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: Paulita Bihis

Heard: August 21, 2018 in Toronto, Ontario
Decision: August 21, 2018
Reasons for Decision: October 26, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC	Chair
Brigitte J. Geisler	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Lyla Simon	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Jonathan Wansbrough	)	Counsel for the Respondent
Paulita Bihis	)	Respondent, in person

Background

1. The Hearing Panel accepted the settlement agreement dated August 20, 2018 ("Settlement Agreement") between the staff of the MFDA and Paulita Bihis ("Respondent"). A copy of the Settlement Agreement is attached to these Reasons as Schedule "1". The agreed facts are set out in section IV of the Settlement Agreement.

2. The parties were only able to fully execute the Settlement Agreement on August 20, 2018. The MFDA issued a News Release giving notice of this hearing on the same date.

3. The parties asked the panel to abridge, as permitted by the rules, the MFDA procedural requirement of at least 10 days' notice of the hearing and to permit the hearing to proceed on August 21, 2018 as indicated in the News Release.

4. The panel abridged the notice requirement as requested and proceeded with the hearing because, in view of the nature of the contraventions admitted and when they occurred and all the circumstances of this matter, no one would be prejudiced and it would not serve the public interest to delay the hearing.

Contraventions

5. The Respondent admitted that from July 30, 2015 to October 22, 2015, the Respondent, in her capacity as Branch Manager, failed to identify regulatory concerns and take adequate supervisory action in response to information which indicated that an Approved Person for whom she had supervisory oversight, may have engaged in unauthorized discretionary trading in the accounts of a client, contrary to MFDA Rules 1.1.2, 2.5.1, 2.5.5(f), and 2.l.l and section 3 of MFDA Policy No. 3.

Agreed penalties

6. The agreed penalties were: i) a prohibition from acting as a Branch Manager or in any other MFDA related supervisory capacity while in the employ of or associated with any MFDA Member for one year; ii) a fine of $5,000; and ii) a costs award of $5,000.

Considerations

7. 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 the Respondent of the agreed penalty.

Nature of the Misconduct

8. The Respondent failed to identify regulatory concerns and take adequate supervisory action in response to information which indicated that an Approved Person for whom she had supervisory oversight may have engaged in unauthorized discretionary trading, contrary to MFDA rules and policies referred to under **Contraventions.** She missed numerous red flags that indicated the necessity of further inquiry or follow-up on her part. Her failure left her Member in the dark for the three months that the Approved Person had processed two large trades without client MC's signature authorizing the trades.

Other considerations in determining acceptability of agreed penalties

9. The Respondent ceased being designated as a Branch Manager by her Member effective March 1, 2016 as a result of the events in this matter. She continued as a salesperson with her Member until she voluntarily retired on June 22, 2018.

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

11. As a result of the purchases referred to in the Settlement Agreement, client MC experienced financial losses. However, when the client complained to the Member the purchases were eventually reversed and the monies were restored to their original pre-trade values.

12. The misconduct did not benefit the Respondent. The Respondent was disciplined by her Member: she received a letter of reprimand and ceased to be designated as a Branch Manager.

13. We were advised that the financial penalties will have a significant impact on the Respondent.

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

15. The agreed penalties are within the recommendations of the MFDA penalty guidelines and the reasonable range of appropriateness with regard to MFDA decisions submitted to us by staff, made by MFDA Hearing Panels in similar circumstances. They are fair and reasonable and will serve as a specific and general deterrent.

Costs

16. The costs award is reasonable.

Conclusion

17. We concluded that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 26th day of October, 2018.

"Paul M. Moore"

Paul M. Moore, QC
Chair

"Brigitte J. Geisler"

Brigitte J. Geisler
Industry Representative

"Kenneth P. Mann"

Kenneth P. Mann
Industry Representative

DM 641131

Schedule "1"

Settlement Agreement

File No. 201760

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: Paulita Bihis

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to s. 24.4 of MFDA By-law No. 1 ("By-law No. 1"), a hearing panel of the Central Regional Council of the MFDA (the "Hearing Panel") should accept the settlement agreement entered into between Staff of the MFDA ("Staff") and the Respondent, Paulita Bihis ("Settlement Agreement").

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in 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.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule "A".

4. Staff and the Respondent agree that the terms of this 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.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part XI) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. From November 2001 to June 22, 2018, when she voluntarily retired, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with TD Investment Services Inc. ("TDIS" or the "Member"), a Member of the MFDA.

