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: Maurice Allen Mailloux

Heard: October 31, 2019 in Toronto, Ontario
Decision: October 31, 2019
Reasons for Decision: December 17, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC	Chair
Selwyn B. Kossuth	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Jacklyn Neborak	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Maurice Allen Mailloux	)	Respondent, in person

Background

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The hearing was held on Thursday, October 31, 2019. The full Settlement Agreement, dated August 26, 2019, entered into between Staff of the MFDA and Maurice Allen Mailloux, (the "Respondent") is available on the MFDA website. The Respondent appeared at the Hearing without counsel.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the hearing, with reasons to follow. These are our reasons for our decision to accept the Settlement Agreement.

3. Since May 2008, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Quadrus Investment Services Ltd. ("Quadrus" or the "Member"), a Member of the MFDA.

4. At all material times, the Respondent conducted business in the Belle River and Windsor, Ontario areas.

5. A Notice of Settlement Hearing was issued by the MFDA on September 5, 2019, alleging that "between December 2012 and April 2018, the Respondent obtained, possessed, and in some instances, used to process transactions, 99 pre-signed account forms in respect of 25 clients, contrary to MFDA Rule 2.1.1."

The Settlement Agreement

6. In Paragraph 4 of the Settlement Agreement, the Respondent admits the allegation in paragraph 5 above.

7. In Paragraph 5 of the Settlement Agreement, Staff and the Respondent agree and consent to the following terms of settlement:

a) the Respondent shall pay a fine in the amount $20,000 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 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.

Agreed Facts

8. The agreed facts are set out in detail in paragraphs 9 to 17 of the Settlement Agreement and will not be repeated in full here.

9. At all material times, the Member had policies and procedures that prohibited its Approved Persons from using pre-signed account forms.

10. Between December 2012 and April 2018, as set out in paragraphs 10 and 11 of the Settlement Agreement, the Respondent "obtained, possessed, and in some instances, used to process transactions, 99 pre-signed account forms in respect of 25 clients."

11. In August 2018, the Member issued a disciplinary letter to the Respondent with respect to the account forms that are the subject of the Settlement Agreement and placed the Respondent under close supervision for a period of one year. On August 22, 2018, the Respondent signed an acknowledgment to confirm that he would not use pre-signed forms and would abide by Member's policies and procedures. The Respondent has also completed internal compliance training required by the Member.

The Misconduct

12. MFDA Hearing Panels have consistently held that using pre-signed forms constitutes a contravention of the standard of conduct under MFDA Rule 2.1.1. See *Re Price* 2011 CanLII 72458; *Re Oh* 2018 LNCMFDA 252; *Re Nash* 2019 LNCMFDA 15; *Re Brenchley* 2019 LNCMFDA 113.

13. Using these forms are proscribed because their use adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact

on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud, and misappropriation. See *Re Brenchley* 2019 LNCMFDA 113.

14. For a number of years, the MFDA has been warning Approved Persons against the use of pre-signed, altered, and re-used account forms. See MFDA Staff Notice, MSN-0066, dated October 31, 2007 (updated January 26, 2017); and MFDA Staff Notice MSN-035, dated December 10, 2004 (updated March 4, 2013); MFDA Bulletin #0661 – E (October 2, 2015).

Acceptance of the Settlement Agreement

15. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

16. The conduct in the present case is serious. This is not an isolated case. The conduct went on for many years with many clients. The majority of the contraventions occurred after the 2015 MFDA Bulletin #0661 relating to pre-signed forms.

17. There are a number of mitigating factors. No clients complained about the Respondent's conduct and there is no evidence of client loss or lack of authorization for the underlying transactions.

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

19. The Respondent has not previously been the subject of MFDA disciplinary Procedures.

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

21. The penalty of $20,000 is not out-of-line with the new Sanctions Guidelines as well as the cases cited to us by counsel: *Re Mills* MFDA 2019 LNCMFDA 21; *Re Roy* 2019 LNCMFDA 37; *Re Wong* 2018 LNCMFDA 159, *Re Letourneau* 2018 LNCMFDA 261.

22. The monetary penalty provides a significant measure of specific and general deterrence.

23. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal affirmed the British Columbia Supreme Court's statement with respect to a settlement by the British Columbia Securities Commission at paragraph 49 of *British Columbia Securities Commission* v. *Seifert* [2006] BCJ No. 225, aff'd [2007] BCCA No. 484:

> "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."

24. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel.

25. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: "It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness." There are many similar statements by MFDA Panels, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated:

> "A District Council considering a settlement agreement 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."

26. The penalty and the costs agreed to in this case fall within "a reasonable range of appropriateness."

27. For the above reasons the Panel accepted the Settlement Agreement.

DATED this 17th day of December, 2019.

"Martin L. Friedland"
Martin L. Friedland, CC, QC
Chair

"Selwyn B. Kossuth"
Selwyn B. Kossuth
Industry Representative

"Kenneth P. Mann"
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Industry Representative

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