



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: Terry Edward Barrett

Heard: August 31, 2017 in Toronto, Ontario

Decision: August 31, 2017

Reasons for Decision: October 20, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.

Guenther W. K. Kleberg

Joseph Yassi

Chair

Industry Representative

Industry Representative

Appearances:

Sarah Glickman

)

Counsel for the Mutual Fund Dealers
Association of Canada

)

)

Ellen Bessner

)

Counsel for the Respondent

)

Terry Edward Barrett

)

Respondent, by teleconference

)

)

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated June 8, 2017 (“Settlement Agreement”) between the staff of the MFDA (“Staff”) and Terry Edward Barrett (“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:

- a) On or around July 25, 2014, he obtained, possessed, and used to process transactions, 1 pre-signed account form in respect of 1 client, contrary to MFDA Rule 2.1.1;
- b) On or about January 24, 2012, he failed to have a client initial alterations to an account form that the client had made after the client had signed the account form, contrary to MFDA Rule 2.1.1; and
- c) Between 2013 and 2014, on two occasions, he failed to accurately respond to the Member’s annual compliance questionnaire by incorrectly affirming that he did not accept or solicit pre-signed account forms or maintain pre-signed account forms in client files, contrary to MFDA Rule 2.1.1.

Agreed penalties

3. The agreed penalties were: i) a fine of \$5,000; 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. Obtaining, possessing and using unsigned account forms, as admitted by the Respondent, is conduct in violation of MFDA Rule 2.1.1.

6. Once a client has signed a form, any changes to it, even those made by the client, whether by strikeout and/or addition, and/or filling in blanks, should be initialed by the client. This may seem like an overly meticulous requirement, but it is meant to guard against, and provide evidence that there has not been, unauthorized changes to a signed document. Having a signed form from a client with insertions made after the Respondent had previously accepted it from the client without the insertions resulted in conduct contrary to MFDA Rule 2.1.1.

7. Failure to correctly report matters required to be reported in a Member's annual questionnaire can be conduct contrary to MFDA Rule 2.1.1.

Other considerations in determining acceptability of agreed penalties

8. No one suffered financial harm or loss as a result of the misconduct in issue and there was no conduct that was unauthorized by the client.

9. On May 21, 2015 and on June 1, 2015, the Member issued a warning letter to the Respondent in respect of the conduct in issue.

10. The Respondent has not previously been the subject of MFDA proceedings.
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 agreed penalties are within the reasonable range of appropriateness with regard to MFDA decisions submitted to us by staff, made by MFDA Hearing Panels in similar circumstances and are in accordance with the MFDA penalty guidelines.

Costs

13. The costs award is reasonable and appropriate.

Conclusion

14. We concluded that the agreed penalties were within an acceptable range based on precedents, would serve as a specific and general deterrent, and were fair and reasonable. We concluded, therefore, that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 20th day of October, 2017.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

“Joseph Yassi”

Joseph Yassi
Industry Representative

Schedule “1”

Settlement Agreement

File No. 201709



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**IN THE MATTER OF A SETTLEMENT HEARING
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Re: Terry Edward Barrett

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Terry Edward Barrett (“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:

- a) on or around July 25, 2014, the Respondent obtained, possessed, and used to process a transaction, 1 pre-signed account form in respect of 1 client, contrary to MFDA Rule 2.1.1;
- b) on or about January 24, 2012, the Respondent failed to have a client initial alterations to an account form that the client had made after the client had signed the account form, contrary to MFDA Rule 2.1.1; and
- c) between 2013 and 2014, on two occasions, the Respondent failed to accurately respond to the Member's annual compliance questionnaire by incorrectly affirming that he did not accept or solicit pre-signed account forms or maintain pre-signed account forms in client files, 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 \$5,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 (the "Fine");
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1 ("Costs");
- c) The Respondent shall pay the Fine and Costs in certified funds as follows:
 - i) \$2,500 (Costs) upon entering into the Settlement Agreement;
 - ii) \$833.33 on the last business day of September, 2017;
 - iii) \$833.33 on the last business day of October, 2017;
 - iv) \$833.33 on the last business day of November, 2017;
 - v) \$833.33 on the last business day of December, 2017;
 - vi) \$833.33 on the last business day of January, 2018; and
 - vii) \$833.33 on the last business day of February, 2018.
- d) If the Respondent fails to make any of the payments described above in paragraph 5(c) then:

