



**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: Brian Colin MacDonald**

Heard: February 25, 2021 by electronic hearing in Toronto, Ontario

Decision: February 25, 2021

Reasons for Decision: March 30, 2021

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Emily Cole  
Linda Anderson  
Joseph Yassi

Chair  
Industry Representative  
Industry Representative

Appearances:

Brendan Forbes	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Justin Papazian	)	Counsel for the Respondent
	)	
	)	
Brian Colin MacDonald	)	Respondent
	)	
	)	

## **I. INTRODUCTION**

1. This was a hearing pursuant to section 24.4 of By-Law No.1 of the Mutual Fund Dealers Association of Canada (“MFDA”) to consider a settlement agreement dated January 25, 2021 (“Settlement Agreement”) between staff of the MFDA (“Staff”) and Brian Colin MacDonald (“Respondent”).

2. After reviewing the Settlement Agreement and the materials filed by Staff and hearing the submissions of counsel for Staff, the Hearing Panel accepted the Settlement Agreement attached as Schedule “1” and signed an order reflecting our approval. These are the reasons for our decision.

## **II. CONTRAVENTIONS**

3. 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 October 2014 and July 2018, the Respondent altered and used to process transactions 20 account forms in respect of 17 clients by altering information on the account form without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) in May 2014, the Respondent obtained and possessed 1 pre-signed account form in respect of 1 client, contrary to MFDA Rule 2.1.1.

## **III. PROPOSED SANCTIONS**

4. Staff and the Respondent agree and consent to the following proposed sanctions:

- a) the Respondent shall pay a fine in the amount of \$14,000 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 in the future comply with MFDA Rule 2.1.1; and
- d) the Respondent will attend in person, on the date set for the Settlement Hearing.

## **IV. AGREED FACTS**

### **Registration History**

5. Since November 2008, the Respondent has been licensed in the securities industry.
6. Since February 17, 2011, the Respondent has been registered in Ontario as a dealing representative with Desjardins Financial Security Investments Inc. (the "Member"), a Member of the MFDA.
7. At all material times, the Respondent conducted business in the Kitchener, Ontario area.

### **Altered Account Forms**

8. Beginning in June 2016, the policies and procedures of the Member required clients to initial any changes on documents or otherwise provide written authorization for the changes to the document.
9. Between October 2014 and July 2018, the Respondent altered and used to process transactions, 20 account forms in respect of 17 clients by altering information on the account forms without having the client initial the alterations.
10. The altered account forms included: 9 Know-Your-Client ("KYC") Update Forms, 4 New Account Application Forms, 4 Letters of Direction, 1 Transfer Form, 1 Non-Financial Change Form and 1 Transfer Authorization for Registered Investments.
11. The alterations made by the Respondent consist of changes: to client risk tolerances, employer information, investment objectives, joint applicant information, client addresses, signature dates, investment time horizon, relinquishing institution information and fund codes.

### **Pre-Signed Account Forms**

12. At all material times, the Member's policies and procedures prohibited its Approved Persons from retaining pre-signed or partially completed forms.
13. In May 2014, the Respondent obtained and possessed 1 pre-signed account form in respect of 1 client. The pre-signed account form was a Reimbursement of Transfer Fees form which was not used to process a transaction.

## **The Member's Investigation**

14. In April 2019, the Member conducted an audit of the client files maintained by the Respondent and identified the pre-signed form that is the subject of this Settlement Agreement.

15. Upon further review of the Respondent's client files, the Member identified the altered account forms that are the subject of this Settlement Agreement.

16. As part of its investigation, the Member took steps to address the deficiencies in the account forms it identified to determine the accuracy of the information and that the alterations made to the account forms were authorized, including by: obtaining client initials on the altered forms; confirming that new updated KYC Update Forms had been obtained for the clients; or sending letters to the clients along with copies of altered forms and asking the clients to contact the Member if the changes made to the account forms were unauthorized. No clients contacted the Member to indicate that the alterations made to the altered account forms were unauthorized.

