



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: Lexy Dawn Koss

Heard: April 4, 2018 in Edmonton, Alberta

Decision: April 4, 2018

Reasons for Decision: July 13, 2018

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh

Howard Mix

Greg Wiebe

Chair

Industry Representative

Industry Representative

Appearances:

Sakeb Nazim

)

Counsel for the Mutual Fund Dealers
Association of Canada

)

James Heelan

)

Counsel for the Respondent

)

Lexy Dawn Koss

)

Respondent, in person

)

I. Background

1. On January 19, 2018, the Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Settlement Hearing in respect of Lexy Dawn Koss ("Respondent"), pursuant to sections 20 and 24.1 of MFDA By-law No. 1.

2. The purpose of the hearing was to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, the Hearing Panel should accept the settlement agreement ("Settlement Agreement") which was entered into between Staff of the MFDA ("Staff") and the Respondent, on March 27, 2018.

3. The settlement hearing took place on April 4, 2018. The Respondent attended the hearing in person and was accompanied by counsel. Both Staff and counsel for the Respondent made oral submissions.

4. At the conclusion of the hearing, the Hearing Panel ("the Panel") accepted the Settlement Agreement. Our reasons for decision are set out below.

II. Agreed Facts

5. A copy of the Settlement Agreement is attached to these Reasons as Schedule "1". The facts which have been agreed to by the parties and which are relevant for the purposes of this decision are set out in section III of the Settlement Agreement.

III. Contraventions

6. In the Settlement Agreement, the Respondent admitted to the following violations of the MFDA's Rules:

- a) between May 24, 2016 and May 25, 2016 without the knowledge, authorization or approval of client DM, the Respondent processed unauthorized trades in client

DM's account, contrary to the policies and procedures of the Member and MFDA Rules 2.3.1, 2.1.1, 2.10 and 1.1.2.

IV. Terms of Settlement

7. Staff and the Respondent agreed to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$5,000 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 Rules 2.3.1, 2.1.1, 2.10 and 1.1.2; and
- d) the Respondent will attend in person on the date set for the Settlement Hearing.

V. Analysis

Role of the Panel

8. The role a Hearing Panel performs at a Settlement Hearing is fundamentally different from the role it performs at a contested hearing.

9. A Hearing Panel has two options when considering a Settlement Agreement – accept the Settlement Agreement or reject it.

MFDA By-law No. 1, s.24.4.3

10. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*, [1999] IDACD No. 17 at p.12:

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

11. The rationale for respecting settlements of the nature found in the Settlement Agreement in this case, was articulated by the British Columbia Court of Appeal:

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

British Columbia (Securities Commission) v Seifert, 2007 BCCA 484, at para.31.

12. 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.

Jacobson (Re) 2007 LNCMFDA 27, at para.70

13. Although the *Seifert* decision dealt with an agreement that was before the British Columbia Securities Commission, the findings in that case apply equally to settlements in the regulatory context of MFDA discipline proceedings. The case has been frequently cited by Hearing Panels in MFDA settlement hearings.

Factors Concerning Acceptance of a Settlement Agreement

14. Hearing Panels have repeatedly expressed the view that generally, settlement agreements should be accepted bearing in mind the following criteria:

1. That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;
2. That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;
3. That the agreement addresses the issues of both specific and general deterrence;
4. That the agreement is likely to prevent the type of conduct set out in the facts;
5. That the agreement will foster confidence in the integrity of the Canadian capital markets;
6. That the agreement will foster confidence in the integrity of the MFDA; and
7. That the agreement will foster confidence in the regulatory process itself. ...

Sterling Mutuals Inc. (Re), supra, at para.36

15. The Supreme Court of Canada, in the case of *Pezim v British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, at para.59, held that the primary goal of all securities regulation is the protection of the investor.

16. The Supreme Court went on in that decision to find that other goals of securities regulation include fostering public confidence in the capital markets and in the securities industry as a whole.

Pezim v British Columbia (Superintendent of Brokers), supra, at paras.59 & 68

Specific Factors Concerning the Appropriateness of the Penalty

17. Factors that Hearing Panels frequently consider when determining whether a penalty is appropriate include the following:

- 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 activities;
- 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 activities to those who are permitted to participate in the capital markets; and
- k) previous decisions made in similar circumstances.

