



Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

**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: Robert Angus Colvin

Heard: November 1, 2022 by electronic hearing in Winnipeg, Manitoba
Decision: November 1, 2022
Reasons for Decision: June 2, 2023

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh
Birju Shah
Patricia Rigsby

Chair
Industry Representative
Industry Representative

Appearances:

Michael A. M. Mantle)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Rafal Szymanski)	Counsel for Respondent
)	
)	
Robert Angus Colvin)	Respondent
)	
)	

I. INTRODUCTION

1. On August 15, 2022 the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to Sections 20 and 24.1 of MFDA By-law No. 1 in respect of Robert Angus Colvin (the “Respondent”).
2. MFDA Staff (“Staff”) and the Respondent entered into a settlement agreement on August 15, 2022 pursuant to which the Respondent agreed to a proposed settlement of matters for which he could be disciplined under Sections 20 and 24.1 of MFDA By-law No. 1 (the “Settlement Agreement”).
3. A settlement hearing was held by videoconference on November 1, 2022 (the “Hearing”) before a Hearing Panel of the MFDA Prairie Regional Council (the “Panel”). The Respondent attended the Hearing where he was represented by counsel.
4. At the outset of the Hearing, the Panel granted Staff’s motion to move the proceeding *in camera*, pursuant to MFDA *Rules of Procedure* 15.2(2) and Section 20.5 of MFDA By-law No. 1.
5. At the conclusion of the Hearing, after considering the submissions both written and oral, which were made by Staff and counsel for the Respondent, the Panel decided to accept the Settlement Agreement and issued an Order to that affect. These are the Panel’s reasons for that decision.

II. CONTRAVENTIONS

6. In the Settlement Agreement, the Respondent admitted to having committed the following violations of the MFDA’s By-laws, Rules, or Policies:
 - a) Between October 2010 and November 2019, without the Member's prior written consent, the Respondent paid compensation totaling approximately \$1,376 directly to 9 clients for fees or penalties incurred by the clients due to errors by the Respondent, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 1.1.2 (as it relates to Rule 2.5.1), and MFDA Policy No. 3;
 - b) Between December 2014 and September 2019, the Respondent altered and used to process transactions, 30 account forms in respect of 26 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and

- c) Between February 2015 and February 2020, the Respondent obtained, possessed and used to process transactions, 7 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1.

III. TERMS OF SETTLEMENT

7. Staff and the Respondent agreed to the following terms of settlement:
 - a) the Respondent shall pay a fine in the amount of \$25,000 in certified funds, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
 - b) the Respondent shall pay costs in the amount of \$5,000 in certified funds, pursuant to s. 24.2 of MFDA By-law No. 1;
 - c) the Respondent shall successfully complete the Ethics and Professional Conduct Course offered by the IFSE Institute, or a different industry course acceptable to the MFDA, within 12 months of acceptance of the Settlement Agreement, pursuant to s. 24.1.1(f) of MFDA By-Law No. 1;
 - d) the Respondent shall in the future comply with MFDA Rules 2.1.1, 2.1.4, and 1.1.2 (as it relates to Rule 2.5.1), and MFDA Policy No. 3; and
 - e) the Respondent shall attend in person or by teleconference on the date set for the Settlement Hearing.

IV. AGREED FACTS

8. The facts which Staff and the Respondent agreed upon as the basis for the Settlement Agreement are set out at paragraphs 7 through 31 inclusive of that agreement and are reproduced below:

Registration History

7. Since approximately 1996, the Respondent has been registered in the securities industry.
8. Since approximately September 28, 2009, the Respondent has been registered in Manitoba as a dealing representative with Investia Financial Services Inc. (the "Member"), a Member of the MFDA.
9. At all material times, the Respondent conducted business in the Winnipeg, Manitoba area.

Compensation Paid Directly to Clients

10. At all material times, the Member's policies and procedures required that all requests to reimburse clients be made by the Approved Person to the Member, required that all reimbursements paid to clients flow through the books and records of the Member, and prohibited Approved Persons from writing cheques directly to clients.

11. Between approximately October 2010 and November 2019, the Respondent paid compensation totaling approximately \$1,376 directly to clients for fees and penalties incurred as a result of errors for which the Respondent was responsible, including compensation to clients in respect of short term-trading fees, transfer fees, and an over-contribution to a Tax-Free Savings Account (TFSA).

