



**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: Glen Stuart Kirkwood**

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**SETTLEMENT AGREEMENT<sup>1</sup>**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and Glen Stuart Kirkwood, (“Respondent”), consent and agree to settlement of this matter by way of this agreement (“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 MFDA:

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<sup>1</sup> The initial Settlement Agreement has been replaced by this Settlement Agreement to correct a clerical error identified in paragraph 8 on page 3 (under Agreed Facts).

- a) between October 2010 and December 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1; and
- b) in April 2013 and in May 2015, the Respondent altered 2 account forms in respect of 1 client 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 \$7,500 pursuant to section 24.1.1(b) of By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
- c) the payment by the Respondent of the Fine and Costs shall be made to and received by MFDA Staff in certified funds as follows:
  - i. \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
  - ii. \$2,500 on or before the last business day of the first month following the date of Settlement Agreement;
  - iii. \$2,500 on or before the last business day of the second month following the date of Settlement Agreement;
  - iv. \$2,500 on or before the last business day of the third month following the date of Settlement Agreement;
- d) if the Respondent fails to make any of the payments described in subparagraph 5(c):
  - i. any outstanding balance of the Fine and Costs owed by the Respondent shall become immediately due and payable to the MFDA; and
  - ii. the Respondent shall be suspended from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding 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;
- e) the Respondent shall in the future comply with MFDA Rules 2.1.1; and

f) The Respondent will attend the Settlement Hearing in person.

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 2007, the Respondent has been registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc.<sup>2</sup> (“Sun Life”), a Member of the MFDA.

8. At all material times, the Respondent carried on business in Edmonton, Alberta area.

#### **Pre-Signed Account Forms**

9. At all material times, Sun Life’s policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining, or using pre-signed account forms.

10. Between October 2010 and December 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 11 clients.

11. The pre-signed account forms consisted of Know-Your-Client, pre-authorized chequing, and transfer authorization forms.

12. The Respondent submitted 10 of the pre-signed account forms to Sunlife to process transactions in client accounts.

#### **Altered Account Forms**

13. At all material times, Sun Life’s policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining, or using falsified account forms.

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<sup>2</sup> Between August 1997 and March 2003, the Respondent was registered as a mutual fund salesperson with Mutual Investco Inc., which underwent a name change to Clarica Investco Inc. In June 2005, Clarica Investco Inc. underwent a name change to Sun Life Financial Services (Canada) Inc.

14. In April 2013 and in May 2015, the Respondent altered 2 account forms in respect of 1 client by altering the date and the investment amount on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

### **Sun Life's Investigation**

15. In August 2016, Sun Life identified 13 of the pre-signed forms described above in paragraph 10 during an onsite branch review. Sun Life subsequently commenced a review of all of the client files serviced by the Respondent and identified the remaining pre-signed and altered account forms that are the subject of this Settlement Agreement.

16. On September 15, 2016, Sun Life placed the Respondent under close supervision.

17. On October 14, 2016, as part of its investigation, Sun Life sent audit letters to all of the Respondent's mutual fund clients to determine if they had any unauthorized transactions on their accounts. The clients did not report any concerns.

18. On November 14, 2016, Sun Life issued a warning letter to the Respondent for possessing and using pre-signed and altered account forms, and placed him under continued close supervision for a period of 12 months.

### **Additional Factors**

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

20. There is no evidence of any client harm or that the transactions were unauthorized.

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 full hearing of 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 (“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 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.

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 the 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 copy of any signature shall be effective as an original signature.

**DATED** this 18<sup>th</sup> day of January, 2018.

“Glen Stuart Kirkwood”

\_\_\_\_\_  
Glen Stuart Kirkwood

“LK”

\_\_\_\_\_  
Witness – Signature

LK

\_\_\_\_\_  
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. 201810**



**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: Glen Stuart Kirkwood**

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**ORDER**

(ARISING FROM SETTLEMENT HEARING ON MAY 15, 2018)

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**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 Glen Stuart Kirkwood (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 October 2010 and December 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1; and



- b) in April 2013 and in May 2015, the Respondent altered 2 account forms in respect of 1 client by altering information on the account forms without having the client initial the alterations, 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 pay a fine in the amount of \$7,500 pursuant to section 24.1.1(b) of By-law No. 1;
2. the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
3. the payment by the Respondent of the Fine and Costs shall be made to and received by MFDA Staff in certified funds as follows:
  - i. \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
  - ii. \$2,500 on or before the last business day of the first month following the date of Settlement Agreement;
  - iii. \$2,500 on or before the last business day of the second month following the date of Settlement Agreement;
  - iv. \$2,500 on or before the last business day of the third month following the date of Settlement Agreement;
4. If the Respondent fails to make any of the payments described in paragraph 3:
  - i. any outstanding balance of the Fine and Costs owed by the Respondent shall become immediately due and payable to the MFDA; and
  - ii. the Respondent shall be suspended from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding 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.
5. the Respondent shall in the future comply with MFDA Rules 2.1.1; and

6. 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 615210