



**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: Nenad Mandic**

Heard: July 30, 2020 by electronic hearing in Toronto, Ontario

Decision: July 30, 2020

Reasons for Decision: August 19, 2020

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Frederick W Chenoweth  
Linda J. Anderson  
Michael Coulter

Chair  
Industry Representative  
Industry Representative

Appearances:

Brendan Forbes	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Ashley Thomassen	)	Counsel for the Respondent
	)	
	)	
Nenad Mandic	)	Respondent
	)	
	)	

## **Background**

1. By Notice of Settlement Hearing, dated June 22, 2020, a Hearing Panel of the Central Regional Counsel of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened to consider whether, pursuant to s. 24.4 of By-law No. 1 of the MFDA, the Hearing Panel should accept a settlement agreement dated June 16, 2020, (“Settlement Agreement”) entered into by the Staff of the MFDA (“Staff”) and Nenad Mandic (the “Respondent”).

2. At the outset of the proceeding, the Hearing Panel considered a joint motion by Staff and the Respondent to move the proceedings “in camera”. The Hearing Panel granted the motion. The Hearing Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Hearing Panel in determining whether or not to accept or reject the Settlement Agreement. The Hearing Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Hearing Panel’s reasons for doing so.

## **The Contraventions**

3. In the Settlement Agreement, the Respondent admits that:

- a) in August 2015, the Respondent altered and used to process a transaction 1 account form in respect of 1 client by altering information on the account form without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) between May 2013 and October 2018, the Respondent obtained, possessed and in some instances, used to process transactions, 30 pre-signed account forms in respect of 16 clients, contrary to MFDA Rule 2.1.1.

## **The Facts**

4. In the Settlement Agreement, Staff and the Respondent agreed to the existence of a series of facts, which are set out in Part III of the said Settlement Agreement. The Settlement Agreement is attached as Appendix “A” to these Reasons.

5. As set out in the Settlement Agreement, the Respondent, since October 1993, had been registered in the securities industry in Ontario as a mutual fund sales person (now known as a

dealing representative) with Sun Life Investment Services (Canada) Inc. (the “Member”), a member of the MFDA. At all material times, the Respondent conducted business in the Waterloo, Ontario area. The Respondent continues to be employed in the securities industry.

## **Discussion**

6. The Hearing Panel was aware that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

- a) The facts admitted by the Respondent constitute misconduct in contravention of the By-laws, MFDA Rules or policies, or provincial securities legislation; and
- b) The penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances.

7. The Hearing Panel accepted that the role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, citing the I.D.A. Ontario District Council in *Milewski (Re)*:

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

*Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

8. The Hearing Panel also considered the principle that a Hearing Panel will not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness. Settlements are necessary to assist the MFDA to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by proscribing activities

that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

*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) [*“British Columbia (Securities Commission)”*], SBA.

9. MFDA Hearing Panels have consistently held that obtaining or using pre-signed or altered forms is a contravention of the standard of conduct prescribed under MFDA Rule 2.1.1.

*Donais (Re) [2020]*, Hearing Panel of the Pacific Regional Council, MFDA File No. 201945, Panel Decision dated January 20, 2020 at paras 10-11.

*Smith (Re) [2019]*, Hearing Panel of the Central Regional Council, MFDA File No. 201960, Panel Decision dated December 17, 2019 at para. 14.

10. The MFDA has previously warned approved persons against the use of pre-signed forms. Among other things, the use of pre-signed forms 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.

MFDA Staff Notice #MSN-0066 dated October 31, 2007

MFDA Bulletin #0661-E dated October 2, 2015

### **Altered Account Form**

11. As the Hearing Panel explained in *Price (Re)*:

Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading....At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client...Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.

*Price (Re)*, [2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) dated April 18, 2011 at paras. 122-124.

12. In the present case, and as reflected in the Settlement Agreement, the Respondent admits that he obtained, possessed and, in some instances, used to process transactions, 30 pre-signed forms in respect of 16 clients, contrary to MFDA Rule 2.1.1.