12. The Respondent determined the amount of loss arising from his errors and paid compensation directly to clients. The Respondent paid compensation directly to clients, as follows:

Client	Date	Approx. Amount Paid to Clients
CN	November 8, 2010	\$50
JW	January 5, 2011	\$250
MD	January 21, 2012	\$13
RH	April 7, 2014	\$331
IT and AT	December 24, 2015	\$125
LV	August 14, 2015	\$400
MY and ML	November 26, 2019	\$206
		Total: \$1,376

13. The Respondent did not disclose to the Member his errors or that he paid compensation directly to the clients as described above.

14. None of the payments of compensation to the clients flowed through the books and records of the Member.

15. No clients complained to the Member in respect of the errors or the compensation paid by the Respondent to the clients.

16. By paying clients without the knowledge of the Member, the Respondent prevented the Member from supervising his conduct.

17. On September 23, 2021, the Member issued a warning letter to the Respondent addressing the Respondent paying compensation to clients without its prior knowledge and authorization.

Altered Account Forms

18. Between approximately December 2014 and September 2019, the Respondent altered and used to process transactions, 30 account forms in respect of 26 clients by altering information on the account forms without having the clients initial the alterations.

19. The account forms consisted of:
- a. 20 Order Instruction Forms;
 - b. 6 Systematic Instruction Forms;
 - c. 2 Know Your Client ("KYC") Update Forms;
 - d. 1 Automatic Rebalancing Service Form; and
 - e. 1 Advisory Service Fee Agreement Form.

20. The alterations the Respondent made to the account forms included alterations to income, special instructions, transaction instructions, dollar amount, account type, transaction type, account number, fund code, fund number, fund description, fund name, client number, plan type, and dates.

Pre-Signed Account Forms

21. At all material times, the Member's policies and procedures prohibited the possession or use of pre-signed forms in client files.

22. Between approximately February 2015 and February 2020, the Respondent obtained, possessed and used to process transactions, 7 pre-signed account forms in respect of 8 clients.

23. The account forms consisted of:
- a. 2 Applications for TFSA;
 - b. 1 Nominee New Client Application Form (TFSA);

- c. 1 New Client Application Form;
- d. 1 New Account Application Form;
- e. 1 KYC Update Form; and
- f. 1 Self-Directed (Nominee) New Client Application Form (TFSA).

24. On June 19, 2020, the Member commenced a full review of the Respondent's client files during which time it discovered some of the altered account forms and pre-signed forms.

25. On July 24, 2020, the Member issued a disciplinary letter to the Respondent which imposed a period of strict supervision. Effective November 13, 2020, the Respondent was removed from strict supervision. No concerns were raised or identified during the period when the Respondent was subject to strict supervision.

26. Commencing on October 9, 2020, the Member sent letters to all clients whose accounts the Respondent serviced along with a three year transaction history to determine whether the trading activity in each client account was authorized and that the KYC information that the Member had on file for each client was accurate. No clients reported any concerns to the Member in response to the letters from the Member.

27. On November 13, 2020, the Member issued a warning letter to the Respondent in respect of the forms misconduct described above.

Additional Factors

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

29. No clients have complained to the Member or the MFDA in respect of the conduct of the Respondent described herein.

30. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a contested hearing of the allegations.

31. The Respondent states that he altered the account forms and obtained and used the pre-signed account forms described in the settlement agreement for the purpose of client convenience, but he acknowledges that this is not an acceptable justification for such conduct.

V. ANALYSIS

Role of the Panel

9. The role a Hearing Panel performs at a settlement hearing is fundamentally different from the role it performs at a contested hearing.

10. When considering a settlement agreement, a Hearing Panel has only two options: either to accept or reject the settlement agreement.

MFDA By-law No. 1, s. 24.4.3

11. As stated by the Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

...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." (In *re Milewski*, [1999] I.D.A.C.D. No. 17)

12. Hearing Panels have acknowledged that one of the reasons that settlement agreements which have been worked out by the parties should be respected, is because Panels do not know what led to the settlement, or what was given up by the parties during the course of their negotiations.

