



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING  
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: James Edward Drysdale**

Heard: September 23, 2019 in Toronto, Ontario  
Decision: September 23, 2019  
Reasons for Decision: November 21, 2019

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Joan Smart  
Guenther W. K. Kleberg  
Selwyn Kossuth

Chair  
Industry Representative  
Industry Representative

Appearances:

Francis Roy	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
James Drysdale	)	Respondent, in person
	)	
	)	

## **I. INTRODUCTION**

1. By Notice of Hearing, dated October 5, 2018, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against James Edward Drysdale (the “Respondent”) pursuant to sections 20 and 24 of MFDA By-law No. 1.

2. MFDA Staff and the Respondent entered into an Agreed Statement of Facts, dated September 20, 2019. The Respondent admitted that certain of those facts constituted misconduct for which he may be penalized pursuant to section 24.1 of MFDA By-law No. 1.

3. In the Agreed Statement of Facts, the Respondent admitted that:

- a) in February and November 2015, he submitted for processing at least 17 transactions in the accounts of 6 clients without maintaining adequate notes of instructions received from the clients, contrary to MFDA Rules 1.1.2, 2.5 and 2.1.1; and
- b) between March 10, 2006 and May 19, 2016, he maintained at least 62 blank pre-signed and/or altered account forms in respect of 47 clients, thereby failing to observe high standards of ethics and conduct in the transaction of business or engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

4. The Notice of Hearing contained two other allegations against the Respondent. At the hearing, MFDA Staff advised that they were not pursuing those allegations.

5. Staff and the Respondent disagreed on the appropriate penalties, if any, to be imposed in this case and jointly requested that the Hearing Panel determine, on the basis of the Agreed Statement of Facts, the appropriate penalty to impose on the Respondent.

6. Staff requested that the Hearing Panel order the following penalties against the Respondent:

- a) a fine of at least \$10,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

- b) costs of between \$2,500 and \$5,000 pursuant to section 24.2 of MFDA By-law No. 1; and
- c) a 2 year prohibition on his authority to act and be registered as a mutual fund salesperson (now known as a dealing representative), pursuant to section 24.1(e) of By-law No. 1.

7. The Respondent was willing to accept that the Hearing Panel order a permanent prohibition on his authority to act and be registered as a mutual fund salesperson, pursuant to section 24.1(e) of By-law No. 1. However, as a result of his claims to be impecunious and unable to pay any amount towards either a fine or costs, he requested that no financial penalties be ordered against him.

## **II. AGREED FACTS**

### **Registration History**

8. From March 10, 2006 to May 19, 2016, the Respondent was an Approved Person registered in Ontario as a mutual fund salesperson with Sun Life Financial Services (Canada) Inc. ("Sun Life" or the "Member"), a Member of the MFDA.

9. The Respondent is not currently registered in the securities industry in any capacity.

### **Failure to Maintain Evidence of Client Trade Instructions**

10. Sun Life's policies and procedures permitted its Approved Persons to submit trades for processing using limited trading authorizations ("LTAs") instead of obtaining trade order forms signed by clients, but only where Approved Persons "document[ed] and retain[ed] all details of the trade instructions [received from the clients], since an LTA does not give [Approved Persons] the ability to perform discretionary trading."

11. In February 2015 and November 2015, the Respondent used LTAs to submit for processing the following trades in the accounts of 6 clients:

<b>Client</b>	<b>Date of LTA Trades</b>	<b>Mutual Fund Investments Originally Held by Clients As At the Date of the LTA Trades</b>	<b>Mutual Funds Invested In By Clients As a Result of the LTA Trades</b>
#1	November 3, 2015	\$13,373.82 in the CI Money Market Fund	<ul style="list-style-type: none"> <li>• \$4,012.15 in the CI Signature Global Inc. &amp; Growth Fund</li> <li>• \$4,012.15 in the CI Cambridge Asset Allocation Corp. Class Fund</li> <li>• \$5,349.52 in the CI Signature Select Canadian Fund</li> </ul>
#2	November 3, 2015	\$12,309.25 in the CI Money Market Fund	<ul style="list-style-type: none"> <li>• \$6,154.63 in the CI Signature Diversified Yield II Class Fund</li> <li>• \$6,154.62 in the CI Cambridge Asset Allocation Corp. Class Fund</li> </ul>
#3	February 5, 2015	<ul style="list-style-type: none"> <li>• \$700.04 in the CI Black Creek Global Balanced Fund DSC</li> <li>• \$473.61 in the CI Cambridge High Income Fund DSC</li> <li>• \$1,205.95 in the CI Cambridge Asset Allocation Cls DSC</li> </ul>	<ul style="list-style-type: none"> <li>• \$700.04 in the CI Black Creek Global Balanced Fund (FEL)</li> <li>• \$473.61 in the CI Cambridge High Income Fund (FEL)</li> <li>• \$1,205.95 in the CI Cambridge Asset Allocation Cls (FEL)</li> </ul>
#4	February 5, 2015	<ul style="list-style-type: none"> <li>• \$476.20 in the CI Signature Diversified Yield II Class Fund DSC</li> <li>• \$1,212.68 in the CI Signature Select Canadian Fund DSC</li> <li>• \$742.01 in the CI Global Inc. &amp; Grown Fund DSC</li> </ul>	<ul style="list-style-type: none"> <li>• 476.20 in the CI Signature Diversified Yield II Class Fund (FEL)</li> <li>• \$1,212.68 in the CI Signature Select Canadian Fund (FEL)</li> <li>• \$742.01 in the CI Global Inc. &amp; Grown Fund (FEL)</li> </ul>
#5	February 20, 2015	• \$6,082.20 in the CI Harbour Fund Class A Fund DSC	• \$6,082.20 in the CI Harbour Fund Class A Fund (FEL)

