



**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: Johanna Almonia Balbiran**

Heard: September 11, 2018 in Calgary, Alberta

Decision: September 11, 2018

Reasons for Decision: October 23, 2018

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC  
Kathleen Jost  
Richard Sydenham

Chair  
Industry Representative  
Industry Representative

Appearances:

Sakeb Nazim	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Maureen Doherty	)	Counsel for the Respondent
	)	
	)	
Johanna Balbiran	)	Respondent, in person
	)	

## **Background**

1. This matter concerns a Settlement Hearing under Section 24.4 of By-Law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The hearing was held on September 11, 2018. The full Settlement Agreement dated May 4, 2018 entered into between the Respondent Johanna Almonia Balbiran ("Balbiran") and MFDA Staff on behalf of MFDA is attached as Appendix "A" to these reasons for decision and its relevant provisions will not be repeated in detail here.
2. The Respondent Balbiran has been registered in Alberta as a mutual fund salesperson (now known as a dealing representative) since September 2012.
3. Under the Settlement Agreement, the Respondent Balbiran has admitted that between March 2013 and May 2016, she altered and used to process transactions, 13 client account forms in respect of 10 clients, by altering information on the client account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

## **Terms of Settlement**

4. Under the terms of the Settlement Agreement, the Respondent agreed to the following penalties:
  - a) Fine of \$8,500; and
  - b) Costs of \$2,500.
5. At the conclusion of the September 11, 2018 hearing, this Hearing Panel accepted the proposed Settlement Agreement with reasons to follow, which are now set out below.

## **Agreed Facts**

6. Since September 2012, 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. (“Sun Life”), a Member of the MFDA.

7. At all material times, the Respondent carried on business in the Calgary, Alberta area.

## **Altered Account Forms**

8. At all material times, Sun Life’s policies and procedures prohibited its Approved Persons, including the Respondent, from altering or correcting any information on a signed document, without the client initialing the document to show the change was approved.

9. Between March 2013 and May 2016, the Respondent altered and used to process transactions, 13 client account forms in relation to 10 clients, by altering information on the client account forms without having the clients initial the alterations.

10. The altered account forms consisted of Pre-Authorized Contribution, Know Your Client, Registered Education Savings Plans and Transfer Authorization forms.

## **Sun Life’s Investigation**

11. In September 2016, Sun Life identified 2 of the altered account forms that are the subject of this Settlement Agreement during an onsite branch review. Sun Life subsequently commenced a review of all the client files serviced by the Respondent, and identified the remaining altered account forms.

12. In December 2016, as part of its investigation, Sun Life sent audit letters to all of the clients whose accounts the Respondent serviced in order to determine whether they had any unauthorized transactions in their accounts. No clients reported any concerns to Sun Life.

13. On December 13, 2016, Sun Life issued a warning letter to the Respondent for possessing and using altered account forms, and placed her under close supervision for a period of 12 months effective December 28, 2016.

### **Additional Factors**

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

15. There is no evidence of any client loss or that the transactions were unauthorized.

16. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

17. 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.

### **Analysis**

18. This Hearing Panel concluded that the allegations admitted by the Respondent had been proven and constitute misconduct in contravention of the By-law and MFDA Rules. It then turned to the question of the appropriateness of the proposed penalty as set out in the Settlement Agreement.

19. This Hearing Panel is aware that its responsibility is to either accept the settlement agreement or reject it, as stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 3, 2008 at para. 37 citing the I.D.A. Ontario District Council in *Milewski (Re)* [1999] IDACD No. 17 at p. 10, Ontario District Council Decision dated July 28, 1999.

20. This Hearing Panel is also mindful of the effectiveness of Settlement Agreements in fulfilling the objective of the regulator as noted in the reasons for decision in *British Columbia Securities Commission v Seifert*, 2007 BCCA 484 at para. 31.

### **Enhanced Penalty**

21. Enforcement Counsel cited an additional consideration for the Hearing Panel to take into account namely, MFDA Bulletin #0661-E, dated October 2, 2015, which reminded Members and Approved Persons that “Signature Falsification” is not permissible under MFDA Rules. This term includes conduct like pre-signed account forms, altered account forms and the falsification of a client signature. In the Bulletin, Staff advised Members and Approved Persons that Staff would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015.

