



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: Diego Gonzalez Borrero

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Diego Gonzalez Borrero (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 of By-law No.1.

II. JOINT SETTLEMENT RECOMMENDATION

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 2013 and September 2016, the Respondent altered, and used to process transactions, 42 account forms in respect of 34 clients by altering

information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1;

- b) between January 2013 and September 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 32 pre-signed account forms in respect of 20 clients, contrary to MFDA Rule 2.1.1; and
- c) on or about February 8, 2017, the Respondent processed two trades in relation to two clients based on the instructions of someone other than the client, contrary to MFDA Rules 2.3.1 and 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 \$18,000 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.2 of By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.3.1; and
- d) the Respondent will attend in person, on the date set for the Settlement Hearing.

6. 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

7. Since June 2001, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Sun Life Financial Investment Services (Canada) Inc. ("Sun Life"), a Member of the MFDA.

8. From September 2009 to November 2011, Sun Life designated the Respondent as a branch manager.

9. At all material times, the Respondent conducted business in the Newmarket, Ontario area.

Altered Forms

10. Between January 2013 and September 2016, the Respondent altered, and used to process transactions, 42 account forms in respect of 34 clients by altering information on the account forms without having the client initial the alterations.

11. The altered account forms consisted of limited trade authorization (“LTA”), transfer authorization, pre-authorized withdrawal, account application, fund conversion, fund switch, fund order, and Know-Your-Client (“KYC”) information forms.

Pre-Signed Account Forms

12. At all material times, Sun Life’s policies and procedures prohibited its Approved Persons from using pre-signed account forms.

13. Between January 2013 and September 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 32 pre-signed account forms in respect of 20 clients.

14. The pre-signed account forms consisted of LTA, transfer authorization, pre-authorized withdrawal, account application, fund switch, fund order, KYC information and Registered Education Savings Plan (“RESP”) payment forms.

Processing Trades Requested by Someone Other than the Client

15. At all material times, Sun Life’s policies and procedures required that, in all cases, clients must authorize trades on their accounts.

16. At all material times, clients AT and LK were siblings, and were clients of Sun Life whose accounts were serviced by the Respondent. Clients AT and LK held RESP accounts at Sun Life, the named beneficiaries of which were the respective children of clients AT and LK.

17. JB is the father of clients AT and LK.

18. On or about February 8, 2017, the Respondent accepted from JB, deposits of \$300 into client AT's RESP account held for the benefit of client AT's two children, and \$600 into client LK's RESP account held for the benefit of client LK's four children.

19. Subsequently, the Respondent processed fund purchases in the amounts deposited by JB to client AT and LK's accounts pursuant to the instructions of JB without having obtained authorization from clients AT and LK.

20. The Respondent maintained notes that he had discussed the trade instructions with client AT on February 18, 2017. The Respondent did not maintain notes that he had discussed the trade instructions with client LK.

21. The Respondent states that he spoke with both clients AT and LK to ensure that the deposits from JB were authorized.

Sun Life's Response

22. On February 14, 2017, Sun Life's compliance staff identified some of the altered forms that are the subject of this Settlement Agreement as a result of a routine branch audit.

23. On March 16, 2017, Sun Life conducted a review of all of the client files serviced by the Respondent and identified additional altered and pre-signed account forms.

24. As part of its investigation, Sun Life sent letters to all of the Respondent's clients to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns.

25. On March 31, 2017, Sun Life issued a warning letter to the Respondent, and placed him under close supervision for a period of two years.

Additional Factors

26. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above other than the commissions or fees he would ordinarily be entitled to had the transactions been completed in the proper manner.

27. With respect to the Respondent's use of altered and pre-signed forms, there is no evidence of client loss or lack of authorization.

28. With respect to the unauthorized trade instructions processed by the Respondent, there is no evidence of client loss.

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 on the allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

31. 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.

32. 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.

33. 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.

34. 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 waives any 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;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in this Settlement Agreement. 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 s. 24.1.2 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; 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.

35. 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 the settlement negotiations.

36. 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.

37. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

DATED this 11th day of September, 2018.

“Diego Gonzalez Borrero”

Diego Gonzalez Borrero

“GO”

Witness – Signature

GO

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.**



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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: Diego Gonzalez Borrero

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Diego Gonzalez Borrero (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 the Respondent:

- a) between January 2013 and September 2016, the Respondent altered, and used to process transactions, 42 account forms in respect of 34 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1;

- b) between January 2013 and September 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 32 pre-signed account forms in respect of 20 clients, contrary to MFDA Rule 2.1.1; and
- c) on or about February 8, 2017, the Respondent processed two trades in relation to two clients based on the instructions of someone other than the client, contrary to MFDA Rules 2.3.1 and 2.1.1.

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 \$18,000 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1;
2. The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.2 of By-law No. 1;
3. The Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.3.1; 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]

DM 650560