



**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: Derrick Foley**

Heard: November 26, 2015 in Toronto, Ontario  
Reasons for Decision: February 19, 2016

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

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Linda J. Anderson	Industry Representative
Robert C. White	Industry Representative

Appearances:

Sarah Glickman	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
	)	
Derrick Foley	)	In Person
	)	

1. We accept the settlement agreement. It is in the public interest that we do so, and the proposed penalties are within the reasonable parameters of acceptability as determined by precedent cases.

2. Our reasons for accepting the settlement agreement are as follows. MFDA Staff (“Staff”) and Derrick Foley (the “Respondent”) have entered into a Settlement Agreement dated September 25, 2015 (the "Settlement Agreement") in which the Respondent admits that in May 2014, he falsified two (2) client signatures on two (2) Know-Your-Client forms, contrary to MFDA Rule 2.1.1.

### Penalty

3. The Respondent agrees as a term of the Settlement Agreement to pay a fine in the amount of \$6,000 and costs in the amount of \$2,500.

### Facts

4. The relevant facts are set out in section 4 of the Settlement Agreement, a copy of which is attached as Schedule “1” to this document.

5. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each Member and 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.

6. Hearing Panels have held that falsifying forms is a contravention of the standard of conduct under MFDA Rule 2.1.1. Falsified forms adversely affect the integrity and reliability of account documents, lead to the destruction of the audit trail, have a negative impact on Member complaint handling, and have the potential for misuse in the form of unauthorized trading, fraud, and misappropriation.

7. Unlike pre-signed account forms (another form of violation of the Rule), where the clients knows he or she is signing an incomplete form to be used in some way, in the case of a form falsified by the Approved Person the possibility exists that the client is unaware of the Approved Person's actions.

8. Cases have held that the falsification of client signatures is a violation of the regulatory authority's standard of conduct provision.

9. There are several factors a Panel is supposed to take into account in determining the appropriateness of the penalty (and Staff as well) in accepting an agreed penalty in a Settlement Agreement.

10. We have considered these factors, and have looked at the factors pointed out in Staff's written submissions. We are satisfied that Staff has taken appropriate factors into account in reaching its Settlement Agreement with the Respondent. Some of those factors are:

#### *Nature of Misconduct*

11. The use of falsified forms is a serious breach of MFDA Rule 2.1.1.

#### *Client Harm*

12. The clients suffered an opportunity loss in the amount of \$1,050 as a result of the delay in the execution of their requested trade. The Member compensated the affected clients, drawing a charge from the Respondent's commission in the amount of the loss. However, Staff pointed out to us, this loss arose out of a mistake by the Respondent, namely his failure to disclose the fees associated with the GIC transaction in question which did not go ahead of the instructed date, and this loss was not based on conduct that is the subject of the settlement agreement, namely the signature falsification.

*Benefits received by the Respondent*

13. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding other than the commissions and fees he would ordinarily be entitled to receive had the transaction been carried out in the proper manner.

*Respondent's experience and level of experience in the capital markets*

14. The Respondent has been registered in the mutual fund industry since 1990. He is a very experienced Dealing Representative and ought to have known and respected his Member's and the MFDA's compliance requirements.

*Deterrence*

15. A fine in the amount of \$6,000 and costs in the amount of \$2,500 are significant and send a message to the Respondent and others in the capital markets with regard to the seriousness of the misconduct at issue.

*Respondent's past conduct*

16. The Respondent has not previously been subject to MFDA disciplinary proceedings.

*Respondent's recognition of the seriousness of his misconduct*

17. 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.

18. The Respondent also co-operated with the Member's internal investigation into his conduct and understands the seriousness of his conduct.

19. Every respondent is entitled to vigorously defend his conduct, and by giving credit for the co-operation in this case, we do not mean to suggest that where there is a vigorous defence somehow a respondent involved, who is unsuccessful in his defence, should be treated more harshly than one who enters into a settlement agreement.

20. Having said this, we do understand that this proceeding has moved forward very smoothly because of all the co-operation that the Respondent gave.

21. The penalty guidelines suggest a minimum fine of \$5,000. The agreed penalty of \$6,000 is consistent with the proposed minimum fine and is very close to the minimum fine suggested.

*Precedents*

22. Counsel provided us with several similar cases, and we are satisfied that the agreed penalties are within the reasonable range of appropriateness with regard to other decision made by MFDA hearing panels in similar circumstances.

This written version of the oral Reasons for Decision is

**DATED** this 19<sup>th</sup> day of February, 2016.

“Paul M. Moore”

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Paul M. Moore, Q.C.  
Chair

“Linda J. Anderson”

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Linda J. Anderson  
Industry Representative

“Robert C. White”

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Robert C. White  
Industry Representative



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**Re: Derrick Foley**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Derrick Foley.

**II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in 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.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this 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.

## **II. ACKNOWLEDGEMENT**

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part XI) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

## **III. AGREED FACTS**

### **Registration History**

6. Since August 1990, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA.

7. At all material times, the Respondent conducted business in the Peterborough, Ontario area.

## **Falsification of Client Signatures**

8. At all material times, Investors Group's policies and procedures prohibited its Representatives, including the Respondent, from falsifying client signatures.

