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: Martin Paul Harris

Heard: January 6, 2016, in Vancouver, British Columbia
Reasons for Decision: July 5, 2016

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Stephen D. Gill	Chair
Holly A. Millar	Industry Representative

Appearances:

Christopher Corsetti	)	Counsel for the Mutual Fund Dealers Association of Canada
Shaun Frost	)	Counsel for the Respondent

1. At a Settlement Hearing on January 6, 2016, we were asked to accept a Settlement Agreement negotiated between the staff of MFDA and Martin Paul Harris (the "Settlement Agreement"). Mr. Harris (the "Respondent") was present, and was represented by counsel at the Hearing. The Hearing Panel was composed of two members, which is permitted pursuant to Section 19.9(6) of MFDA By-law No. 1. The parties agreed that the Panel could proceed as a two person panel.

2. At the end of the Hearing, having reviewed the Settlement Agreement, and heard the submissions of Enforcement Counsel and the Respondent's counsel, the Panel advised the parties that it accepted the Settlement Agreement, and an appropriate Order was duly signed. We stated that the reasons for our decision would be provided at a later date. For the reasons that follow, we accepted the Settlement Agreement.

3. A copy of the Settlement Agreement is attached to this decision (Appendix 'A'). As will be noted Staff and the Respondent agree with the facts set out in Part IV of the Settlement Agreement.

4. The Respondent admits that between March, 2010 and April, 2014, he obtained, maintained or used to process transactions 56 pre-signed account forms in respect to 34 clients, contrary to MFDA Rule 2.1.1.

5. As per the terms of settlement, the Respondent agrees that:

(a) the Respondent shall pay a fine in the amount of $10,000;
(b) the Respondent shall pay costs in the amount of $2,500;
(c) in future, the Respondent shall comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder including MFDA Rule 1.1.2, 2.1.1 and 2.5.1; and
(d) the Respondent agreed to attend the Settlement Hearing in person.

6. Pursuant to Section 24.4.3 of MFDA By-law No. 1, a Hearing Panel has two options with respect to a Settlement Agreement. It may either accept the Settlement Agreement or reject it. The role of a Hearing Panel at a Settlement Hearing is fundamentally different than its role at a contested Hearing. As was stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*[1], quoting the reasons in the IDA matter of *Milewski (Re)*[2]:

> "We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the 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 if views the penalty as clearly falling outside a reasonable range of appropriateness." (In *Re Milweski,* [1999] I.D.A.C.D. No. 17.)

7. We agree with the submissions of Enforcement Counsel that the principle that a Hearing Panel will not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness assists the MFDA to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the Regulator and a Respondent.

8. We agree with the comments and analysis in *Seifert*[3], where the court cites the following from *R. v. 974649 Ontario Inc.*, 2001 SCC 81, [2001] 3 S.C.R. 575 at para. 31:

> "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. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct

[1] *Sterling Mutuals Inc. (Re),* 2008 LNCMFDA 16
[2] *Milewski (Re),* [1999] I.D.A.C.D. No. 17, Ontario District Council Decision dated July 28, 1999
[3] *British Columbia Securities Commission v. Seifert,* 2007 BCCA 484 at paras. 31 and 49

their resources to the matters that are in dispute, and therefore to be resolved by way of a hearing."

9. It is well settled that the primary goal of securities regulation is the protection of the investor: *Pezim v. British Columbia (Superintendent of Brokers),* [1994] 2 S.C.R. 557 (S.C.C.) at paras. 59, and 68.

10. We agree with and adopt the following reasons of the Panel in *Re Jacobson*:

> "4. In past cases, MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:
>
> (a) Whether the acceptance of the Settlement Agreement would be in the public interest and whether the penalties 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;
> (g) Whether the Settlement Agreement will foster confidence in the regulatory process itself."[4]

11. It is also well settled that a Hearing Panel should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness having regard to the conduct of the respondent: *Re Jacobson* supra, at page 10.

12. Hearing Panels frequently consider the following when determining whether a penalty is appropriate:

[4] *Re Jacobson*, 2007 MFDA 27 at page 9

"Previous hearing panels and tribunals have set out a number of additional factors which should be considered when determining an appropriate penalty. These include:

(a) The seriousness of the allegations proved against the Respondent;
(b) The Respondent's past conduct, including prior sanctions;
(c) The Respondent's experience in the capital markets;
(d) The level of the Respondent's activity in the capital markets;
(e) Whether the Respondent recognizes the seriousness of the improper activity;
(f) The harm suffered by investors as a result of the Respondent's activities;
(g) The benefits received by the Respondent as a result of the improper activity;
(h) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
(i) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
(j) 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;
(k) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
(l) Previous decisions made in similar circumstances."[5]

13. Enforcement Counsel also referred to the MFDA Penalty Guidelines, which are an additional source of factors to be taken into account with regards to the penalty, but are not binding or mandatory but are intended to assist Hearing Panels, MFDA staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings. Counsel referred to paragraph 23:

"23. Where an Approved Person fails to adhere to the standard of conduct, the MFDA Penalty Guidelines recommend one or all of the following: a minimum fine of $5,000; writing or re-writing an appropriate industry course; suspension; a permanent prohibition in egregious cases."