13. Additionally, in the present case, as stated in the Settlement Agreement, the Respondent admits that he altered and used to process a transaction one (1) account form in respect of one (1) client by altering information on the account form without having the client initial the alteration, contrary to MFDA Rule 2.1 .1.

14. When an Approved Person alters information on an account form without having the client initial the form to show that the client is aware of the change and has authorized it, the Approved Person engages in conduct that is contrary to MFDA Rule 2.1.1.

*Lok (Re)*, supra at para 9, Staff's Book of Authorities.

*Power (Re)*, supra at para 26, Staff s Book of Authorities

15. Like "pre-signed forms", the creation or use of altered forms is considered serious misconduct. The negative consequences which can result from the use of pre-signed forms, described above at paragraph 11, also apply to altered forms.

16. The Hearing Panel accordingly concluded that the Respondent's conduct constituted misconduct in contravention of the By-laws, MFDA Rules or policies or provincial securities legislation.

17. The Hearing Panel then proceeded to consider the appropriateness of the proposed penalty as set out in the Settlement Agreement. In doing so, the Hearing Panel considered the submissions of Staff and the Respondent's counsel, the MFDA Sanction Guidelines and the substantial case law to which it was referred.

18. The Hearing Panel was mindful that the primary goal of securities regulation is the protection of the investor. The Hearing Panel was further mindful that in addition to protection of

the public, the goals of securities regulation also include fostering public confidence in the capital markets and the securities industry.

*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557.

*Breckenridge (Re)*, MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 71

19. The Hearing Panel accepted the submissions of Staff that the following factors are frequently considered by Hearing Panels when determining whether a penalty is appropriate:

- 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 activity;
- 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 activity in the capital markets; and
- k) Previous decisions made in similar circumstances.

*Breckenridge*, supra

20. In this respect, the Hearing Panel was mindful that, the nature of the contraventions that had been admitted by the Respondent were serious and warranted significant penalties. In

particular, the use of pre-signed and altered account forms was a serious breach of MFDA Rule 2.1.1

*Balani (Re)*, MFDA File No. 201402, Hearing Panel of the Central Regional Council, Decision and Reasons dated January 15, 2015.

21. With respect to the particular factors which were considered by the Hearing Panel when assessing the appropriateness of the penalty agreed to in this matter, the Hearing Panel was mindful that:

- a) The Respondent had acknowledged that his conduct constitutes a serious contravention of MFDA Rules. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct, and has saved the MFDA the time, resources and expenses associated with a full discipline hearing.

Settlement Agreement, para. 21

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

Settlement Agreement, para. 20

- c) There was no evidence of any lack of authorization or client loss resulting from the Respondent's conduct as described within the Settlement Agreement.

Settlement Agreement, para. 19

- d) Additionally, there was no evidence that the Respondent received any financial benefits from his misconduct beyond any commission and fees that he would ordinarily be entitled to receive had the transaction been carried out in the proper manner.

Settlement Agreement, para. 17.

- e) In addition, the Respondent previously paid \$14,000.00 to the Member in respect of his misconduct, which also provided a deterrent against the Respondent engaging in similar behaviour in the future.

22. The proposed penalties will act as a general deterrent by reinforcing the message that the use of pre-signed and altered forms will not be tolerated within the mutual fund industry. The said penalties will also specifically deter the Respondent from engaging in similar activities by imposing a meaningful sanction upon the Respondent.

23. Staff proposed that costs in the amount of \$2,500 be imposed against the Respondent. In its submissions, Staff made it clear to the Hearing Panel that the costs incurred more than justify the imposition of the above cost award. The Respondent, in the Settlement Agreement, and by Respondent counsel's remarks at the Hearing, consented to same.

## **Result**

24. For all the above reasons, the Hearing Panel concluded that the Settlement Agreement was reasonable and proportionate. Accordingly, the following penalties were imposed upon the Respondent:

- a) The Respondent shall pay a fine in the amount of \$8,000 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 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) If at any time a non-party to this proceeding, with the exception of the bodies set out in s. 23 of the 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 19<sup>th</sup> day of August, 2020.

