



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: Adrian Craig Kotze

Heard: October 1, 2021 by electronic hearing in Vancouver, British Columbia

Decision: October 1, 2021

Reasons for Decision: November 11, 2021

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Joseph A. Bernardo
Barbara E. Fraser
Michelle Leung

Chair
Industry Representative
Industry Representative

Appearances:

Brendan Forbes)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Adrian Craig Kotze)	Respondent
)	
)	

I. INTRODUCTION

1. On October 1, 2021, the Hearing Panel was asked in a closed session to consider a settlement agreement dated August 31, 202 (the “Settlement Agreement”) made between the staff (“Staff”) of the Mutual Fund Dealer’s Association of Canada (“MFDA”) and Adrian Craig Kotze, (the “Respondent”). It is attached as Schedule “A”.
2. The Settlement Agreement concerned an Approved Person using pre-signed forms. The Hearing Panel accepted it for the following reasons.

II. AGREED FACTS

3. The facts in the Settlement Agreement were supplemented by additional evidence that entered the record by consent during the hearing. The parties agree that:
 - a) At all material times, the Respondent was registered as a dealing representative with Quadrus Investment Services Ltd., a Member of the MFDA (the “Member”), and conducted business in or around Langley, British Columbia.
 - b) The Member’s policies and procedures prohibited Approved Persons from possessing or using pre-signed account forms.
 - c) In or around early 2013, the Member discovered that between 2001 and 2009 the Respondent had possessed 23 pre-signed account forms. Consequently, on February 14, 2013 the Member issued a letter to the Respondent warning him against any further use of pre-signed account forms.
 - d) In December 2019, a client complained to the Member that the Respondent had used pre-signed account forms. The Member commenced an investigation, and took possession of the Respondent’s client files.
 - e) The Member discovered some pre-signed account forms in the client files. This led the Member to send letters to all of the Respondent’s clients. The letters, which included portfolio summaries, asked the clients whether any authorized transactions were missing from the summaries or, conversely, if any unauthorized transactions had taken place in their accounts. None of the clients reported any concerns.
 - f) The Member then took the following supervisory actions:
 - i. On December 19, 2019, it issued a disciplinary letter to the Respondent.
 - ii. On December 23, 2019, it placed the Respondent under close supervision.

- iii. It required the Respondent to complete training in respect of pre-signed account forms, and to review the Member's written policies and procedures concerning the prohibition against using pre-signed account forms.
- iv. It continued its investigation into the Respondent's conduct.
- g) In January 2020, a fuller audit of the Respondent's client files revealed additional pre-signed account forms. The Respondent, who had been unable to review his client files after the Member had taken control of them, did not recall the existence of these particular forms. The information available to Staff does not support the inference that the Respondent deliberately failed to disclose the existence of the forms to the Member.
- h) The Member sent follow up letters to the subset of clients who had not previously responded to the December 2019 letter. These letters again asked clients whether their accounts appeared to be missing authorized transactions or included any unauthorized ones. Again, none of the clients reported any concerns.
- i) The Member's investigation disclosed that between about June 2013 and January 2017 the Respondent had obtained and possessed a total of 5 pre-signed account forms in respect of 3 clients. These consisted of two Redemption Forms, two Automatic Withdrawal or Registered Investment Fund Payment Forms, and one Agent of Record Transfer Form.
- j) There is no evidence that:
 - i. Any transactions were made without client authorization.
 - ii. Any clients suffered losses as a result of the misconduct.
 - iii. The Respondent derived any financial benefit from his misconduct, apart from the compensation he would ordinarily have been entitled to receive had the relevant transactions been carried out in the proper manner.
- k) The Respondent has not previously been the subject of MFDA disciplinary proceedings.
- l) As at the date of the settlement hearing, the Respondent had paid a total of \$2,800 to the Member to cover costs arising from his close supervision, which remained in place.

III. CONTRAVENTION

4. Among other things, MFDA Rule 2.1.1 obligates Approved Persons to observe high standards of ethics and conduct in the transaction of business, and to refrain from conduct that is unbecoming or detrimental to the public interest.

