



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: Valorie Jean McManes

Heard: October 5, 2018 in Calgary, Alberta

Decision: October 5, 2018

Reasons for Decision: February 12, 2019

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, Q.C.

Kathleen Jost

Richard Sydenham

Chair

Industry Representative

Industry Representative

Appearances:

Justin Dunphy

)

Enforcement Counsel for the Mutual Fund

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Dealers Association of Canada

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Patricia Gonzales

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Counsel for Respondent

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Valorie Jean McManes

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Respondent, in person

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Background

1. This matter concerns 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 October 5, 2018. The full Settlement Agreement dated September 25, 2018 entered into between the Respondent Valorie Jean McManes ("McManes") and MFDA Staff on behalf of MFDA is attached as Appendix "A" to these reasons for decision and its relevant provisions will not be repeated in detail here.
2. Under the Settlement Agreement, the Respondent has admitted that:
 - a) between June 2012 and April 2016, she obtained, possessed, and used to process transactions, 9 pre-signed account forms in respect of 4 clients, contrary to MFDA Rule 2.1.1; and
 - b) in September 2015, she altered one account form in respect of one client by altering information on the account form without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

Terms of Settlement

3. Under the terms of the Settlement Agreement, the Respondent agreed to pay a fine of \$6,500 and costs of \$2,500 by installment.
4. At the conclusion of the October 5, 2018 hearing, this Hearing Panel accepted the proposed Settlement Agreement with reasons to follow, which are set out below.

Agreed Facts

5. The Settlement Agreement contains the following agreed facts:

Registration History

- a) From August 1997 until August 2017, the Respondent was registered as a mutual fund salesperson (now known as a dealing representative) in Alberta with Sun Life Financial Investment Services (Canada) Inc. ("Sun Life"), a Member of the MFDA.

- b) Between August 1997 and March 2003, the Respondent was registered as a mutual fund salesperson with Mutual Investco Inc., which underwent a name change to Clarica Investco Inc. In June 2005, Clarica Investco Inc. underwent a name change to Sun Life Financial Services (Canada) Inc.
- c) At all material times, the Respondent conducted business in the Calgary, Alberta area.
- d) The Respondent is no longer registered in the securities industry in any capacity.

Pre-Signed Account Forms

- e) At all material times, Sun Life’s policies and procedures prohibited its Approved Persons, including the Respondent, from obtaining, holding, or using pre-signed account forms.
- f) Between June 2012 and April 2016, the Respondent obtained, possessed, and used to process transactions, 9 pre-signed account forms in respect of 4 clients.
- g) The pre-signed account forms consisted of the following:

| Client | Date | Type of Form |
|--------|------------------|--|
| KM | June 4, 2012 | 3 x Canada Education Savings Grant Application Forms |
| | | 3 x Pre-Authorized Contribution Forms |
| BM | October 16, 2013 | 1 x Pre-Authorized Contribution Form |
| DM | July 16, 2015 | 1 x Transfer Authorization Form |
| GF | April 19, 2016 | 1 x Transfer Authorization Form |

- h) The Respondent obtained a pre-signed transfer authorization form from client GF which she submitted to Sun Life for processing on or about April 19, 2016. On or about April 22, 2016, Sun Life supervisory staff identified the form was missing client GF’s Sun Life account number and the relinquishing fund company account numbers, and requested that the Respondent resubmit the form containing the missing information. On or about May 9, 2016, in response to Sun Life’s request, the Respondent added the missing information to the form that client GF previously signed and re-submitted the form to Sun Life for processing.

Altered Account Forms

- i) At all material times, Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining, or using altered account forms.
- j) On or about September 3, 2015, the Respondent altered one Pre-Authorized Contribution form in respect of one client by altering the fund directions on the account form without having the client initial the alterations.

Sun Life's Investigation

- k) In April 2016, Sun Life identified the altered account form described in subparagraph 5(j) above during an audit. Sun Life subsequently commenced a review of all of the client files serviced by the Respondent and identified the remaining pre-signed account forms that are the subject of this Settlement Agreement. On or about May 9, 2016, Sun Life placed the Respondent on close supervision for a period of 6 months.
- l) In May 2016, as part of its investigation, Sun Life sent a letter to the client for whom the altered account form was identified in order to determine if she had any concerns with respect to the transaction that occurred. The client did not report any concerns.
- m) On or about August 4, 2016, Sun Life issued a warning letter to the Respondent for possessing and using pre-signed and altered account forms, and placed her under additional close supervision for a period of 12 months.

Additional Factors

- n) There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
- o) There is no evidence of any client loss or that the transactions were unauthorized.
- p) The Respondent states that the pre-signed and altered forms as described above were obtained for the purpose of client convenience.

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

Analysis

6. This Hearing Panel concluded that the allegations admitted by the Respondent had been proven and constitute misconduct in contravention of the By-law and MFDA Rules. It then turned to the question of the appropriateness of the proposed penalty as set out in the Settlement Agreement.