Fike (Re), MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017, at paras. 22 and 23

13. The rationale for respecting settlements of the nature found in the Settlement Agreement in this case, was further articulated by the British Columbia Court of Appeal:

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. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore to be resolved by way of a hearing.

British Columbia (Securities Commission) v. Seifert, 2007 BCCA 484, para. 31

14. Although the *Seifert* decision dealt with an agreement that was before the British Columbia Securities Commission, the case has been frequently cited by Hearing Panels in MFDA settlement hearings.

Factors Concerning Acceptance of a Settlement Agreement

15. MFDA Hearing Panels have taken into account the following considerations when determining whether to accept a proposed settlement:

- 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 proposed settlement 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.

Jacobson (Re), 2007 LNCMFDA 27, at para. 68

Appropriateness of the Proposed Penalty

16. In determining the appropriateness of a proposed penalty, Hearing Panels frequently cite the decision in *Breckenridge (Re)*, where the Panel stated that sanctions "... should be preventative, protective and prospective in nature ..." taking into account the following considerations:

- a) the protection of the investing public;
- b) the integrity of the securities markets;
- c) specific and general deterrence;
- d) the protection of the MFDA's membership; and
- e) protection of the integrity of the MFDA's enforcement processes.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, 2007 LNCMFDA 38, at paras. 75 & 76

17. The Panel in *Breckenridge (Re)* set out the following additional factors which a Hearing Panel should consider, having regard to the specific circumstances of the case:

- a) the seriousness of the allegations proved against the respondent;
- b) the respondent's experience in the capital markets;
- c) the level of the respondent's activity in the capital markets;
- d) the harm suffered by investors as a result of the respondent's activities;
- e) the benefits received by the respondent as a result of the improper activity;
- f) the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
- g) the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;

- h) 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;
- i) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- j) previous decisions made in similar circumstances.

Breckenridge (Re), supra, at para. 77

18. When deciding whether a proposed penalty is appropriate, a Hearing Panel must keep in mind that the primary goal of all securities regulation is investor protection.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557, at para. 68

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

Pezim v. British Columbia (Superintendent of Brokers), supra, at paras. 59 & 68

MFDA Sanction Guidelines

20. On November 15, 2018, the MFDA issued Sanction Guidelines (the “Guidelines”) to assist Staff and Respondents in conducting disciplinary proceedings and negotiating settlement agreements and to assist Hearing Panels in determining the fair and efficient disposition of settled and contested disciplinary proceedings.

21. The Guidelines, as their name suggests, are not mandatory. They state, under the heading “Purpose of the Sanction Guidelines”:

... The determination of the appropriate sanction in any given case is discretionary and a fact specific process. The appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. The Sanction Guidelines are intended to provide a summary of the key factors upon which discretion may be exercised consistently and fairly in like circumstances, but are not binding on Hearing Panels. The list of key factors in the Sanction Guidelines is not exhaustive, and Hearing Panels may consider other aggravating and mitigating factors as appropriate.

Hearing Panels should always exercise judgement and discretion, and consider appropriate aggravating and mitigating factors in determining appropriate sanctions in every case. In addition, Hearing Panels should identify the basis for the sanctions imposed in the Reasons for Decision.

MFDA Sanction Guidelines, p. 1

Application of the Factors Listed Above in the Present Case

Nature of the Misconduct

22. The Panel finds that the misconduct to which the Respondent has admitted, having regard to all 3 allegations listed in the Settlement Agreement is conduct which amounts to a serious breach of MFDA Rules 2.1.1, 2.1.4 and 1.1.2 (as it relates to Rule 2.5.1), and MFDA Policy No. 3.

Allegation #1 - Compensation Paid Directly to Clients

23. Between October 2010 and November 2019, without the Member's prior written consent, the Respondent paid compensation totaling approximately \$1,376.00 directly to 9 clients for fees or penalties incurred by the clients due to errors made by the Respondent.

24. MFDA Hearing Panels have consistently held that directly reimbursing a client without the prior approval of a Member is conduct which violates MFDA Rules 1.1.2, 2.5.1, 2.1.4, 2.1.1 and MFDA Policy No. 3.

See for example: *Coltart (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201821, Panel Decision dated February 7, 2019 at para. 12

Standard of Conduct – Rule 2.1.1

25. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to all registrants in the mutual fund industry. It requires that each Member and Approved Person: deal fairly, honestly, and in good 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.

