



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: Phillip Wayne Barker

Heard: April 27, 2017 in Toronto, Ontario

Decision: April 27, 2017

Reasons for Decision: June 7, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.

Chair

Robert C. White

Industry Representative

Joseph Yassi

Industry Representative

Appearances:

Sarah Glickman

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Counsel for the Mutual Fund Dealers
Association of Canada

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Ellen Bessner

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Counsel for the Respondent

)

)

Phillip Wayne Barker

)

Respondent, In Person

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated January 19, 2017 (the “Settlement Agreement”) between the staff of the MFDA and Phillip Wayne Barker (the “Respondent”). A copy of the Settlement Agreement is attached to these reasons as Schedule “1”. The agreed facts are set out in section III of the Settlement Agreement.

Contraventions

2. The Respondent admitted that between November 2012 and July 2015, he obtained, possessed, and used to process transactions, 31 pre-signed account forms in respect of 12 clients, contrary to MFDA Rule 2.1.1.

Agreed penalty

3. The agreed penalties were: i) a fine of \$8,500; and ii) a costs award of \$2,500.

Considerations

4. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on him of the agreed penalty.

Nature of the Misconduct

5. The possession and/or use of pre-signed account forms is a serious breach of MFDA Rule 2.1.1.

Other considerations in determining acceptability of agreed penalty

6. There was no evidence of client loss.

7. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct.

8. The Respondent has not previously been subject to MFDA disciplinary proceedings.

9. On October 12, 2015 the Respondent's Member issued a disciplinary letter to him and placed him under strict supervision for 3 months.

10. The agreed penalty is significant and helps the MFDA to send a message to the respondent and others in the capital markets about the seriousness of the misconduct.

11. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

12. The MFDA penalty guidelines recommend one or more of the following sanctions where a person fails to adhere to the standard of conduct set out in the rules: a minimum fine of \$5,000; writing or re-writing an appropriate industry course; suspension; a permanent prohibition in egregious cases.

13. The guidelines are not mandatory but are intended to assist Hearing Panels, MFDA staff and respondents in considering the appropriate penalties in MFDA disciplinary proceedings. The

fine is higher than the suggested minimum of \$5,000 and reflects the number of pre-signed account forms at issue.

14. The agreed penalty is within the reasonable range of appropriateness with regard to other decisions, submitted to us by staff, made by MFDA Hearing Panels in similar circumstances.

Conclusion

15. We concluded that the agreed penalty was within an acceptable range based on precedents, would serve as a specific and general deterrent, and was fair and reasonable. We considered the costs award to be reasonable in the circumstances. We concluded, therefore, that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 7th day of June, 2017.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Robert C. White”

Robert C. White
Industry Representative

“Joseph Yassi”

Joseph Yassi
Industry Representative

Schedule "1"

Settlement Agreement

File No. 201704



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**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Phillip Wayne Barker

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Phillip Wayne Barker (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 November 2012 and July 2015, the Respondent obtained, possessed and used to processed transactions, 31 pre-signed account forms in respect of 12 clients, 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 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 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.

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 2001, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative). Since 2013, the Respondent has been registered in Alberta. He was also registered in Quebec between August and December 2009.

8. Since 2012, the Respondent has been registered with International Capital Management, a Member of the MFDA (“International Capital”).

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

Pre-Signed Forms

10. Between November 2012 and July 2015, the Respondent obtained, possessed and used to processed transactions, 31 pre-signed account forms in respect of 12 clients, contrary to MFDA Rule 2.1.1.

11. The pre-signed account forms consisted entirely of New Account Application Forms.

International Capital's Investigation

12. In or around May 2015, MFDA Sales Compliance Staff alerted International Capital after it identified pre-signed account forms in the client files serviced by the Respondent during an examination of International Capital. As a result, International Capital commenced its investigation and identified further pre-signed account forms.

13. As part of its investigation, International Capital conducted a review of a selection of the client files serviced by the Respondent and sent letters to the clients serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading. In response to the letters, no clients raised any concerns with International Capital.

14. On or about October 12, 2015, International Capital issued a disciplinary letter to the Respondent and placed him under strict supervision for a period of three months.

Additional Factors

15. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above.

16. There is no evidence of client loss or lack of authorization.

17. The Respondent has not previously been the subject of MFDA 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 on the allegations.

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.

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 facts and contraventions described in this Settlement

Agreement. 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 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 19th day of January, 2017.

“Phillip Wayne Barker”
Phillip Wayne Barker

“CZ”
Witness – Signature

CZ
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. 201704



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**IN THE MATTER OF A SETTLEMENT HEARING
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Re: Phillip Wayne Barker

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 Phillip Wayne Barker (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 between November 2012 and July 2015, the Respondent obtained, possessed and used to processed transactions, 31 pre-signed account forms in respect of 12 clients, 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 pursuant to s. 24.1.1(b) of MFDA By-law No.1 (the “Fine”);
2. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No.1 (“Costs”);
3. The Respondent shall in the future comply with MFDA Rule 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]