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: Yeram Kwak (also known as Kaylee Kwak)

Heard: April 7, 2022 by electronic hearing in Vancouver, British Columbia
Decision: April 7, 2022
Reasons for Decision: April 26, 2022

# REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

| | |
|---|---|
| Joseph Bernardo | Chair |
| Susan Monk | Industry Representative |
| Tammi Walsh | Industry Representative |

Appearances:

| | | |
|---|---|---|
| Zaid Sayeed | ) | Enforcement Counsel for the Mutual Fund Dealers Association of Canada |
| Nicole Chang | ) | Counsel for Respondent |
| Yeram Kwak | ) | Respondent |

## I. INTRODUCTION

1. On April 7, 2022, the Hearing Panel was asked in a closed session to consider a settlement agreement (Settlement Agreement) made between the staff (Staff) of the Mutual Fund Dealer's Association of Canada (MFDA) and the Respondent. It is attached as Exhibit A.

2. The Settlement Agreement concerned an Approved Person signing a client's name to account forms and then submitting them to her employing Member for processing. The Hearing Panel accepted the Settlement Agreement for the following reasons.

## II. AGREED FACTS AND LAW

### Facts

3. The parties agree that:

a) On December 27, 2017, the Respondent became registered as a dealing representative with TD Investment Services Inc., a Member of the MFDA (the Member), and commenced conducting business in and around Surrey, British Columbia.

b) The Member's policies and procedures prohibited its Approved Persons from signing documents for clients.

c) In the course of a branch review, the Member discovered that on or about September 20, 2019 the Respondent had signed a client's name on two account forms. She then used the forms to effect a transfer of the client's assets to the Member from another financial institution. The client had authorized the transfer.

d) There is no evidence that the client sustained any losses from the Respondent's conduct, or that the Respondent derived any financial benefit other than normal course compensation from her actions.

e) The Member reviewed a number of other client files maintained by the Respondent. It did not identify any further concerns.

f) On March 25, 2020, the Respondent resigned from the Member. The Respondent is no longer registered in the securities industry in any capacity.

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

**Law**

4. MFDA Rule 2.1.1 obligates an Approved Person to observe high ethical standards. This includes refraining from business conduct that is unbecoming or detrimental to the public interest.

5. The Respondent acknowledges that she contravened MFDA Rule 2.1.1 when she signed a client's name on two account forms on or about September 20, 2019.

**Applicable standard**

6. Under MFDA By-Law 24.4, a settlement hearing panel's jurisdiction is defined narrowly: a panel's discretion is limited to either accepting or rejecting a settlement agreement; it has no authority to impose its own preferred outcome on the parties.

7. From this, it follows that a hearing panel ought not to assess a settlement agreement against the outcome the panel might itself order if it were free to do so. Instead, a panel's role is to take the agreed upon facts at their face value and weigh the proposed sanctions against the objectives of protecting the investing public and the integrity of the mutual fund industry. An outcome that clearly falls "outside a reasonable range of appropriateness" 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.

8. The rationale for this deferential approach is the well-established policy that settlements are to be encouraged and supported because they enable the efficient allocation of limited enforcement resources, which in turn serves to advance the MFDA's core regulatory goal of protecting the investing public. Moreover, emerging as a negotiated compromise between the competing perspectives of the litigants, a settlement necessarily represents a pragmatic and nuanced resolution of the facts and issues arrived at by the persons best situated to assess them.

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

9. As the British Columbia Court of Appeal stated with respect to a settlement involving 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.

*Seifert, supra*, at paragraphs 26 and 31.

**Assessing appropriateness**

10. The appropriateness of a settlement outcome depends on whether it can reasonably be said to satisfy the overarching principles that inform sanctioning generally.

11. Penalties in securities regulatory proceedings are required to be forward looking and preventative in orientation, not retrospective or punitive. Regardless of whether the context is a contested disciplinary hearing or a settlement, the appropriateness of proposed sanctions turns on whether their deterrent effect is both necessary to protect the investing public from future harm and proportional to the misconduct. As the Supreme Court of Canada stated in *Cartaway Resources Corp.*, the importance of deterrence when "imposing a sanction… will vary according to the breach… and the circumstances of the person charged".

