



**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: Mary Elizabeth Innes**

Heard: September 24, 2020 by electronic hearing in Toronto, Ontario

Decision: September 24, 2020

Reasons for Decision: November 3, 2020

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Frederick W Chenoweth  
Guenther W. K. Kleberg  
Joseph Yassi

Chair  
Industry Representative  
Industry Representative

Appearances:

Brendan Forbes	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Zach Pringle	)	Counsel for the Respondent
	)	
	)	
Mary Elizabeth Innes	)	Respondent
	)	
	)	

## **I. BACKGROUND**

1. By Notice of Settlement Hearing dated July 21, 2020, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened to consider whether, pursuant to s. 24.4 of By-law No. 1 of the MFDA, the Hearing Panel should accept a settlement agreement dated July 20, 2020, (“Settlement Agreement”) entered into by the Staff of the MFDA (“Staff”) and Mary Elizabeth Innes (the “Respondent”), assisted by her counsel. On acceptance of the Settlement Agreement, the proceedings were again made public.

2. At the outset of the proceeding, the Hearing Panel considered a joint motion by Staff and the Respondent to move the proceedings “*in camera*”. The Hearing Panel granted the motion. The Hearing Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Hearing Panel in determining whether or not to accept or reject the Settlement Agreement. The Hearing Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Hearing Panel’s reasons for doing so.

### **The Contravention**

3. In the Settlement Agreement, the Respondent admits that:

- a) Between January 2013 and October 2018, the Respondent, acting in her capacity as branch manager, reviewed and approved the use of a total of 113 pre-signed and altered account forms, contrary to MFDA Rule 2.5.5 (f) and 2.1.1.

### **The Facts**

4. In the Settlement Agreement, Staff of the MFDA and the Respondent agreed to the existence of a series of facts, which are set out in Part III of the said Agreement. The Settlement Agreement is attached as Appendix “A” to these Reasons.

5. As set out in the Settlement Agreement, the Respondent, had been registered in the securities industry since September 1992. Since October 2002, the Respondent had been registered in Ontario as a dealing representative with Investia Financial Services Inc. (“the Member”), a member of the MFDA. Between January 2011 and May 2019, the Member designated the

Respondent as a branch manager at a branch of the Member located in Belleville, Ontario (“the Branch”). On May 10, 2019, the Respondent resigned from her position as branch manager.

## **Discussion**

6. The Hearing Panel was aware that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

- a) The facts admitted by the Respondent constitute misconduct in contravention of the By-laws, MFDA Rules or policies, or provincial securities legislation; and
- b) The penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances.

7. The Hearing Panel accepted that the role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, citing the I.D.A. Ontario District Council in *Milewski (Re)*:

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 it views the penalty as clearly falling outside a reasonable range of appropriateness.” [Emphasis added].

*Sterling Mutual Inc. (Re)*, MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37.

*Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

8. The Hearing Panel also considered the principle that a Hearing Panel will not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness. Settlement agreements are necessary to assist 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.

*British Columbia (Securities Commission) v. Seifert*, [2006] B.C.J. No. 225 at paras. 48-49 (S.C.), aff'd, [2007] B.C.J. No. 2186 at para. 31 (C.A.) [*“British Columbia (Securities Commission)”*], SBA.

9. MFDA Rule 2.5.5(f) (formerly MFDA Rule 2.5.5(d)) states that: “The branch manager must: (i) supervise the activities of the Member at a branch or sub-branch that are directed toward ensuring compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons; and (ii) supervise the opening of new accounts and trading activity at the branch office.”

MFDA Rule 2.5.5(f)

10. The MFDA prohibits Approved Persons from obtaining pre-signed account forms or altering account forms without obtaining client initials to indicate that the alteration was approved by the client. The MFDA has warned Approved Persons against obtaining pre-signed account forms or altered account forms for a number of years.

MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017).

MFDA Bulletin #0661-E dated October 2, 2015.

11. Hearing Panels have held that the review and approval of pre-signed account forms and altered account forms without obtaining client initials by a branch manager is a violation of MFDA Rules 2.1.1 and 2.5.5(f) (formerly Rule 2.5.5(d)).

*Gocool (Re)*, [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201628, Panel Decision dated August 10, 2016.

*Ghose (Re)*, [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201671, Panel Decision dated January 19, 2017.

