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: Johnson Tit Ping Fu

Heard: November 29, 2018 in Toronto, Ontario
Decision: November 29, 2018
Reasons for Decision: February 7, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Cheryl A. Hamilton	Industry Representative
Jeff J. Page	Industry Representative

Appearances:

Alan Melamud	)	Counsel for the Mutual Fund Dealers Association of Canada
Uri Snir	)	Counsel for the Respondent
Johnson Tit Ping Fu	)	Respondent, in Person

I. 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, November 29, 2018. The full Settlement Agreement, dated September 12, 2018, entered into between Staff of the MFDA and Johnson Tit Ping Fu (the "Respondent") is available on the MFDA website. The Respondent was represented by counsel and also appeared in person.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the November 29, 2018 hearing, with reasons to follow. These are our reasons for the decision.

3. Since 1988, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative). Since 2002, he has been registered in Ontario with FundEX Investments Inc. ("FundEX"), a Member of the MFDA. At all material times, the Respondent conducted business in the Richmond Hill, Ontario, area.

4. In March 2017, during the course of a branch review, FundEX identified a pre-signed account form. As a result of its findings, FundEX reviewed all client files serviced by the Respondent and identified the remainder of the account forms that are the subject of this Settlement Agreement. On May 4, 2017, FundEX sent a letter to all clients whose accounts the Respondent serviced in order to determine whether the Respondent had engaged in unauthorized trading. No clients reported any concerns.

5. Between May 1, 2017 and September 12, 2017, FundEX placed the Respondent under strict supervision. The Respondent continues as a Dealing Representative with FundEX.

Contraventions

6. The Respondent admits in paragraph 4 of the Settlement Agreement that:

   a) between December 2003 and September 2015, the Respondent obtained, possessed and, in some instances, used to process transactions, 15 pre-signed account forms in respect of 10 clients, contrary to MFDA Rule 2.1.1;

b) between December 2003 and September 2015, the Respondent altered 17 account forms in respect of 10 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and

c) on or about February 24, 2008, the Respondent photocopied a completed account form signed by a client, used liquid correction fluid to change the client instructions on the photocopied form, and submitted the account form for processing, contrary to MFDA Rule 2.1.1.

The Misconduct

7. The details of the misconduct are set out in paragraphs 9 to 14 of the Settlement Agreement and will not be described in detail here.

8. MFDA Hearing Panels have consistently held that such conduct – using pre-signed forms, altering account forms, and re-using previously signed account forms – constitutes a contravention of the standard of conduct under MFDA Rule 2.1.1. See *Re Price* 2011 CanLII 72458; *Re Symes* 2017 LNCMFDA 104; *Re Owen* 2017 LNCMFDA 287; *Re Lewis* 2018 LNCMFDA 59; *Re Pollon* 2018 LNCMFDA 54; and *Re Garofalo* 2016 LNCMFDA 119.

9. Using these forms are proscribed because their use 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.

10. For a number of years, the MFDA has been warning Approved Persons against the use of pre-signed, altered, and re-used account forms. See MFDA Staff Notice, MSN-0066, dated October 31, 2007 (updated January 26, 2017); and MFDA Staff Notice MSN-035, dated December 10, 2004 (updated March 4, 2013).

Terms of Settlement

11. Staff and the Respondent agreed and consented to the following Terms of Settlement (see Paragraph 5):

a) the Respondent shall pay a fine in the amount of $12,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
b) the Respondent shall pay costs in the amount of $2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA Rule 2.1.1;
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.

Acceptance of Settlement Agreement

12. As stated above, the Hearing Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

13. The conduct in the present case is serious. Altered forms and re-used forms are especially serious because, unlike pre-signed forms that the client knows are blank when he or she signs the form, an alteration may be done without the client's knowledge and with a reused form the client may be unaware that a transaction took place.

14. The conduct is particularly serious in the present case because the Respondent had been warned in 2011 when, during the course of a branch audit, FundEX identified pre-signed account forms in client files serviced by the Respondent and the Respondent agreed not to use pre-signed forms in the future. See paragraphs 14 of the Settlement Agreement.

15. The respondent has been in the mutual fund industry since 1988 and has not previously been the subject of a disciplinary hearing.

16. There were no client complaints and no evidence of client losses as a result of the improper conduct. There is also no evidence that the Respondent received any financial benefit from the misconduct besides commissions and fees that he would have received if the transactions had been properly carried out. Further, there is no evidence of lack of authorization for the underlying transactions.

17. Moreover, the conduct took place before the publication of MFDA Bulletin #0661-E, dated October 2, 2015, in which the MFDA advised Members and Approved Persons that Staff would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin.

18. The monetary fine of $12,500 is a significant penalty. It will serve as a deterrent to the Respondent and others in the industry.

19. The penalty agreed upon is not out of line with the numerous cases cited by counsel for the MFDA or with the new MFDA Sanction Guidelines that came into effect on November 15, 2018.

20. 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."

21. 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. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel.

22. A Settlement Agreement indicates a recognition of wrongdoing by the Respondent and also saves the MFDA the time, resources, and expense of a contested hearing.

23. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: "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, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated: "A District Council considering a settlement agreement 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."

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

25. For the above reasons the panel accepted the Settlement Agreement.

DATED this 7th day of February, 2019.

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

"Cheryl A. Hamilton"
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Industry Representative

"Jeff J. Page"
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