



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: James Alexander Hunter

Heard: September 30, 2020 by electronic hearing in Vancouver, British Columbia

Decision: September 30, 2020

Reasons for Decision: November 5, 2020

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Joseph A. Bernardo
Liz Chichka
Darryl Gossen

Chair
Industry Representative
Industry Representative

Appearances:

Sakeb Nazim)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Tom Newnham)	Counsel for the Respondent
)	
)	
James Alexander Hunter)	Respondent
)	
)	

I. INTRODUCTION

1. These are the reasons for the September 30, 2020 decision of the Hearing Panel to accept a settlement agreement dated September 21, 2020 (“Settlement Agreement”) made between Staff of the Mutual Fund Dealer’s Association of Canada (“MFDA”) and James Alexander Hunter (the “Respondent”).

II. RELEVANT FACTUAL ADMISSIONS

2. The Settlement Agreement is attached as Appendix “A”.

3. Briefly, this case concerns the problem of an Approved Person cutting corners for the sake of convenience:

- a) Since November 2012, the Respondent has been registered in British Columbia as a dealing representative with Desjardins Financial Security Investments Inc., a Member of the MFDA (the Member).
- b) The Member’s policies and procedures required Approved Persons to obtain client initials to confirm any changes made to client account forms, and prohibited them from possessing or using pre-signed account forms.
- c) During a June 2017 branch review, the Member discovered evidence that the Respondent had engaged in these practices. This led to a full review of the Respondent’s client files, which disclosed that:
 - i. Between February 2009 and March 2017, the Respondent made alterations to 78 account forms in respect of 57 clients without having them initial the changes.
 - ii. Between January 2013 and February 2017, he also used 26 pre-signed account forms in respect of 20 clients.
- d) Some of the improperly prepared documentation was used to process transactions. There is no evidence of any client loss, or that the Respondent derived anything other than normal course financial compensation from the transactions.

- e) The Member sent letters to all of the relevant clients to determine whether any unauthorized transactions had taken place in their accounts. No clients reported any concerns.
- f) On January 15, 2018, the Member issued a warning letter to the Respondent for possessing and using pre-signed and altered account forms, and placed him under close supervision.
- g) The Respondent has been registered in the mutual fund industry since September 1989. He has not previously been disciplined.

III. MISCONDUCT

4. MFDA Rule 2.1.1 obligates Approved Persons to deal fairly, honestly and in good faith with their clients and observe high standards of ethics and conduct in the transaction of business.

5. MFDA Rule 2.3.1(b) prohibits Members and Approved Persons from engaging in discretionary trading on behalf of clients:

- a) In light of this Rule, the use of pre-signed trade order forms is inherently risky. This is because the practice, if permitted, would render all clients vulnerable to transactions being implemented without their prior knowledge or approval.
- b) This is why transactions in mutual funds are typically permitted only upon the receipt of trade specific written instructions.
- c) The limited exceptions to this general rule do not apply to the facts of this case.

6. On October 31, 2007, Staff of the MFDA (“Staff”) issued Notice 0066: Pre-Signed Forms (updated March 4, 2013) affirming prior guidance that:

- a) The use of pre-signed trade order forms is evidence an Approved Person may be engaging in discretionary trading. Its discovery will result in a referral to Enforcement for investigation.
- b) The same logic applies when previously completed documents are found to have been altered without the client’s explicit approval.
- c) It is never appropriate to resort to the use of pre-signed documentation for the sake of client convenience.

d) The use of pre-signed forms constitutes a breach of Rule 2.1.1.

7. On October 2, 2015, Staff issued MFDA Bulletin #0661-E in which Staff informed Members and Approved Persons that it would seek enhanced penalties in cases involving the use of pre-signed forms or signed documents that had been altered without the client initialing the changes.

8. The Respondent's admissions leave no doubt that he breached MFDA Rule 2.1.1.

IV. STANDARD

9. MFDA By-Law 24.4 sets out the procedures for settlement hearings and grants hearing panels the jurisdiction to accept or reject settlements.

10. As has been routinely observed in previous decisions, settlements are to be encouraged and supported because they enable the efficient allocation of limited enforcement resources. This is crucial for maximizing public protection, which is the core purpose of securities regulation.

11. Moreover, settlements are the result of negotiations between litigants opposed in interest, and therefore emerge from the competing perspectives of the persons closest to the facts of a case. As such, settlements deserve a measure of deference, because they represent a pragmatic and balanced assessment of the issues achieved through the best efforts of the persons most engaged with them.

