



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: William McTavish

Heard: September 8, 2022 by electronic hearing in Toronto, Ontario

Decision: September 8, 2022

Reasons for Decision: October 12, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.
Colleen Waring
Linda J. Anderson

Chair
Industry Representative
Industry Representative

Appearances:

Molly McCarthy)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
William McTavish)	Respondent
)	
)	

I. SETTLEMENT AGREEMENT

1. We accepted the settlement agreement dated July 22, 2022 (“Settlement Agreement”) between the staff of the MFDA (“Staff”) and William McTavish (“Respondent”) at an electronic settlement hearing held in accordance with MFDA rules for an electronic hearing.
2. A copy of the Settlement Agreement is attached to these Reasons as Schedule “1”. The agreed facts are set out in Part III of the Settlement Agreement.

II. CONTRAVENTIONS

3. The Respondent admits that
 - a) between September 26, 2017 and March 2, 2021, the Respondent obtained, possessed, and used to process transactions, 8 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1; and
 - b) between August 17, 2017 and November 5, 2020, the Respondent altered and used to process transactions, 21 account forms in respect of 16 clients, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

III. PROPOSED SANCTIONS

4. The Settlement Agreement provides that:
 - a) the Respondent shall pay a fine of \$22,000;
 - b) the Respondent shall pay costs of \$2,500; and
 - c) the Respondent shall in the future comply with MFDA Rule 2.1.1.

IV. CONSIDERATIONS

5. We determined that we had to be satisfied regarding three considerations before we could accept the Settlement Agreement. First, the agreed penalties had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalties had to be fair and reasonable (i.e. proportional to the seriousness of the contraventions taking into consideration relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalties should serve as a deterrent to the Respondent and to the industry. To be satisfied

on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on the Respondent of the agreed penalties.

V. MISCONDUCT

6. The Respondent's conduct was in violation of the standard of conduct required by MFDA Rule 2.1.1. This rule requires that Members and Approved Persons 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. A multitude of MFDA disciplinary cases have found conduct similar to that of the Respondent in our case to be a contravention of MFDA Rule 2.1.1.

VI. OTHER CONSIDERATIONS

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

8. There was no evidence of client complaints, client loss or lack of client authorization for the underlying transactions.

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

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

VII. RESPONDENT'S CONCERNS

11. When asked by the panel if the Respondent had anything he wished to say, he replied to the following effect:

- a) He felt that the agreed penalties were unreasonable. By his calculation, they amounted to about \$1000 for each incident that constituted a violation.
- b) People today do paperlessly over the internet what he did with paper transactions, although not in strict accordance with the rules where paper is required.
- c) None of his clients were harmed or deceived.
- d) His clients over the years have always thought highly of him and have never complained about him.

- e) He has been out of the business for some time now and had no intention of going back.
- f) He implied that such a large fine was not necessary as a deterrent for him.
- g) However, he agreed to everything in the Settlement Agreement because he just wanted to get a troubling and distressing regulatory matter behind him.
- h) He wanted the panel to accept the Settlement Agreement.

12. We responded to the Respondent's comments as follows:

- a) We understood the Respondent's view that in his case the penalties seemed harsh.
- b) People often feel like him when they are caught for a speeding incident in a low-speed zone where going slow was not really necessary because of circumstances. Sometimes, when this happens, the driver is let off with just a warning and is not prosecuted.
- c) But when charges of misconduct are pursued by Staff and a settlement is reached, the settlement agreement is brought before a panel of the MFDA for acceptance, not approval.
- d) The panel can, under our rules, only accept the settlement or reject it.
- e) The panel cannot change the settlement agreement. In particular, the panel cannot change the agreed penalties to what the panel might have imposed as, in its opinion, more apt in the circumstances, had the matter come before the panel, not as a settlement, but as a contested matter.
- f) It is not up to the panel to even consider whether the agreed penalties are apt.
- g) In a settlement hearing, a panel cannot know, and need not know, all the reasons and motivating factors of each party for agreeing to the settlement.
- h) The panel needs, however, to be made aware of all relevant facts to reach the conclusions set out in Part VIII below, failing which the panel would not accept the settlement agreement.
- i) In deciding whether the agreed penalties will provide an appropriate deterrence in the case before us, we looked at the impact on others in the industry (and not just on the Respondent) who might otherwise be inclined to similar misconduct in the future.

