



**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: Gary Golden**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By Notice of Settlement Hearing, 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 Prairie 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, Gary Golden.

**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. 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 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. Since March 8, 2004, the Respondent has been registered in Manitoba and Ontario as a mutual fund salesperson with Credential Asset Management Inc. (“Credential”), a Member of the MFDA.

7. Prior to Credential, the Respondent was registered as a mutual fund salesperson with Investors Group Financial Services Inc., also a Member of the MFDA, from January 1992 until February 2004.

8. At all material times, the Respondent carried on business in Winnipeg, Manitoba.

#### **Maintaining and Using Altered and Blank Pre-signed Forms**

9. At all material times, Credential’s policies and procedures manual specifically prohibited the maintenance and use of pre-signed forms:

## Chapter 23 Sales Practices

### Discretionary Trading and Prohibition on the Use of Pre-Signed Forms

The use of blank pre-signed forms is prohibited. Reps may only use forms that have been duly executed by the client after information on the form has been properly completed.

... ..

10. In early September 2011, the Regional Branch Compliance Officer (the “RCO”) noted a discrepancy between the information entered on the back office system for a client account serviced by the Respondent and the New Account Application Form in the client’s file which warranted further review.

11. As a result, on September 12, 2011 to September 13, 2011, Credential conducted a review of all new accounts opened by the Respondent since January 1, 2010 and reviewed the files of 80 accounts serviced by the Respondent. During this review, Credential discovered 19 altered forms and two partially completed pre-signed forms in client files:

#	Client	Type of Form	Contravention	Particulars
1	TD	Investment Instruction Form	Pre-Signed	Partially completed trade ticket signed by the client on May 12, 2010 which was missing the fund code and purchase amount.
2	TD	NAAF	Altered	Risk tolerance on KYC update form dated February 11, 2010 was altered by the Respondent and the client did not initial the changes
3	HS	NAAF	Pre-Signed	NAAF dated August 12, 2011 indicates the client investment objectives to be 100% growth and 100% high risk however these selections were made using a different ink color than used on the rest of the form, indicating they were completed after the fact.
4	GL	NAAF	Altered	On NAAF dated December 10, 2010 white out was used to change the nominee account number and the client did not initial the change.
5	KLV	NAAF	Altered	On NAAF dated January 31, 2011, white out was used to change the client’s SIN and postal

#	Client	Type of Form	Contravention	Particulars
				code and the client did not initial the changes.
6	FO	NAAF	Altered	NAAF dated February 16, 2011 was completed in black ink except the client number, risk tolerance and investment objectives, which were completed in a different ink color, indicating they were completed after the fact.
7	FO	Investment Instruction Form	Altered	Investment Instruction Form dated February 16, 2011 was completed in black ink except for the client number and the amounts to be purchased, which were completed in a different ink color, indicating they were completed after the fact.
8	MP	Know-Your-Client ("KYC") Form	Altered	Risk tolerance on KYC form dated October 13, 2010 changed from an 8 to a 7 and the client did not initial the change.
9	JAJ	KYC Form	Altered	Risk tolerance and investment objectives on KYC form dated December 9, 2009 were altered and the client did not initial the changes.
10	MH	NAAF	Altered	Investment objectives on NAAF dated May 26, 2011 changed and the client did not initial the change.
11	RK	Investment Instructions Form	Altered	On form dated June 9, 2011, the Respondent altered the switch amounts from all units to a specific dollar amount and the client did not initial the change.
12	KM	NAAF	Altered	On form dated June 8, 2011, the Respondent altered the investment objectives and risk tolerance and the client did not initial the changes.
13	JB	KYC Form	Altered Form	On form dated August 30, 2010, the Respondent altered the risk tolerance and the client did not initial the change.
14	PE	KYC Form	Altered Form	On form dated August 27, 2009, the Respondent altered the client's risk tolerance and the client did not initial the change.
15	DS	Systematic Plan Instruction Form	Altered Form	The form dated August 2, 2011 was altered using white out to change the withdrawal amount

#	Client	Type of Form	Contravention	Particulars
				and the client did not initial the change.
16	JM	NAAF	Altered Form	NAAF dated February 16, 2010 is completed in black ink except the client's risk tolerance which is completed in another ink color, indicating they were completed after the fact.
17	SC	NAAF	Altered Form	NAAF dated February 16, 2010 is completed in black ink except for the client's risk tolerance which is completed in another ink color, indicating they were completed after the fact.
18	GM	KYC Form	Altered Form	Risk tolerance on KYC update form dated June 14, 2010 was altered by the Respondent and the changes were not initialed by the client.
19	VF	NAAF	Altered Form	Investment objectives on NAAF dated January 5, 2010 altered by the Respondent and the change was not initialed by the client
20	AS	KYC Form	Altered Form	Risk tolerance on KYC update form dated February 11, 2010 was altered by the Respondent and the client did not initial the change.
21	RB	Investment Instruction Form	Altered Form	Respondent used white-out to change the plan number on the form dated February 27, 2011 and the client did not initial the changes.