British Columbia Securities Commission v. Seifert, 2007 BCCA 484
at paras. 26 and 31.

12. A hearing panel, therefore, ought not to assess a proposed outcome against what it might itself deem appropriate if it were exercising its own independent judgment. Instead, a hearing panel's role is to weigh the agreed upon sanctions solely against the objectives of protecting the investing public and the integrity of the mutual fund industry. An outcome should be rejected only if it clearly falls "outside a reasonable range of appropriateness" for the facts disclosed in the settlement. Otherwise, it is incumbent on the hearing panel to accept it.

Sterling Mutuals Inc. (Re), 2008 MFDA 16, at para. 37, citing the reasoning in *Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 11, Ontario District Council Decision dated July 28, 1999.

V. DECISION

13. The Settlement Agreement proposed the following sanctions:

- a) \$17,500 fine, payable in instalments; and
- b) \$2,500 costs.

14. The Respondent is a highly experienced dealing representative. At the time his misconduct was discovered, he had been registered for over 27 years. Some of his misconduct occurred after the issuance of MFDA Bulletin #0661-E. The Respondent's disregard for Staff's explicit guidance concerning the use of pre-signed forms and the alteration of documents can only be described as blatant.

15. Enforcement Counsel referenced recent settlement decisions involving closely similar misconduct. In those cases, the fines ranged from \$15,000 to \$24,000 and in each case costs of \$2,500 were ordered. In *Williams (Re)*, where a new transaction was effected by altering the signature dates on a previously used pre-authorized chequing form, one of the respondents was suspended for six months.

Simon Chi Ming Wong (Re), MFDA File No. 201848, July 23, 2018.

Tamera Jean Williams and Todd Russell Williams (Re), MFDA File No. 201864, August 30, 2018.

Michael Harold Mills (Re), MFDA File No. 2018103, January 25, 2019.

16. The sanctions proposed by the parties fall within the middle of the range of outcomes ordered in the previous cases. Reviewing the facts of those cases, it is evident that the same can also be said about the gravity of the Respondent's conduct.

17. The Hearing Panel, therefore, was satisfied that the sanctions proposed by the parties did not fall outside the reasonable range of appropriateness, and approved the Settlement Agreement.

DATED this 5th day of November, 2020.

“Joseph A. Bernardo”

Joseph A. Bernardo
Chair

“Liz Chichka”

Liz Chichka
Industry Representative

“Darryl Gossen”

Darryl Gossen
Industry Representative

DM 777614



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: James Alexander Hunter

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 the Respondent, James Alexander Hunter.

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 MFDA 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 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.

IV. AGREED FACTS

Registration History

6. The Respondent has been registered as a mutual fund salesperson (now known as a dealing representative¹) since September 1989.

7. From November 2012, the Respondent was registered in British Columbia as a dealing representative with Desjardins Financial Security Investments Inc.² (the “Member”), a Member of the MFDA.

8. Prior to November 2012, the Respondent was registered with other mutual funds dealers. Commencing in 2002, those mutual funds dealers became Members of the MFDA.

9. At all material times, the Respondent carried on business in the Vancouver, British Columbia area.

¹On September 28, 2009, as a result of the implementation of National Instrument 31-103, the mutual fund salesperson registration category was changed to “dealing representative – mutual fund dealer”.

² Between March 2000 and October 2002, the Respondent was registered as a mutual fund salesperson with Independent Wealth Advantage Inc., which underwent a name change to MGI Financial Inc. In November 2012, MGI Financial Inc. underwent a name change to Desjardins Financial Security Investments Inc.

Altered Account Forms

10. At all material times, the Member's policies and procedures required its Approved Persons to obtain client initials on any changes to client account forms

11. Between February 2009 and March 2017, the Respondent altered and, in some instances, used to process transactions, 78 account forms in respect of 57 clients by altering information on the account forms without having the clients initial the alterations.

12. The altered account forms consisted of Letter of Direction forms, Know-Your-Client ("KYC") Update forms, Account Opening forms, Financial Instruction forms, Limited Authorization forms, and Trade Ticket forms. These forms had portions completed in handwriting.

13. The alterations made to the account forms included handwritten fund names, fund codes, amounts, dates, dealer codes, client addresses, investment objectives, and risk tolerances.

Pre-Signed Account Forms

14. At all material times, Member's policies and procedures prohibited its Approved Persons from possessing or using pre-signed account forms.

15. Between January 2013 and February 2017 the Respondent obtained, possessed, and, in some instances, used to process transactions, 26 pre-signed account forms in respect of 20 clients.

