



**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: Jerome Thomas Bates**

Heard: October 25, 2019 in Vancouver, British Columbia

Decision: October 25, 2019

Reasons for Decision: April 6, 2020

**REASONS FOR DECISION**

Hearing Panel of the Pacific Regional Council:

Michael Carroll, QC  
Darlene Barker  
Darryl Gossen

Chair  
Industry Representative  
Industry Representative

Appearances:

Justin Dunphy	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Jerome Thomas Bates	)	Respondent, by teleconference
	)	
	)	

## **Settlement Agreement**

1. The Hearing Panel accepted the settlement agreement dated July 9, 2019 (“Settlement Agreement”) between the staff of the Mutual Fund Dealers Association of Canada (“MFDA”) and Jerome Thomas Bates (“Respondent”). A copy of the Settlement Agreement is attached as Schedule “1” to these Reasons for Decision. The agreed facts are as set out in Schedule III of the Settlement Agreement.

## **Contraventions**

2. The Respondent admitted that:

- a) Between October 2009 and April 2017, he, or his assistant for whom he was responsible, altered and used to process transactions, 27 account forms in respect of 15 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1, and
- b) Between October 2009 and April 2017 he failed to comply with the Member’s policies and procedures by failing to record and maintain evidence of client instructions with respect to alterations made to 27 account forms in respect of 15 client, contrary to MFDA Rules 2.5.1, 1.1.2 and 2.1.1.

## **Agreed Penalties**

3. The Respondent has agreed to pay a fine of \$15,000 and costs of \$2,500.

## **Considerations**

4. Pursuant to s. 24.4.3 of MFDA By-law No. 1, a Hearing Panel must either accept the Settlement Agreement or reject it.

5. In making the determination to accept or reject the Settlement Agreement, Hearing Panels have taken into account a number of factors including:

- a) Whether the acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;

- b) Whether the Settlement Agreement is reasonable and proportionate having regard to the conduct of the Respondent and is within the acceptable range taking into account similar cases;
- c) Whether it will prevent the type of conduct described in the Settlement Agreement from occurring again; and
- d) Whether it will foster confidence in the integrity of the MFDA and the regulatory process itself.

6. In the present case the Respondent's conduct is serious. He or his assistant for whom he was responsible altered and used 27 account forms in respect of 15 clients contrary to MFDA Rule 2.1.1.

7. The MFDA has made clear to Approved Persons since October 31, 2007, in both MFDA staff notices and bulletins that possessing and using altered and pre-signed account forms is contrary to the obligations set out in Rule 2.1.1.

8. The Hearing Panel in *Price (Re)* MFDA File No.200814, Hearing Panel of the Central Regional Council, dated April 18, 2011 at paras 122-124, identified the dangers posed by pre-signed forms as follows:

- a) Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading;
- b) At worst they create a mechanism for an Approved Person to engage in acts of fraud, theft, or other forms of harmful conduct towards a client; and
- c) They subvert the ability of a Member to properly supervise trading activity.

9. The reasoning in *Price (Re)* is equally applicable to the use of altered account forms, with the additional concern that there also exists the possibility that changes are made to the forms with the client's knowledge or consent.

10. In the present case there is an additional factor to consider in assessing the seriousness of the Respondent's conduct. In MFDA Bulletin 0661-E dated October 2, 2015 Members and Approved Persons were reminded that "signature falsification" is not permissible under MFDA Rules. This term includes conduct such as obtaining pre-signed account forms, altering account

forms, and falsifying client signatures. In the Bulletin, Members and Approved Persons were reminded that Staff would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin.

### **Post Bulletin Misconduct**

11. Thirteen altered account forms were obtained after the MFDA issued Bulletin 0661-E. This has been considered by other Hearing Panels to be an aggravating factor.

*Owen (Re)* MFDA File No. 201784, Hearing Panel of the Prairie Regional Council dated December 7, 2017 at para 35

*Lo (Re)* MFDA File No. 201776 , Hearing Panel of the Central Regional Council dated February 7, 2018 at paras 16 and 18

### **Respondent is Responsible for Assistant**

12. MFDA Rule 2.1.1 has a broad application. In several cases Hearing Panels found that the Approved Person was responsible for the actions of their assistant who obtained and used pre-signed or altered account forms.