> *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, at paras. 59 and 68.
>
> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 14, 85.
>
> *Cartaway Resources Corp. (Re)*, [2004] 1 S.C.R. 672 at para. 61.

12. This requires a case specific assessment of the objective risk the misconduct presents to the investing public. In this regard the key factors to be considered are summarized in the MFDA's Sanction Guidelines, and the relative importance to be placed on any single factor will depend on the nature and scope of the misconduct. 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 her 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.

## III. PROPOSED SANCTIONS

13. The Settlement Agreement proposed the following penalties:

a) $11,000 fine; and
b) $2,500 costs.

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

> *Machon (Re)*, MFDA File No. 2017122, October 30, 2018.
>
> *Armstrong (Re)*, MFDA File No. 202161, November 30, 2021.
>
> *Yu (Re)*, MFDA File No. 202170, dated October 27, 2021.
>
> *Terrill, (Re)*, MFDA File No. 201909, May 9, 2019.

15. The falsification of client signatures in these cases extended from a low of 2 signatures in respect of 2 clients to a high of 6 signatures in respect of 5 clients. The agreed upon fines ranged from $7,500 to $12,000, while costs ranged from $2,500 to $5,000.

16. *Machon, supra*, was the only case provided to the Hearing Panel in which the sanctions included a period of prohibition. Unlike the other cases, which are all settlement decisions, *Machon, supra,* was a disciplinary hearing in which the respondent failed to either file a Reply or attend the hearing.

17. As in this case, none of the respondents in the settlement precedents had a prior disciplinary history and none of their misconduct involved unauthorized trading, imposed losses on clients or conferred a financial benefit on the respondent.

## IV. DECISION

18. For the MFDA, signature falsification has been a persistent and longstanding problem.

a) On December 10, 2004, the MFDA issued Staff Notice — *Recording and Maintaining Evidence of Client Trade Instructions* #MSN-0035, cautioning mutual fund dealers and salespersons that using pre-signed trade order forms, falsifying client signatures and photocopying client signatures to engage in discretionary trading is contrary to both the MFDA Rules and securities legislation.

b) On October 31, 2007, the MFDA issued *Staff Notice — Signature Falsification* #MSN-0066, explaining why the practice is deleterious and to warn Approved Persons there are no circumstances under which it is acceptable.

c) On March 4, 2013, the MFDA updated and re-issued #MSN-0066 to remind Approved Persons that signature falsification is strictly prohibited.

d) On October 2, 2015, the MFDA issued Bulletin #0661-E cautioning Approved Persons that going forward it would seek increased penalties in all signature falsification cases.

e) On January 26, 2017, the MFDA found it necessary to yet again update and re-issue #MSN-0066 to warn Approved Persons against engaging in signature falsification.

19. The substance of this guidance is that:

a) Signing a client's name to a form always constitutes signature falsification, even if it is done for the sake of the client's convenience and at their request.

b) It is inherently risky and always inappropriate to sign a document on a client's behalf because it undercuts the integrity and reliability of Member account documentation. Among other things, the practice:

i. hampers the Member's ability to audit account activity and the Approved Person's business conduct;

ii. misleads supervisory personnel;

iii. interferes with the Member's ability to address potential client complaints; and

iv. has the potential to enable unauthorized trading, which in turn can be exploited to misappropriate funds and perpetrate fraud.

c) It follows that signature falsification constitutes a breach of Rule 2.1.1.

20. This is why the Member's policies and procedures prohibited its Approved Persons from signing documents on a client's behalf.

21. In other words, when the Respondent signed the client's name to the account forms, she did so in a regulatory and operational environment in which it was unmistakably clear that signature falsification is never permissible. As in the precedents provided to the Hearing Panel, the harm caused by the two falsifications was not that they put the client directly at risk. It was that hiding the truth of the Respondent's actions interfered with the Member's ability to supervise her. The agreed upon facts unambiguously establish that the Respondent breached Rule 2.1.1.

22. In each of the sanction precedents, relatively limited misconduct that did not involve client losses or the respondent receiving improper benefits nonetheless attracted a firm deterrent response. For example, in *Yu, supra*, the misconduct consisted of a one instance of copying and pasting a signature from a pre-existing account form and an instance of signing a client's initials

on an account form. The sanctions provided by the settlement were a $9,500 fine and $2,500 in costs.