*Blake (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201873, Panel Decision dated December 8, 2017.

12. With the above principles in mind, the Hearing Panel considered in detail the agreed facts set out in the Settlement Agreement, and having done so, concluded that the allegation admitted by the Respondent had been proven and constitutes misconduct in contravention of the bylaws, MFDA rules and policies or provincial securities legislation.

13. The Hearing Panel then proceeded to consider the appropriateness of the proposed penalty as set out in the Settlement Agreement. In doing so, the Hearing Panel considered the submissions of Staff and the Respondent's counsel, MFDA Sanction Guidelines and the substantial case law to which it was referred.

14. In doing so, the Hearing Panel was mindful that the primary goal of securities regulation is the protection of the investor. The Hearing Panel was further mindful that in addition to protection of the public, the goals of securities regulation also include fostering public confidence in the capital markets and the securities industry.

*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557.

*Breckenridge (Re)*, MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007, at paragraph 71.

15. The Hearing Panel also accepted the submissions of Staff that the following factors are frequently considered by Hearing Panels when determining whether a penalty is appropriate:

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

- k) Previous decisions made in similar circumstances.

*Breckenridge*, supra.

16. With respect to those considerations, the Hearing Panel was mindful that:

- a) The nature of the contraventions that had been admitted by the Respondent were serious and warranted significant penalties. In particular, the use of pre-signed account forms is a serious breach of MFDA Rule 2.1.1.

*Balani (Re)*, MFDA File No. 201402, Hearing Panel of the Central Regional Council, Decision and Reasons dated January 15, 2015

- b) Branch managers are required to lead by example and should act as standard-bearers of conduct for the industry.

*Gocool (Re)*, supra at para 10

- c) The Respondent has acknowledged that her conduct constitutes a serious contravention of MFDA rules. By entering into the Settlement Agreement, the Respondent has accepted responsibility for her misconduct and saved the MFDA the time, resources and expenses associated with a full discipline hearing.
- d) The Respondent has not previously been the subject of MFDA disciplinary proceedings.
- e) There is no evidence of client loss or lack of authorization, resulting from the Respondent's conduct as described in the Settlement Agreement.
- f) At the time of the subject offence, the Respondent was a salaried employee and accordingly, there is no evidence that the Respondent received a financial benefit from her misconduct.
- g) The proposed penalty will ensure deterrence to both the Respondent and to the mutual fund industry.

17. Staff proposed that costs in the amount \$2,500.00 be imposed against the Respondent. The Respondent acknowledged her agreement with the proposed costs in the Settlement Agreement. The Hearing Panel was satisfied that the costs proposed were proportionate to the actual costs incurred in the prosecution of this matter.

## Result

18. For all the above reasons, the Hearing Panel concluded that the Settlement Agreement was reasonable and proportionate. Accordingly, the following penalties were imposed upon the Respondent:

- a) The Respondent shall pay a fine in the amount of \$9,000 in certified funds, 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, pursuant to section 24.2 of MFDA By-law No. 1;
- c) The Respondent shall be prohibited from acting as a branch manager or in any supervisory capacity for a Member of the MFDA for a period of 6 months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
- d) The Respondent shall successfully complete the branch manager's course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada prior to acting as a branch manager in the future, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
- e) The Respondent shall in the future comply with MFDA Rules 2.5.5(f) and 2.1.1; and
- f) 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 3<sup>rd</sup> day of November, 2020.

“Frederick W Chenoweth”

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Frederick W Chenoweth  
Chair

“Guenther W. K. Kleberg”

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Guenther W. K. Kleberg  
Industry Representative

“Joseph Yassi”

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Joseph Yassi  
Industry Representative



**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: Mary Elizabeth Innes**

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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, Mary Elizabeth Innes (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 Mutual Fund Dealers Association of Canada ("MFDA"):

- a) between January 2013 and October 2018, the Respondent, acting in her capacity as branch manager, reviewed and approved the use of a total of 113 pre-signed and altered account forms, contrary to MFDA Rules 2.5.5(f) and 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 \$9,000 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 By-law No. 1;
  - c) the Respondent shall be prohibited from acting as a branch manager or in any supervisory capacity for a Member of the MFDA for a period of 6 months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
  - d) the Respondent shall successfully complete the branch manager's course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada prior to acting as a branch manager in the future, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
  - e) the Respondent shall in the future comply with MFDA Rules 2.5.5(f) and 2.1.1; and
  - f) the Respondent will attend in person, 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. Since September 1992, the Respondent has been registered in the securities industry.