Headley (Re), 2006 LNCMFDA 3, at para.85

18. The Supreme Court of Canada has held that it is also appropriate for a Hearing Panel to include general deterrence amongst the factors that it takes into account when determining an appropriate penalty. In *Cartaway Resources Corp.*, the Court stated:

“A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one in imposing a sanction ...”

Re Cartaway Resources Corp., [2004] 1 S.C.R. 672, at para.61

MFDA Penalty Guidelines

19. The MFDA Penalty Guidelines ("Guidelines") are an additional resource that a Hearing Panel may consider when determining the appropriateness of the penalty to be imposed pursuant to a Settlement Agreement. The penalty types and ranges set out in the Guidelines are not mandatory or binding. They are intended to provide a basis upon which a Hearing Panel's discretion can be exercised consistently, in like circumstances.

20. In cases involving misconduct of the type admitted to in the present case, the Penalty Guidelines recommend consideration of the following penalties and factors:

BREACH	PENALTY TYPE & RANGE	SPECIFIC FACTORS TO CONSIDER
Discretionary Trading (Rule 2.3.1) (Guidelines, p.26)	<ul style="list-style-type: none"> • Fine (AP): Minimum of \$5,000 • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course) • Period of increased supervision • Suspension • Permanent prohibition in egregious cases 	<ul style="list-style-type: none"> • Number of trades • Whether client provided verbal authority to engage in discretionary trading • Underlying reason for engaging in trading or (e.g. for personal financial gain) • The number of clients affected • Period of time over which the trading took place • Suitability of trades • Extent of client losses
Standard of Conduct (Rule 2.1.1) (Guidelines, p. 27)	<ul style="list-style-type: none"> • Fine (AP): Minimum of \$5,000 • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course) • Suspension • Permanent prohibition in egregious cases 	<ul style="list-style-type: none"> • Nature of the circumstances and conduct • Number of individuals affected • Whether the conduct is likely to bring the individual, the Member or the mutual fund industry into disrepute

excerpts from the *MFDA Penalty Guidelines* at pp.26 & 27

Application in the Present Case

Staff's Submissions

21. In its written submissions Staff identified that in reaching the Settlement Agreement it took into account the factors set out above, as follows¹:

i) Nature of Misconduct

28. Engaging in unauthorized discretionary trading is a serious misconduct with potential to result in significant client harm. The Respondent redeemed \$36,477.71 from the client's RRSP account and invested the monies into a different fund without the knowledge, authorization or approval of the client.

Griffith (Re), [2014] Hearing Panel of the Central Regional Council, MFDA File No. 201329, Panel Decision dated August 19, 2014, at para. 7

Settlement Agreement, para. 14.

ii) Client Harm

29. There is no evidence of client harm in this case.

Settlement Agreement, para. 20.

iii) Member's Disciplinary Action

30. On January 10, 2017, The Respondent's employer, Manulife Securities Investment Services, imposed a fine of \$15,000 on the Respondent.

Settlement Agreement, para. 19.

iv) Benefits Received by the Respondent

31. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, beyond the commissions and fees that she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

Settlement Agreement, para. 21.

v) The Respondent's Experience and Level of Activity in the Capital Markets

¹ Staff's Submissions, paras.28-38

32. The Respondent has been registered in the mutual fund industry since 2006.

Settlement Agreement, para. 6.

33. The Respondent is an experienced dealing representative who ought to have known and respected the MFDA's and the Member's compliance requirements.

vi) Deterrence

34. The proposed penalties, in addition with the fine already imposed by the Member, will deter the Respondent from engaging in misconduct in the future, and will also deter others in the capital markets.

vii) The Respondent's Past Conduct including Prior Sanctions

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

Settlement Agreement, para. 22.

viii) The Respondent's Recognition of the Seriousness of the Misconduct

36. 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 proceeding.

ix) Penalty Guidelines

37. Staff is seeking a \$5000 fine, which is the minimum fine recommended by the Penalty Guidelines for an Approved Person's breach of the discretionary trading or standard of conduct. In this case, the Member has already imposed a fine of \$15,000. Therefore, Staff submits that the combination of the two fines is appropriate in the present case, having regard to the above noted factors.