MFDA Rule 2.1.1(a)-(c)

26. The Rule has been interpreted and applied in a purposeful manner in a wide range of circumstances. As stated by the Hearing Panel in *Breckenridge (Re)*:

The Rule articulates the most fundamental obligations of all registrants in the securities industry.

Breckenridge (Re), *supra*, at para. 71

Member Responsibilities – Rules 1.1.2 and 2.5.1

27. Rule 2.5.1 requires Members to establish policies and procedures. Rule 1.1.2 places a corresponding obligation on Approved Persons to comply with such policies and procedures. As the Hearing Panel in *Franco (Re)* stated:

The obligation of the Approved Persons to comply with the policies and procedures of the Member that they are registered with is a cornerstone of the self-regulatory system... When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined.

Franco (Re), [2011] Hearing Panel of the Prairie Regional Council, MFDA File No. 201016, Panel Decision dated May 6, 2011 at para. 38

28. At all material times, the Member's policies and procedures required that all requests to reimburse clients be made by the Approved Person to the Member, all reimbursements paid to clients flow through the books and records of the Member, and prohibited Approved Persons from writing cheques directly to clients.

Settlement Agreement, para. 10

MFDA Policy No. 3 - Complaint Handling, Supervisory Investigations and Internal Discipline

29. MFDA Policy No. 3 prescribes that:

No Approved Person shall, without the prior written consent of the Member, enter into any settlement agreement with, pay any compensation to or make any restitution to a client.

MFDA Policy No. 3

30. By way of clarification to the industry, in the Notice Staff published on October 3, 2005, the MFDA advised as follows:

All monetary and non-monetary benefits provided directly or indirectly to or from clients must flow through the Member. The Member must be notified of any such arrangements, so that the Member is in a position to determine the significance of the benefit and to monitor the activity. With respect to the resolution of complaints, in accordance with MFDA Policy 3, no Approved Person may enter into any settlement agreement with a client without the prior written consent of the Member.

MFDA Staff Notice – MSN-0047 October 3, 2005 at p. 3

31. Approved Persons who compensate clients without the Member's knowledge may be concealing misconduct from the Member, evading disciplinary and regulatory action or offering

an amount of compensation that is objectively unreasonable having regard to the consequences of the conduct.

32. When an Approved Person offers compensation to a client to address losses arising from their errors, negligence or regulatory misconduct without informing the Member, they deprive the Member of the opportunity to ensure that all applicable regulatory requirements are complied with including: the reporting obligations set out in MFDA Policy No. 3; the obligation to handle complaints promptly and fairly; and any supervisory obligations of the Member that may be applicable.

Conflict of Interest – Rule 2.1.4

33. MFDA Rule 2.1.4 prescribes the conflict of interest rule applicable to registrants in the mutual fund industry. The rule requires that Approved Persons be aware of actual and potential conflicts of interest and where such a conflict arises, inform the Member and together ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interest of the client.

MFDA Rule 2.1.4

34. The payment of compensation or other complaint handling conduct which is undertaken without the knowledge and written authorization of the Member gives rise to an actual or potential conflict of interest between the Approved Person and the client because of the potential for an Approved Person to put their own interest ahead of the client's. This can happen, for example, by not fully informing the client of the extent of the harm which they may have suffered as the result of the Approved Person's misconduct.

35. By virtue of his failure to inform the Member about the conflict which arose in this case, the Respondent failed to comply with the requirements of Rule 2.1.4.

36. The Panel acknowledges that in this case there was no suggestion that the Respondent failed to fully compensate the clients or caused them any financial harm. Nonetheless, the nature of the Respondent's conduct in compensating clients without involving the Member cannot be condoned and amounts to misconduct.

37. The Panel also notes that while we consider the Respondent's misconduct to be serious, in accepting the Settlement Agreement we acknowledge that the quantum of compensation involved in this matter was relatively small.

Allegations #2 & #3 - Altered Account Forms and Pre-Signed Forms are not Permissible

38. The Respondent processed transactions using 30 account forms in respect of 26 clients after altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1 and he obtained, possessed and in some instances used to process transactions, 7 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1.

