



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: Alex Eng

Heard: April 26, 2022 by electronic hearing in Toronto, Ontario

Decision: April 26, 2022

Reasons for Decision: June 29, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Emily Cole
Robert Christianson
Guenther W. K. Kleberg

Chair
Industry Representative
Industry Representative

Appearances:

| | | |
|-----------------|---|---|
| Paul Blasiak |) | Senior Enforcement Counsel for the Mutual |
| |) | Fund Dealers Association of Canada |
| |) | |
| Zachary Pringle |) | Counsel for Respondent |
| |) | |
| |) | |
| Alex Eng |) | Respondent |
| |) | |
| |) | |

I. INTRODUCTION

1. This was a hearing pursuant to section 24.4 of By-Law No.1 of the Mutual Fund Dealers Association of Canada (“MFDA”) to consider a settlement agreement dated February 1, 2022 (“Settlement Agreement”) between staff of the MFDA (“Staff”) and Alex Eng (the “Respondent”).

2. After reviewing the Settlement Agreement and the material filed by Staff and hearing submissions from counsel for Staff and counsel for the Respondent, the Hearing Panel accepted the Settlement Agreement attached and signed an order reflecting our approval. These are the reasons for our decision.

II. CONTRAVENTIONS

3. Based on the Agreed Facts set out below the Respondent admits that:

Between November 2018 and February 2019, the Respondent processed 10 transactions in seven client accounts as redemptions and purchases, rather than as switches, in order to ensure the transactions counted towards the Member’s sales targets for the Respondent, thereby engaging in conduct giving rise to conflicts or potential conflicts of interest which the Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgement influenced only by the best interests of the clients, contrary to the Member’s policies and procedures and MFDA Rules 2.1.4¹, 2.1.1, 2.5.1 and 1.1.2.

III. PROPOSED SANCTIONS

4. Staff and the Respondent agree and consent to the following proposed sanctions:

- a) the Respondent shall pay a fine in the amount of \$12,500, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, which shall be payable in certified funds as follows;
- b) \$4,166.67 on or before the last business day of the first month following the acceptance of the Settlement Agreement by a Hearing Panel;
- c) \$4,166.67 on or before the last business day of the second month following the acceptance of the Settlement Agreement by a Hearing Panel; and

¹ On June 30, 2021, MFDA Rule 2.1.4 was amended to conform with client focused reform amendments to National Instrument 31-103 that came into effect on the same day. As the conduct addressed in this Settlement Agreement pre-dated the amendment to this Rule, all contraventions set out in this Settlement Agreement that refer to that Rule concern the version of the Rule that was in effect between February 27, 2006, and June 30, 2021.

- d) \$4,166.66 on or before the last business day of the third month following the acceptance of the Settlement Agreement by a Hearing Panel;
- e) the Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
- f) the Respondent shall in the future comply with MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2.

IV. AGREED FACTS

Registration History

5. Since December 1, 2017, the Respondent has been registered in all provinces and territories in Canada as a Dealing Representative with BMO Investments Inc. (the “Member”), a Member of the MFDA.

6. At all material times, the Respondent conducted business in Montreal, Quebec.

7. The Agreed Facts are set out in detail in paragraphs 7 to 25 of the Settlement Agreement. Briefly, for a period of three months between November 2018 and February 2019, the Respondent processed 10 transactions in seven client accounts as redemptions and subsequent purchases rather than switches.

8. Further Agreed Facts will be discussed in our analysis below.

V. ANALYSIS

A. Jurisdiction of the Hearing Panel

9. A Hearing Panel is authorized to either accept or reject a settlement agreement.

Section 24.4.3 of MFDA By-law No. 1

10. The role of a Hearing Panel in reviewing a settlement agreement is to determine whether the proposed penalties agreed to by Staff and the Respondent fall within a reasonable range of appropriateness – not to determine what is, in its view, the correct penalty. A Hearing Panel “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.”

Milewski (Re), [1999] I.D.A.C.D. No. 17

Sterling Mutuals Inc. (Re), 2008 LNCMFDA 16 at para 37

11. Settlements are to be encouraged. They make a significant contribution to meeting the MFDA’s primary objective of investor protection by providing a practical and efficient way of addressing misconduct in the securities industry. Where the Respondent takes responsibility and admits his misconduct and the parties can agree upon appropriate sanctions, settlements can save time and conserve the regulator’s limited resources. Settlements also provide certainty and are likely to result in greater compliance with the sanctions imposed.

British Columbia (Securities Commission v. Seifert), [2006] B.C.J. No. 225 at paras. 48-49 (S.C.), aff’d [2007] B.C.J. No 2186 at para. 31 (C.A.)