5. It is longstanding MFDA guidance that:

- a) Having a client sign a form which is blank or only partially completed constitutes signature falsification.
- b) The use of pre-signed forms for the sake of client convenience is inherently risky and never appropriate. This is because it undercuts the integrity and reliability of client account documentation. Among other things, the practice:
 - i. hampers a Member's ability to audit account activity and an Approved Person's business conduct;
 - ii. misleads supervisory personnel;
 - iii. interferes with a Member's ability to address client complaints; and
 - iv. has the potential to enable unauthorized trading, which in turn can be exploited to misappropriate funds and perpetrate fraud.
- c) The use of pre-signed forms constitutes a breach of Rule 2.1.1.

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

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

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

IV. APPLICABLE STANDARD

7. MFDA By-Law 24.4 sets out the procedures for settlement hearings.

8. The By-Law defines a hearing panel's jurisdiction over settlement outcomes very narrowly. It states at subsection 24.4.3 simply that a panel "may accept or reject a settlement agreement", making clear that a settlement hearing panel does not have the authority to impose its own preferred outcome on the parties.

9. From this, MFDA settlement hearing panels have repeatedly drawn the obvious corollary: a hearing panel ought not to assess proposed sanctions against the outcome the hearing panel might

itself order exercising its own discretion. Instead, taking the facts as agreed upon by the parties at face value, a hearing panel's task is to determine whether their intended outcome falls within a reasonable range of appropriateness. If it clearly does not, a settlement may properly be rejected; otherwise, it is incumbent on the hearing panel to accept it.

Sterling Mutuals Inc. (Re), MFDA File No. 20080, September 3, 2008, at paragraph 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.

10. The policy reason for this deference is straightforwardly pragmatic: the efficient allocation of limited enforcement resources serves to advance the MFDA's core regulatory goal of protecting the investing public.

11. As the British Columbia Court of Appeal stated with respect to a settlement by the British Columbia Securities Commission:

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.

B.C. Securities Commission v. Seifert [2007] B.C.J. No. 2186, at paragraph 49.

12. In other words, a policy of deference is warranted because settlements are the product of negotiations between litigants opposed in interest. That is, they are pragmatic compromises arrived at by the persons best positioned to assess the significance of the relevant facts, not all of which may be disclosed in the settlement text.

Seifert, supra, at paragraphs 26 and 31.

V. PROPOSED SANCTIONS

13. The Settlement Agreement contemplates that the Respondent be ordered to:

- a) pay a financial penalty of \$13,000;
- b) pay costs of \$2,500; and
- c) successfully complete a course in ethics and professional conduct acceptable to Staff.

14. In support of this position, Enforcement Counsel referred to several relatively recent settlement decisions involving closely similar misconduct:

Blundell (Re), MFDA File No. 201557, May 31, 2016.

Techer (Re), MFDA File No. 201662, December 5, 2016.

Shah (Re), MFDA File No. 201907, July 22, 2019.

Jutting (Re), MFDA File No. 201970, March 16, 2020.

15. The use of pre-signed account forms in these cases extended from a low of 6 forms in respect of 5 clients to a high of 12 forms in respect of 8 clients. The agreed upon fines in the decisions ranged from \$5,000 to \$11,500. Costs of \$2,500 were ordered in all of the cases but one, where \$1,000 was ordered.

16. Each of the precedents has the following features in common with the present case:

- a) The respondent had been previously caught and warned against using pre-signed forms by their employing Member, but nonetheless did it again.
- b) No unauthorized trading was involved.
- c) No losses were imposed on clients.
- d) The misconduct did not confer a financial benefit on the respondent.
- e) No prior disciplinary history was identified.

17. *Techer, supra*, was the only settlement precedent provided to the Hearing Panel in which the sanctions included a period of prohibition. The distinguishing feature of that case is the defiant attitude of the respondent, who was under close supervision for using pre-signed forms when discovered doing it again.

