



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: Taayla Markell Mark

Heard: April 18, 2019 in Vancouver, British Columbia
Decision: April 18, 2019
Reasons for Decision: June 10, 2019

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

The Hon. Thomas R. Braidwood, QC	Chair
Darryl Gossen	Industry Representative
Holly Millar	Industry Representative

Appearances:

Christopher Corsetti)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Ellen Bessner)	Counsel for the Respondent, by teleconference
)	
)	
Taayla Markell Mark)	Respondent, in person
)	
)	

1. This hearing was duly constituted by the Mutual Fund Dealers Association of Canada (“MFDA”) to consider a settlement agreement dated the 15th day of February, 2019 (the “Settlement Agreement”), between MFDA and Taayla Markell Mark (the “Respondent”).

Allegations

2. Pursuant to the terms of the Settlement Agreement, the Respondent admits that:

- a) between October 19, 2015 and January 21, 2016, she processed 9 transactions in 2 client accounts without discussing the specific elements of the trades thereby engaging in authorized discretionary trading, contrary to the policies and procedures of the Member and MFDA Rules 2.3.1 (b), and 2.1.1;
- b) on January 21, 2016, she processed 5 trades in the accounts of 1 client based on the requests of the client's spouse without the authorization of the client, contrary to the policies and procedures of the Member and MFD A Rules 2.1.1;
- c) between October 19, 2015 and April 13, 2016, the Respondent submitted 4 trades in 4 client accounts to the Member, without maintaining sufficient evidence of client instructions, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.3.1, 2.10 and 1.1.2; and
- d) between January 19, 2016 and February 2, 2016, the Respondent made changes to Know-Your-Client ("KYC") information in 4 client accounts without discussing or obtaining authorization of the clients prior to making the changes and without completing a KYC update form as required by the Member, contrary to the policies and procedures of the Member, and MFD A Rules 2.2.4, 1.1.2, 2.5.1, and 2.1.1.

3. The Respondent agrees as a term of the Settlement Agreement:

- a) the Respondent shall pay a fine of \$15,000.00, pursuant to Section 24.1.1(b) of MFDA Bylaw No. 1; and
- b) the Respondent shall pay costs in the amount of \$2,500.00, pursuant to section 24.2 of Bylaw No. 1.

I. AGREED FACTS

Registration History

4. Since January 9, 2014, the Respondent has been registered in British Columbia as a dealing representative with Peak Investment Services Inc. (the “Member”), a Member of the MFDA.

5. At all material times, the Respondent carried on business in the Vancouver, British Columbia area.

Discretionary Trading

6. At all material times, the Member had a policy and procedure that prohibited discretionary trading.

Authorized Discretionary Trading

Client MP

7. Since April 4, 2015, client MP was a client of the Member, whose account was serviced by the Respondent.

8. The Respondent states that, in or about April 2015, at an initial meeting with client MP, she had a general discussion about making changes to client MP's portfolio in the future. During this initial meeting, the Respondent did not obtain client instructions as to the specific elements of the potential changes, such as the timing of any trades, identity of the mutual funds, and the amounts of any trades.

9. On October 19, 2015, the Respondent submitted 2 switches in client MP's RRSP account and 1 switch in client MP's RESP, without obtaining client instructions for specific elements of the switches, as follows:

From	To
SWO-FID Global Health Care Series B FE FID299 FE \$11,159.38	SWI-FID NorthStar Series B FE FID253 FE \$11,159.38
SWO-FID Global Health Care Series B FE FID299 \$25,317.50	SWI-FID US Monthly Income FIDI220 FE \$25,317.50
SWO-FID Canadian Growth Company Series B FID265 FE \$9,285.43	SWI-FID Global Technology Series B FID297 FE \$9,285.43

10. The Respondent admits that she determined the essential elements of the trades, including the selection of the fund, the amount to be invested in each fund, and the timing of the trades, thereby engaging in authorized discretionary trading.

11. On October 19, 2015, after the 3 switches were submitted for processing, the Respondent emailed client MP to advise her of the details of the transactions. Client MP did not complain to the Member regarding these transactions.

Client DL

12. Since August 27, 2014, client DL was a client of the Member, whose account was serviced by the Respondent.

13. The Respondent states that, in or about August 2014 at an initial meeting with client DL, she had a general discussion about making changes to client DL's portfolio in the future. During this initial meeting the Respondent did not obtain client instructions as to the specific elements of the potential changes, such as the timing of any trades, identity of the mutual fund, and the amounts of any trades.