7. From September 22, 2010 to February 29, 2016, the Respondent also acted as a Branch Manager. The Respondent ceased being designated as a Branch Manager by TDIS effective March 1, 2016 as a result of the events herein and was provided the option of being designated as a Branch Manager again following successful completion of the applicable course. The Respondent elected not to pursue the designation at the time.

8. At all material times, the Respondent carried on business from a branch located in Etobicoke, Ontario (the "Branch"). On June 22, 2018, the Branch closed and merged with another branch in Etobicoke.

An Approved Person Under the Respondent's Supervision Processed Two Trades Without Evidence of Client Authorization

9. At all material times, the Respondent was responsible for conducting supervisory activities within the Branch, including monitoring all information that TDIS received regarding potential breaches of applicable requirements on the part of the Member and its Approved Persons that might raise the possibility of risk to TDIS's clients or other investors. This included daily tier-one reviews of all trading activity within the Branch.

10. At all material times, TDIS employed an arrangement whereby trades were submitted electronically by an Approved Person, and original hard copy trade forms remained at the Branch in a centralized file for review.

11. In August 2010, JD became registered as an Approved Person (the "AP") at the Branch. The Respondent was the Branch Manager responsible for supervising the registered activities of the AP.

12. In or about January to February 2015, the AP started servicing the accounts of client MC and his spouse.

13. On July 29, 2015, the AP submitted two purchases totaling approximately $468,423 in client MC's RRSP account ($104,206) and locked-in RRSP account ($364,217) without the signatures of client MC authorizing the trades (the "Purchases").

14. The AP completed the following four trade forms regarding the Purchases:

a) TD Mutual Funds Retirement Savings Plan Account Application form (for the Locked-In RSP)

b) Addendum to Retirement Savings Plan Declaration of Trust for Locked-In Pension Transfers to a Locked-In Registered Retirement Savings Plan;

c) Transaction and Account Maintenance Form (for the $364,217 purchase into the TD Comfort Growth Portfolio); and

d) Transaction and Account Maintenance Form (for the $104,206 purchase into the TD Comfort Growth Portfolio).

The Respondent's Review of the Purchases

15. On July 30, 2015, the Respondent conducted her tier-one review of the previous day's trades using the daily *Branch Manager Supervisory Report* (the "**Report**"). The Respondent viewed the Purchases on the Report, but upon attending at the centralized file, could not locate the originals of the relevant trade forms for the Purchases.

16. On July 30, 2015, the Respondent questioned the AP regarding the missing trade forms that were required for the Purchases. The AP advised the Respondent that client MC had not signed the trade forms, and that the AP would be obtaining the signed trade forms from client MC "soon".

17. In or about August 2015, the Respondent again questioned the AP regarding the missing trade forms for the Purchases. The AP advised the Respondent that the AP would be getting the signed trade forms from client MC "soon".

18. The Respondent failed to take reasonable supervisory actions to address the unsigned trade forms, including:

a) making inquiries of the AP regarding whether he had discussed the trades with client MC and received authorization for the trades from client MC;

b) contacting client MC directly to discuss the client's knowledge of and authorization for the trades; or

c) advising TDIS that the AP had processed trades without client signatures, and seeking to have the trades stopped or reversed.

19. At all material times, TDIS policies and procedures required Branch Managers to immediately report to TDIS head office compliance any "reportable events", whether suspected or confirmed, including unauthorized transactions in client accounts.

20. In September 2015, the AP still had not provided the required signed trade forms for the Purchases to the Respondent.

21. On September 11, 2015, client MC sent an email to the AP, advising that the Purchases had been conducted without client MC's input or authorization. In his email, client MC requested that the AP rectify the situation, including that the trades be reversed and the accounts (which had declined in value) be returned to their full value.

22. On or about September 11, 2015, the AP advised the Respondent that he had received an email from client MC. The AP did not present a copy of the email to the Respondent. When discussing the matter with the Respondent, the AP was visibly upset and advised the Respondent that client MC was asking about the trades. At this time, the Respondent still had not received the required signed trade forms for the Purchases.

23. The Respondent did not make inquiries of the AP regarding the contents of the email from client MC, did not review the email herself, and did not notify TDIS of the Purchases or the fact that client MC had sent an email to the AP regarding the Purchases.

24. On October 22, 2015, client MC telephoned the manager of the Branch directly and advised him of the Purchases. On October 23, 2015, the manager of the Branch met with client MC and arranged to have the Purchases reversed and the accounts restored to their original pre-trade values.

