



**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: Cristina Cruz**

Heard: January 21, 2019 in Edmonton, Alberta

Decision: January 21, 2019

Reasons for Decision: March 7, 2019

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC

Howard Mix

Greg Wiebe

Chair

Industry Representative

Industry Representative

Appearances:

Sakeb Nazim

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Enforcement Counsel for the Mutual Fund

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Dealers Association of Canada

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Maureen Doherty

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Counsel for the Respondent, by teleconference

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Cristina Cruz

)

Respondent, in person

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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 on January 21, 2019. The Respondent appeared in person. The full Settlement Agreement dated December 4, 2018 entered into between the Respondent Cristina Cruz ("Cruz") and MFDA signed by its Staff is attached as Appendix "A" to these reasons and its relevant provisions will not be repeated in detail here.
2. The Respondent was registered as a mutual fund dealing representative since February 2009.
3. This Hearing Panel accepted the proposed Settlement Agreement at the conclusion of the January 21, 2019 hearing, with reasons to follow, which are set out below.

## **Contraventions**

4. The Respondent has admitted that:
  - a) between November 2011 and March 2016, she obtained, possessed, and used to process transactions, 12 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1;
  - b) between June 2013 and March 2017, she altered and used to process transactions, 9 account forms in respect of 8 clients, by altering the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
  - c) in July 2015, she photocopied the signature page from an account form that had been signed by the client and re-used the signature page to complete an additional form, contrary to MFDA Rule 2.1.1.

## **Terms of Settlement**

5. In paragraph 5 of the Settlement Agreement, the Respondent agreed to the following penalties and terms of settlement:

- a) The Respondent shall pay a fine in the amount of \$12,500.00 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1;
- b) The Respondent shall pay costs in the amount of \$2,500.00 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of By-law No. 1;
- c) The Respondent shall in the future comply with MFDA Rule 2.1.1; and
- d) The Respondent will attend the Settlement Hearing in person.

### **Acceptance of the Settlement Agreement**

6. In determining if it was appropriate to accept the terms of the Settlement Agreement, this Hearing Panel took into consideration the following factors:

#### **Agreed Facts**

#### **Registration History**

7. Since February 2009, the Respondent has been registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc. (“Sun Life”), a Member of the MFDA.

8. At all material times, the Respondent carried on business in the Edmonton, Alberta area.

#### **Pre-signed Account Forms**

9. At all material times, Sun Life’s policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining, or using pre-signed account forms.

10. Between November 2011 and March 2016, the Respondent obtained, possessed, and used to process transactions, 12 pre-signed account forms in respect of 11 clients.

11. The pre-signed account forms consisted of Pre-authorized chequing, Account Application, Know-Your-Client, Order ticket and Registered Education Savings Plans forms.

### **Altered Account Forms**

12. At all material times, Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining, or using falsified account forms.

13. Between June 2013 and March 2017, the Respondent altered and used to process transactions, 9 client forms in respect of 8 clients, by altering the account forms without having the clients initial the alterations.

14. The altered forms consisted of Pre-authorized chequing, Account Application, Know-Your-Client, Order ticket and Registered Education Savings Plans forms.

### **Re-using Signature Page Previously Signed by a Client**

15. At all material times, Sun Life's policies and procedures prohibited its Approved Persons from photocopying a document to re-use a previous signature.

16. Between February 2015 and September 2016, the Respondent photocopied the signature page from an account form that had been signed by the client and re-used the signature page to complete an additional form.

### **SunLife's Investigation**

17. In June 2016, Sun Life identified 2 of the pre-signed and altered forms that are the subject of this Settlement Agreement during an onsite branch review. Sun Life subsequently commenced a review of all of the client files serviced by the Respondent and identified the remaining pre-signed and altered account forms.

18. On May 15, 2017, Sun Life placed the Respondent under close supervision.

19. On August 11, 2017, Sun Life issued a warning letter to the Respondent for possessing and using pre-signed account forms, and placed her under continued close supervision for a period of 12 months. The close supervision period ended on August 1, 2018.

20. On September 1, 2017, as part of its investigation, Sun Life sent audit letters to all of the clients whose accounts the Respondent serviced in order to determine whether they had any unauthorized transactions in their accounts. No clients reported any concerns to Sun Life.

### **Additional Factors**

21. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

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

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

24. 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.

### **Nature of the Misconduct: Altered Account Forms and Re-used Client Signature**

25. The Respondent's misconduct is serious. She altered 9 account forms in respect of 8 clients by altering information on the account forms without having the clients initial the alterations. Three of the 9 forms were altered post-bulletin.

26. The Respondent photocopied the signature page from an account form that had been signed by the client and re-used the signature page to complete an additional form.

27. The Respondent is an experienced dealing representative who ought to have known and respected the MFDA's and the Member's compliance requirements.

28. There were certain mitigating factors applicable to the instant case, including:

- a) There is no evidence of client harm.
- b) There is no evidence that the Respondent received any financial or other benefit through her conduct, and there was no client complaint.
- c) The Respondent has not previously been disciplined by the MFDA.

- d) 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.

29. Enforcement Counsel cited in support of his submission the penalties imposed in a number of recent cases, including:

- a) *Simard*, MFDA File No. 2017123, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated June 5, 2018
- b) *Georgijev*, MFDA File No. 201721, Hearing Panel of the Central Regional Council, Decision and Reasons dated June 29, 2017
- c) *Gibson*, MFDA File No. 201620, Hearing Panel of the Central Regional Council, Decision and Reasons dated May 2, 2016

30. This Hearing Panel noted that the fact patterns in each of those cited cases were similar to the facts in the instant case. The monetary penalties imposed were \$11,000.00, \$10,000.00 and \$10,000.00, respectively. The costs award in each case was \$2,500.00.

