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: Mansu Ding

Heard: September 24, 2015 in Toronto, Ontario
Reasons for Decision: October 2, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Brigitte J. Geisler	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Sarah Glickman	)	For the Mutual Fund Dealers Association of Canada
Mansu Ding	)	Ms. Ding and her counsel in attendance by teleconference
Christopher P. Morris	)	

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, September 24, 2015. The full Settlement Agreement, dated September 18, 2015, entered into between Staff of the MFDA and Mansu Ding ("Ms. Ding" or the "Respondent") is available on the MFDA website and will not be set out in detail here. Ms. Ding and her counsel appeared at the Settlement Hearing by teleconference.

2. The hearing was one of three hearings relating to pre-signed account forms heard by the present Panel on September 24, 2015 under a recent MFDA procedure called the "Bulk Track Hearing Process." The Bulk Track process, instituted a few years ago by the MFDA, is described as follows in the Staff Submission to the Panel: the Bulk Track Hearing Process "is intended to promote the efficient use of time and resources by MFDA Staff, Hearing Panels and Respondents by allowing for the processing of multiple cases of a similar nature or type before a single Hearing Panel at a single sitting." Each case is, however, considered in a separate proceeding and in the case of a Settlement Hearing in a separate *in camera* proceeding.

3. The Panel accepted the proposed Settlement Agreement in the *Mansu Ding* case at the September 24, 2015 hearing, with reasons to follow. These are our reasons for the *Mansu Ding* decision.

4. Since 1999 the Respondent has been registered in Ontario as a mutual fund salesperson (now known as Dealing Representative) with Sun Life Financial Investment Services (Canada) Inc. ("Sun Life"), a member of the MFDA, or its predecessor, Clarica Investco Inc. At all material times, the Respondent conducted business in the Ottawa, Ontario area.

5. Proceedings against the Respondent were commenced by a Notice of Settlement Hearing, dated June 3, 2015. That hearing was adjourned several times, and a date was set for a Settlement Hearing on September 24, 2015.

Allegations

6. In the Settlement Agreement, dated September 18, 2015, the Respondent admits that between April 2010 and April 2013, she obtained maintained, and in some instances, used to process trades, a total of 65 pre-signed account forms in respect of 15 clients, contrary to MFDA Rule 2.1.1.

Pre-Signed Account Forms

7. "Pre-signed account forms" is a generic term which is applied to a variety of situations where an Approved Person seeks to rely on a client's signature on a document when the signature was not provided by the client at the time the document was completed.

8. Ms. Ding admits that she obtained and maintained, and in some instances, used to process trades, a total of 65 pre-signed trade authorization account forms in respect of 15 clients, contrary to MFDA Rule 2.1.1.

9. Hearing Panels have held that obtaining or using pre-signed account forms is a contravention of the standard of conduct under MFDA Rule 2.1.1. (See *Re Byce* File No. 201311; and *Re Price* File No. 200814.) The Panel in *Re Price* sets out in detail a number of MFDA Staff Notices relating to the prohibition of such forms. MFDA Staff Notice MSN-0066, issued in 2007, states, in part, under the heading "PROHIBITION ON USE OF PRE-SIGNED FORMS":

> "The purpose of this Notice is to emphasize that it is contrary to MFDA requirements for Members and Approved Persons to obtain pre-signed forms from their clients. Members may only use forms that are duly executed by the client after information on the form has been properly completed. As indicated in [earlier Bulletins] where MFDA staff find pre-signed forms in the course of completing compliance reviews, these deficiencies may be referred directly to the MFDA Enforcement Department."

10. The use of pre-signed account 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 for misuse in the form of unauthorized trading, fraud and misappropriation. As the Hearing Panel explained in *Re Price* (at paragraphs 122-124):

> "Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading....At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client....Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. 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."

11. In the present case, the pre-signed forms were used in conjunction with Limited Trade Authorizations. The Settlement Agreement states in paragraph 18: "The Respondent stated that she collected and used pre-signed account forms in conjunction with Limited Trade Authorizations in order to process trades in a timely manner and that all transactions were authorized by the clients." A signed trading authorization is not, in fact, needed in such cases. Nevertheless, thirty two pre-signed order entry forms were used by the Respondent. She admits that it was wrong for her to do so and that the use of such forms was contrary to MFDA Rules. In many of the reported cases the clients were aware of and authorized the use of pre-signed forms.

Terms of Settlement

12. The Respondent agreed to the following terms of settlement:

a. the Respondent shall pay a fine in the amount of $11,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

b. the Respondent shall pay costs in the amount of $2,500 pursuant to s. 24.2 of MFDA By-law No. 1; and

c. the Respondent shall in the future comply with MFDA Rule 2.1.1.

Acceptance of Settlement Agreement

13. 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. We found that the proposed penalty was reasonable and proportionate in the circumstances of this case. It provides specific deterrence to the Respondent and general deterrence to others in the industry.

14. No harm was suffered by investors in this case. Further, by entering into a Settlement Agreement the Respondent has accepted responsibility for her misconduct and recognizes its seriousness.

15. The Respondent has never been the subject of a disciplinary proceeding by the MFDA and cooperated with Staff during its investigation into her conduct. By entering into the Agreement, the Respondent saved the MFDA the time, resources, and expense associated with conducting a full hearing of the allegations.

16. A fine of $11,000 (plus costs of $2,500) is not an insignificant amount. The fine is not out of line with the MFDA Penalty Guidelines, where the suggested minimum fine for breach of MFDA 2.1.1 (Standard of Conduct) is $5,000.

17. A number of cases involving pre-signed forms were cited by counsel. See *Re Byce* (File No. 201311); *Re Moro* (File No. 200714); *Re Kahlon* (File No. 201438); *Re Kant* (File No. 201337); *Re Sowunmi* (File No. 201338); and *Re Ewart* (File No. 201528).

18. 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. This is particularly true in the present case where the monetary penalty appears at the higher end of the range of penalties imposed in other cases. Counsel for the Respondent and his client urged us to accept the Settlement Agreement.

19. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

> "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."

20. As a recent Panel stated (*Re Keshet*, September 3, 2014, File No. 201419 at paragraph 7) "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.

21. The penalty agreed to in this case falls within "a reasonable range of appropriateness."

22. For the above reasons we accepted the Settlement Agreement.

DATED this 2nd day of October, 2015.

"Martin L. Friedland"

Martin L. Friedland, C.C., Q.C.
Chair

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