7. This Hearing Panel is aware that its responsibility is to either accept the settlement agreement or reject it, as stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 3, 2008 at para. 37 citing the I.D.A. Ontario District Council in *Milewski (Re)* [1999] IDACD No. 17 at p. 10, Ontario District Council Decision dated July 28, 1999.

8. This Hearing Panel is also mindful of the effectiveness of Settlement Agreements in fulfilling the objective of the regulator as noted in the reasons for decision in *British Columbia Securities Commission v Seifert*, 2007 BCCA 484 at para. 31.

Enhanced Penalty

9. Enforcement Counsel cited an additional consideration for the Hearing Panel to take into account namely, MFDA Bulletin #0661-E, dated October 2, 2015, which reminded Members and Approved Persons that “Signature Falsification” is not permissible under MFDA Rules. This term includes conduct like pre-signed account forms, altered account forms and the falsification of a client signature. In the Bulletin, Staff advised Members and Approved Persons that Staff would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015.

10. One of the account forms in this case was obtained after MFDA issued MFDA Bulletin #0661-E on October 2, 2015. Previous hearing panels such as in *Owen (Re)*, MFDA File No. 201784, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 7, 2017, at para. 35 and *Lo (Re)*, MFDA File No. 201776, Hearing Panel of the Central Regional

Council, Decision and Reasons dated February 7, 2018, at paras. 16, 18, have held that such “post-bulletin conduct” should be treated as an aggravating factor.

11. Enforcement Counsel cited the following cases in support of acceptance of the Settlement Agreement:

- a) *Holowaty (Re)*, MFDA File No. 201680, Hearing Panel of the Central Regional Council, Decision and Reasons dated March 29, 2017.
- b) *Dias Pereira (Re)*, MFDA File No. 201652, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 18, 2017.
- c) *Gallant (Re)*, MFDA File No.201814, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated June 8, 2018.
- d) *Kirkwood (Re)*, MFDA File No. 201810, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated June 13, 2018.

12. In all of the above-cited cases, the costs award was \$2500. *Holowaty (Re)*, *supra*, concerned six pre-signed account forms in respect of two clients; and six falsified account forms in respect of one client. The fine was \$7,500.

13. *Dias Pereira (Re)* concerned 8 pre-signed account forms in respect of 7 clients, altering and in some cases, using to process transactions, 3 account forms in respect of 3 clients without the clients’ initials to the alterations. The fine was \$7,000.

14. *In Gallant (Re)* (*supra*) the Respondent used ten pre-signed account forms to process transactions in respect of five clients. The fine was \$6,500.

15. *In Kirkwood (Re)* *supra*, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 11 clients, and altered two account forms in respect of one client. The fine was \$7,500.

16. This Hearing Panel found that the misconduct of the Respondent in the case at hand was very serious. In addition to obtaining, possessing and using to process transactions, nine pre-signed account forms in respect of four clients, one of the pre-signed forms was obtained in response to a supervisory inquiry, which is an aggravating factor.

17. However the mitigating factors included the facts that no clients were harmed as a result of the Respondent's misconduct, there was no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, she had not previously been the subject of MFDA disciplinary proceedings and by entering into the Settlement Agreement, she accepted responsibility for her misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary proceeding.

18. Accordingly, this Hearing Panel considered the monetary fine jointly proposed in this case was appropriate to meet the requirements of specific deterrence to this Respondent and general deterrence to other dealing representatives who may be tempted to engage in similar wrongful conduct.

19. Having regard to the foregoing, this Hearing Panel is satisfied that the Settlement Agreement is in the public interest, is reasonable and proportionate, and will foster public confidence in the integrity of the Canadian capital markets and the industry and, accordingly, approves its terms.

20. This Hearing Panel thanks Counsel for their helpful presentations and their cooperation during the hearing.

DATED this 12th day of February, 2019.

“Shelley L. Miller”

Shelley L. Miller, QC
Chair

“Kathleen Jost”

Kathleen Jost
Industry Representative

“Richard Sydenham”

Richard Sydenham
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: Valorie Jean McManes

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Valorie Jean McManes (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 MFDA:

- a) between June 2012 and April 2016, the Respondent obtained, possessed, and used to process transactions, 9 pre-signed account forms in respect of 4 clients, contrary to MFDA Rule 2.1.1; and
 - b) in September 2015, the Respondent altered 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.
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 \$6,500 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 pursuant to s. 24.2 of MFDA By-law No. 1;
 - c) the payment of the fine and costs shall be made to and received by MFDA Staff as follows:
 - i. \$2,500 (costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$2,500 (fine) on or before the last business day of the 2nd month following the date of the acceptance of the Settlement Agreement by the Hearing Panel;
 - iii. \$2,500 (fine) on or before the last business day of the 4th month following the date of the acceptance of the Settlement Agreement by the Hearing Panel; and
 - iv. \$1,500 (fine) on or before the last business day of the 6th month following the date of the acceptance of the Settlement Agreement by the Hearing Panel;
 - d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - e) 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. From August 1997 until August 2017, the Respondent was registered as a mutual fund salesperson (now known as a dealing representative) in Alberta with Sun Life Financial Investment Services (Canada) Inc. 1 (“Sun Life”), a Member of the MFDA.