17. On August 22, 2019, the Member imposed a period of close supervision on the Respondent and issued a warning letter to the Respondent with respect to the pre-signed and altered forms described above.

18. On September 3, 2019, the Respondent signed an Undertaking to confirm, among other things, that he understands that obtaining pre-signed forms and altering forms without obtaining client initials is prohibited.

19. The Respondent remains under close supervision by the Member.

## **Additional Factors**

20. 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.

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

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. ANALYSIS

### Jurisdiction of the Hearing Panel

24. A Hearing Panel is authorized to either accept or reject a settlement agreement.

Section 24.4.3 of MFDA By-law No. 1

25. The role of a Hearing Panel in reviewing a settlement agreement is to determine whether the proposed penalties agreed to by Staff and the Respondent fall within a reasonable range of appropriateness – not to determine what is, in its view, the correct penalty. A Hearing Panel “will tend not to alter a penalty that it considers to be within a reasonable range, considering 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.” This is particularly so when the settlement agreement has been negotiated by counsel.

*Milewski (Re)*, [1999] I.D.A.C.D. No. 17.

*Sterling Mutuals Inc. (Re)*, 2008 LNCMFDA 16 at para 37

26. Settlements are to be encouraged. They make a significant contribution to meeting the MFDA’s primary objective of investor protection by providing a practical and efficient way of addressing misconduct in the securities industry. Where the Respondent takes responsibility and admits his misconduct and the parties can agree upon appropriate sanctions, settlements can save time and conserve the regulator’s limited resources. Settlements also provide certainty and are likely to result in greater compliance with the sanctions imposed.

*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.)

### The Seriousness of the Misconduct

27. The Respondent admitted to two contraventions involving:

- i. pre-signed account forms; and
- ii. altered account forms.

### Pre-signed Account Forms

28. The Respondent obtained, possessed one pre-signed account form in respect of one client. The pre-signed account form was a Reimbursement of Transfer Fees form which was not used to process a transaction

### Altered Account Forms

29. The Respondent altered and used to process transactions 20 forms in respect of 17 clients by altering information on the account forms.

30. Significantly, none of the alterations were account details and all the alterations were to correct errors the Respondent had made.

31. There was no evidence of client harm or a lack of authorization.

32. Nonetheless the Respondent's altering of account forms and obtaining and using one pre-signed form is a serious breach of the standard of conduct expected of an Approved Person under Rule 2.1.1. This type of misconduct adversely affects the integrity and reliability of account documents, destroys the audit trail, and prevents the Member from effectively supervising its Dealing Representatives and protecting clients.

*Rambarran (Re)*, [2017] Hearing Panel of the Central Regional Council, MFDA  
File No. 201629, Panel Decision dated January 13, 2017, at para. 8.

### Mitigating Factors

33. We considered the following mitigating factors:

- a) The Respondent did not cause any financial harm to investors;
- b) The Respondent did not benefit from his misconduct;
- c) The Respondent has not previously been the subject of any MFDA disciplinary proceedings; and
- d) The Respondent recognizes the seriousness of his misconduct and settled this matter.

34. At the hearing and in response to our inquiry, the Respondent advised that the Member lifted the close supervision approximately three weeks before the hearing. We infer the Member

has renewed confidence in the Respondent's competence and conduct and we interpreted this as a positive sign.

### Costs

35. The costs award is appropriate and consistent with previous MFDA decisions.

## **VI. CONCLUSION**

36. We are satisfied that the proposed sanctions, the \$14,000 fine will serve as a specific deterrence to the Respondent and a general deterrence to others in the industry who may contemplate engaging in similar misconduct in the future.

37. Staff provided five MFDA decisions which addressed similar misconduct: *Ho (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201862, Reasons for Decision dated December 7, 2018, *Boassaly (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201918, Reasons for Decision dated May 15, 2019, *Oh (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201853, Reasons for Decision October 26, 2018, *Lok (Re)*, [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202011, Hearing Panel Decision dated May 11, 2020 and *Warr (Re)*, [2020] Hearing Panel of the Atlantic Regional Council, MFDA File No. 202037, Hearing Panel Decision dated September 25, 2020.

