



**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: Ping-Chung Peter Chiu**

Heard: January 27, 2021 by electronic hearing in Toronto, Ontario

Decision: January 27, 2021

Reasons for Decision: February 5, 2021

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.

Kenneth P. Mann

Timothy Pryor

Chair

Industry Representative

Industry Representative

Appearances:

Brendan Forbes

) Enforcement Counsel for the Mutual Fund  
) Dealers Association of Canada

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Justin Papazian

) Counsel for the Respondent

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Ping-Chung Peter Chiu

) Respondent

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## **Background**

1. This is a Settlement Hearing under section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held by way of a video conference on Wednesday, January 27, 2021. The full Settlement Agreement, dated November 30, 2020, entered into between Staff of the MFDA and Ping-Chung Peter Chiu (“Mr. Chiu” or the “Respondent”) is available on the MFDA website and will not be set out in detail here. Mr. Chiu appeared at the Settlement Hearing and was represented by counsel.

2. At the conclusion of the hearing, the Hearing Panel accepted the proposed Settlement Agreement, with reasons to follow. These are our reasons for the decision.

3. The Respondent was registered in the securities industry in Ontario since 1997. Since June 2006, the Respondent has been registered in Ontario as a dealing representative (formerly known as a mutual fund salesperson) with Desjardins Financial Security Inc. (the “Member”), a member of the MFDA. From June 2006 to August 2017, the Member designated the Respondent as a branch manager. At all material times, the Respondent conducted business in the Toronto, Ontario area.

## **Allegations**

4. Proceedings against the Respondent were commenced by a Notice of Settlement Hearing, dated December 1, 2020. In paragraph 4 of the Settlement Agreement the Respondent admits that

- a) between February 2014 and February 2017, the Respondent, acting in his capacity as branch manager, reviewed and approved the use of 27 altered account forms, contrary to MFDA Rules 2.5.5(f) and 2.1.1; and
- b) between July 2014 and October 2016, the Respondent altered and used to process transactions, 4 account forms in respect of 3 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

## **Altering account forms without obtaining the clients’ initials**

5. It is well known in the industry, as stated in an MFDA Staff Notice (MSN-0066, October 31, 2007 and updated March 4, 2013 and January 26, 2017), that “Members and Approved Persons may only use forms that are executed by the client after information on the form has been properly

completed.” See also MFDA Bulletin #0661-E, dated October 2, 2015. Recent examples are *Re Mandic* MFDA File No. 202031 and *Kawka* MFDA File No. 202033.

6. There are numerous MFDA cases dealing with improperly signing a clients’ name on a form or having pre-signed forms or altering a form.

7. In all these cases, their use adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud, and misappropriation.

8. As the Hearing Panel explained in *Re Price* MFDA File No. 200814 (at paragraphs 122-124), a case dealing with pre-signed forms:

“Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading....At its 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....Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client’s signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.”

9. Although the current matter relates to altering information on an account form, the same principles apply. See *Re Innes* MFDA File No. 202039; *Re Bates* MFDA File No. 201948; *Re Ghose* MFDA File No. 201671; and *Re Gocool* MFDA File No. 201628. Indeed, altering a form is more serious than having pre-signed forms because altered forms can be made without the clients’ knowledge or consent.

### **Branch Manager Responsibilities**

10. The Respondent was a branch manager. This makes the conduct even more serious.

11. MFDA Rule 2.5.5(f) (formerly MFDA Rule 2.5.5(d)) states:

“The branch manager must...supervise the activities of the Member at a branch or sub-branch that are directed towards ensuring compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons; and...supervise the opening of new accounts and trading activity at the branch office.”

12. The Member designated the Respondent as the branch manager responsible for the activities at his branch. In doing so, one of the Respondent's responsibilities was to review account forms for prohibited conduct.

13. In paragraph 12 of the Settlement agreement, the Respondent admits that:

“Between February 2014 and February 2017, two Approved Persons who the Respondent had the responsibility to supervise as branch manager submitted to the Respondent for Approval a total of 27 account forms where information had been altered on the forms without having the client initial the alterations.”