8. Since October 2002, the Respondent has been registered in Ontario as a dealing representative (formerly known as a mutual fund salesperson)<sup>1</sup> with Investia Financial Services Inc. (the “Member”), a Member of the MFDA.

9. Between January 2011 and May 2019, the Member designated the Respondent as a branch manager at a branch of the Member located in Belleville, Ontario (the “Branch”).

### **Approval of Pre-Signed and Altered Account Forms**

10. At all material times, the Member’s branch manager manual required all branch managers to:

“ensur[e] that business conducted on behalf of [the Member] by Representatives and other employees and agents at the branch is in compliance with regulations and [the Member’s] policies and procedures.”

11. Between January 2013 and October 2018, DL, an Approved Person who the Respondent had the responsibility to supervise as his branch manager, submitted to the Respondent for approval 81 pre-signed account forms and 32 account forms where information had been altered on the forms without having the client initial the alterations.

12. The Respondent, acting in her capacity as branch manager, reviewed and approved the use of these forms which she knew or ought to have known were either pre-signed forms or altered account forms.

13. The pre-signed and altered account forms the Respondent approved as branch manager consisted of: 76 Know-Your-Client (“KYC”) Update Forms, 24 New Client Account Forms, 9 Order Instruction Forms, 3 RESP Forms and 1 Systematic Instruction Form.

14. The alterations made to the 32 altered account forms include alterations to: client KYC information, client contact information, plan types, investment amounts and fund descriptions.

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<sup>1</sup> In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

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

15. In or around December 2018, the Member conducted an audit of client files at the Branch, during which the Member identified some of the account forms that are the subject of this Settlement Agreement.

16. In January 2019, the Member commenced an investigation into, among other things, the Respondent's activities, which revealed the remainder of the account forms that are the subject of this Settlement Agreement.

17. On May 10, 2019, the Respondent resigned from her position as a branch manager.

18. On May 17, 2019, the Member sent letters to the clients whose client files contained the pre-signed or altered account forms along with a transaction history for the prior 3 years and, where applicable, the KYC information on file for the client. The Member asked the clients to review the transactions within their account and to review their KYC information to ensure that all transactions and KYC information were accurate. No clients raised any concerns to the Member about the activity within their accounts.

### **Additional Factors**

19. At the material time, the Respondent was a salaried employee with the Member and therefore received no commissions or financial benefit from the transactions which relate to the pre-signed and altered forms which are the subject of this Settlement Agreement.

20. There is no evidence of client loss or lack of authorization.

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

22. 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.

### **IV. ADDITIONAL TERMS OF SETTLEMENT**

23. 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.

24. 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. 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](http://www.mfda.ca).

25. 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.

26. 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.

27. 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.

28. 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.

29. 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 20<sup>th</sup> day of July, 2020.

“Mary Elizabeth Innes”  
 \_\_\_\_\_  
 Mary Elizabeth Innes

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 \_\_\_\_\_  
 Witness – Signature

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 \_\_\_\_\_  
 Witness – Print Name

“Charles Toth”  
 \_\_\_\_\_  
 Staff of the MFDA  
 Per: Charles Toth  
 Vice-President, Enforcement

**Schedule “A”**

**Order**

**File No. 202039**



**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: Mary Elizabeth Innes**

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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 MFDA 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 MFDA By-law No. 1;

**AND WHEREAS** the Hearing Panel is of the opinion that:

- a) between January 2013 and October 2018, the Respondent, acting in her capacity as branch manager, reviewed and approved the use of a total of 113 pre-signed and altered account forms, contrary to MFDA Rules 2.5.5(f) and 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 \$9,000 in certified funds, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$2,500 in certified funds, pursuant to section 24.2 of MFDA By-law No. 1;
3. The Respondent shall be prohibited from acting as a branch manager or in any supervisory capacity for a Member of the MFDA for a period of 6 months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
4. The Respondent shall successfully complete the branch manager's course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada prior to acting as a branch manager in the future, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
5. The Respondent shall in the future comply with MFDA Rules 2.5.5(f) and 2.1.1; and
6. 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]

DM 775027