[5] *Re Headley,* 2006 MFDA 3, at pages 25 – 26.

14. To be an effective general deterrent, the sanctions should be proportionate to the severity of the misconduct and consistent with industry expectations: *Re Mills* (2001) I.D.A.C.D. No. 7. In our view the sanction in this case meets these goals.

15. The Panel has taken into account the following:

(a) the use of pre-signed account forms and altered forms are serious breaches of MFDA Rule 2.1.1;
(b) There is no evidence of client harm. The Member contacted all of the Respondent's affected clients; no clients reported any concerns to the Member.
(c) There is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue, other than the commissions and fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

16. The Respondent has been registered in the mutual fund industry since 1986. He is an experienced Dealing Representative and no doubt knew, and should have respected, his Member's and the MFDA's compliance requirements. The Respondent has not previously been subject to MFDA disciplinary proceedings. However, he was previously warned by his Member firm in November, 2012, against the practice of maintaining pre-signed forms. As a result of these events in September, 2014, the Member issued a warning letter to the Respondent that placed him on 12 months close supervision.

17. Further, 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. We note the Respondent also cooperated with the investigation into his conduct.

18. In our view the proposed penalties are consistent with the Penalty Guidelines. The Penalty Guidelines suggest a minimum fine of $5,000 and the proposed fine of $10,000 is greater than the minimum, and reflects multiple Rule violations. The amount takes into account that the

Respondent fully cooperated, admitted the misconduct, and it is the first disciplinary action taken against him by the MFDA in his 30 year career in the industry.

19. Enforcement Counsel referred us to previous decisions made in similar cases, that reinforce the view that the proposed resolution is within the reasonable range of appropriateness. In *Re Mansu Ding*[6], the Respondent obtained, maintained and in some instances used to process trades, a total of 65 pre-signed account forms in respect of 15 clients. The penalty was a fine of $11,000 and costs of $2,500.

20. In *Re David Ewert,*[7] between April 2008 and March 2013 the Respondent obtained, maintained, and in some instances used to process trades, a total of 47 blank pre-signed forms in respect of 26 clients. During this time period the Respondent also obtained, altered and used to process transactions five client account forms after those forms were signed by the client, in respect of six clients. The penalty was a fine of $15,000 and costs of $2,500.

21. In *Re Lachman Balani*[8], the Respondent obtained, maintained, and in some instances used to process transactions, 89 pre-signed account forms in 23 client accounts, some of which he also altered. The penalty was a fine of $10,000 and costs of $2,500.

22. In this case the Respondent agreed to pay a fine in the amount of $10,000, and costs of $2,500.

23. We agree with the submissions of Enforcement Counsel that in the circumstances of this case, the proposed penalty is reasonable, proportionate to the misconduct in question, and in keeping with the MFDA's mandate to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by members and approved persons.

24. The Panel therefore accepted the Settlement Agreement.

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[6] *Re Mansu Ding,* 201518 MFDA, October 2, 2015
[7] *Re David Ewert,* 201528 MFDA, September 11, 2015
[8] *Re Lachman Balani,* MFDA File No. 201402, January 15, 2015

25. These Reasons may be signed in counterpart.

DATED this 5th day of July, 2016.

"Stephen D. Gill"

Stephen D. Gill
Chair

"Holly A. Millar"

Holly A. Millar
Industry Representative

Mutual Fund Dealers Association of Canada
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Re: Martin Paul Harris

SETTLEMENT AGREEMENT

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 Pacific 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 Martin Paul Harris (the "Respondent").

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.

III. 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 IX) 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.

IV. AGREED FACTS

Registration History

6. The Respondent has been registered in the securities industry since 1986.

7. Since November 30, 2012, the Respondent has been registered in Alberta, British Columbia and Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Desjardins Financial Security Investments Inc. ("Desjardins"), a Member of the MFDA.

8. The Respondent was previously registered as a mutual fund salesperson in Ontario from May 4, 2005 to November 30, 2012 and in British Columbia from September 28, 2009 to November 30, 2012 with MGI Financial Inc. ("MGI"), a Member of the MFDA. MGI amalgamated with Desjardins on November 30, 2012.

9. At all material times, the Respondent carried on business from a branch office of Desjardins located in Coquitlam, British Columbia.

