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: Mark Patrick Cliche

Heard: March 5, 2015, in Toronto, Ontario
Reasons for Decision: March 17, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Guenther W.K. Kleberg	Industry Representative
Robert C. White	Industry Representative

Appearances:

Charles A. Toth	)	For the Mutual Fund Dealers Association of Canada
	)	
	)	
Keir Turner	)	For the Respondent
	)	
	)	

Decision

1. We, the Hearing Panel, approve the settlement agreement (the "Settlement Agreement") attached hereto as Schedule '1' to these Reasons for Decision as being in the public interest; and, therefore we accept the Settlement Agreement under the Rules of the Mutual Fund Dealers Association of Canada (the "MFDA").

Contraventions

2. Mark Patrick Cliche (the "Respondent") has admitted that between 2001 and July 2013, he obtained and maintained 72 pre-signed and/or altered photocopied account forms for 13 clients and used pre-signed and/or altered photocopied account forms to process transactions in client accounts, thereby:

a) engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1; and
b) failing to comply with the Member's policies and procedures, contrary to MFDA Rules 1.l.2 and 2.5.1 and MFDA Rule 2.1.1.

Penalty

3. In accordance with the Settlement Agreement, the Respondent will pay a fine of $7,500 and $2,500 in respect of MFDA costs.

Factors Concerning the Appropriateness of the Penalty

4. We are satisfied that the penalty agreed to in the Settlement Agreement is appropriate and fair and in the public interest.

5. It does not include a prohibition against the participation in the industry by the Respondent for any period of time.

6. The fine is slightly above the minimum amount suggested in the MFDA Penalty Guidelines.

7. The costs are at a moderate level in view of the fact that this case has been dealt with on the "bulk track" by the MFDA.

8. While any infraction of the MFDA Rules is serious, the conduct in this case was not egregious. There was no evidence that any client was harmed. It appears that the Respondent did not act contrary to his clients' wishes or instructions. Indeed, he may have believed that he was acting for their convenience. There was no suggestion that the Respondent acted for his private gain at the expense of his clients.

9. Taking into account all the circumstances outlined in the Settlement Agreement, including the Respondents prior record, position and conduct, we do not believe that a period of prohibition against the Respondent's participation in the industry is necessary or appropriate in order for us to accept the Settlement Agreement.

10. Our acceptance of the Settlement Agreement with its sanctions is consistent with decisions made by other MFDA hearing panels in similar circumstances.

DATED this 17th day of March, 2015.

"Paul M. Moore"

Paul M. Moore, Q.C.
Chair

"Guenther W.K. Kleberg"

Guenther W.K. Kleberg
Industry Representative

"Robert C. White"

Robert C. White
Industry Representative

IN THE MATTER OF A SETTLEMENT HEARING
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Re: Mark Patrick Cliche

SETTLEMENT AGREEMENT

I. INTRODUCTION

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

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 IX) 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. Since December 19, 1994, the Respondent has been registered in Ontario as a dealing representative (formerly known as a mutual fund salesperson) with PFSL Investments Canada Ltd. ("PFSL"), a Member of the MFDA. Since March 11, 1999, the Respondent has been registered as a branch manager with PFSL.

7. Since June 2004, the Respondent has conducted business in Markham, Ontario.

Background

8. On July 8, 2013, PFSL conducted a scheduled routine branch compliance review of the Respondent's branch office and identified 7 original pre-signed forms in a file folder entitled "Forms" and 52 questionable altered transaction forms that were either partially completed signed forms or photocopies of client signed transaction forms with altered dates and other changes without client initials in the Respondent's client files.

9. By letter, PFSL requested that the Respondent provide an explanation for each client whose file contained a pre-signed or altered form and to indicate the names of all other clients not listed in PFSL's letter for which he obtained and/or used pre-signed forms. The Respondent disclosed that he had also used three altered photocopied redemption forms which had not been previously identified by PFSL. In total, 13 clients were affected.

10. PFSL conducted a further test of its scanned records of previous trades to compare client signatures on redemption, customer service and subsequent contribution forms to determine whether the questionable forms identified were used and/or photocopies of previously submitted forms. PFSL identified 13 questionable redemption forms in its scanned records for four of the 13 affected clients.