Altered Account Forms

39. The use of altered account forms is serious misconduct.

40. When an Approved Person alters information on an account form without having the client initial the form to show that they are aware of the change and have authorized it, the Approved Person engages in conduct that is contrary to MFDA Rule 2.1.1.

Perron (Re), [2021] Hearing Panel of the Atlantic Regional Council, MFDA File No. 202041, Panel Decision dated May 20, 2021 at para. 15

Warr (Re), [2020] Hearing Panel of the Atlantic Regional Council, MFDA File No. 202037, Panel Decision dated September 25, 2020 at para. 13

Lok (Re), [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202011, Panel Decision dated May 11, 2020 at para. 9

Wong (Re), [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201848, Panel Decision dated July 23, 2018 at para. 5

Pre-Signed Forms

41. "Pre-Signed Forms" is a generic term that applies to a variety of situations in which an Approved Person obtains a client's signature on a document before all of the material information on the document has been completed.

42. MFDA Hearing Panels have consistently held that obtaining, possessing, or using pre-signed forms is a contravention of the standard of conduct prescribed under MFDA Rule 2.1.1.

Perron (Re), *supra* at para. 10, 26

Lok (Re), *supra* at para. 9

Warr (Re), *supra* at para. 13

Lewis (Re), [2018] Hearing Panel of the Prairie Regional Council, MFDA File No. 2017121, Panel Decision dated March 26, 2018 at paras. 21-27

43. The Hearing Panel in *Price (Re)* gave a description of the dangers posed by using pre-signed forms which can be summarized as follows:

- a) They present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading;
- b) At its worst they create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct toward a client; and
- c) They subvert the ability of a Member to properly supervise trading activity.

Price (Re), [2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) dated April 18, 2011, at paras. 122-124

44. With respect to this last point, the Panel in *Price (Re)* pointed out that the reason that pre-signed forms interfere with the Member's ability to properly supervise trading activity is because they destroy the audit trail. The Panel in that decision noted:

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.

Price (Re), *supra* at para. 124

45. Obtaining or using pre-signed forms has been held to be a contravention of MFDA Rule 2.1.1 because it amounts to engaging in business conduct or practice which is unbecoming or detrimental to the public interest and therefore constitutes serious misconduct.

46. Similar to altering account forms without obtaining client initials, using pre-signed forms 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.

47. As the Hearing Panel in *Wong (Re)* stated:

The reason for the stringency associated with the rules regarding pre-signed and altered forms is clear. Approved persons may not engage in discretionary trading. Moreover, the preparation and preservation of an audit trail is essential in the securities and mutual fund industries. An approved person must be able to support the claim that trades or transactions were based on client instructions.

Wong (Re), *supra*, at paras. 27

48. The MFDA has consistently warned Approved Persons about the type of misconduct that is the subject of these proceedings. See: MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017) and MFDA Bulletin #0661-E dated October 2, 2015.

49. As these Notices identify, the use of altered and pre-signed forms 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 to facilitate misuse of the form by enabling a person with access to the form to engage in unauthorized trading, fraud or misappropriation.

50. In MFDA Bulletin #0661-E, Staff reminded Members and Approved Persons that “Signature Falsification” is not permissible under MFDA Rules and that this term includes conduct which involves: altered account forms, pre-signed account forms and the falsification of a client signature. Staff also advised Members and Approved Persons that Staff would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015.

51. For all of the above reasons, therefore, the Panel finds that the Respondent engaged in misconduct that must be regarded as serious.

Post-Bulletin Misconduct

52. The Respondent’s misconduct is further aggravated by the fact that a significant number of the account forms were obtained after the MFDA issued MFDA Bulletin #0661-E on October 2, 2015.

Lo (Re), [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201776, Panel Decision dated February 7, 2018 at paras. 16 & 18

Ackerman (Re), [2017] Hearing Panel of the Prairie Regional Council, MFDA File No. 201734, Panel Decision dated September 13, 2017 at para. 29

Lewis (re), *supra* at para. 33

Deterrence

53. Both the Supreme Court of Canada and MFDA Hearing Panels have held that deterrence is a factor to be taken into account when determining the appropriateness of a penalty.

54. The effect of general deterrence should advance the goal of protecting investors. A penalty should be sufficient so as to affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry. As the Supreme Court of Canada stated:

A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction ... The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged ...

