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 Edward Dekker

Heard: October 31, 2019 in Toronto, Ontario
Decision: October 31, 2019
Reasons for Decision: December 17, 2019

# REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

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| Martin L. Friedland, CC, QC | Chair |
| Selwyn B. Kossuth | Industry Representative |
| Kenneth P. Mann | Industry Representative |

Appearances:

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| Jacklyn Neborak | ) | Enforcement Counsel for the Mutual Fund Dealers Association of Canada |
| Rafal Szymanski | ) | Counsel for the Respondent |
| David Edward Dekker | ) | Respondent, by teleconference |

**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 Thursday, October 31, 2019. The full Settlement Agreement, dated September 11, 2019, entered into between Staff of the MFDA and David Edward Dekker, (the "Respondent") is available on the MFDA website. The Respondent appeared at the Hearing by teleconference and was represented by counsel.

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

3. The Respondent has been registered in the mutual fund industry since May 1992. From January 1994, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Y.I.S. Financial Inc. ("Y.I.S." or the "Member"), a Member of the MFDA.

4. At all material times, the Respondent conducted business in the Thorold, Ontario area.

5. A Notice of Settlement Hearing was issued by the MFDA on September 13, 2019, alleging that the Respondent:

a) between December 2003 and January 2017, obtained, possessed, and in some instances, used to process transactions, 22 pre-signed account forms in respect of 17 clients, contrary to MFDA Rule 2.1.1;

b) between November 2010 and March 2014, altered and used to process transactions, 13 account forms in respect of ten clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and

c) between October 2002 and August 2014, submitted seven Letters of Direction directly to mutual fund companies to process transactions in the accounts of two clients without the knowledge or approval of the Member, contrary to the Member's policies and procedures and MFDA Rules 1.1.1(a), 1.1.2, 2.1.1, and 2.5.1.

**The Settlement Agreement**

6. In Paragraph 4 of the Settlement Agreement, the Respondent admits the violations alleged in paragraph 5 above.

7. In Paragraph 5 of the Settlement Agreement, Staff and the Respondent agree and consent to the following terms of settlement:

a) the Respondent shall pay a fine in the amount $12,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:
   i. $7,500, in certified funds, upon acceptance of the Settlement Agreement by the Hearing Panel; and
   ii. $5,000, on or before the last business day of the sixth month following the acceptance of the Settlement Agreement by the Hearing Panel;

b) the Respondent shall pay costs in the amount of $2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s.24.2 of MFDA By-law No. 1;

c) the Respondent shall in the future comply with MFDA Rules 1.1.1(a). 1.1.2, 2.1.1, 2.5.1; and

d) the Respondent will attend in person or by teleconference on the date set for the Settlement Hearing.

**Agreed Facts**

8. The agreed facts are set out in detail in paragraphs 7 to 23 of the Settlement Agreement and will not be repeated in full here.

9. Beginning in December 2012, the Member had policies and procedures that prohibited its Approved Persons from using pre-signed account forms.

10. Between December 2003 and January 2017, as set out in paragraphs 11 and 12 of the Settlement Agreement, the Respondent obtained, possessed, and in some instances, used to process transactions, 22 pre-signed account forms in respect of 17 clients.

11. Beginning in December 2012, the Member also had policies and procedures that prohibited its Approved Persons from using altered account forms.

12. As set out in paragraphs 14 and 15 of the Settlement Agreement, between November 2010 and March 2014, the Respondent altered and used to process transactions, 13 account forms in respect of 10 clients by altering information on the account forms without having the client initial the alteration.

13. Further, contrary to the Member's policies and procedures that prohibited Approved Persons from directly processing transactions with mutual fund companies (i.e. off-book transactions); required that Approved Persons process all business activity through the Approved Person's branch or the Member's head office; and required all trading activity of Approved Persons to be reviewed and approved by a branch manager, the Respondent dealt in a number of cases directly with the mutual fund companies without the knowledge and approval of the Member. (See paragraph 16 and 17 of the Settlement Agreement.)

14. On February 2, 2018, the Member placed the Respondent under close supervision and he remains under close supervision.

**The Misconduct**

15. MFDA Hearing Panels have consistently held that using pre-signed forms and altering account forms – constitute a contravention of the standard of conduct under MFDA Rule 2.1.1. See *Re Price* 2011 CanLII 72458; *Re Singh* 2014 LNCMFDA 12; *Re Symes* 2017 LNCMFDA 104; *Re Owen* 2017 LNCMFDA 287; *Re Oh* 2018 LNCMFDA 252; *Re Nash* 2019 LNCMFDA 15 and *Re Brenchley* 2019 LNCMFDA 113.

16. Using these forms are proscribed because their use adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud, and misappropriation. See *Re Brenchley* 2019 LNCMFDA 113.

17. For a number of years, the MFDA has been warning Approved Persons against the use of pre-signed, altered, and re-used account forms. See MFDA Staff Notice, MSN-0066, dated

October 31, 2007 (updated January 26, 2017); and MFDA Staff Notice MSN-035, dated December 10, 2004 (updated March 4, 2013); MFDA Bulletin #0661 – E (October 2, 2015).

18. Further, Letters of Direction sent directly to mutual fund companies to process transactions in the accounts of two clients without the knowledge or approval of the Member and contrary to the Member's policies and procedures, is clearly improper.

**Acceptance of the Settlement Agreement**

19. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

20. The conduct in the present case is serious. Altered forms are especially serious because, unlike pre-signed forms that the client knows are blank when he or she signs the form, an alteration may be done without the client's knowledge.

21. This is not an isolated case. The conduct went on for many years with many clients.

22. There are a number of mitigating factors. No clients complained about the Respondent's conduct. There is no evidence of client loss or lack of authorization for the underlying transactions.

23. There is also no evidence that the Respondent received any benefit from the conduct set out above beyond the commissions or fees he would ordinarily be entitled to receive had the transaction been carried out in the proper manner. Since June 2018, the Member has been reducing the Respondent's eligible commission percentage. At the present time this amounts to over $3,000 and the reduction continues. The Respondent has been under close supervision.

24. The Respondent has not previously been the subject of MFDA disciplinary Procedures.

25. By entering into the Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations and by entering into a Settlement Agreement, has accepted responsibility for his actions.

26. The penalty of $12,500 is not out-of-line with the new Sanctions Guidelines as well as the cases cited to us by counsel: *Re Simmons* 2019 LNCMFDA 1; *Re Boassaly* MFDA File No. 201918; *Re Wellman* 2015 LNCMFDA 148; and *Re Brock* 2018 LNCMFDA 80.

27. The monetary penalty provides a significant measure of specific and general deterrence.

28. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal affirmed the British Columbia Supreme Court's statement with respect to a settlement by the British Columbia Securities Commission at paragraph 49 of *British Columbia Securities Commission* v. *Seifert* [2006] BCJ No. 225, aff'd [2007] BCCA No. 484:

> "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."

29. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel. Respecting settlements is particularly desirable in cases, such as this one, where experienced counsel were involved.

30. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: "It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness." There are many similar statements by MFDA Panels, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated:

> "A District Council considering a settlement agreement 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."

31. The penalty and the costs agreed to in this case fall within "a reasonable range of appropriateness."

32. For the above reasons the Panel accepted the Settlement Agreement.

**DATED** this 17th day of December, 2019.

"Martin L. Friedland"
Martin L. Friedland, CC, QC
Chair

"Selwyn B. Kossuth"
Selwyn B. Kossuth
Industry Representative

"Kenneth P. Mann"
Kenneth P. Mann
Industry Representative

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