11. In total, 72 pre-signed and/or altered forms were identified pertaining to the accounts of the 13 clients.

12. Staff became aware of the Respondent's conduct on or about October 15, 2013, when PFSL reported the findings through the MFDA Member Events Tracking System ("METS") in accordance with MFDA Policy No. 6.

Description of Pre-signed and Altered Forms

13. Below are descriptions of the 72 pre-signed forms and altered forms pertaining to the accounts of the 13 clients.

a) **Pre-signed Forms**

Type of Form	Quantity	Date	Comments
PFSL Redemption Request Form	3	April 2005	Client signature photocopied.
MRS Deregistration/Withdrawal Request	2	No date	Partially completed with client signature.
PFSL Customer Service Request Form	2	October 2009	Client signature only.
Total	**7**		

b) **Altered Forms**

Type of Form	Quantity	Date	Comments
PFSL Investments Redemption Request Form	47	May 2001-June 2013	Client signatures photocopied. Client information, trade details, representative signature and dates were written in ink.
PFSL Customer Service Form	2	May 2004-March 2005	Client signatures photocopied. Client information, trade details, representative signature and dates were written in ink.
Home Buyers' Plan (HBP) Request to Withdraw Funds from an RRSP	3	June 2005	Client signatures photocopied. Client information, trade details, representative signature and dates were written in ink.
Total	**52**		

c) **Questionable Forms in Scanned Records**

The 13 questionable Redemption Request Forms identified from PFSL's scanned records were photocopies of previously submitted forms.

14. On some occasions, the Respondent obtained, maintained and used blank or partially completed pre-signed and/or altered photocopied forms to process transactions in client accounts. In the cases identified, the Respondent, after discussing a trade with the client, would populate a blank or partially completed pre-signed form with the essential elements of the trade and other required information and/or photocopy a previously submitted form and alter the dates and other required information before submitting the trade for processing.

15. During the material time, PFSL's written policies and procedures (the "Policies and Procedures") prohibited its Approved Persons from using pre-signed forms. The Respondent was aware that the Policies and Procedures prohibited the use of pre-signed forms. In May 2008, during a scheduled branch compliance review, PFSL identified two pre-signed forms in two of the Respondent's client files. The Respondent was reminded of PFSL's prohibition from maintaining or using pre-signed forms and was required to develop a system to prevent reoccurrence.

16. Staff is not aware of any client complaints nor did Staff's investigation find any evidence of unauthorized trading relating to the Respondent's use of blank or partially completed pre-signed forms and/or altered photocopied forms.

V. CONTRAVENTIONS

17. The Respondent admits that between 2001 and July 2013, he obtained and maintained 72 pre-signed and/or altered photocopied account forms for 13 clients and used pre-signed and/or altered photocopied account forms to process transactions in client accounts, thereby:

a) engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1; and
b) failing to comply with the Member's policies and procedures, contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

a) the Respondent shall pay a fine of $7,500, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
b) the Respondent shall pay $2,500 in respect of the costs of the investigation and settlement of this matter, pursuant to section 24.2 of MFDA By-law No. 1;

c) the Respondent shall in the future comply with MFDA Rules 2.1.1, 1.1.2 and 2.5.1; and

d) the Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

19. 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 Part V of 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 Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part V, 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.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

20. 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.

21. 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 his 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.

22. 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 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.

23. 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 him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

24. 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 section 24.3 of the By-laws of the MFDA 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.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

25. 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 sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

26. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he 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.

XI. DISCLOSURE OF AGREEMENT

27. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 9th day of October, 2014.

"Richard Mathieu"
Witness – Signature

Richard Mathieu
Witness – Print name

"Mark Patrick Cliche"
Mark Patrick Cliche

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

Schedule "A"

Order

File No. 201428

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: Mark Patrick Cliche

ORDER

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 Mark Patrick Cliche (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 2001 and July 2013, the Respondent obtained and maintained 72 pre-signed and/or altered photocopied account forms for 13 clients and used pre-signed and/or altered photocopied account forms to process transactions in client accounts, thereby:

a) engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1; and

b) failing to comply with the Member's policies and procedures, contrary to MFDA Rules 1.1.2 and 2.5.1 and 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 of $7,500, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

2. The Respondent shall pay $2,500 in respect of the costs of the investigation and settlement of this matter, pursuant to section 24.2 of MFDA By-law No. 1;

3. The Respondent shall in the future comply with MFDA Rules 2.1.1, 1.1.2 and 2.5.1; and;

4. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or 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]

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