; and
3. 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]