



**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: John Holowaty (also known as Ivan Holowatyji, John H. Holowaty)**

Heard: January 26, 2017 in Toronto, Ontario

Decision: January 26, 2017

Reasons for Decision: March 29, 2017

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

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.

Chair

Robert C. White

Industry Representative

Kenneth Mann

Industry Representative

Appearances:

Sarah Glickman

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Counsel for the Mutual Fund Dealers  
Association of Canada

John Holowaty

By teleconference

## **Settlement Agreement**

1. The Hearing Panel accepted the settlement agreement dated September 16, 2016 (the “Settlement Agreement”) between the staff of the MFDA and John Holowaty (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 June 2008 and May 2015, he obtained and possessed, six (6) pre-signed account forms in respect of two (2) clients; and falsified six (6) account forms in respect of one (1) client by altering information on the account forms without obtaining client initials authorizing the alterations.

## **Agreed penalties**

3. The agreed penalty was a fine of \$7,500. In addition, the Respondent agreed to pay a costs award of \$2,500.

## **Considerations**

4. The 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.

## **Nature of the Misconduct**

5. The use of pre-signed and falsified account forms is a serious breach of MFDA Rule 2.1.1.

## **Other considerations in determining acceptability of agreed penalty**

6. There is no evidence of client harm.

7. The Respondent has been registered in the mutual fund industry since 2008. He ought to have known and respected the compliance requirements of the Member and the MFDA.

8. The agreed penalty is significant and helps the MFDA send a message to the Respondent and others in the capital markets about the seriousness of the misconduct.

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. Staff advised that the fine of \$7,500 is greater than the minimum fine of \$5,000 suggested in the MFDA's penalty guidelines because the Respondent admitted to two violations of Rule 2.1.1: the use of both pre-signed account forms and falsified account forms.

## Conclusion

12. We concluded that the agreed penalty was within an acceptable range based on precedents, would serve as a specific and general deterrent, and was 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 29<sup>th</sup> day of March, 2017.

“Paul M. Moore”

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Paul M. Moore, Q.C.  
Chair

“Robert C. White”

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Robert C. White  
Industry Representative

“Kenneth Mann”

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Kenneth Mann  
Industry Representative

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, John Holowaty (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 June 2008 and May 2015, the Respondent falsified 6 account forms in respect of 1 client by altering information on the account forms without obtaining client initials authorizing the alterations, contrary to MFDA Rule 2.1.1; and
- b) between June 2008 and May 2015, the Respondent obtained and possessed, 6 pre-signed account forms in respect of 2 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 \$7,500 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. Between June 2008 and May 2015, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Armstrong & Quaille Associates Inc. ("Armstrong"), a Member of the MFDA. In May 2015, Armstrong amalgamated with Sterling Mutuals Inc. ("Sterling").

8. At all material times, the Respondent conducted business in the Thunder Bay, Ontario area.

### **Falsified Account Forms**

9. Between June 2008 and May 2015, the Respondent falsified 6 account forms in respect of 1 client by altering information on the account forms without obtaining client initials authorizing the alterations.

### **Pre-Signed Account Forms**

10. At all material times, Armstrong prohibited its Approved Persons, including the Respondent, from the use of pre-signed account forms.

11. Between June 2008 and May 2015, the Respondent obtained and possessed, 6 pre-signed account forms in respect of 2 clients.

### **The Member's Investigation**

12. The Member's compliance staff detected the conduct that is the subject of this Settlement Agreement during a branch audit in or around April 2015 and subsequent follow-up investigation, including the review of all client files serviced by the Respondent.

13. As part of its investigation, the Member sent letters to the two clients in whose files the account forms were identified in order to determine whether the Respondent had engaged in any unauthorized trading; neither client responded to the Member's inquiries.

14. On May 6, 2015, the Member placed the Respondent under close supervision.

## **Additional Factors**

15. 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.
16. There is no evidence of client harm or lack of client authorization.
17. The Respondent has not previously been the subject of MFDA proceedings.
18. 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**

19. 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.
20. 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.
21. 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.
22. 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.

23. 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.

24. 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.

25. 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 23<sup>rd</sup> day of September, 2016.

“John Holowaty”  
\_\_\_\_\_  
John Holowaty

“MH”  
\_\_\_\_\_  
Witness – Signature

MH  
\_\_\_\_\_  
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. 201680**



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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 between June 2008 and May 2015, the Respondent falsified 6 account forms in respect of 1 client by altering information on the account forms without obtaining client initials authorizing the alterations and obtained and possessed, 6 pre-signed account forms, in respect of 2 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 \$7,500 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. 2;
- 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]