*Barak (Re)* MFDA File No. 201635, Hearing Panel of the Central Regional Council dated September 9, 2016

*Boucher (Re)* MFDA File No. 201744, Hearing Panel of the Central Regional Council dated December 8, 2017

13. The Respondent was designated as a branch manager from March 1997 until August 2011 when some of the forms were obtained and used. Staff submits and the Hearing Panel agrees that this is an aggravating factor.

### **Failure to Maintain Evidence of Client Instructions**

14. The Respondent also failed to record and maintain evidence of client instructions with respect to the alterations made to the account forms as required by the Member's policies and procedures. Other Hearing Panels have found this to be contrary to MFDA Rules 2.5.1, 1.1.2, and 2.1.1.

*Irwin (Re)* MFDA File No. 200915, Hearing Panel of the Central Regional Council dated April 28, 2010

*Boldt (Re)* MFDA File No. 201649 Hearing Panel of the Central Regional Council dated February 6, 2017 at paras 6 and 7.15

15. A mitigating factor is that no evidence was presented to indicate unauthorized trades or client losses. Furthermore there was no evidence to indicate that the Respondent received a financial or other benefit through his conduct and there were no client complaints.

16. MFDA Counsel referred us to other similar cases and the Panel finds that the agreed penalties fall within the range imposed in such cases.

*Villegas (Re)* MFDA File No. 201872 ,Hearing Panel of the Prairie Regional Council dated March 12, 2019

*Knezevic (Re)* MFDA File No. 2018100, Hearing Panel of the Central Regional Council dated June 11, 2019

*Blake (Re)* MFDA File No. 201873 ,Hearing Panel of the Central Regional Council dated December 7, 2018

*Riewe (Re)* MFDA File No. 201822, Hearing Panel of the Prairie Regional Council dated April 23,2018

17. Based on the foregoing the Panel finds that the Settlement Agreement is in the public interest and we accept it.

**DATED** this 6<sup>th</sup> day of April, 2020.

“Michael Carroll”  
\_\_\_\_\_  
Michael Carroll, QC  
Chair

“Darlene Barker”  
\_\_\_\_\_  
Darlene Barker  
Industry Representative

“Darryl Gossen”  
\_\_\_\_\_  
Darryl Gossen  
Industry Representative



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**Re: Jerome Thomas Bates**

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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, Jerome Thomas Bates (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 Mutual Fund Dealers Association of Canada ("MFDA"):

- a) between October 2009 and April 2017, the Respondent, or his assistant for whom he was responsible, altered and used to process transactions, 27 account forms in respect of 15 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
  - b) between October 2009 and April 2017, the Respondent failed to comply with the Member's policies and procedures by failing to record and maintain evidence of client instructions with respect to alterations made to 27 account forms in respect of 15 clients, contrary to MFDA Rules 2.5.1, 1.1.2, and 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 \$15,000 in certified funds upon acceptance of the settlement Agreement, 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 in certified funds upon acceptance of the settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
  - c) the Respondent shall in the future comply with MFDA Rules 1.1.2, 2.1.1 and 2.5.1; and
  - d) the Respondent will attend in person or via 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. From October 1995 to November 2017, the Respondent was registered as a mutual fund salesperson (now known as a dealing representative) in British Columbia with Investia Financial Services Inc.<sup>1</sup> (the “Member”), a Member of the MFDA.
8. The Respondent was also registered in Alberta at various times until September 2009, and Ontario until November 2017.
9. Between March 1997 and August 2011, the Member designated the Respondent as a Branch Manager.
10. In November 2017, the Respondent resigned from the Member.
11. The Respondent is not currently registered in the securities industry in any capacity.
12. At all material times, the Respondent conducted business in the Chilliwack, British Columbia area.