x) Previous Decisions Made in Similar Cases

38. The proposed resolution is within the reasonable range of appropriateness with regard to other decisions made by MFDA Hearing Panels in similar circumstances:

CASE	FACTS	PENALTIES
<i>Griffiths</i> , [2014] MFDA File No. 201329, Staff's Book of Authorities, Tab 12 .	AP engaged in discretionary trading by processing 9 redemptions in the total amount of \$39,516, based on instructions from the client's husband	Fine of \$10,000 Fine of \$12,892 to Member Costs of \$5,000
<i>Wallace</i> , [2017] MFDA File No. 201683, Staff's Book of Authorities, Tab 13 .	AP processed three trades amounting to \$5,889 without the client's knowledge or authorization	Fine of \$10,500 Costs of \$2,500
<i>Ewens</i> , [2017] MFDA File No. 201714, Staff's Book of Authorities, Tab 14 .	AP processed approximately 53 authorized discretionary trades as part of a dollar-cost averaging strategy in relation to one client	Fine of \$11,500 Fine of \$7,569 to Member Costs of \$2,500
<i>Stolarz</i> , [2016] MFDA File No. 201642, Staff's Book of Authorities, Tab 15 .	AP increased monthly payments from client's Systematic Withdrawal Plan based on instructions from the client's spouse AP processed two mutual fund switches without the client's authorization	Fine of \$15,000 Costs of \$2,500
<i>Garries</i> , [2016] MFDA File No. 201605, Staff's Book of Authorities, Tab 3 .	AP processed 306 authorized discretionary trades as part of a dollar-cost averaging strategy in relation to 38 clients AP failed to record and maintain evidence of client trade instructions with respect to 340 transactions AP obtained, possessed and, in some instances, used to process transactions, 54 pre-signed account forms	Fine of \$25,000 1 month suspension Costs of \$2,500

Respondent's Submission

22. At the hearing, while not in any way detracting from the admissions that the Respondent made in the Settlement Agreement, Respondent's counsel submitted that:

- prior to the matters which are the subject of these proceedings, the Respondent had a long and exemplary career and she is deeply embarrassed by her actions which she acknowledges, contravened the MFDA Rules;
- when the Respondent engaged in the misconduct she had no intention to show willful disregard for the Rules; rather she felt challenged by difficulties in receiving instructions from her client and believed she was acting in her client's best interests;

- in addition to the fine imposed by the Member and the proposed penalty set out in the Settlement Agreement, the Respondent was required to attend a Securities Professionals Workshop in Ontario, at her own expense; and
- as the result of these proceedings, the Respondent has paid a significant price for her mistake including serious public denunciation of her behavior.

Conclusion

23. Having reviewed the written submissions of Staff and having heard oral submissions from both Staff and counsel for the Respondent, the Panel is satisfied, based on the totality of the evidence that the proposed penalty which is set out in the Settlement Agreement, falls within a reasonable range of appropriateness.

24. The penalty satisfies the primary goal of securities regulation - to protect investors. It is reasonable and proportionate and appropriately addresses issues of both specific and general deterrence.

25. Accordingly, the Panel accepts the Settlement Agreement.

DATED this 13th day of July, 2018.

“Sherri Walsh”

Sherri Walsh
Chair

“Howard Mix”

Howard Mix
Industry Representative

“Greg Wiebe”

Greg Wiebe
Industry Representative

Schedule “1”

Settlement Agreement

File No. 201812



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: Lexy Dawn Koss

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (“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 Prairie Regional Council (“Hearing Panel”) of the MFDA should accept the settlement agreement (“Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Lexy Dawn Koss.

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 was registered in the mutual fund industry commencing in April 2006.

7. The Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) in Alberta since April 2006, and in Ontario since April 2015, with Manulife Securities Investment Services (“Manulife”), a Member of the MFDA.

8. At all material times, the Respondent carried on business in the Edmonton, Alberta area.

Unauthorized Discretionary Trading

9. At all material times, Manulife's policies and procedures prohibited its Approved Persons from engaging in discretionary trading and also explicitly stipulated that Approved Persons must obtain express prior written consent from clients prior to processing 10% free unit switches from mutual funds in a client's portfolio that are held subject to deferred sales charge ("DSC") fees ("DSC load mutual funds").