Client	Date of LTA Trades	Mutual Fund Investments Originally Held by Clients As At the Date of the LTA Trades	Mutual Funds Invested In By Clients As a Result of the LTA Trades
		<ul style="list-style-type: none"> <li>• \$2,027.41 in the CI Signature Global Income &amp; Growth Fund DSC</li> <li>• \$2,027.41 in the CI Signature Global Income &amp; Growth Fund DSC</li> </ul>	<ul style="list-style-type: none"> <li>• \$2,027.41 in the CI Signature Global Income &amp; Growth Fund (FEL)</li> <li>• \$2,027.41 in the CI Signature Global Income &amp; Growth Fund (FEL)</li> </ul>
#6	February 24, 2015	<ul style="list-style-type: none"> <li>• \$55.66 in the CI Harbour Growth &amp; Income Fund DSC</li> <li>• \$3,316.93 in the CI Canadian Investment Fund DSC</li> <li>• \$3,182.21 in the CI Harbour Growth &amp; Income Fund DSC</li> </ul>	<ul style="list-style-type: none"> <li>• \$55.66 in the CI Harbour Growth &amp; Income Fund (FEL)</li> <li>• \$3,316.93 in the CI Canadian Investment Fund (FEL)</li> <li>• \$3,182.21 in the CI Harbour Growth &amp; Income Fund (FEL)</li> </ul>

12. The Respondent stated he obtained instructions from the clients to complete the above trades using LTAs. He did not, however, document or otherwise maintain records/notes of such trading instructions, including, among other things: the time and date of the discussions with, or instructions received from, the clients; and details of what mutual funds, including unit prices and amounts, were discussed to be traded by the clients.

**Blank Pre-signed or Altered Forms**

13. In or about April 2016, the Member conducted a review of the client files maintained by the Respondent at his branch office, during which the Member found that, since at least March 10, 2006, the Respondent had obtained and/or maintained at least 62 blank pre-signed and/or altered account forms in respect of 47 clients whose accounts he serviced.

14. The 62 forms included, among other things, trade order forms, LTAs, know-your-client forms and new account application forms. A number of forms contained photocopied client signatures with other information added in ink. On some client forms, the Respondent or his unlicensed assistant had: altered client information without the clients having initialed or otherwise

evidenced their agreement to such alterations on the documents; altered dates without the clients having initialed or otherwise evidenced their agreement to such alterations on the documents; or added information, including client information, trade instructions or account numbers, after the clients had signed the forms but without the clients having initialed or otherwise evidenced their agreement to the addition of such information.

15. As the mutual fund salesperson responsible for the 47 clients' accounts, the Respondent accepted full responsibility for the 62 forms having been obtained or maintained in his client files.

### **III. CONSIDERATIONS AND DECISION**

#### **Misconduct – Failure to Maintain Evidence of Client Trade Instructions**

16. MFDA Rule 2.1.1 requires that each 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.

17. MFDA Rule 1.1.2 requires that Approved Persons comply with the By-laws and Rules as they relate to the Member. MFDA Rule 2.5.1 provides that each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies [of the MFDA] and with applicable securities legislation. Accordingly, the Respondent, as an Approved Person, was required to comply with such policies and procedures of the Member.

18. As was stated in the matter of *Franco (Re)*, “the obligation of Approved Persons to comply with the policies and procedures of the Members 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)*, MFDA File No. 201016, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated May 6, 2011, at para. 38.

19. We found that the Respondent breached MFDA Rules 1.1.2 (as it relates to MFDA Rule 2.5.1) and MFDA Rule 2.1.1 when he failed to comply with the Member's policies and procedures by submitting for processing at least 17 transactions in the accounts of 6 clients without maintaining adequate notes of instructions received from the clients.

### **Misconduct – Blank Pre-signed or Altered Forms**

20. Obtaining and maintaining pre-signed account forms or altering account forms may, among other things, affect the integrity of account documents, impede the Member in supervising accounts and addressing client complaints, and possibly facilitate other misconduct, such as unauthorized trading and misappropriation.