22. Enforcement Counsel cited the following cases in support of acceptance of the Settlement Agreement:

- a) *Holowaty*, MFDA File No. 201680, Hearing Panel of the Central Regional Council, Decision and Reasons dated March 29, 2017
- b) *Malhotra*, MFDA File No. 201718, Hearing Panel of the Central Regional Council, Decision and Reasons dated July 10, 2017
- c) *Nguyen*, MFDA File No. 2016105, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated April 18, 2017
- d) *Pereira*, MFDA File No. 201652, Hearing Panel of the Central Regional Council, Decision and Reasons dated July 27, 2017

23. In *Pereira*, the agreed penalties were a fine of \$7,000 and a costs award of \$2,500. In *Holowaty*, and *Nguyen, supra*, the agreed penalties were a fine of \$7,500 and a costs award of \$2,500. In *Malhotra Re, supra*, the agreed penalties were a fine of \$7,500, a costs award of \$2,500, and a prohibition against acting in the capacity of a branch manager for a period of 3 months.

24. While the above-cited decisions are comparable to the case at hand, Enforcement Counsel submitted that since certain of the conduct occurred post bulletin, i.e., six of the forms in question, the cited cases were distinguishable as regards the amount of the monetary fine. Counsel for both parties agreed that due to the timing of the aforementioned conduct, a higher fine in the amount of \$8500 was appropriate to meet the requirements of specific deterrence to this Respondent and general deterrence to other dealing representatives who may be tempted to engage in similar wrongful conduct.

25. In the case at hand, this Hearing Panel found that the misconduct of the Respondent was very serious. However the mitigating factors included the facts that no clients were harmed as a result of the Respondent's misconduct, there was no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, she had not previously been the subject of MFDA disciplinary proceedings and by entering into the Settlement Agreement, she accepted responsibility for her misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary proceeding.

26. Having regard to the foregoing, this Hearing Panel is satisfied that the Settlement Agreement is in the public interest, is reasonable and proportionate, and will foster public confidence in the integrity of the Canadian capital markets and the industry and, accordingly, approves its terms.

27. This Hearing Panel thanks Counsel for their helpful presentations and their cooperation during the hearing.

**DATED** this 23<sup>rd</sup> day of October, 2018.

"Shelley L. Miller"

Shelley L. Miller, QC  
Chair

“Kathleen Jost”

Kathleen Jost  
Industry Representative

“Richard Sydenham”

Richard Sydenham  
Industry Representative

DM 637184



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**Re: Johanna Almonia Balbiran**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Johanna Almonia Balbiran (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 MFDA:

- a) between March 2013 and May 2016, the Respondent altered and used to process transactions, 13 client account forms in respect of 10 clients, by altering information on the client account forms without having the clients 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 \$8,500 in certified funds upon acceptance of the 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 the Settlement Agreement, pursuant to section 24.2 of 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.

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 September 2012, 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. ("Sun Life"), a Member of the MFDA.

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

## **Altered Account Forms**

9. At all material times, Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent, from altering or correcting any information on a signed document, without the client initialing the document to show the change was approved.

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11. The altered account forms consisted of Pre-Authorized Contribution, Know Your Client, Registered Education Savings Plans and Transfer Authorization forms.

Sun Life's Investigation

12. In September 2016, Sun Life identified 2 of the altered account forms that are the subject of this Settlement Agreement during an onsite branch review. Sun Life subsequently commenced a review of all the client files serviced by the Respondent, and identified the remaining altered account forms.

13. In December 2016, as part of its investigation, Sun Life sent audit letters to all of the clients whose accounts the Respondent serviced in order to determine whether they had any unauthorized transactions in their accounts. No clients reported any concerns to Sun Life.

14. On December 13, 2016, Sun Life issued a warning letter to the Respondent for possessing and using altered account forms, and placed her under close supervision for a period of 12 months effective December 28, 2016.

## **Additional Factors**

15. 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.
16. There is no evidence of any client loss or that the transactions were unauthorized.
17. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
18. 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**

19. 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.
20. 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](http://www.mfda.ca).
21. 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.

22. 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.

23. 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.

24. 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.

25. 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 4<sup>th</sup> day of May, 2018.

“Johanna Almonia Balbiran”  
\_\_\_\_\_  
Johanna Almonia Balbiran

“JB”  
\_\_\_\_\_  
Witness – Signature

JB  
\_\_\_\_\_  
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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**Re: Johanna Almonia Balbiran**

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**ORDER**

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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 Johanna Almonia Balbiran (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 March 2013 and May 2016, altered and used to process transactions, 13 client account forms in respect of 10 clients, by altering information on the client account forms without having the clients 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 \$8,500 in certified funds upon acceptance of the 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 the 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
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]