



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: Jeffery Robert Duffey

Heard: February 23, 2017 in Toronto, Ontario

Decision: February 23, 2017

Reasons for Decision: March 27, 2017

**REASONS FOR DECISION FOR ACCEPTANCE OF
SETTLEMENT AGREEMENT**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.

Robert C. White

Greg Juby

Chair

Industry Representative

Industry Representative

Appearances:

Sarah Glickman

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Counsel for the Mutual Fund Dealers
Association of Canada

Suzanne Kittell

Counsel for the Respondent

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated October 18, 2016 (the “Settlement Agreement”) between the staff of the MFDA and Jeffery Robert Duffey (the “Respondent”). A copy of the Settlement Agreement is attached to these reasons as Schedule “1”. The agreed facts are set out in section III of the agreement.

Contraventions

2. The Respondent admitted that between May 2008 and May 2015, he or his assistant for whom he was responsible:

- a) altered and used to process transactions, six (6) account forms in respect of five (5) clients by altering information on the account forms without obtaining client initials authorizing the alterations, contrary to MFDA Rule 2.1.1; and
- b) obtained, possessed, and in some instances, used to process transactions, 40 pre-signed account forms of 24 clients, contrary to MFDA Rule 2.1.1.

Agreed penalties

3. The agreed penalties were a fine in the amount of \$13,000 and a cost award in the amount of \$2,500.

Considerations

4. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the settlement agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public

and industry. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on him of the agreed penalty.

Considerations in determining acceptability of agreed penalty

5. The Respondent has been in the securities business since at least 2001.
6. The Respondent's Member placed the Respondent under close supervision for 12 months, issued a warning letter to him, and required him to complete a relevant industry course.
7. There was no evidence of client harm or lack of authorization.
8. There was no evidence that the Respondent received any financial benefit from his misconduct in addition to usual fees or commissions.
9. The Respondent has not previously been subject to MFDA disciplinary proceedings.
10. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.
11. The MFDA penalty guidelines recommend one or more of the following sanctions for misconduct of the nature in our case: a minimum fine of \$5,000; writing or re-writing an appropriate industry course; suspension. The guidelines are not mandatory but are intended to assist hearing panels, MFDA staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings.
12. We determined that the agreed penalties were in accordance with the suggestions in the guidelines.

13. The agreed penalties are within the reasonable range of appropriateness with regard to other decisions, submitted to us by staff, made by MFDA hearing panels in similar circumstances.

Conclusion

14. We concluded that the agreed penalties were within an acceptable range based on precedents, would serve as a specific and general deterrent, and were fair and reasonable. We considered the costs award to be reasonable in the circumstances. We concluded, therefore, that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 27th day of March, 2017.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Robert C. White”

Robert C. White
Industry Representative

“Greg Juby”

Greg Juby
Industry Representative



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Re: Jeffery Robert Duffey

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Jeffery Robert Duffey (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 May 2008 and May 2015, the Respondent, or his assistant for whom he was responsible, altered and used to process transactions, 6 account forms in respect of 5 clients by altering information on the account form without obtaining client initials authorizing the alterations, contrary to MFDA Rule 2.1.1; and
- b) between May 2008 and May 2015, the Respondent, or his assistant for whom he was responsible, obtained, possessed, and in some instances, used to process transactions, 40 pre-signed account forms in respect of 24 clients, 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 \$13,000 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;
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- d) the Respondent will attend by teleconference on the date set for the Settlement Hearing.

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 June 2001, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Sun Life Investment Services (Canada) Inc. (“Sun Life”)¹, a Member of the MFDA.

8. The Respondent has also been registered in Quebec since November 2005 and in New Brunswick since March 2011.

9. At all material times, the Respondent conducted business in the Ottawa, Ontario area.

10. At all material times, the Respondent conducted business with the support of his current unregistered assistant, LD. The Respondent was responsible for the actions of LD.

Altered Account Forms

11. May 2008 and May 2015, the Respondent, or his assistant for whom he was responsible, altered and used to process transactions, 6 account forms in respect of 5 clients.

12. The Respondent, or his assistant, altered 6 of the account forms by altering information on the account form without obtaining client initials authorizing the alterations.

13. The altered account forms included pre-authorized contribution agreement forms and Know-Your-Client forms.

¹ Effective June 25, 2007, Clarica Investco Inc. changed its name to Sun Life.

Pre-Signed Account Forms

14. Between May 2008 and May 2015, the Respondent, or his assistant for whom he was responsible, obtained, possessed, and in some instances, used to process transactions, 40 pre-signed account forms in respect of 24 clients.

15. The pre-signed account forms included transfer authorization forms, pre-authorized contribution agreement forms and new account application forms.

Sun Life's Investigation

16. On April 28, 2015 and during a subsequent follow up investigation, Sun Life's dealer operations staff detected the conduct that is the subject of this Settlement Agreement.

17. As part of its investigation, Sun Life reviewed all client files serviced by the Respondent and sent letters to all clients serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns to Sun Life.

18. On July 15, 2015, Sun Life placed the Respondent under close supervision for a period of 12 months. On August 31, 2015, Sun Life issued a Warning Letter to the Respondent and recited the Respondent to complete a relevant industry course.

Additional Factors

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

20. There is no evidence of client harm or lack of authorization.

21. The Respondent has not previously been the subject of MFDA proceedings.
22. The Respondent has expressed remorse for his conduct.
23. The Respondent has cooperated fully with Staff during the course of its investigation.
24. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on 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.
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 facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and 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 18th day of October, 2016.

“Jeffery Robert Duffey”

Jeffery Robert Duffey

“DH”

Witness – Signature

DH

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. 201686



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Re: Jeffery Robert Duffey

ORDER

WHEREAS on [date], 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 [Respondent] (the “Respondent”);

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

- a) between May 2008 and May 2015, the Respondent, or his assistant for whom he was responsible, altered and used to process transactions, 6 account forms in respect of 5

clients by altering information on the account form without obtaining client initials authorizing the alterations, contrary to MFDA Rule 2.1.1; and

- b) between May 2008 and May 2015, the Respondent, or his assistant for whom he was responsible, obtained, possessed, and in some instances, used to process transactions, 40 pre-signed account forms in respect of 24 clients, 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 \$13,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- 2) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- 3) the Respondent shall in the future comply with MFDA Rule 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]