9. At all material times, clients MM and NM were clients of Investors Group and the Respondent was the mutual fund salesperson responsible for servicing their accounts.

10. On May 6, 2014, the Respondent met with clients MM and NM to discuss selling mutual funds they held in order to purchase Guaranteed Investment Certificates ("GICs"). Clients MM and NM completed the necessary account documents to proceed with the sale of mutual funds and the purchase of GICs, and instructed the Respondent to proceed with the transaction by May 7, 2014 (the "GIC Transaction").

11. The Respondent submitted the account documents to Investors Group to process the GIC Transaction on or before May 7, 2014.

12. The Respondent subsequently realized that there might be fees associated with the GIC Transaction that he had not disclosed to clients MM and NM. After receiving confirmation from Investor's Group compliance staff that fees would apply, the Respondent placed a hold on the GIC Transaction.

13. The Respondent left a voicemail message for clients MM and NM informing them of the fees associated with the GIC Transaction.

14. On May 9, 2014, clients MM and NM instructed the Respondent not to proceed with the GIC Transaction. Instead, clients MM and NM instructed the Respondent to switch their IG Mutual Funds into the IG Canadian Money Market Fund to avoid paying fees associated with the Transfer (the "Switch").

15. On May 9, 2014, the Respondent submitted the necessary documents to Investors Group to process the Switch.

16. After submitting the documents, the Respondent was contacted by Investors Group's regional office which advised him that, before the Switch could be processed, clients MM and NM needed to provide Know-Your-Client ("KYC") forms (no KYC information was on file for either client).

17. The Respondent approached another Investors Group employee (the "Co-Worker"), asking her to falsify one of the client's signatures on a KYC form. The Co-Worker refused.

18. The Respondent completed two KYC forms (one for each client), falsified the signatures of clients MM and NM on the KYC forms, and submitted the KYC forms to Investors Group (the "KYC Forms") for processing.

### **Post-Detection**

19. Investors Group became aware of the conduct that is the subject of this Settlement Agreement on May 9, 2014, after its Regional Coordinator became suspicious when he witnessed the Respondent approach the Co-Worker and become agitated. After the regional office received the KYC Forms, the Regional Coordinator compared the signatures of the KYC Forms to other documents previously signed by the clients.

20. Later in the day on May 9, 2014, the Investors Group Regional Director questioned the Respondent, who immediately admitted he had falsified the signatures on the KYC Forms.

21. As part of its investigation, Investors Group performed a 50 client file review, but found no further irregularities.

22. The KYC information on the KYC Forms was the same as KYC information on the account opening documents related to the GIC transaction that did not go ahead, which clients MM and NM had approved.

23. On August 18, 2014, the Respondent provided a written statement to Investors Group, stating the falsifications on the KYC Forms were an isolated incident and he was deeply remorseful and apologetic.

24. On February 11, 2015, Investors Group sent a warning letter to the Respondent, imposing upon the Respondent a requirement to complete the Branch Manager Examination Course (available from the IFSE Institute) and placing the Respondent under close supervision for six months.

#### **Additional Factors**

25. There is 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 transactions been carried out in the proper manner.

26. Investors Group compensated clients MM and NM for the loss they suffered as a result of the Respondent delaying the execution of their trade on May 7, 2014 by drawing a charge to the Respondent's commissions in the amount of the loss, \$1,050.00.

27. The Respondent cooperated with Investors Group during its investigation into his conduct.

28. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

29. 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. CONTRAVENTIONS**

30. The Respondent admits that, in May 2014, he falsified two client signatures on two KYC forms, contrary to MFDA Rule 2.1.1.

#### **V. TERMS OF SETTLEMENT**

31. The Respondent agrees to the following terms of settlement:

- a. the Respondent shall pay a fine in the amount of \$6,000 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 in person, on the date set for the Settlement Hearing.

#### **VI. STAFF COMMITMENT**

32. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part XI below. 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 Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

## **VII. PROCEDURE FOR APPROVAL OF SETTLEMENT**

33. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

34. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his 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.

35. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then 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.

36. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, 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 him.

## **VIII. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

37. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing

panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

#### **IX. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT**

38. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule “A” is not made 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 this Settlement Agreement or the settlement negotiations.

39. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

#### **X. DISCLOSURE OF AGREEMENT**

40. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

41. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

#### **XI. EXECUTION OF SETTLEMENT AGREEMENT**

42. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

43. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 25<sup>th</sup> day of September, 2015.

“Kimberly Foley”  
Witness – Signature

Kimberly Foley  
Witness – Print name

“Derrick Foley”  
Derrick Foley

“Shaun Devlin”  
Staff of the MFDA  
Per: Shaun Devlin  
Senior Vice-President,  
Member Regulation – Enforcement



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**Re: Derrick Foley**

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**ORDER**

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**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 on May 9, 2014, the Respondent falsified two client signatures on two KYC forms, 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 \$6,000 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; and
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 requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or 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]