Pre-Signed Account Forms

10. At all material times, MGI and Desjardins prohibited their Approved Persons from maintaining or using blank or partially complete pre-signed account forms.

11. On November 7, 2012 (before MGI amalgamated with Desjardins), MGI issued a caution letter to the Respondent after it found blank pre-signed account forms in client files maintained by the Respondent. At that time, the Respondent was also warned by his Branch Manager that clients could only sign account forms that were fully complete.

12. During the course of a branch audit and subsequent review of 25 client files conducted in June and July 2014, Desjardins detected that the Respondent had obtained, maintained and used 20 pre-signed account forms in respect of 10 clients. The Respondent obtained and used some of the pre-signed account forms after he was cautioned about this practice by MGI.

13. On September 15, 2014, Desjardins issued a warning letter to the Respondent and placed him under close supervision for a period of 12 months.

14. On September 29, 2014, the Respondent sent an email to Desjardins acknowledging that he had obtained, maintained or used pre-signed account forms.

15. On January 8, 2015, Desjardins conducted a further review of 202 client files maintained by the Respondent. During this review, Desjardins detected 36 additional instances where the Respondent had obtained, maintained or used pre-signed account forms in respect of 24 clients. Five of these account forms were obtained after November 7, 2012, when MGI had cautioned the Respondent that this practice was not permitted. In all five of those instances the Respondent states that the account forms were obtained for client convenience to administer client instructions, and with the clients' full knowledge and authorization. The Respondent states that

18 of the forms form were never used to process client transactions and were voided by Desjardins' compliance department. There is no evidence that any of the account forms were obtained after Desjardins warned the Respondent about this practice on September 15, 2014.

16. The pre-signed account forms identified in this Settlement Agreement included Know-Your-Client update forms, trade tickets, account application forms, and letters of direction. The pre-signed account forms contained client signatures which had been faxed, photocopied or scanned (i.e., the client signatures were copies of originals). The Respondent states that 18 of the documents were left blank. The remaining account forms had information or instructions completed after the clients had signed them.

17. On March 6, 2015, the Respondent sent an email to Desjardins admitting that he obtained, maintained or used the pre-signed account forms described above.

18. The Respondent states that all of the transactions he processed using pre-signed account forms were authorized by the clients and he processed the transactions in this manner for client convenience.

19. Desjardins sent questionnaires to all of the clients for whom the Respondent obtained or used pre-signed account forms to determine whether the transactions processed in their account were authorized by them. None of the clients reported any concerns to Desjardins.

20. There is no evidence that:

(a) the Respondent processed any trades or changes to client information without the knowledge or authorization of clients;

(b) clients suffered any financial harm as a result of the maintenance or use of the Pre-Signed Forms by the Respondent;

(c) the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which he would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner; and

(d) any clients have complained about the Respondent's conduct.

21. In the almost 30 years he has been in the securities industry, the Respondent has not previously been the subject of MFDA disciplinary proceedings or investigation.

V. CONTRAVENTIONS

22. The Respondent admits that, between March 2010 and April 2014, he obtained, maintained or used to process transactions 56 pre-signed account forms in respect of 34 clients, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

(a) the Respondent shall pay a fine in the amount of $10,000, pursuant to section 24.1.1(b) of By-law No. 1;
(b) the Respondent shall pay costs in the amount of $2,500, pursuant to section 24.2 of By-law No. 1;
(c) in the future, the Respondent shall comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder including MFDA Rule 1.1.2, 2.1.1 and 2.5.1; and
(d) the Respondent will attend the Settlement Hearing in person.

VII. STAFF COMMITMENT

24. 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 contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or

initiating proceedings in respect of any 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.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

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

26. 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.

27. 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.

28. 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 it him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

29. 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.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

30. 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.

31. 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.

XI. DISCLOSURE OF AGREEMENT

32. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 24th day of November, 2015.

"Vivian Milne"
Witness – Signature

Vivian Milne
Witness – Print name

"Martin Paul Harris"
Martin Paul Harris

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

Mutual Fund Dealers Association of Canada
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IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Martin Paul Harris

ORDER

WHEREAS on November 18, 2015, 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 Martin Paul Harris (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated November ___, 2015 (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, between March 2010 and April 2014, the Respondent obtained, maintained or used to process transactions 56 pre-signed account forms in respect of 34 clients, contrary to MFDA Rule 2.1.1;

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. t the Respondent shall pay a fine in the amount of $10,000, pursuant to section 24.1.1(b) of By-law No. 1;

2. the Respondent shall pay costs in the amount of $2,500, pursuant to section 24.2 of By-law No. 1;

3. In the future, the Respondent shall comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder including MFDA Rule 1.1.2, 2.1.1 and 2.5.1; 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]

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