14. On October 17, 2015, the Respondent submitted 6 trades to the Member for processing in client DL's RRSP account, without obtaining client instructions for the specific elements of the trades, as follows:

From	To
SWO-CI American Managers Corp Class A CIG709 DSC \$8,859.39	SWI-CI Black Creek Global Balanced Corp A CIG3573 DSC \$8,859.39
SWO-CI Global Health Sciences Corp Class CIG201 FE \$3,871.69	SWI-CI Global Bond Corp Class CIG2302 FE \$3,871.69
RED-CI Global Health Sciences Corp Class CIG701 DSC \$4,908.40	PUR-CI American Small Cap Companies Class A CIG813 DSC \$4,908.40
Sell-CI Global Health Sciences Corp Class CIB701 DSC \$4,908.35	Buy-CI Global Bond Corp Class CIG2302 FE \$4,908.35
SWO-CI Signature Global Income & Growth Corp CL A CIG3312 DSC \$24,201.52	SWI-CI Black Creek Global Balanced Corp A CIG3573 DSC \$24,201.52
SWO-CI American Managers Corp Class A CIG709 DSC \$13,289.07	SWI-Cambridge American Equity CIG11159 DSC \$13,289.07

15. The Respondent admits that she determined the essential elements of the trades, including the selection of the fund, the amount to be invested in each fund and the timing of the trades, thereby engaging in authorized discretionary trading.

16. On October 19, 2015, after the trades were processed, the Respondent emailed client DL, to advise him of the details of the transactions. Client DL did not complain to the Member regarding these transactions.

17. With respect to each of the trades noted above, the Respondent submitted the trades for processing on the Member's back office system, Univeris, and did not have trade tickets signed by the clients.

Unauthorized Trading

Client JP

18. Since November 14, 2015, client JP was a client of the Member, whose account was serviced by the Respondent. The Respondent also serviced the account of his spouse, client MP.

19. The Respondent states that on or about January 21, 2016, she received instructions from client MP to process 5 switches in client JP's account. The Respondent submitted the switches to the Member for processing without obtaining client JP's authorization.

- 20. Client MP did not have a Power of Attorney or trading authorization on client JP's account.
- 21. The Respondent relied on an LTA signed by client JP to process the switches.
- 22. The Respondent admits that she did not have client JP's authorization to process the switches, thereby engaging in unauthorized trading.

Failure to Maintain Notes of Client Trade Instructions

- 23. At all material times, the Member had a policy and procedure requiring its Approved Persons to retain physical records of the instructions from clients for each transaction.
- 24. Between October 19, 2015 and April 13, 2016, the Respondent submitted 4 trades in 4 client accounts to the Member, without maintaining sufficient evidence of instructions from the clients, as follows:

Client	Date	Trade
BT	October 19, 2015	Switch of \$6,537.24 from the TD Health Science Fund to the TD Precious Metals Fund
DD	January 7, 2016	Purchase of \$10,000
DL	January 20, 2016	Switch of \$29,855.97
MS	April 13, 2016	Redemption of \$5,000 in FID Floating Rate High Income

- 25. With respect to each of the trades noted above, the Respondent submitted the trades for processing on the Member's back office system, Univeris, and did not have trade tickets signed by the clients.
- 26. The Respondent states that she spoke to the clients on the telephone before each of the above noted trades at paragraph 24 and obtained their verbal authorization, however the Respondent failed to keep record of the telephone conversations.

Failure to Obtain Authorization to Change Know-Your-Client Information

27. At all material times, the Member had a policy and procedure requiring its Approved Persons to obtain a signed and dated Know-Your-Client ("KYC") update form when changing client KYC information.

28. Between January 19, 2016 and February 2, 2016, the Respondent made changes to KYC information in 4 client accounts without having a discussion with the clients or obtaining authorization to make the changes to the clients' KYC information.

29. The Respondent made the changes to the clients' KYC information in response to the Member's suitability queries regarding trades in the clients' accounts. The Respondent updated the KYC information to match her recommendations without using or obtaining authorization for the changes in KYC information with the clients, as follows:

Client	Prior KYC	Updated KYC Change
BT	October 19, 2015 <u>Investment Objective:</u> Growth 32% Maximum Growth 68%	January 19, 2016 <u>Investment Objective:</u> Income 75% Growth 25%
DL	October 16, 2015 <u>Investment Objective:</u> Income 42% Growth 43% Maximum Growth 15% <u>Risk Tolerance:</u> Low Risk 3% Medium Risk 39% High Risk 59%	February 2, 2016 <u>Investment Objective:</u> Income 100% <u>Risk Tolerance:</u> Medium Risk 100%
JP	November 18, 2015 <u>Investment Objective:</u> Income 30% Growth 50%	February 2, 2016 <u>Investment Objective:</u> Income 100% <u>Risk Tolerance:</u>

Client	Prior KYC	Updated KYC Change
	Maximum Growth 20% <u>Risk Tolerance:</u> Medium 30% High 70%	Medium 100%
DD	January 6, 2015 <u>Investment Objective:</u> Income 54% Growth 46% <u>Risk Tolerance:</u> Medium 54% High Risk 46%	February 2, 2016 <u>Investment Objective:</u> Income 100% <u>Risk Tolerance:</u> Medium 100%

30. The Respondent made the changes to the clients' KYC information directly on Univeris and did not have the clients sign KYC update forms.