VI. DECISION

18. Whether the sanctions proposed in a settlement fall within a reasonable range of appropriateness depends on multiple factors. Where, as in this case, there is no evidence of client harm or improper gain, the most relevant factors are:

- a) The gravity of the misconduct.
- b) Whether the Respondent recognizes the significance of his misconduct.
- c) The continuing risk, if any, the Respondent may present to the investing public.
- d) Whether the proposed sanctions meet the need for both specific and general deterrence.

19. As already noted, the use of pre-signed forms constitutes a serious breach of MFDA Rule 2.1.1. The Respondent's misconduct is compounded by these aggravating factors:
- a) The misconduct addressed by the Settlement Agreement occurred between June 2013 and January 2017. That is, it all took place after the explicit guidance in MFDA Notice #MSN-0066 was promulgated in March 2013, and some of the misconduct took place after MFDA Bulletin #0661-E was issued in October 2015.
 - b) The Respondent has been a registrant since at least 2001, which means at the time his misconduct was discovered he had been registered for not less than 18 years. While all Approved Persons are expected to know and abide by the MFDA's guidance, the failure to do so by a highly experienced dealing representative is all the more inexcusable.
 - c) The misconduct commenced in June 2013, a scant four months after the Respondent received the Member's letter of February 2013 expressly warning him against ever using pre-signed forms again. It is evident the Respondent deliberately chose to ignore the Member's supervisory direction.
20. The Respondent showed blatant disregard for the standard of conduct he was obligated to meet. The same, however, can be said of the respondents in the settlement precedents, all of whom likewise resumed using pre-signed forms after being flat out told that the practice was entirely unacceptable.
21. The Respondent's possession of pre-signed forms shares another thing in common with the settlement precedents: there is nothing in the agreed upon facts to suggest his misconduct was motivated by dishonesty. Rather, it appears to have been undertaken for the sake of convenience, not to advance his financial interests over those of his clients.
22. By virtue of entering the Settlement Agreement, the Respondent has acknowledged the gravity of his misconduct and accepted responsibility for it. As in all settlements, his admission of liability has saved the MFDA the expenditure of time and resources that would otherwise be required to conduct a contested hearing.
23. In *Jutting, supra*, the misconduct involved 6 pre-signed forms in respect of 5 clients, making it the precedent in which the misconduct was narrowest in scope. The combined monetary sanctions of \$14,000 in that case also make it the precedent that resulted in the greatest financial impact on the respondent. By contrast, the Settlement Agreement addresses the possession of 5

pre-signed forms in respect of 3 clients, and contemplates combined penalty and costs of \$15,500. In other words, the total monetary sanctions proposed in this case exceed the highest amount imposed in the precedents, but for misconduct narrower in scope.

24. The aggravating factors in this case are considerable. They do not, however, distinguish the Respondent's misconduct from that in previous settlement decisions. Rather, the available evidence indicates that the essential problem for the public interest in the present case is the same as that addressed by the precedents: a failure to fully understand that MFDA Rule 2.1.1 is a literal directive that defines the standard of conduct Approved Persons are obligated to meet in every aspect of their employment.

25. The proposed sanctions are proportional to the need for specific and general deterrence in the circumstances of this case. It follows that they do not fall outside the reasonable range of appropriateness, and for that reason the Hearing Panel accepted the Settlement Agreement.

DATED this 11th day of November, 2021.

"Joseph A. Bernardo"

Joseph A. Bernardo
Chair

"Barbara E. Fraser"

Barbara E. Fraser
Industry Representative

"Michelle Leung"

Michelle Leung
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: Adrian Craig Kotze

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Adrian Craig Kotze (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"):

Between approximately June 2013 and January 2017, the Respondent obtained and possessed 5 pre-signed account forms in respect of 3 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 \$13,000 in certified funds upon acceptance of the Settlement Agreement, 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 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
 - c) the Respondent shall successfully complete the Ethics and Professional Conduct Course offered by the IFSE Institute, or an industry course acceptable to Staff of the MFDA, within 6 months of the acceptance of the Settlement Agreement, pursuant to section 24.1.1(f) of By-law No. 1;
 - d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - e) 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 March 2008, the Respondent has been registered in British Columbia as a dealing representative with Quadrus Investment Services Ltd. (the “Member”), a Member of the MFDA.
8. At all material times, the Respondent conducted business in the Langley, British Columbia area.