V. MITIGATING FACTORS

25. **No prior history**. The Respondent has no prior history of regulatory misconduct, including breaches of Ontario securities law.

26. **Previously disciplined**. The Respondent was disciplined by TDIS in connection with this matter. The Respondent received a letter of reprimand and ceased to be designated as a Branch Manager.

27. **Full Cooperation**. The Respondent has fully cooperated with Staff's investigation.

28. **No profit.** The Respondent did not profit personally in any way as a result of her actions, including the Purchases.

29. **Retirement**. The Respondent has recently retired from her position with TDIS. Consequently, the financial penalties agreed to by the Respondent are particularly significant.

VI. CONTRAVENTIONS

30. From July 30, 2015 to October 22, 2015, the Respondent, in her capacity as Branch Manager, failed to identify regulatory concerns and take adequate supervisory action in response to information which indicated that an Approved Person for whom she had supervisory oversight, may have engaged in unauthorized discretionary trading in the accounts of a client, contrary to MFDA Rules 1.1.2, 2.5.1, 2.5.5(f), and 2.1.1 and section 3 of MFDA Policy No. 3.

VII. TERMS OF SETTLEMENT

31. The Respondent agrees to the following terms of settlement:

a) the Respondent shall be prohibited from acting as a Branch Manager or acting in any other MFDA related supervisory capacity while in the employ of or associated with any MFDA Member for a period of one year commencing from the date of the final Order herein, pursuant to s. 24.1.1(f) of By-law No. 1;

b) the Respondent shall pay a fine in the amount of $5,000, pursuant to s. 24.1.1(b) of By-law No. 1;

c) the Respondent shall pay costs in the amount of $5,000, pursuant to s. 24.2 of By-law No. 1;

d) the Respondent shall in the future comply with MFDA Rules 1.1.2, 2.5.1, 2.5.5(f), and 2.1.1 and section 3 of MFDA Policy No. 3; and

e) the Respondent shall attend in person on the date scheduled for the MFDA settlement hearing.

VIII. STAFF COMMITMENT

32. If this Settlement Agreement is accepted by the Hearing Panel, 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, subject to the provisions of Part IX below. 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 or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in herein, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

IX. PROCEDURE FOR APPROVAL OF SETTLEMENT

33. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent. MFDA Settlement Hearings are typically held in the absence of the public pursuant to s. 20.5 of 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.

34. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive its her 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.

35. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to 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.

36. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, 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 her.

X. FAILURE TO HONOUR SETTLEMENT AGREEMENT

37. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under s. 24.3 of By-law No. 1 against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

XI. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

38. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made 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 ss. 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

39. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it she will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XII. DISCLOSURE OF AGREEMENT

40. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

41. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XIII. EXECUTION OF SETTLEMENT AGREEMENT

42. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

43. A facsimile copy of any signature shall be effective as an original signature.

DATED this 20th day of August, 2018.

"Paulita Bihis"
Paulita Bihis

"JW"
Witness – Signature

JW
Witness – Print Name

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

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: Paulita Bihis

ORDER

WHEREAS on January 19, 2018, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 ("By-law No. 1") in respect of Paulita Bihis (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 from July 30, 2015 to October 22, 2015, the Respondent, in her capacity as Branch Manager, failed to identify regulatory concerns and take adequate supervisory action in response to information which indicated that an Approved Person for whom she had supervisory oversight, may have engaged in unauthorized discretionary trading in the accounts of a client, contrary to MFDA Rules 1.1.2, 2.5.1, 2.5.5(f), and 2.1.1 and section 3 of MFDA Policy No. 3.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. the Respondent shall be prohibited from acting as a branch manager or acting in any other MFDA related supervisory capacity while in the employ of or associated with any MFDA Member for a period of one year commencing from the date of the final Order herein, pursuant to s. 24.1.1(f) of By-law No. 1;

2. the Respondent shall pay a fine in the amount of $5,000, pursuant to s. 24.1.1(b) of By-law No. 1;

3. the Respondent shall pay costs in the amount of $5,000, pursuant to s. 24.2 of By-law No. 1;

4. the Respondent shall in the future comply with MFDA Rules 1.1.2, 2.5.1, 2.5.5(f), and 2.1.1 and section 3 of MFDA Policy No. 3; and

5. if at any time a non-party to this proceeding, with the exception of the bodies set out in s. 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]