8. At all material times, the Respondent conducted business in the Calgary, Alberta area.

9. The Respondent is no longer registered in the securities industry in any capacity.

Pre-Signed Account Forms

10. At all material times, Sun Life’s policies and procedures prohibited its Approved Persons, including the Respondent, from obtaining, holding, or using pre-signed account forms.

11. Between June 2012 and April 2016, the Respondent obtained, possessed, and used to process transactions, 9 pre-signed account forms in respect of 4 clients.

12. The pre-signed account forms consisted of the following:

| Client | Date | Type of Form |
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| KM | June 4, 2012 | 3 x Canada Education Savings Grand Application Forms |
| | | 3 x Pre-Authorized Contribution Forms |
| BM | October 16, 2013 | 1 x Pre-Authorized Contribution Form |
| DM | July 16, 2015 | 1 x Transfer Authorization Form |
| GF | April 19, 2016 | 1 x Transfer Authorization Form |

¹ Between August 1997 and March 2003, the Respondent was registered as a mutual fund salesperson with Mutual Investco Inc., which underwent a name change to Clarica Investco Inc. In June 2005, Clarica Investco Inc. underwent a name change to Sun Life Financial Services (Canada) Inc.

13. As described above in paragraph 12, in April 2016, the Respondent obtained a pre-signed transfer authorization form from client GF which she submitted to Sun Life for processing on or about April 19, 2016. On or about April 22, 2016, Sun Life supervisory staff identified the form was missing client GF's Sun Life account number and the relinquishing fund company account numbers, and requested that the Respondent resubmit the form containing the missing information. On or about May 9, 2016, in response to Sun Life's request, the Respondent added the missing information to the form that client GF previously signed and re-submitted the form to Sun Life for processing.

Altered Account Forms

14. At all material times, Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining, or using altered account forms.

15. On or about September 3, 2015, the Respondent altered 1 Pre-Authorized Contribution form in respect of 1 client by altering the fund directions on the account form without having the client initial the alterations.

Sun Life's Investigation

16. In April 2016, Sun Life identified the altered account form described in paragraph 15 above during an audit. Sun Life subsequently commenced a review of all of the client files serviced by the Respondent and identified the remaining pre-signed account forms that are the subject of this Settlement Agreement.

17. On or about May 9, 2016, Sun Life placed the Respondent on close supervision for a period of 6 months.

18. In May 2016, as part of its investigation, Sun Life sent a letter to the client for whom the altered account form was identified in order to determine if she had any concerns with respect to the transaction that occurred. The client did not report any concerns.

19. On or about August 4, 2016, Sun Life issued a warning letter to the Respondent for possessing and using pre-signed and altered account forms, and placed her under additional close supervision for a period of 12 months.

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 she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

21. There is no evidence of any client loss or that the transactions were unauthorized.

22. The Respondent states that the pre-signed and altered forms as described above were obtained for the purpose of client convenience.

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

24. 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

25. 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.

26. 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.

27. 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.

28. 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 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.

29. 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.

30. 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.

31. 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 25th day of September, 2018.

“Valorie Jean McManes”

Valorie Jean McManes

“LM”

Witness – Signature

LM

Witness – Print Name

“Shaun Devlin”

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement

Schedule “A”

**Order
File No.**



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: Valorie Jean McManes

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Valorie Jean McManes (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 By-law No. 1;

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

- a) between June 2012 and April 2016, obtained, possessed, and used to process transactions, 9 pre-signed account forms in respect of 4 clients, contrary to MFDA Rule 2.1.1; and
- b) in September 2015, altered 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.

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 \$6,500 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 pursuant to s. 24.2 of MFDA By-law No. 1;
3. The payment of the fine and costs shall be made to and received by MFDA Staff as follows:
 - a) \$2,500 (costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - b) \$2,500 (fine) on or before the last business day of the 2nd month following the date of the acceptance of the Settlement Agreement by the Hearing Panel;
 - c) \$2,500 (fine) on or before the last business day of the 4th month following the date of the acceptance of the Settlement Agreement by the Hearing Panel; and
 - d) \$1,500 (fine) on or before the last business day of the 6th month following the date of the acceptance of the Settlement Agreement by the Hearing Panel;
4. The Respondent shall in the future comply with MFDA Rule 2.1.1; and
5. 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]