- i) any outstanding balance of the Fine and Costs owed by the Respondent shall immediately become due and payable to the MFDA; and
- ii) the Respondent shall immediately 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 section 24.3.13(c) of MFDA By-law No. 1;
- e) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- f) the Respondent will attend by teleconference 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 2009, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA.

8. At all material times, the Respondent conducted business in the Uxbridge, Ontario area.

Pre-Signed Account Forms

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

10. On or around July 25, 2014, the Respondent obtained, possessed, and used to process a transaction, 1 client update form in respect of 1 client. The Respondent inserted the client's banking information into the account form after the client had signed the form.

Failed to Obtain Client Initials

11. On or about January 24, 2012, the Respondent failed to have a client initial alterations to an account form that the client had made after the client had signed the account form.

12. The Respondent states that he received an incomplete signed account form from a client. After the Respondent noticed that information was missing from the form, he returned the form to the client with instructions to complete and return the form, which the client did. The Respondent failed to advise the client to initial by the information added to the account form. The Respondent subsequently submitted the account form for processing to the Member without having the client initial the alterations.

Failed to Accurately Respond to Member Compliance Questionnaires

13. Between 2013 and 2014, on two occasions, the Respondent failed to accurately respond to the Member's annual compliance questionnaire by incorrectly affirming that he did not accept or solicit pre-signed account forms or maintain pre-signed account forms in client files.

Investors Group's Investigation

14. In January 2015 and during the course of the follow-up investigation, Investors Group's compliance department identified the conduct that is the subject of this Settlement Agreement.

15. As part of its investigation, Investors Group reviewed all of the client files serviced by the Respondent.

16. On May 21, 2015 and on June 1, 2015, Investors Group issued warning letters to the Respondent in respect of the conduct that is the subject of this Settlement Agreement.

Additional Factors

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

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

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

20. 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

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 8th day of June, 2017.

“Terry Edward Barrett”

Terry Edward Barrett

“BL”

Witness – Signature

BL

Witness – Print Name

“Shaun Devlin”

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement



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**IN THE MATTER OF A SETTLEMENT HEARING
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Re: Terry Edward Barrett

ORDER

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

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (“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:

- a) on or around July 25, 2014, the Respondent obtained, possessed, and used to process a transaction, 1 pre-signed account form in respect of 1 client, contrary to MFDA Rule 2.1.1;

- b) on or about January 24, 2012, the Respondent failed to have a client initial alterations to an account form that the client had made after the client had signed the account form, contrary to MFDA Rule 2.1.1; and
- c) between 2013 and 2014, on two occasions, the Respondent failed to accurately respond to the Member's annual compliance questionnaire by incorrectly affirming that he did not accept or solicit pre-signed account forms or maintain pre-signed account forms in client files, 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 \$5,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 ("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 pay the Fine and Costs in certified funds as follows:
 - a) \$2,500 (Costs) upon entering into the Settlement Agreement;
 - b) \$833.33 on the last business day of September, 2017;
 - c) \$833.33 on the last business day of October, 2017;
 - d) \$833.33 on the last business day of November, 2017;
 - e) \$833.33 on the last business day of December, 2017;
 - f) \$833.33 on the last business day of January, 2018; and
 - g) \$833.33 on the last business day of February, 2018;
- 4. If the Respondent fails to make any of the payments described above in paragraph 3 then:
 - a) any outstanding balance of the Fine and Costs owed by the Respondent shall immediately become due and payable to the MFDA; and

- b) the Respondent shall immediately 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 section 24.3.13(c) of MFDA By-law No. 1.

5. The Respondent shall in the future comply with MFDA Rule 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 575136 v1