16. The pre-signed account forms consisted of Letter of Direction forms, Trade Ticket forms, KYC Update forms, CRA Direct Deposit forms, Withdrawal Request forms, and Transfer Authorization forms.

Member's Investigation

17. In June 2017, the Member identified two of the altered forms, and two of the pre-signed forms, that are the subject of this Settlement Agreement during an onsite branch review. The Member subsequently commenced a review of all of the client files serviced by the Respondent and identified the additional pre-signed and altered account forms that are referred to in this Settlement Agreement.

18. On January 15, 2018, the Member issued a warning letter to the Respondent for possessing and using pre-signed and altered account forms. The Member also placed him under close supervision.

19. In September 2017, as part of its investigation, the Member sent audit letters to all of the clients whose accounts the Respondent serviced in order to determine whether they had any unauthorized transactions in their accounts. No clients reported any concerns to the Member.

Additional Factors

20. The Respondent continued to obtain and use pre-signed and altered account forms after the publication of MFDA Bulletin #0661-E on October 2, 2015

21. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

22. There is no evidence of any client loss or that the transactions were unauthorized.

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

24. The Respondent has cooperated fully with Staff during the course of the investigation, and by entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

V. CONTRAVENTIONS

25. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) Between February 2009 and March 2017, the Respondent altered and, in some instances, used to process transactions, 78 account forms in respect of 57 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

- b) Between January 2013 and February 2017 the Respondent obtained, possessed, and in some instances, used to process transactions, 26 pre-signed account forms in respect of 20 clients, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

- a) The Respondent shall pay a fine in the amount of \$17,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1 (Fine);
- 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 By-law No. 1 (Costs);
- c) The payment by the Respondent of the Fine and Costs shall be made and received by MFDA staff in certified funds as follows:
 - i) \$5,000 (Fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii) \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - iii) \$2,500 (Fine) on or before the last business day of the first month following the date of the Settlement Agreement;
 - iv) \$2,500 (Fine) on or before the last business day of the second month following the date of the Settlement Agreement;
 - v) \$2,500 (Fine) on or before the last business day of the third month following the date of the Settlement Agreement;
 - vi) \$2,500 (Fine) on or before the last business day of the fourth month following the date of the Settlement Agreement;
 - vii) \$2,500 (Fine) on or before the last business day of the fifth month following the date of the Settlement Agreement;
- d) The Respondent shall in the future comply with MFDA Rule 2.1.1; and
- e) The Respondent will attend the Settlement Hearing in person or via teleconference.

VII. STAFF COMMITMENT

27. 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 Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part 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

28. 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. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

29. 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.

30. 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.24.1.1 and/or 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.

31. 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.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

32. 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

33. 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.

34. 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

35. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 21st day of September, 2020.

“James Alexander Hunter”

James Alexander Hunter

“JM”

Witness – Signature

JM

Witness – Print Name

“Charles Toth”

Staff of the MFDA
Per: Charles Toth
Vice-President, Enforcement

Schedule “A”

Order

File No. 202014



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 James Alexander Hunter

ORDER

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 James Alexander Hunter (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 on the basis of the admissions of the Respondent, the Hearing Panel is of the opinion that the Respondent:

- a) Between February 2009 and March 2017, the Respondent altered and, in some instances, used to process transactions, 78 account forms in respect of 57 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and

- b) Between January 2013 and February 2017 the Respondent obtained, possessed, and in some instances, used to process transactions, 26 pre-signed account forms in respect of 20 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 \$17,500 in certified funds, pursuant to section 24.1.1(b) of By-law No. 1 (Fine);
2. The Respondent shall pay costs in the amount of \$2,500 in certified funds, pursuant to section 24.2 of By-law No. 1 (Costs);
3. The payment by the Respondent of the Fine and Costs shall be made and received by MFDA staff in certified funds as follows:
 - i. \$5,000 (Fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - iii. \$2,500 (Fine) on or before the last business day of the first month following the date of the Settlement Agreement;
 - iv. \$2,500 (Fine) on or before the last business day of the second month following the date of the Settlement Agreement;
 - v. \$2,500 (Fine) on or before the last business day of the third month following the date of the Settlement Agreement;
 - vi. \$2,500 (Fine) on or before the last business day of the fourth month following the date of the Settlement Agreement;
 - vii. \$2,500 (Fine) on or before the last business day of the fifth month following the date of the Settlement Agreement; and
4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party

without first redacting from them any and all 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]