The Member's Response

31. Between June 16, 2016 and August 12, 2016, the conduct described herein was detected during an MFDA audit of the Member.

32. In January 2017, the Member limited the Respondent's access to Univeris and the Respondent was placed on strict supervision.

II. MITIGATING CIRCUMSTANCES

33. The Respondent has not previously been the subject of a MFDA disciplinary proceeding.

34. There is no evidence that:

- a) clients suffered any financial loss;
- b) the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which she would have been ordinarily entitled

had the transactions in the clients' accounts been carried out in the proper manner;
and

- c) any clients have complained about the Respondent's conduct.

III. TERMS OF SETTLEMENT

35. As outlined above, the parties have agreed to the terms of settlement and they include an arrangement for period payments. The terms are as follows:

- a) the Respondent shall pay a fine of \$15,000.00, in certified funds, pursuant to Section 24.1.1 (b) of MFDA Bylaw No. 1 (the "Fine");
- b) the Respondent shall pay costs in the amount of \$2,500.00, in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of Bylaw No. 1 (the "Costs");
- c) the payment by the Respondent of the Fine and Costs shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$2,500.00 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$1,666.66 on or before the last business day of the first month following the date of Settlement Agreement;
 - iii. \$1,666.66 on or before the last business day of the second month following the date of Settlement Agreement;
 - iv. \$1,666.66 on or before the last business day of the third month following the date of Settlement Agreement;
 - v. \$1,666.66 on or before the last business day of the fourth month following the date of Settlement Agreement;
 - vi. \$1,666.66 on or before the last business day of the fifth month following the date of Settlement Agreement;
 - vii. \$1,666.66 on or before the last business day of the sixth month following the date of Settlement Agreement;
 - viii. \$1,666.66 on or before the last business day of the seventh month following the date of Settlement Agreement;

- ix. \$1,666.66 on or before the last business day of the eighth month following the date of Settlement Agreement; and
- x. \$1,666.66 on or before the last business day of the ninth month following the date of Settlement Agreement;
- d) the Respondent shall in the future comply with the MFDA Rules 2.3.1, 2.10, 1.1.2, 2.5.1 , 2.2.4, and 2.1.1; and
- e) the Respondent will attend the Settlement Hearing in person.

MFDA Rule 2.1.1 -High Standard of Ethics

36. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each Member and Approved Person: deal fairly, honestly, and in good with faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

37. At all material times, the Member had a policy and procedure requiring its Approved Persons to retain physical records of the instructions from clients for each transaction.

Discretionary Trading and Failure to Follow Member Policies and Procedures

38. The Respondent processed 9 trades in 2 client accounts without discussing the specifics of the trade, thereby engaging in authorized discretionary trading.

39. The Respondent processed 5 trades in 1 client account based on spouse's instructions without obtaining the authorization of the client, thereby engaging in unauthorized discretionary trading.

40. At all material times, the Member had a policy and procedure requiring its Approved Persons to retain physical records of the instructions from clients for each transaction.

41. Between October 19, 2015 and April 13, 2016, the Respondent submitted 4 trades in 4 client accounts to the Member, without maintaining sufficient evidence of instructions from the clients.

42. At all material times, the Member had a policy and procedure requiring its Approved Persons to obtain a signed and dated Know-Your-Client ("KYC") update form when changing client KYC information.

43. Between January 19, 2016 and February 2, 2016, the Respondent made changes to KYC information in 4 client accounts without having a discussion with the clients or obtaining authorization to make the changes to the clients' KYC information.

The Test

44. The role of the 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.”

Sterling Mutuals Inc. (Re), MFDA File No. 200820,
Hearing Panel of the Central Regional Council,
Decision and Reasons dated August 21, 2008 at para. 35

Milewski (Re), [1999] IDACD No. 17 at p. 10,
Ontario District Council Decision dated July 28, 1999

The Law

45. The Hearing Panel has considered various cases, including *Re Pan Chen*, MFDA File No. 201006 (Reasons dated April 18, 2011) and *Re Peter Ewens*, MFDA File 201714 (Reasons for Decision dated April 6, 2017).

IV. CONCLUSION

46. Having regard to all of the foregoing, factors, the Hearing Panel is unanimously of the opinion that the penalties proposed in the Settlement Agreement will advance the public interest and enhance investor protection and ensure high standards of conduct in the mutual fund industry.

DATED this 10th day of June, 2019.

“Thomas R. Braidwood”

The Hon. Thomas R. Braidwood, QC
Chair

“Darryl Gossen”

Darryl Gossen
Industry Representative

“Holly Millar”

Holly Millar
Industry Representative

DM 677758