21. There was no evidence before us that the Respondent had used the pre-signed or altered client account forms for any fraudulent purpose.

22. The MFDA has been warning Approved Persons against pre-signed account forms and altering account forms for a number of years, including in MFDA Bulletin #0661-E, dated October 2, 2015, in which the MFDA warned Approved Persons that it would be seeking enhanced penalties at MFDA disciplinary hearings after publication of that Bulletin.

23. We note that some of the subject account forms were obtained after issuance of the above-referenced Bulletin and we considered that to be an aggravating factor.

24. We have found that the Respondent failed to observe high standards of ethics and conduct in the transaction of business or engaged in conduct unbecoming an Approved Person, contrary to Rule 2.1.1, by maintaining at least 62 blank pre-signed and/or altered account forms in respect of 47 clients.

### **Sanction**

25. The MFDA Sanction Guidelines provide a framework for Hearing Panels to consider in determining an appropriate sanction and are reflective of factors that have been considered by Hearing Panels in the past. The factors set out in those Guidelines that are relevant in this case include:

- a) general and specific deterrence;
- b) public confidence;
- c) the seriousness of the allegations proved against the Respondent;
- d) whether the Respondent recognizes the seriousness of the misconduct;
- e) the benefits received by the Respondent as a result of the misconduct;
- f) the harm suffered by investors as a result of the Respondent's misconduct;
- g) the Respondent's past conduct, including prior sanctions;
- h) whether a sanction was imposed on the Respondent for the same misconduct by the Member or other regulator;
- i) previous decisions made in similar circumstances;
- j) for multiple violations, the total or cumulative sanction should appropriately reflect the totality of the misconduct;
- k) ability to pay; and
- l) the Respondent's proactive and exceptional assistance to the MFDA.

26. In determining an appropriate sanction in this case, we have considered the above factors.

27. In our opinion, the Respondent's contraventions in this case constituted serious misconduct.

28. We took into account several mitigating factors in reaching our decision on an appropriate sanction, including that:

- a) there was no evidence of client harm resulting from the Respondent's misconduct;
- b) the Respondent has not previously been the subject of a MFDA proceeding;
- c) the Respondent cooperated with the MFDA's investigation and, by entering into the Agreed Statement of Facts, accepted responsibility for his actions and avoided the need for a prolonged hearing on the merits.

29. We also noted that, at the hearing, there was no indication that the Respondent had received any benefit as a result of the misconduct, other than commissions or fees he would have been entitled to had the transactions been carried out properly.

30. We have also taken note of the fact that the Respondent is no longer employed in the securities industry.

31. The MFDA Sanction Guidelines indicate that a respondent's ability to pay may be a consideration in determining an appropriate monetary sanction. The burden was on the Respondent to provide evidence of a bona fide inability to pay. The Respondent submitted that he was impecunious and unable to pay a fine and provided certain documents in support of his claim. While those documents showed that the Respondent has significant debts, we were not satisfied on the evidence provided that he would be unable to pay a fine. While we gave some consideration to the Respondent's financial situation in determining the amount of the monetary sanction, it was not a significant factor when considering the financial evidence provided and all the circumstances of the case.

32. The Respondent submitted that, instead of a fine, a permanent prohibition on him being registered as a mutual fund salesperson would be appropriate. In our view, such a permanent prohibition would generally be excessive in relation to the subject breaches and would set an inappropriate precedent. Furthermore, we questioned whether that would have any deterrent effect, given that the Respondent is no longer employed in the mutual fund industry.

33. MFDA Staff requested that costs be awarded of between \$2500 and \$5000. They provided a Bill of Costs which showed their costs were \$5925, which did not include certain of their time and disbursements.

34. We concluded that an appropriate sanction to impose on the Respondent in this case was:

- a) a fine in the amount of \$7500;
- b) costs of \$2500; and
- c) a 2 year prohibition on his authority to act and be registered as a mutual fund salesperson.

35. The above penalty falls within the range of penalties imposed by Hearing Panels in previous cases involving similar facts which MFDA Staff submitted to us. For example, sanctions ranged from a relatively high fine of \$25,000 in one case to a relatively low fine of \$2,500 plus a 2 year suspension in another.

*Re Donald Wayne O'Connor*, [2018] MFDA File No.201756, Hearing Panel of the Prairie Regional Council, Reasons for Decision dated October 31, 2018.

*Yeung (Re)*, MFDA File No. 201502, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated September 28, 2016.

36. We are of the view that the above penalty is reasonable and proportionate, having regard to the Respondent's misconduct and the circumstances of this case and should deter the Respondent and other MFDA Approved Persons from engaging in this type of misconduct in the future.

**DATED** this 21<sup>st</sup> day of November, 2019.

"Joan Smart"

Joan Smart  
Chair

"Guenther W. K. Kleberg"

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Industry Representative

"Selwyn Kossuth"

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