38. Based on a review of these cases and taking into consideration the factors discussed above, we are satisfied the proposed sanctions fall within a reasonable range of appropriateness.

39. We therefore accepted the Settlement Agreement and made an order reflecting the agreed upon sanctions against the Respondent.

**DATED** this 30<sup>th</sup> day of March, 2021.

“Emily Cole”

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Emily Cole  
Chair

“Linda Anderson”

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Linda Anderson  
Industry Representative

“Joseph Yassi”

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Joseph Yassi  
Industry Representative

## Schedule "1"

Settlement Agreement

File No. 202105



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
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**Re: Brian Colin MacDonald**

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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, Brian Colin MacDonald (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 section 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 October 2014 and July 2018, the Respondent altered and used to process transactions 20 account forms in respect of 17 clients by altering information on

the account form without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and

- b) in May 2014, the Respondent obtained and possessed 1 pre-signed account form in respect of 1 client, 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 \$14,000 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 in the future comply with MFDA Rule 2.1.1; and
- d) 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 November 2008, the Respondent has been licensed in the securities industry.

8. Since February 17, 2011, the Respondent has been registered in Ontario as a dealing representative with Desjardins Financial Security Investments Inc. (the “Member”), a Member of the MFDA.

9. At all material times, the Respondent conducted business in the Kitchener, Ontario area.

#### **Altered Account Forms**

10. Beginning in June 2016, the policies and procedures of the Member required clients to initial any changes on documents or otherwise provide written authorization for the changes to the document.

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14. At all material times, the Member’s policies and procedures prohibited its Approved Persons from retaining pre-signed or partially completed forms.

15. In May 2014, the Respondent obtained and possessed 1 pre-signed account form in respect of 1 client. The pre-signed account form was a Reimbursement of Transfer Fees form which was not used to process a transaction.

### **The Member’s Investigation**

16. In April 2019, the Member conducted an audit of the client files maintained by the Respondent and identified the pre-signed form that is the subject of this Settlement Agreement.

17. Upon further review of the Respondent’s client files, the Member identified the altered account forms that are the subject of this Settlement Agreement.

18. As part of its investigation, the Member took steps to address the deficiencies in the account forms it identified to determine the accuracy of the information and that the alterations made to the account forms were authorized, including by: obtaining client initials on the altered forms; confirming that new updated KYC Update Forms had been obtained for the clients; or sending letters to the clients along with copies of altered forms and asking the clients to contact the Member if the changes made to the account forms were unauthorized. No clients contacted the Member to indicate that the alterations made to the altered account forms were unauthorized.

19. On August 22, 2019, the Member imposed a period of close supervision on the Respondent and issued a warning letter to the Respondent with respect to the pre-signed and altered forms described above.

20. On September 3, 2019, the Respondent signed an Undertaking to confirm, among other things, that he understands that obtaining pre-signed forms and altering forms without obtaining client initials is prohibited.

21. The Respondent remains under close supervision by the Member.

#### **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](http://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 section 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 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 25<sup>th</sup> day of January, 2021.

“Brian Colin MacDonald”  
\_\_\_\_\_  
Brian Colin MacDonald

“NM”  
\_\_\_\_\_  
Witness – Signature

NM  
\_\_\_\_\_  
Witness – Print Name

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



**Mutual Fund Dealers Association of Canada**  
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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: Brian Colin MacDonald**

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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 Brian Colin MacDonald (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 sections 20 and 24.1 of MFDA By-law No. 1;

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

- a) between October 2014 and July 2018, the Respondent altered and used to process transactions 20 account forms in respect of 17 clients by altering information on the account form without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) in May 2014, the Respondent obtained and possessed 1 pre-signed account form in respect of 1 client, 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 \$14,000 in certified funds upon acceptance of the Settlement Agreement, 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 upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-law No. 1;
3. The Respondent shall in the future comply with MFDA Rule 2.1.1; and
4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

**DATED** this [day] day of [month], 20[ ].

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]

DM 808647