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: Pamela (Pan) Chen

Heard: April 18, 2019 in Vancouver, British Columbia
Decision: April 18, 2019
Reasons for Decision: June 10, 2019

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

The Hon. Thomas R. Braidwood, QC	Chair
Darryl Gossen	Industry Representative
Holly Millar	Industry Representative

Appearances:

Justin Dunphy	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Mark Skorah, QC	)	Counsel for the Respondent
Pamela (Pan) Chen	)	Respondent, in person

1. This hearing was duly constituted by the Mutual Fund Dealers Association of Canada ("MFDA") to consider a settlement agreement dated April 15, 2019 (the "Settlement Agreement), between MFDA and Pamela (Pan) Chen (the "Respondent").

I. CONTRAVENTIONS

2. Pursuant to the terms of the Settlement Agreement, the Respondent admits that:

a) between December 2008 and October 2016, she altered 16 account forms in respect of 14 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 May 2010 and November 2015, she obtained, possessed, and used to process transactions, 4 pre-signed account forms in respect of 3 clients, contrary to MFDA Rule 2.1.1.

II. TERMS OF SETTLEMENT

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

Factors Concerning Acceptance of a Settlement Agreement

4. Pursuant to s. 24.4.3 of MFDA By-law No. 1, a Hearing Panel has two options with respect to a settlement agreement referred to it on the recommendation of MFDA. The Hearing Panel shall either accept the settlement agreement or reject it.

5. The role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in Sterling Mutuals Inc. (Re), citing the I.D.A. Ontario District Council in *Milewski (Re)*:

> "We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness." [Emphasis added.]

Sterling Mutuals Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008.

Milewski (Re), [1999] lDACD No. 17 at p. 10, Ontario District Council Decision dated July 28, 1999.

6. Hearing Panels have also held that settlements worked out by the parties should be respected, as panels do not know what led to the settlement, or what was given up by the parties during the course of the negotiations. The presence of experienced legal counsel during the negotiation of a settlement agreement is likewise a factor to consider.

Fike (Re), MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017.

7. In past cases, MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

a) Whether 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 as set out in the settlement agreement;
c) Whether the settlement agreement addresses the issues of both specific and general deterrence;
d) Whether the settlement agreement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
e) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
f) Whether the settlement agreement will foster confidence in the integrity of the MFDA; and
g) Whether the settlement agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc. (Re), supra, at pp. 8-9.

Appropriateness of the Proposed Penalty

8. The primary goal of securities regulation, whether in the context of a settlement hearing or a contested hearing, is protection of the investor.

> *Pezim v British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557 (SCC).
>
> *Breckenridge (Re)*, MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007.

9. In addition to protection of the investor, the goals of securities regulation include fostering public confidence in the capital markets and the securities industry.

> *Pezim v British Columbia (Superintendent of Brokers)*, supra.

10. Hearing Panels frequently consider the following factors when determining whether a penalty is appropriate:

a) The seriousness of the allegations proved against the Respondent;
b) The Respondent's past conduct, including prior sanctions;
c) The Respondent's experience and level of activity in the capital markets;
d) Whether the Respondent recognizes the seriousness of the improper activity;
e) The harm suffered by investors as a result of the Respondent's activities;
f) The benefits received by the Respondent as a result of the improper activity;
g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
i) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
k) Previous decisions made in similar circumstances.

Breckenridge (Re), supra.

11. It was further submitted by counsel for MFDA that there is an additional consideration for the Hearing Panel to take into account. In MFDA Bulletin #0661-E, dated October 2, 2015, MFDA 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, MFDA advised Members and Approved Persons that MFDA will be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015.

III. AGREED FACTS

Registration History

12. Since August 2008, the Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) in British Columbia with Investia Financial Services Inc. ("Investia"), a Member of the MFDA.

13. From November 2001 to February 2008, the Respondent was registered as a mutual fund salesperson in British Columbia with Sun Life Financial Investment Services (Canada) Inc., a Member of the MFDA.

14. At all material times, the Respondent conducted business in the Surrey, British Columbia area.

Altered Account Forms

15. At all material times, Investia's policies and procedures required its Approved Persons, including the Respondent, to obtain client initials on any material changes to a client's trade documents, and to not use liquid correction fluid or white out on account forms.

16. Between December 2008 and October 2016, the Respondent altered 16 account forms in respect of 14 clients by:

a) in 13 instances, altering information on the account forms without having the clients initial the alterations; and

b) in 3 instances, using liquid correction fluid to alter information on the account forms, without having the clients initial the alterations.

17. The altered account forms consisted of:

a) 1 Know Your Client ("KYC") update form;

b) 2 new account application forms;

c) 1 fund company application form;

d) 11 order instruction forms; and

e) 1 systematic instruction form.

18. The Respondent states that the alterations were made to the account forms in the presence of the clients and prior to the clients signing the forms. The Respondent acknowledges that she was required to obtain client initials with respect to the alterations.

19. The Respondent submitted the altered forms to Investia to process transactions in the clients' accounts.

Pre-Signed Account Forms

20. At all material times, Investia's policies and procedures prohibited its Approved Persons from obtaining, holding, or using pre-signed account forms.

21. Between May 2010 and November 2015, the Respondent obtained, possessed, and used to process transactions, 4 pre-signed account forms in respect of 3 clients.

22. The pre-signed account forms consisted of:

a) 1 leverage account review form; and

b) 3 order instruction forms.