Cartaway Resources Corp. (Re), *supra*, at para. 61

55. The Panel is concerned about the fact that misconduct involving signature falsification continues to occur and trusts that Approved Persons will read and learn from decisions such as this one.

56. MFDA Hearing Panels have increasingly emphasized the need to impose penalties which will dissuade Approved Persons from engaging in the type of misconduct which is the subject of these proceedings.

Showalter (Re), [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201906, Panel Decision dated June 3, 2019

Myers (Re), [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202145 Panel Decision dated January 10, 2022 at para. 29

Armstrong (Re), [2021] Hearing Panel of the Pacific Regional Council, MFDA File No. 202161, Panel Decision dated November 30, 2021 at para. 8

Ramjohn (Re), [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202067, Panel Decision dated October 22, 2021 at para. 1

Gilchrist (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 2016100, Panel Decision dated May 29, 2017 at para. 16

57. We agree with Staff's submission that the proposed penalty is necessary in order to communicate to other Approved Persons that the misconduct engaged in by the Respondent in this matter has no place in the mutual fund industry.

58. We find that the penalty which is proposed in the Settlement Agreement is sufficient to demonstrate that the Respondent's misconduct in all of the circumstances is serious and carries significant consequences.

59. The proposed penalty will therefore deter both the Respondent and others in the mutual fund industry from engaging in similar activity to that described in the Settlement Agreement.

Client Complaints

60. No clients complained either to the Member or the MFDA about the Respondent's conduct.

Respondent's Past Conduct Including Prior Sanctions

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

Respondent's Recognition of the Misconduct

62. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and has saved the MFDA the time, resources and expenses associated with a full disciplinary hearing.

Previous Decisions Made in Similar Circumstances

63. Staff spent considerable time at the Hearing reviewing the decisions referenced in the Chart below, to assist the Panel in determining whether the proposed penalty fell within a reasonable range of appropriateness having regard to the circumstances of this case. Based on Staff's submissions, the Panel is of the view that the proposed penalty does fall within a reasonable range of appropriateness.

Allegation # 1: Paying Compensation to clients

Case:	Contraventions:	Penalty:	Other Factors:
<p>Showalter (Re), [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201906, Panel Decision dated June 3, 2019</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Received a complaint from client NB verbally and in writing that he failed to report to the Member. Without the prior written authorization of the Member, the Respondent paid compensation to client NB to resolve her complaint. Engaged in discretionary trading by processing three trades in the investment accounts of client NB, without first obtaining instructions from the client with respect to all elements of the trades. 	<p>Settlement</p> <ul style="list-style-type: none"> \$18,000 fine. \$5,000 costs. 	<ul style="list-style-type: none"> The Respondent had been an Approved Person since 1991. Client losses incurred was \$262.19 from a DSC fee. The Respondent paid \$250 (cash) in compensation to the client stemming from a DSC fee.
<p>Savoy (Re), [2017] Hearing Panel of the Atlantic Regional Council, MFDA File No. 2016108, Panel Decision dated November 20, 2017</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Agreed to personally reimburse a client the deferred sales charge fees and then reneged on the agreement. Obtained and possessed 10 pre-signed client account forms in respect of seven 7 clients. Accepted cash deposits from six 6 clients on 11 occasions, and used the cash deposits to purchase bank drafts to invest in mutual funds. Delayed the processing of 20 transactions in the accounts of 10 clients. Compensated six clients for fees incurred by the client as a result of investment losses due to errors or trade delays. Continued in a dual occupation by providing tax preparation services to 14 clients, which was not disclosed. Made misleading statements during the Member's investigation into his conduct. <p>He misled the Member in annual compliance questionnaires when he falsely represented to the Member.</p>	<p>Settlement</p> <ul style="list-style-type: none"> \$25,000 fine. \$2,500 costs. 6 month suspension. 5 year prohibition from being a Branch Manager. <p>Successfully complete an ethics or other industry course.</p>	<ul style="list-style-type: none"> The Respondent was a Branch Manager. The Respondent's actions surrounding the rebalancing of investments resulted in approximately \$20,000 in client losses.