23. It is evident that the misconduct was the result of an isolated lapse of judgment. By contrast, the Respondent has shown some wisdom by acknowledging her mistake and accepting responsibility for it. Moreover, her admission of liability has saved the MFDA the expenditure of time and resources that would otherwise be required to conduct a contested hearing.

24. In the Hearing Panel's view, the proposed sanctions answer the need for specific and general deterrence as disclosed by the circumstances of this case. The Settlement Agreement is therefore accepted.

**DATED** this 26th day of April, 2022.

"Joseph Bernardo"
Joseph Bernardo
Chair

"Susan Monk"
Susan Monk
Industry Representative

"Tammi Walsh"
Tammi Walsh
Industry Representative

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**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: Yeram Kwak**

# SETTLEMENT AGREEMENT

## I. INTRODUCTION

1. The Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing (the "Settlement Hearing") to consider whether, pursuant to section 24.4 of MFDA 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, Yeram Kwak (the "Respondent").

2. Staff and the Respondent consent and agree to the terms of this Settlement Agreement.

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

## II. CONTRAVENTIONS

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

On or about September 20, 2019, the Respondent signed a client's signature on two account forms and submitted them to the Member for processing, contrary to MFDA Rule 2.1.1.

## III. TERMS OF SETTLEMENT

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 $11,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.l(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 in the future comply with MFDA Rule 2.1.1; and

d) the Respondent will attend by videoconference 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 this Settlement Agreement herein and consent to the making of an Order in the form attached as Schedule "A".

## IV. AGREED FACTS

### Registration History

7. Since December 27, 2017, the Respondent has been registered in British Columbia as a dealing representative with TD Investment Services Inc. (the "Member"), a Member of the MFDA.

8. On March 25, 2020, the Respondent resigned from the Member and is no longer registered in the securities industry in any capacity.

9. At all material times, the Respondent conducted business in the Surrey, British Columbia area.

### Signed a Client's Signature on Two Account Forms

10. At all material times, the Member's policies and procedures prohibited its Approved Persons from signing documents for clients.

11. On or about September 20, 2019, the Respondent signed a client's signature on a Transaction and Account Maintenance Form and a Transfer Authorization for Registered Investments form (the "Account Forms").

12. The Account Forms were used to transfer the client's assets from a financial institution to the Member.

**The Member's Investigation**

13. During a branch review, in or around March 2020, the Member discovered the Account Forms described above and commenced an investigation.

14. In March and February 2021, the Member contacted the client during its investigation who confirmed that the transfer transaction described above at paragraph 12 was authorized.

15. As part of its investigation, the Member also reviewed a portion of the client files maintained by the Respondent during the period of March 2019 to March 2020 to determine whether transactions in the accounts were completed in good order. The Member did not identify any additional concerns.

**Additional Factors**

16. There is no evidence that the Respondent received any financial benefit from the conduct set out above beyond the commissions or fees she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

17. As described above, the affected client authorized the transaction described at paragraph 12. There is no evidence of client loss and the client did not complain.

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

19. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

## V. ADDITIONAL TERMS OF SETTLEMENT

20. 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.

21. The Settlement Agreement is subject to acceptance by the Hearing Panel. 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.

22. 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.

23. 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 at the settlement hearing, subject to rule 15.3 of the MFDA Rules of Procedure;

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) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in this Settlement Agreement, 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;

d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of MFDA 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.

24. 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 this 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.

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

26. 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. The terms of the Settlement Agreement, including the attached Schedule "A", will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

27. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile or electronic copy of any signature shall be as effective as an original signature.

**DATED** this 18th day of January, 2022.

"Yeram Kwak"

Yeram Kwak

Witness – Signature

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: Yeram Kwak

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# ORDER

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") provided notice to the public of a Settlement Hearing in respect of Yeram Kwak (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** based upon the admissions of the Respondent, the Hearing Panel is of the opinion that on or about September 20, 2019, the Respondent signed a client's signature on two account forms and submitted them to the Member for processing, 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 $11,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.l(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; and

3. 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 884031