12. On October 20, 2011, the Respondent received training from Credential regarding the sales process for new and existing clients including using Credential tools Portfolio Planner and Investor Profile and setting KYC information. Expectations around verbal and physical disclosures and notes to the file were also provided to the Respondent.

13. On November 29, 2011, the Respondent provided details to Credential regarding the reasoning for the altered and pre-signed forms found in the files for clients' accounts which he serviced. The Respondent stated that in the majority of cases the alteration of the specific form was intended to correct clerical errors or oversights and that the use of pre-signed forms was, in the Respondent's view, for the client's convenience.

14. There were no client complaints arising from the use of the altered or pre-signed forms and no evidence that any of the clients suffered any financial harm or loss.

15. Effective September 2011, Credential placed the Respondent on close supervision for a period of 1 year, during which the Respondent was required to comply with the following terms and conditions, among others:

- under no circumstances was the Respondent to request or accept blank or partially completed account documents signed by clients;
- all client account documents were to be signed in one ink color;
- all clients that had signed partially completed forms were to be advised that this practice was not allowed by Credential or the MFDA;
- where Univeris functionality permitted, all client account forms were to be completed using system generated forms;
- white out was not be used on any client account documents;
- all changes to signed client account documents were to be accompanied by evidence of client authorization for the change;
- all clients were required to be given a copy of the NAAF and the Respondent was required to evidence delivery of the NAAF by making a note in the client's file; and
- the Respondent was to pay Credential \$500 per month during the period of close supervision.

16. As of October 2011, the Respondent serviced approximately 1,104 clients having assets under administration totaling approximately \$18 million.

17. Previously, on May 12, 2008, the Respondent received a warning letter from MFDA Staff for falsifying a client's signature on an account document and not following the Member's policies and procedures.

18. By altering forms and maintaining and using partially completed pre-signed forms to conduct Member business, the Respondent engaged in a practice unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

## **V. CONTRAVENTIONS**

19. The Respondent admits that between May 2009 and August 2011, he engaged in a practice unbecoming an Approved Person by maintaining and using altered and partially completed pre-signed forms to conduct Member business, contrary to MFDA Rule 2.1.1.

## **VI. TERMS OF SETTLEMENT**

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

- (a) the Respondent shall pay a fine in the amount of \$5,000.00, pursuant to Section 24.1.1(b) of MFDA By-law No.1;
- (b) the Respondent shall pay costs in the amount of \$2,000.00, pursuant to Section 24.2 of MFDA By-law No.1;
- (c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- (d) the Respondent will attend in person, on the date set for the Settlement Hearing.

## **VII. STAFF COMMITMENT**

21. 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 set out in Part IV and 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 facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and 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**

22. Acceptance of this Settlement Agreement shall be sought at a hearing of the Prairie Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

23. 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 its 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.

24. 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. 24.1.2 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.

25. 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 him.

## **IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

26. 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**

27. 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.

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

## **XI. DISCLOSURE OF AGREEMENT**

29. 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.

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

## **XII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

Dated this 14<sup>th</sup> day of January, 2013.

“Claire Magne-Klassen”

Witness – Signature

Claire Magne-Klassen

Witness - Print name

“Gary Golden”

Gary Golden

“Shaun Devlin”

Staff of the MFDA

Per: Shaun Devlin

Vice-President, Enforcement

**Schedule "A"**

**Order**

**File No. 201218**



**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  
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**Re: Gary Golden**

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**ORDER**

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**WHEREAS** on \_\_\_\_\_, 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 Gary Golden (the "Respondent");

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated \_\_\_\_\_ (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 between May 2009 and August 2011 engaged in a practice unbecoming an Approved Person by maintaining and using altered and partially completed pre-signed forms to conduct Member business, contrary to MFDA Rule 2.1.1.

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

1. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;
2. The Respondent shall pay a fine in the amount of \$5,000.00, pursuant to Section 24.1.1(b) of MFDA By-law No.1;
3. The Respondent shall pay costs in the amount of \$2,000.00, pursuant to Section 24.2 of MFDA By-law No.1;
4. The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder, including MFDA Rule 2.1.1.

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

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]