VIII. CONCLUSIONS

13. The agreed penalties are within the recommendations of the MFDA Sanction Guidelines and the reasonable range of appropriateness with regard to MFDA decisions submitted to us by Staff, made by MFDA Hearing Panels in similar circumstances. They are fair and reasonable and will serve as a specific and general deterrent.

14. The costs award is reasonable.

DATED this 12th day of October, 2022.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Colleen Waring”

Colleen Waring
Industry Representative

“Linda Anderson”

Linda Anderson
Industry Representative

Schedule "1"

Settlement Agreement

File No. 202233



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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: William McTavish

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, William McTavish (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 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) between September 26, 2017 and March 2, 2021, the Respondent obtained, possessed and used to process transactions, 8 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1; and
 - b) between August 17, 2017 and November 5, 2020, the Respondent altered and used to process transactions, 21 account forms in respect of 16 clients, by altering information on the account forms 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 \$22,000 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;
 - d) the Respondent will attend in person or by videoconference, on the date set for the Settlement Hearing; and
 - e) 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

6. Commencing on August 4, 2017, the Respondent was registered in Ontario as a dealing representative with Investia Financial Services Inc. (the “Member”), a Member of the MFDA.

7. At all material times, the Respondent conducted business in the Newmarket, Ontario area.

Pre-signed Account Forms

8. At all material times, the Member’s policies and procedures prohibited its dealing representatives from using pre-signed account forms.

9. Between and September 26, 2017 and March 2, 2021, the Respondent obtained, possessed and used to process transactions, 8 pre-signed account forms in respect of 8 clients.

10. The pre-signed account forms include: a Non-Financial Instruction Form; New Client Application Forms; Systematic withdrawal Instruction Forms and an Order Instruction Form.

Altered Account Forms

11. Between August 17, 2017 and November 5, 2020, the Respondent altered and used to process transactions, 21 account forms in respect of 16 clients, by altering information on the account forms without having the client initial the alterations.

12. The Respondent altered information on the account forms including investment instructions, risk tolerance, annual income, client addresses, account numbers, and institution information.

Member's Investigation

13. On March 24, 2021, the Member completed a full file review of the client files maintained by the Respondent and discovered the account forms that are described above.

14. Between April 20, 2021 and July 23, 2021, the Member placed the Respondent on strict supervision.

15. As part of its investigation into the Respondent's conduct, the Member sent letters to clients whose accounts the Respondent serviced to determine the transactions were authorized and the KYC information it maintained for the clients was accurate, including by sending letters to clients containing three years of transaction history and the clients' KYC information. No clients responded to the Member's letters with any concerns.

16. On July 23, 2021, the Member issued the Respondent a Warning Letter for his misconduct described above.

Additional Factors

17. There is no evidence that the Respondent received any financial benefit from the misconduct described above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the required manner.

18. There is no evidence of client loss, client complaints or lack of authorization for the underlying transactions.

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

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

IV. ADDITIONAL TERMS OF SETTLEMENT

21. 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.

22. 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.

23. 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.

24. 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 agrees to waive 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) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, 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, whether known or unknown at the time of settlement. 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 section 24.1.1 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of MFDA 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.

25. 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 settlement negotiations.

26. 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.

27. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile or electronic copy of any signature shall be as effective as an original signature.

DATED this 22nd day of July, 2022.

“William McTavish”

William McTavish

“BM”

Witness – Signature

BM

Witness – Print name

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement



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Re: William McTavish

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") provided notice to the public of a Settlement Hearing in respect of William McTavish (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 based upon the admissions of the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that

- a) Between and September 26, 2017 and March 2, 2021, the Respondent obtained, possessed and used to process transactions, 8 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1; and
- b) Between August 17, 2017 and November 5, 2020, the Respondent altered and used to process transactions, 21 account forms in respect of 16 clients, by altering information on the account forms 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 \$22,000 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]

DM 897121