10. At all material times, client DM was a client of Manulife, whose accounts were serviced by the Respondent.

11. In 2016, client DM held DSC load mutual funds in his RRSP account.

12. Between March 2016 and May 2016, the Respondent made approximately six attempts to contact client DM to recommend and obtain client DM's authorization to redeem 10% free units held in the DSC load mutual funds, and apply the proceeds from the redemptions to the purchase of units of a different mutual fund that the Respondent believed would advance client DM's investment objective to pursue growth.

13. Client DM did not respond to any of the Respondent's attempts to contact him.

14. On May 24, 2016, without the knowledge, authorization or approval of client DM, the Respondent redeemed the 10% free units from the DSC load mutual funds that client DM held in his RRSP account. The proceeds from the redemptions totaled \$36,477.71.

15. On May 25, 2016, without the knowledge, authorization or approval of client DM, the Respondent used the proceeds from the redemptions from client DM's DSC load mutual funds to purchase a front end load mutual fund.

16. On July 8, 2016, client DM emailed the Respondent and advised her that he had received a confirmation showing that unauthorized transactions had been processed in his account on May 24 and 25, 2016.

Manulife's Response

17. Manulife was notified of the complaint regarding unauthorized trading on July 21, 2016, and issued an acknowledgement letter to client DM the next day.

18. On September 19, 2016, Manulife contacted client DM and offered to reverse the trades, but client DM did not respond and did not request a reversal of the trades. The mutual fund that the Respondent purchased with the proceeds from the redemptions of the DSC load mutual funds increased in value following the unauthorized trading that was processed in client DM's account.

19. On January 10, 2017, Manulife issued a warning letter to the Respondent and took the following disciplinary action against the Respondent:

- a) \$15,000 fine
- b) Close Supervision for an indefinite period, to be reviewed on June 30, 2017; and
- c) Attendance and completion of the Manulife Securities Professional Workshop in Oakville, Ontario on April 10 to 12, 2017, at the Respondent's expense.

Additional Factors

20. There is no evidence of client harm resulting from any of the misconduct described in this Settlement Agreement.

21. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described in this Settlement Agreement, beyond the commissions and fees that she would ordinarily be entitled to receive had the transactions been processed in the proper manner.

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

23. 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

24. The Respondent admits that, between May 24, 2016 and May 25, 2016, without the knowledge, authorization or approval of client DM, the Respondent processed unauthorized trades in client DM's account, contrary to the policies and procedures of the Member and MFDA Rules 2.3.1, 2.1.1, 2.10 and 1.1.2.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall pay a fine in the amount of \$5,000 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 Rules 2.3.1, 2.1.1, 2.10 and 1.1.2; and
- d) the Respondent will attend in person on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

26. 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

27. Acceptance of this Settlement Agreement shall be sought at a hearing of the Prairie 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.

28. 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 her 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.

29. 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 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.

30. 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 her.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

31. 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

32. 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 MFDA By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

33. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that she 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

34. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 27th day of March, 2018.

“Lexy Dawn Koss”

Lexy Dawn Koss

“GMK”

Witness – Signature

GMK

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. 201812



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: Lexy Dawn Koss

ORDER

(ARISING FROM SETTLEMENT HEARING ON APRIL 4, 2018)

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 Lexy Dawn Koss (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated March 27, 2018 (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 admissions made by the Respondent as set out in the Settlement Agreement, the Hearing Panel is of the opinion that the Respondent:

- a) between May 24, 2016, and May 25, 2016, without the knowledge, authorization or approval of client DM, the Respondent processed unauthorized trades in client

DM's account, contrary to the policies and procedures of the Member and MFDA Rules 2.3.1, 2.1.1, 2.10 and 1.1.2.

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 \$5,000 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 1;
3. the Respondent shall in the future comply with MFDA Rules 2.3.1, 2.1.1, 2.10 and 1.1.2;
4. the Respondent will attend in person on the date set for the Settlement Hearing; and
5. 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]