Prior MFDA Disciplinary History

23. On March 11, 2011, a Hearing Panel of the MFDA Pacific Regional Council approved a settlement between MFDA and the Respondent in MFDA File No. 201006, where the Respondent admitted that:

a) between 2006 and 2008, she made discretionary trades in client accounts, contrary to MFDA Rules 2.1.1 and 2.3.2, and the terms of her registration as a mutual fund salesperson; and

b) in July 2007, she attempted to enter into a settlement agreement with a client, without the consent of the Member, contrary to MFDA Policy No. 3 and MFDA Rule 2.1.1.

24. The Hearing Panel approved the settlement, which included a fine of $18,000, costs of $5,000, the completion of an industry course, and a requirement to comply with all MFDA By-laws, Rules, and Policies, and applicable securities legislation in the future.

Investia's Investigation

25. In April 2017, Investia identified the altered and pre-signed account forms that are the subject of this Settlement Agreement during an audit. Investia subsequently commenced an investigation.

Nature of the Misconduct: Pre-Signed Account Forms

26. The Respondent's misconduct is serious: she obtained, possessed, and used to process transactions, 4 pre-signed account forms in respect of 3 clients.

27. MFDA Rule 2.1.1 sets the standard of conduct to be followed by all Approved Persons. The Rule is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. The Rule has been interpreted and applied in a purposive manner in a wide range of circumstances. As stated by the MFDA Hearing Panel in Breckenridge (Re): "The Rule articulates the most fundamental obligations of all registrants in the securities industry."

Breckenridge (Re), supra.

Price (Re), MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011.

28. MFDA Rule 2.1.1 requires that each Member and Approved Person deal fairly, honestly, and in good with faith with clients, observe high standards of ethics and conduct in the transaction of business, and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

29. The MFDA has made clear to Approved Persons since October 31, 2007, in both MFDA MFDA Notices and Bulletins, that possessing and using pre-signed forms is contrary to the obligations of Rule 2.1.1.

Member Staff Notice 0066: Pre-Signed Forms, dated October 31, 2007 (updated March 4, 2013).

MFDA Bulletin #0661-E: Signature Falsification, dated October 2, 2015.

30. Hearing Panels of the MFDA, IIROC, and provincial securities commissions have also confirmed that the possession and use of pre-signed forms is prohibited.

Price (Re), supra.

31. The MFDA Hearing Panel in Price (Re) identified the dangers posed by pre-signed forms which can be summarized 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, pre-signed forms 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) pre-signed forms subvert the ability of a Member to properly supervise trading activity.

Price (Re), supra.

32. The prohibition on the use of pre-signed account forms applies regardless of whether the client was aware, or authorized the use of the pre-signed forms, and whether the forms were actually used by the Approved Person for discretionary trading or other improper purposes.

> *Wellman (Re)*, MFDA File No. 201529, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015.

Nature of the Misconduct: Altered Account Forms

33. The Respondent also altered information on 16 account forms without obtaining client initials authorizing the changes.

34. Hearing Panels have held that altering or falsifying forms is a contravention of the standard of conduct as set out in MFDA Rule 2.1.1.

> *Byce (Re)*, MFDA File No. 201311, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 4, 2013.

35. In the present matter, the Respondent states that all alterations were made to the account forms in the presence of the clients and prior to the clients signing the forms.

The Respondent's Past Conduct

36. As previously mentioned, the Respondent was previously the subject of an MFDA disciplinary proceeding, where she had made discretionary trades and attempted to enter into a settlement agreement with a client without the Member's consent, contrary to MFDA Rules 2.1.1, 2.3.2, and her terms of registration. The Hearing Panel accepted a penalty of an $18,000 fine and $5,000 costs.

37. Both the MFDA Sanction Guidelines and multiple MFDA decisions point to repeat conduct being an aggravating factor.

> MFDA Sanction Guidelines.
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> *Courneya, Mark (Re)*, MFDA File No. 201639, Hearing Panel of the Central Regional Council, Decision and Reasons dated May 23, 2017.

IV. MITIGATING FEATURES

38. The Respondent has been registered as a mutual fund dealing representative since November 2001.

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

40. As mentioned, the alterations were made to the account forms in the presence of the clients and prior to the clients signing the forms.

41. MFDA's investigation did not reveal any evidence of unauthorized trades or client losses. There is no evidence to suggest that the Respondent received a financial or other benefit through her conduct, and there were no client complaints. There is no evidence of discretionary trading.

42. The Hearing Panel has considered the following cases:

Shah (Re), MFDA File No. 201530
Tabalba (Re), MFDA File No. 201724
Georgijev (Re), MFDA File No. 201721; and
Power (Re), MFDA File no. 201798

V. CONCLUSION

43. Having regard to all of the foregoing factors, the Hearing Panel is unanimously of the view that the penalties proposed in the Settlement Agreement are reasonable and proportionate and will tend to deter the Respondent and other Approved Persons from obtaining, maintaining and using pre-signed or altered account forms. We are of the opinion that the Settlement Agreement will advance the public interest and the objective of the MFDA to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

DATED this 10th day of June, 2019.

"Thomas R. Braidwood"
The Hon. Thomas R. Braidwood, QC
Chair

"Darryl Gossen"
Darryl Gossen
Industry Representative

"Holly Millar"
Holly Millar
Industry Representative

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