



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: David James Hong Chow

Heard: April 26, 2018 in Toronto, Ontario

Decision: April 26, 2018

Reasons for Decision: June 8, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth)	Chair
Edward V. Jackson)	Industry Representative
Guenther W. K. Kleberg)	Industry Representative

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Morgan Westgate)	Counsel for the Respondent
)	
David James Hong Chow)	Respondent, in person
)	

Background

1. By Notice of Settlement Hearing dated the January 23, 2018, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened to consider whether, pursuant to s. 24.4 of By-law No. 1 of the MFDA, the Panel should accept a settlement agreement dated January 15, 2018, (“Settlement Agreement”) entered into by the Staff of the MFDA (“Staff”) and the Respondent, assisted by his counsel.

2. The Panel then considered the various provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Panel in determining whether or not to accept or reject the Settlement Agreement. The Panel unanimously accepted the Settlement Agreement and issued an order accordingly. These are the Panels reasons for doing so.

Contraventions

3. In the Settlement Agreement, the Respondent admits that:

- a) between January 2015 and March 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 147 pre-signed account forms in relation to 94 clients, contrary to MFDA Rule 2.1.1.

The Facts

4. In the Settlement Agreement, Staff of the MFDA and the Respondent agreed to the existence of a series of facts, which are set out in Part III of the said Agreement. The Settlement Agreement is attached as Appendix “A” to these Reasons.

5. As set out in paragraphs 7 to 10 of the Settlement Agreement, since 1994, the Respondent has been registered as a mutual fund sales person (now known as a dealing representative). Since January 6, 2015, the Respondent has been registered in Ontario and Alberta as a mutual fund sales

person with FundEX Investments Inc., a Member of the MFDA (“FundEX”). At all material times, the Respondent conducted business in the Thunder Bay, Ontario area.

Discussion

6. The Hearing Panel was aware that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

- a) the facts admitted by the Respondent constitute misconduct in contravention of the By-law, MFDA Rules or policies, or provincial securities legislation; and
- b) the penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances.

7. The Panel accepted that 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 Mutual Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37.

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

8. The Panel was advised that the MFDA has been warning Approved Persons against the use of pre-signed account forms for a number of years.

MFDA Staff Notice #MSN-0035 dated December 10, 2004

MFDA Staff Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017)
MFDA Bulletin #0661-E dated October 2, 2015

9. Hearing Panels have held that obtaining or using pre-signed account forms is a contravention of the standard of conduct under MFDA Rule 2.1.1.

Bansal (Re), MFDA File No. 201664, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated November 23, 2016

Balani (Re), MFDA File No. 201402, Hearing Panel of the Central Regional Council, Decision and Reasons dated January 15, 2015.

10. Additionally, Hearing Panels have found that when an Approved Person processes transactions without client authorizations, he or she violates MFDA Rules 2.3.1 and 2.1.1.

Stolarz (Re), MFDA File No. 201642, Hearing Panel of the Atlantic Regional Council, Decision and Reasons dated November 4, 2016.

Jean (Re), MFDA File No. 2016114, Hearing Panel of the Central Regional Council, Decision and Reasons dated June 15, 2017.

11. The Panel considered in detail the agreed facts set out in the Settlement Agreement, and having done so, concluded that the allegation admitted by the Respondent had been proven and constitutes misconduct in contravention of the By-laws, MFDA Rules or policies, or provincial securities legislation.

12. The Panel then proceeded to consider the appropriateness of the proposed penalty as set out in the Settlement Agreement. In doing so, the Panel considered the submissions of Staff and the Respondent's counsel, the MFDA Penalty Guidelines and the substantial case law to which it was referred.

13. In doing so, the Panel was mindful that the primary goal of securities regulation is the protection of the investor. The Panel was further mindful that in addition to protection of the public,

the goals of securities regulation also include fostering public confidence in the capital markets and the securities industry.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 71.

14. The Panel also accepted the submissions of Staff that the following factors are frequently considered by Hearing Panels 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 activity;
- 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 activity to those who are permitted to participate in the capital markets; and
- k) Previous decisions made in similar circumstances.

Breckenridge, *supra*

15. When applying the above factors, the Panel considered that:

- a) Using pre-signed account forms is a serious breach of MFDA Rule 2.1.1;
Balani (Re), supra
- b) The Respondent had not been the subject of previous MFDA discipline proceedings;
- c) There was no evidence of client loss, nor evidence that the Respondent received any financial benefit from engaging in the misconduct described;
- d) There had been no client complaints with respect to the misconduct;
- e) By entering into the Settlement Agreement, the Respondent had saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations;
- f) At the request of FundEX, the Respondent had completed, by March of 2018, an ethics and conduct course.

Result

16. For all the above reasons, the Panel concluded that the Settlement Agreement was reasonable and proportionate and should be accepted. Accordingly, the following penalties were imposed upon the Respondent:

- a) The Respondent shall pay a fine in the amount of \$17,500 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 pursuant to s. 24.2 of MFDA By-Law No. 1;
- c) The Respondent shall, in the future, comply with MFDA Rule 2.1.1; and
- d) 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, request 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 8th day of June, 2018.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Edward V. Jackson”

Edward V. Jackson
Industry Representative

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

DM 618192



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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: David James Hong Chow

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, David James Hong Chow ("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) between January 2015 and March 2016, the Respondent obtained, possessed and, in some instances, used to process transactions, 147 pre-signed account forms in respect of 94 clients, 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 \$17,500 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 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- d) the Respondent will attend in person, 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 1994, the Respondent has been registered as a mutual fund salesperson (now known as a Dealing Representative).

8. Since January 6, 2015, the Respondent has been registered in Ontario and Alberta as a mutual fund salesperson with FundEX Investments Inc., a Member of the MFDA ("FundEX").

9. At all material times, the Respondent conducted business in the Thunder Bay, Ontario area.

Pre-Signed Account Forms

10. Between January 2015 and March 2016, the Respondent obtained, possessed and, in some instances, used to process transactions, 147 pre-signed account forms in respect of 94 clients.

11. The pre-signed account forms included order entry forms, new account application forms, and Know-Your-Client update forms.

FundEx's Investigation

12. On April 13, 2016, during the course of a branch audit and subsequent follow-up review, FundEX identified the pre-signed account forms that are the subject of this Settlement Agreement.

13. As part of its investigation, FundEX reviewed all client files serviced by the Respondent and sent letters to all clients serviced by the Respondent in order to determine whether the Respondent had engaged in unauthorized trading. No clients reported any concerns to FundEX.

14. On April 26, 2016, FundEX placed the Respondent under close supervision. FundEX directed the Respondent to complete an industry course by October 29, 2016, which to date, the Respondent has yet to complete.

Additional Factors

15. 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.

16. There is no evidence of any client loss or that the transactions were unauthorized.

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

18. 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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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 15th day of January, 2017.

“David James Hong Chow”

David James Hong Chow

“GB”

Witness – Signature

GB

Witness – Print Name

“Shaun Devlin”

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

Schedule “A”

Order

File No. 201815



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Re: David James Hong Chow

ORDER

(ARISING FROM SETTLEMENT HEARING ON APRIL 26, 2018)

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 David James Hong Chow (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 between January 2015 and March 2016, the Respondent obtained, possessed and, in some instances, used to process transactions, 147 pre-signed account forms in respect of 94 clients, 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 \$17,500 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 pursuant to s. 24.2 of MFDA By-law No. 1;
- 3) the Respondent shall in the future comply with MFDA Rule 2.1.1; 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]