B. General Considerations Concerning the Acceptance of Settlement Agreements

12. MFDA Hearing Panels have considered the following when determining whether to accept a proposed settlement:

- a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- c) whether the settlement agreement addresses the issues of both specific and general deterrence;
- d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- f) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- g) whether the settlement agreement will foster confidence in the regulatory process itself.

Jacobson (Re), 2007 LNCMFDA 27, at para. 68

C. Factors Concerning the Appropriateness of the Sanctions

13. Specific factors that Hearing Panels frequently consider when determining whether proposed sanctions are appropriate also include the following:

- a) the seriousness of the allegations proven against the Respondent;
- b) the Respondent's past conduct, including prior sanctions;
- c) the Respondent's experience and level of activity in the capital markets;
- d) whether the Respondent recognizes the seriousness of the improper activity;
- e) the harm suffered by investors as a result of the Respondent's activities;
- f) the benefits received by the Respondent as a result of the improper activity;
- g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) previous decisions made in similar circumstances.

Headley (Re), 2006 LNCMFDA 3, at para. 85.

14. The Hearing Panel may also refer to the MFDA Sanction Guidelines. The Guidelines include many of the factors listed above which have been considered by MFDA Hearing Panels in previous decisions. The Guidelines help Panel members exercise their discretion fairly and consistently.

MFDA Sanction Guidelines.

Application of the Sanctioning Principles to this Case

15. The Panel has considered the applicable factors set out above and the guidance provided by the MFDA Sanction Guidelines in reaching its decision to approve this Settlement Agreement. A discussion of the seriousness of the misconduct, the mitigating factors and how this settlement satisfies the sanctioning principles is set out below.

D. The Seriousness of the Misconduct

16. The Respondent's misconduct is serious because of the nature of the misconduct. The Respondent deliberately engaged in deceitful misconduct which put his own financial interests ahead of his clients' best interests.

17. The Respondent admitted to a single contravention involving conflict of interest contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2.

18. The Respondent was eligible to receive a quarterly sales bonus from the Member if he achieved sales targets set by the Member. The Transactions processed as switches were not considered sales and therefore not included in the Respondent's quarterly sales.

19. The Respondent deceitfully processed 10 transactions in seven client accounts as redemptions and subsequent purchases to bolster his quarterly sales such that he would be eligible for a sales bonus. His misconduct exposed the clients to a risk that the value of their mutual funds would decrease in the time after the redemptions were processed but before the purchases were processed. The seriousness of the misconduct is aggravated by the fact that the risk was realized in losses to two clients totaling \$217.99.

20. The Hearing Panel is concerned that the Respondent who is a new registrant put his own interests ahead of his clients contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2. This is not a good way to begin a career in the securities industry.

E. Mitigating Factors

21. The Hearing Panel considered the following mitigating factors:

- a) The client losses totaled \$217.99. The Member reimbursed these losses.
- b) There is no evidence of client complaints.
- c) The Member disciplined the Respondent. In March 2019, the Member issued a Corrective Action Letter to the Respondent.
- d) Any financial benefit the Respondent would have received from his misconduct was removed by the Member.
- e) During 2019, the Member did not pay the Respondent a \$9720 sales bonus which he would have received but for the misconduct. \$417.83 of the \$9720 sales bonus was attributable to the switches that are the subject of this proceeding.

- f) The Respondent has not previously been the subject of MFDA disciplinary proceedings.
- g) The Respondent continues to be employed by the Member. The Panel inferred from this that the Member supports the Respondent.
- h) 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.

F. Costs

- 22. The costs award is appropriate and consistent with previous MFDA decisions.

VI. CONCLUSION

- 23. We are satisfied that the proposed sanctions, including the \$12,500 fine and \$5,000 costs will serve as specific deterrence to the Respondent, Alex Eng, and general deterrence to others in the industry who may contemplate engaging in similar misconduct in the future.

- 24. Staff provided two MFDA decisions which addressed similar misconduct: *Hale (Re)*, [2021] Hearing Panel of the Prairie Regional Council, MFDA File No. 202046, Panel Decision dated March 9, 2021, and *Rana (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201871, Panel Decision dated March 19, 2019.

- 25. Based on a review of these cases and taking into consideration the factors discussed above, we are satisfied the proposed sanctions fall within a reasonable range of appropriateness.

- 26. We therefore accepted the Settlement Agreement and made an order reflecting the agreed upon sanctions against the Respondent, Alex Eng.

DATED this 29th day of June, 2022.

“Emily Cole”

Emily Cole
Chair

“Robert Christianson”

Robert Christianson
Industry Representative

“Guenther W. K. Kleberg”

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Industry Representative

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