31. As noted, Enforcement Counsel sought a penalty which exceeds the range of monetary fines levied in previous decisions on similar facts for an Approved Person's breach of the standard of conduct by reason that 4 of the forms were obtained after the MFDA issued MFDA Bulletin #0661-E on October 2, 2015.

### **Appropriateness of the Proposed Penalty**

32. In the view of this Hearing Panel, the penalties in the above-cited decisions are comparable to the case at hand, and the fact that some of the wrongful conduct occurred post Bulletin is a reasonable justification for a monetary fine above the range of results on those cases.

33. Accordingly, this Hearing Panel concludes that the penalties, including the costs award proposed in the Settlement Agreement, are reasonable and proportionate and will deter the Respondent and other Approved Persons from engaging in similar misconduct.

34. Further, this Hearing Panel concludes that acceptance of this 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.

35. The Hearing Panel accordingly approves its terms.

36. This Hearing Panel thanks Enforcement Counsel for his helpful presentation and the Respondent and her counsel for their cooperation during the hearing.

**DATED** this 7<sup>th</sup> day of March, 2019.

“Shelley L. Miller”

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Shelley L. Miller, QC  
Chair

“Howard Mix”

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Howard Mix  
Industry Representative

“Greg Wiebe”

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Greg Wiebe  
Industry Representative

DM 659962



**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: Cristina Cruz**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and Cristina Cruz, (the "Respondent"), consent and agree to settlement of this matter by way of this agreement (the "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 November 2011 and March 2016, the Respondent obtained, possessed, and used to process transactions, 12 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1;
  - b) between June 2013 and March 2017, the Respondent altered and used to process transactions, 9 account forms in respect of 8 clients, by altering the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
  - c) in July 2015, the Respondent photocopied the signature page from an account form that had been signed by the client and re-used the signature page to complete an additional form, 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 \$12,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of 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 By-law No. 1;
  - c) The Respondent shall in the future comply with MFDA Rule 2.1.1; and
  - d) The Respondent will attend the Settlement Hearing in person.
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 February 2009, the Respondent has been registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc. (“Sun Life”), a Member of the MFDA.
8. At all material times, the Respondent carried on business in the Edmonton, Alberta area.

### **Pre-Signed Account Forms**

9. At all material times, Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining, or using pre-signed account forms.

10. Between November 2011 and March 2016, the Respondent obtained, possessed, and used to process transactions, 12 pre-signed account forms in respect of 11 clients.

11. The pre-signed account forms consisted of Pre-authorized chequing, Account Application, Know-Your-Client, Order ticket and Registered Education Savings Plans forms.

### **Altered Account Forms**

12. At all material times, Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining, or using falsified account forms.

13. Between June 2013 and March 2017, the Respondent altered and used to process transactions, 9 client forms in respect of 8 clients, by altering the account forms without having the clients initial the alterations.

14. The altered forms consisted of Pre-authorized chequing, Account Application, Know-Your-Client, Order ticket and Registered Education Savings Plans forms.

### **Re-Using Signature Page Previously Signed by a Client**

15. At all material times, Sun Life's policies and procedures prohibited its Approved Persons from photocopying a document to re-use a previous signature.

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### **Sun Life's Investigation**

17. In June 2016, Sun Life identified 2 of the pre-signed and altered forms that are the subject of this Settlement Agreement during an onsite branch review. Sun Life subsequently commenced

a review of all of the client files serviced by the Respondent and identified the remaining pre-signed and altered account forms.

18. On May 15, 2017, Sun Life placed the Respondent under close supervision.

19. On August 11, 2017, Sun Life issued a warning letter to the Respondent for possessing and using pre-signed account forms, and placed her under continued close supervision for a period of 12 months. The close supervision period ended on August 1, 2018.

20. On September 1, 2017, as part of its investigation, Sun Life sent audit letters to all of the clients whose accounts the Respondent serviced in order to determine whether they had any unauthorized transactions in their accounts. No clients reported any concerns to Sun Life.

#### **Additional Factors**

21. 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.

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

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

24. 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**

25. 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.

26. 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](http://www.mfda.ca).

27. 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.

28. 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.

29. 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.

30. 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.

31. 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 4<sup>th</sup> day of December, 2018.

“Cristina Cruz”

\_\_\_\_\_  
Cristina Cruz

“RC”

\_\_\_\_\_  
Witness – Signature

RC

\_\_\_\_\_  
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. 2018119**



**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: Cristina Cruz**

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**ORDER**

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**WHEREAS** on [date], 2018, 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 Cristina Cruz (the “Respondent”);

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date], 2018, (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 the Respondent:

- a) between November 2011 and March 2016, obtained, possessed, and used to process transactions, 12 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1; and;
- b) between June 2013 and March 2017, altered and used to process transactions, 9 account forms in respect of 8 clients, by altering the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and

- c) in July 2015, photocopied the signature page from an account form that had been signed by the client and re-used the signature page to complete an additional form, 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 \$12,500, pursuant to section 24.1.1(b) of By-law No. 1;
2. The Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
3. The Respondent shall in the future comply with MFDA Rules 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]