



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: Darrel Colin McIntyre

Heard: September 27, 2018 in Vancouver, British Columbia

Decision: September 27, 2018

Reasons for Decision: October 26, 2018

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Ian H. Pitfield
Holly A. Millar
Nova Aitchison

Chair
Industry Representative
Industry Representative

Appearances:

Christopher Corsetti)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Tom Newnham)	Counsel for the Respondent
)	
)	
Darrel Colin McIntyre)	Respondent, in person
)	

1. On September 27, 2018, we approved a Settlement Agreement concluded on August 12, 2018, between the Mutual Fund Dealers Association of Canada and the Respondent, Darrel Colin McIntyre. The Order provides that the Respondent shall forthwith pay a fine of \$11,000 and costs of \$2,500 as a result of obtaining, possessing, and occasionally using, 35 pre-signed account forms in respect of 14 clients.

Agreed Facts

2. The agreed facts are set forth in the Settlement Agreement. Since January 2, 2015, the Respondent has been registered in British Columbia as a mutual fund salesperson, now known as a Dealing Representative, with Investia Financial Services, Inc. (“Investia”), a member of the MFDA. Between May 2005 and January 2015, he was registered with Investors Group Financial Services, Inc. also a member of the MFDA. The Respondent carried on business in Victoria, British Columbia and the surrounding area.

3. Investia’s policies and procedures prohibit its approved Dealing Representatives from conducting business using blank or partially complete pre-signed account forms, including photocopies of pre-signed account forms.

4. In the period from February 20, 2015 through November 16, 2016, the Respondent obtained, possessed, and in some cases used, 35 pre-signed accounts pertaining to 14 clients. The forms consisted of 1 transfer authorization form; 1 RRSP account opening form; 2 systematic instruction forms; 3 know your client update forms; 6 new account application forms; 8 F Series service fee agreements; and 14 order instruction forms.

5. Investia identified the pre-signed forms when conducting a review of all of the Respondent’s client accounts in the period from January 28 through February 2, 2017. Investia placed the Respondent on strict supervision in the period from February 27 through June 13, 2017. Investia issued a warning letter to the Respondent on June 13, 2017.

6. On March 6, 2017, Investia sent letters to all clients serviced by the Respondent in order to determine whether he had engaged in any unauthorized trading. No clients reported any concerns to Investia.

7. The Respondent has not previously been the subject of MFDA disciplinary proceedings. There is no evidence that the Respondent processed any transactions without the authorization of his clients; that clients suffered any financial loss; or that the Respondent received any financial benefit beyond the commissions to which he would ordinarily be entitled had the transactions been carried out properly.

Analysis

8. This is another instance in which a dealing representative has engaged in the use of pre-signed forms notwithstanding regular communications from the MFDA reminding members and dealing representatives that their use is prohibited.

9. It is well known that the use of pre-signed forms constitutes a violation of MFDA Rule 2.1.1 prescribing 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 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. Hearing panels have continually held that obtaining or using pre-signed account forms is a contravention of the standard of conduct demanded under MFDA Rule 2.1.1.

10. The use of pre-signed forms is prohibited because they may adversely affect the integrity and reliability of documents; destroy the audit trail; impact the ability of approved persons to produce valid documentation to support transactions that come into question; mislead member supervisory personnel; negatively affect the credibility of the approved person; negatively affect member complaint handling; and facilitate other misconduct such as unauthorized trading, fraud and the misappropriation of funds: see MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017). The prohibition applies whether or not the client

was aware of, or authorized the use of, the forms and whether or not the forms were actually used by the approved person for discretionary trading or other improper purposes.

11. The accepted principle is that a hearing panel will not reject a settlement agreement unless the proposed penalty falls outside the reasonable range of appropriateness. As stated by counsel, settlements advance the MFDA's regulatory objective of protecting the public 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: see *Re Sterling Mutuals Inc.*, MFDA File No. 200820, August 21, 2008, Ontario Regional Council, and *British Columbia Securities Commission v. Seifert*, 2007 BCCA 484, at para. 31.

12. When considering whether a settlement falls within the reasonable range of appropriateness the Panel will consider criteria identified in other cases, namely, whether the settlement is in the public interest and the penalty imposed will protect investors; whether the settlement is reasonable and proportionate having regard for the Respondent's conduct; whether the settlement addresses the issues of specific and general deterrence; whether the settlement will prevent recurrence of the type of conduct in question; and whether the settlement will foster confidence in the integrity of the MFDA and the regulatory process itself: see *Re: Jacobson*, 2007 MFDA 27, p. 9.

13. With regard to the penalty itself, the assessment of reasonableness will take into account a number of factors including the seriousness of the allegations; the Respondent's past conduct; whether the Respondent recognizes the seriousness of the improper activity; the benefits derived from the improper activity; the risk to investors and the capital markets should the Respondent continue to participate in the mutual fund industry; the damage to the integrity of the capital markets occasioned by the Respondent's conduct; the need for specific and general deterrence; and prior decisions in comparable circumstances.

14. In this instance, counsel cites two comparables: *Re: Shearing*, MFDA File No. 201813, March 21, 2018, Pacific Regional Council, imposing a fine of \$5,000 and costs of \$2,500 for the possession and use of 16 pre-signed forms for 4 clients; and *Re: Rosborough*, MFDA File No. 201865, July 23, 2018, Central Regional Council, imposing a fine of \$10,000 and costs of \$2,500

for the possession and use of 23 pre-signed forms for 18 clients. While the penalty in the *Shearing* matter may appear low, it should be noted that the Member in that case fined the dealing representative \$5,000 independently of any action by the MFDA. The MFDA penalty guidelines mandate a penalty of not less than \$5,000 for the use of pre-signed forms. The MFDA has recently notified the industry that it will be seeking increased penalties for the use of pre-signed forms.

15. The Panel is of the view that the penalty of \$11,000 and the requirement to pay costs in the amount of \$2,500 fall within the reasonable range of appropriateness having regard for the fact that the Respondent has been engaged in the securities industry for a lengthy period of time and must be taken to have known that the use of pre-signed forms is prohibited, and the number of pre-signed forms obtained by the Respondent is substantial. The Panel is mindful of the fact that the Respondent has not been the subject of prior discipline proceedings, he has not inappropriately benefitted from the misconduct, no client has suffered harm, and he has admitted his misconduct and acknowledged its seriousness.

16. The principal consideration in this case must be deterrence, both specific to the Respondent and general to participants in the mutual fund industry as a whole. The Settlement Agreement suits that purpose.

17. For the foregoing reasons, the Settlement Agreement is approved.

DATED this 26th day of October, 2018.

“Ian H. Pitfield”

Ian H. Pitfield
Chair

“Holly A. Millar”

Holly A. Millar
Industry Representative

“Nova Aitchison”

Nova Aitchison
Industry Representative

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