#### **Altered Account Forms**

13. Since at least February 2012, the Member’s policies and procedures required its approved persons to obtain client initials on any material changes to a client’s trade documents, and to not use liquid correction fluid on account forms.
14. Between October 2009 and April 2017, the Respondent, or his assistant for whom he was responsible, altered 27 account forms in respect of 15 clients by:
  - a) in 25 instances, altering information on the account forms without having the clients initial the alterations; and
  - b) in 2 instances, using liquid correction fluid to alter information on the account forms, without having the clients initial the alterations.

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<sup>1</sup> Commencing October 1995, the Respondent was registered as a mutual fund salesperson with AEGON Dealer Services Canada Inc. (“AEGON”). In September 2008, AEGON amalgamated with Investia Financial Services Inc.

15. The altered account forms consisted of:

- a) 1 account change form;
- b) 4 fund transfer fee disclosure forms;
- c) 1 new account application form;
- d) 12 order instruction forms;
- e) 1 self directed purchase form;
- f) 7 trade tickets; and
- g) 1 withdrawal of assets from a registered plan disclosure form.

16. The alterations to the account forms included alterations to fund codes, investment amounts, redemption fees, and client signature dates.

17. The Respondent, or his assistant, submitted the altered forms to the Member to process transactions in the clients' accounts.

18. The Respondent was a branch manager when he, or his assistant, obtained and used 6 of the altered account forms as described above.

### **Failure to Maintain Evidence of Client Instructions**

19. At all material times, the Member's policies and procedures required its approved persons to maintain a record of all client conversations.

20. The Respondent did not maintain notes of client conversations pertaining to the alterations that he or his assistant made to the account forms described above at paragraph 14.

### **The Member's Investigation**

21. In June 2017, the Member identified the altered account forms that are the subject of this Settlement Agreement as a result of a file review. The Member subsequently commenced an investigation.

22. On or about September 14, 2017, the Member placed the Respondent on close supervision for a period of 90 days.

23. In October 2017, as part of its investigation, the Member sent letters to all of the clients serviced by the Respondent, along with copies of the clients' account transaction histories for the last three years, in order to determine if the Respondent had engaged in unauthorized trading activity. In November 2017, the Member sent separate audit letters to the clients where altered account forms were identified, which included summaries of their KYC information, in order to ensure the KYC information was recorded according to their instructions. No clients reported any concerns in response to either of the Member's letters. The Respondent paid a \$500 administration charge and \$432 mailing charge to Investia with respect to the audit letters.

24. On or about November 8, 2017, the Respondent resigned from the Member.

#### **Additional Factors**

25. 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.

26. There is no evidence of client complaints relating to the Respondent's conduct as described herein.

27. There is no evidence of any client loss.

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

29. 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**

30. 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.

31. 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).

32. 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.

33. 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.

34. 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.

35. 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.

36. 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 9<sup>th</sup> day of July, 2019.

“Jerome Thomas Bates”

\_\_\_\_\_  
Jerome Thomas Bates

“BF”

\_\_\_\_\_  
Witness – Signature

BF

\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”

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Shaun Devlin  
Staff of the MFDA  
Per: Shaun Devlin  
Senior Vice-President,  
Member Regulation – Enforcement

## Schedule "A"

Order

File No. 201948



**Mutual Fund Dealers Association of Canada**  
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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
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**Re: Jerome Thomas Bates**

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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 Jerome Thomas Bates (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 2009 and April 2017, he or his assistant for whom he was responsible, altered and used to process transactions, 27 account forms in respect of 15 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) between October 2009 and April 2017, he failed to comply with the Member's policies and procedures by failing to record and maintain evidence of client

instructions with respect to alterations made to 27 account forms in respect of 15 clients, contrary to MFDA Rules 2.5.1, 1.1.2, and 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 \$15,000 in certified funds upon acceptance of the settlement Agreement, pursuant to s. 24.1.1.(b) of MFDA 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 s. 24.2 of MFDA By-law No. 1;
- 3. The Respondent shall in the future comply with MFDA Rules 1.1.2, 2.1.1 and 2.5.1; 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]