“Frederick W. Chenoweth”

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Frederick W. Chenoweth  
Chair

“Linda J. Anderson”

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Linda J. Anderson  
Industry Representative

“Michael Coulter”

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Michael Coulter  
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: Nenad Mandic**

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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, Nenad Mandic (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"):

- a) in August 2015, the Respondent altered and used to process a transaction 1 account form in respect of 1 client by altering information on the account form without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
  - b) between May 2013 and October 2018, the Respondent obtained, possessed and in some instances, used to process transactions, 30 pre-signed account forms in respect of 16 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 \$8,000 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.
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 October 1993, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative)<sup>1</sup> with Sun Life Investment Services (Canada) Inc. (the “Member”), a Member of the MFDA.

8. At all material times, the Respondent conducted business in the Waterloo, Ontario area.

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<sup>1</sup> In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

### **Altered Account Form**

9. In August 2015, while the Respondent was an Approved Person of the Member, he altered 1 Registered Educational Savings Plan Education Assistance Payment Form (“RESP Form”) in respect of 1 client by altering the withdrawal amount on the RESP form without having the client initial the alteration, and used this altered form to process a transaction.

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

10. At all material times, the Member’s policies and procedures prohibited Approved Persons from obtaining pre-signed forms from their clients.

11. Between May 2013 and October 2018, while the Respondent was an Approved Person of the Member, he obtained, possessed and, in some instances, used to process transactions, 30 pre-signed account forms in respect of 16 clients.

12. The pre-signed forms consisted of: 13 Pre-Authorized Chequing/Automatic Withdrawal Forms, 6 RESP Forms, 2 Limited Trade Authorization Forms, 2 Order Tickets, 2 Transfer Authorizations for Registered Investments, 2 Requests to Withdraw Funds from a Registered Retirement Savings Plan, 1 Client Information (Know Your Client (“KYC”)) Form, 1 Tax Free Savings Account Form, and 1 Educational Savings Plan Application Form.

### **The Member’s Investigation**

13. In November 2018, the Member identified the account forms that are the subject of this Settlement Agreement during a review of the Respondent’s files.

14. In November 2018, as a result of the Member’s findings during its review of the Respondent’s files, the Member placed the Respondent under close supervision for a period of 6 months.

15. In January 2019, the Member sent letters to clients whose accounts the Respondent serviced. The Member asked the clients to review the account statements, transaction histories and KYC documents which were attached to the letter in order to ensure that all transactions within

the account had been authorized by the client. The Member did not receive any responses from the clients which raised issues related to transactions within their accounts.

16. Between March 2019 and April 2020, the Member placed the Respondent under enhanced supervision which required a further review of the Respondent's completion and submissions of forms for processing to the Member.

#### **Additional Factors**

17. 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.

18. The Respondent has paid a total of \$14,000 to the Member for the 17 month period which he remained under close supervision and enhanced supervision.

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

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

21. 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**

22. 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.

23. 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).

24. 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.

25. 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 waives 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.

26. 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.

27. 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.

28. 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 16<sup>th</sup> day of June, 2020.

“Nenad Mandic”

\_\_\_\_\_  
Nenad Mandic

VM

\_\_\_\_\_  
Witness – Signature

VM

\_\_\_\_\_  
Witness – Print Name

“Charles Toth”

\_\_\_\_\_  
Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement

**Schedule “A”**

**Order**

**File No. 202031**



**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: Nenad Mandic**

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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 Nenad Mandic (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:

- a) in August 2015, the Respondent altered and used to process a transaction 1 account form in respect of 1 client by altering information on the account form without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and

- b) between May 2013 and October 2018, the Respondent obtained, possessed and in some instances, used to process transactions, 30 pre-signed account forms in respect of 16 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 \$8,000 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 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]

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