Pre-Signed Account Forms

9. At all material times, the Member’s policies and procedures prohibited the use of pre-signed forms.
10. Between approximately June 2013 and January 2017, the Respondent obtained and possessed 5 pre-signed account forms in respect of 3 clients
11. The pre-signed account forms included: 2 Redemption Forms, 2 Automatic Withdrawal or Registered Investment Fund Payment Forms and 1 Agent of Record Transfer Form.

Prior Use of Pre-Signed Account Forms

12. Between 2001 and 2009, while the Respondent was registered with the Member, the Respondent obtained and possessed 23 pre-signed account forms.

13. On February 14, 2013, the Member issued a warning letter to the Respondent in respect of his use of pre-signed account forms.

14. The Respondent obtained and possessed the pre-signed account forms that are the subject of this Settlement Agreement in the period after the Member issued the warning letter to him on February 14, 2013.

The Member's Investigation

15. In December 2019, the Member received a client complaint which alleged that the Respondent had used pre-signed account forms. The Member commenced an investigation into the Respondent's conduct and discovered pre-signed account forms in the client files maintained by the Respondent.

16. In December 2019, the Member sent audit letters to all clients whose accounts were serviced by the Respondent and included portfolio summaries. In the letters, the Member requested that clients advise the Member if any investments were made by the Respondent on behalf of the client which were not contained within the portfolio summary or if any transactions contained within the portfolio summary were not authorized by the client. No clients responded to the Member's letter with any concerns about the transactions within their account.

17. On December 19, 2019, the Member issued a disciplinary letter to the Respondent in respect of the pre-signed forms account forms described above.

18. On December 23, 2019, the Member placed the Respondent under close supervision. The Respondent remains under close supervision and has paid a total of \$2,800 to the Member in respect of the close supervision.

19. The Member also required the Respondent to complete training in respect of pre-signed account forms, and required the Respondent to review its policies and procedures manual pertaining to the prohibitions against using pre-signed account forms.

20. In January 2020, the Member conducted an audit of all of the client files maintained by the Respondent and discovered additional pre-signed account forms that are described above.

21. In January 2020, the Member sent a follow up letter to all clients whose accounts were serviced by the Respondent who had not responded to the December 2019 letter. In the letters, the Member requested clients advise the Member if any investments were made by the Respondent on behalf of the client which were not contained within the portfolio summary, or if any transactions contained within the portfolio summary were not authorized by the client. No clients responded to the Member's second letter with any concerns about the transactions within their account.

Additional Factors

22. 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.

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

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

25. 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

26. 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.

27. 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.

28. 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.

29. 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 agrees to waive any rights to a full hearing, a review hearing or appeal 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.

30. 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.

31. 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.

32. 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 31st day of August, 2021.

“Adrian Craig Kotze”

Adrian Craig Kotze

“LK”

Witness – Signature

LK

Witness – Print Name

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement



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: Adrian Craig Kotze

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 MFDA By-law No. 1 in respect of Adrian Craig Kotze (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 between approximately June 2013 and January 2017, the Respondent obtained and possessed 5 pre-signed account forms in respect of 3 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 \$13,000 in certified funds upon acceptance of the Settlement Agreement, 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 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
3. The Respondent shall successfully complete the Ethics and Professional Conduct Course offered by the IFSE Institute, or an industry course acceptable to Staff of the MFDA, within 6 months of the acceptance of the Settlement Agreement, pursuant to section 24.1.1(f) of By-law No. 1;
4. The Respondent shall in the future comply with MFDA Rule 2.1.1; 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]

DM 852765