<p>Chen (Re), [2011] Hearing Panel of the Pacific Regional Council, MFDA File No. 201006, Panel Decision dated April 18, 2011</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Made approximately 27 discretionary trades in client accounts, contrary to MFDA Rules 2.1.1 and 2.3, and the terms of her registration as a mutual fund salesperson; and Attempted to enter into a settlement agreement (of \$1,400) with a client, without the consent of the Member. 	<p>Settlement</p> <ul style="list-style-type: none"> \$18,000 fine. \$5,000 costs. Completion of Investment Funds Course. 	<ul style="list-style-type: none"> As a result of the events, the British Columbia Securities Commission would not approve the Respondent's re-registration as a mutual funds salesperson for a six month period following her termination by Sun Life in February 2008.
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Allegations # 2 and #3: Pre-Signed and Altered Forms

Case:	Contraventions:	Penalty:	Other Factors:
<p>Liu (Re), [2022] Hearing Panel of the Prairie Regional Council, MFDA File No. 202218 [Decision Not Yet Released]</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Obtained and possessed 14 pre-signed account forms in respect of 8 clients. Altered and used to process transactions 27 account forms in respect of 20 clients by altering information on the account forms. 	<p>Settlement</p> <ul style="list-style-type: none"> \$20,000 fine. \$5,000 costs. 	<ul style="list-style-type: none"> The Respondent was placed on heightened supervision for a period of six months. The Respondent completed an industry course required by the Member. Conduct occurred post-warning bulletin issued by the MFDA.
<p>Kachur (Re), [2022] Hearing Panel of the Prairie Regional Council, MFDA File No. 202201, Panel Decision dated July 6, 2022</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Altered and used to process transactions, 29 account forms in respect of 18 clients by altering information on the account forms without having the clients initial the alterations. 	<p>Settlement</p> <ul style="list-style-type: none"> \$18,000 fine. \$5,000 costs. 	<ul style="list-style-type: none"> The Member issued a warning letter to the Respondent, placed him under close supervision for a period of 90 days, and imposed a fine of \$3,250 for his use of altered forms. Conduct occurred post-warning bulletin issued by the MFDA.
<p>Rolland (Re), [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202174, Panel Decision dated January 16, 2022</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Altered, and used to process transactions, 39 account forms in respect of 25 clients by altering information on the account forms. Obtained, possessed, and in some instances, used to process transactions, 8 pre-signed account forms in respect of 5 clients. 	<p>Settlement</p> <ul style="list-style-type: none"> \$12,000 fine. \$2,500 costs. 	<ul style="list-style-type: none"> Commencing October 1, 2019, the Member placed the Respondent on close supervision for a period of 90 days. The Member deducted \$15,000 from the Respondent's commissions for the cost of carrying out the

			strict supervision and issuing the client letters. <ul style="list-style-type: none"> • Conduct occurred post-warning bulletin issued by the MFDA.
<i>Kliever (Re)</i> , [2021] Hearing Panel of the Prairie Regional Council, MFDA File No. 202139 [Decision Not Yet Released]	The Respondent: <ul style="list-style-type: none"> • Obtained, possessed, and in some instances used to process transactions, 7 pre-signed account forms in respect of 5 clients. • Altered and used to process transactions, 26 account forms in respect of 22 clients, by altering information on the account forms. 	Settlement <ul style="list-style-type: none"> • \$14,500 fine. • \$2,500 costs. 	<ul style="list-style-type: none"> • The Member placed the Respondent on strict supervision. • The Respondent paid a total of \$992 to the Member consisting of an administration fee and a fee in respect of the letters sent to clients. • Conduct occurred post-warning bulletin issued by the MFDA.

VI. CONCLUSION

64. Having reviewed the Settlement Agreement and having considered the submissions from both Staff and counsel for the Respondent, the Panel is satisfied that the penalty proposed in the Settlement Agreement is reasonable and proportionate having regard to the Respondent's conduct in all of the circumstances of the case.

65. This penalty will deter the Respondent and other Approved Persons from engaging in the type of misconduct that is the subject of these proceedings and will advance both the public interest and the MFDA's objectives to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

66. For all of the above reasons, therefore, the Panel accepts the Settlement Agreement.

DATED this 2nd day of June, 2023.

“Sherri Walsh”

Sherri Walsh
Chair

“Birju Shah”

Birju Shah
Industry Representative

“Patricia Rigsby”

Patricia Rigsby
Industry Representative

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