14. In paragraph 13 of the Settlement Agreement, the Respondent admits that he “acting in his capacity as a branch manager, reviewed and approved the use of these forms which he knew or ought to have known were altered account forms.”

### **Terms of Settlement**

15. The Respondent agreed to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$16,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 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 section 24.2 of MFDA By-law No.1;
- c) the Respondent shall be permanently prohibited from acting as a branch manager or in any supervisory capacity for a Member of the MFDA commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rule 2.5.5(f) and 2.1.1; and
- e) the Respondent will attend in person, on the date set for the Settlement Hearing.

### **Acceptance of Settlement Agreement**

16. As stated above, the Hearing Panel accepted the terms of the Settlement Agreement. A Hearing Panel can either accept or reject a Settlement Agreement. It cannot modify it. We found that the proposed penalty was reasonable and proportionate in the circumstances of this case. It provides specific deterrence to the Respondent and general deterrence to others in the industry.

17. The conduct in the present case is serious. The respondent was an experienced Approved Person. The fact that he was a branch manager increases the seriousness of the conduct. Branch managers are required to lead by example and should act as standard bearers of conduct for the industry. See *Re Gocool* MFDA File No. 201628 at para. 10.

18. As set out in paragraph 11 of the Settlement Agreement, the Member's Policies and Procedures required branch managers to "tak[e] note of the activities and actions of its advisors and ensur[e] that they are following all company and regulatory standards in the performance of their role."

19. Moreover, altering a form without the client's initials appears to us to be more serious than using pre-signed forms. Clients who pre-sign forms know that they have done so, but in the case of altering a form or placing a client's signature on a document, the client may not know that the Approved Person has put their signature on a document. The possibility of subsequent improper conduct by the Approved Person increases in such a case.

20. In mitigation, no harm was suffered by the investors in this case and the clients were aware of and authorized the transactions.

21. The Member conducted a review of the Respondent's clients and no other incidents of altered forms came to light.

22. Further, the Respondent did not profit from the transactions except to the extent that he earned a regular commission. And by entering into a Settlement Agreement the Respondent has accepted responsibility for his misconduct and recognizes its seriousness.

23. A fine of \$16,000 (plus costs of \$2,500) is not an insignificant amount. As stated above, it provides specific deterrence to the Respondent and a measure of general deterrence to others in the industry.

24. Moreover, the Respondent is being permanently prohibited from acting as a branch manager or in any supervisory capacity for a Member of the MFDA. This is an added deterrent for branch managers and other supervisors.

25. The penalty imposed is not out of line with the five similar cases cited by counsel. Four of those cases involved branch managers: *Re Bast* MFDA File No. 201956; *Re Blake* MFDA File No. 201873; *Re Lewin* MFDA File No. 201656; and *Re Hogan* MFDA File No. 201567.

26. The penalty here is, in fact, somewhat higher than the cases cited. That is because the Respondent had been disciplined by the MFDA in 2017, whereas there was no disciplinary history in the four cited cases involving branch managers. In the earlier hearing, the Respondent was fined \$12,500 and was suspended from acting in the capacity of a branch manager for 3 months. The Respondent's prior conduct is set out in paragraph 25 of the Settlement Agreement.

27. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal affirmed the British Columbia Supreme Court's statement with respect to a settlement by the British Columbia Securities Commission (*British Columbia Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 31 (B.C.C.A.)):

“Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation.”

28. Hearing Panels should respect settlements worked out by the parties. A Hearing Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations or what interest each party has in agreeing to resolve the matter. It is particularly important to respect a settlement when experienced counsel are involved, as in the present case.

29. As a Hearing Panel stated (*Re Keshet*, September 3, 2014, File No. 201419 at paragraph 7) “It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness.” There are many similar statements by MFDA Hearing Panels.

30. The penalty agreed to in this case falls within “a reasonable range of appropriateness.”

31. For the above reasons we accepted the Settlement Agreement.

**DATED** this 5<sup>th</sup> day of February, 2021.

“Martin L. Friedland”

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Martin L. Friedland, C.C., Q.C.  
Chair

“Kenneth P. Mann”

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Industry Representative

“Timothy Pryor”

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