



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: Jeffrey Alistair Milne

Heard: March 18, 2022 by electronic hearing in Vancouver, British Columbia

Decision: March 18, 2022

Reasons for Decision: April 26, 2022

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Michael Carroll, Q.C.
Barbara Fraser
David B. Webb

Chair
Industry Representative
Industry Representative

Appearances:

Zaid Sayeed)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Joshua Shneer)	Counsel for the Respondent
)	
)	
Jeffrey Alistair Milne)	Respondent
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Background

1. In this matter the Hearing Panel has been asked to approve a settlement agreement dated March 11, 2022 (the “Settlement Agreement”) between the Mutual Fund Dealers Association of Canada (the “MFDA”) and Jeffrey Alistair Milne (the “Respondent”).
2. Under the terms of the Settlement Agreement, the Respondent has admitted that between February 2015 and February 2019, he obtained and possessed 60 pre-signed account forms for 33 clients contrary to MFDA Rule 2.1.1.
3. The Respondent has also admitted in the Settlement Agreement that he falsely represented to Investors Group Financial Services Inc. (the “Member”) on its annual compliance confirmations that he did not accept, solicit, or maintain any pre-signed account forms, contrary to MFDA Rule 2.1.1.
4. Should the Hearing Panel approve the Settlement Agreement the Respondent has agreed to the following;
 - a) A fine in the amount of \$22,500;
 - b) Costs in the amount of \$2,500;
 - c) The payment of the fine and costs to be made to the MFDA in certified funds as follows;
 - i) \$3,750 (Fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii) \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - iii) \$6,250 (Fine) on or before the last business day of the first month following the date of the Settlement Agreement;
 - iv) \$6,250 (Fine) on or before the last business day of the second month following the date of the Settlement Agreement;
 - v) \$6,250 (Fine) on or before the last business day of the third month following the date of the Settlement Agreement; and
 - d) He shall in future comply with MFDA Rule 2.1.1.

Agreed Relevant Facts

5. From October 8, 1998 to May 13, 2019 the Respondent was registered in British Columbia as a dealing representative with the Member. At all material times the Respondent carried on business in the Surrey, British Columbia area.

Pre-Signed Account Forms

6. At all material times the Member's policies and procedures prohibited its Approved Persons from holding, obtaining, or using pre-signed account forms. Between February 2015 and February 2019, the Respondent obtained and possessed 60 pre-signed account forms for 33 clients. He failed to submit these forms to the Member for processing and they were not used to process trades or update Know Your Client ("KYC") information.

False Annual Compliance Confirmations

7. Between March 2015 and March 2019, the Respondent completed 5 annual compliance confirmations of the Member in which he stated that he had not accepted, solicited, or maintained any pre-signed account forms.

8. His responses on the annual compliance confirmations were false since he had obtained the 60 pre-signed account forms referenced above.

9. In March 2015, the Member issued a warning letter to the Respondent after it discovered the Respondent had used 2 pre-signed account forms. Some of the 60 pre-signed account forms were obtained by the Respondent after the Member issued the warning letter.

Pre-Signed Account Forms are not Permissible

10. "Pre-signed account forms" is a generic term that applies to account forms that were incomplete at the time they were signed. Members and Approved Persons are only permitted to use and rely on account forms that are executed by the client after all information on the form has been properly completed.

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

12. The prohibition on the use of pre-signed account forms applies regardless of whether the client was aware or authorized the use of the pre-signed account forms, or whether the forms were used by the Approved Person for discretionary trading or other improper purposes.

MFDA Bulletin #0661 October 2nd, 2015

Answering Falsely on Client Confirmations is not Permissible

13. Misleading the Member by falsely answering a compliance questionnaire is a contravention of the standard of conduct under MFDA Rule 2.1.1. As stated in paragraph 7 above the Respondent admits that he falsely represented to the Member on 5 annual compliance confirmations that he did not accept, solicit, or maintain any pre-signed account forms.

General Considerations Concerning the Acceptance of Settlement Agreements

14. Some of the general considerations Hearing Panels have taken into account in determining whether a settlement agreement ought to be accepted include:

- a) Whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- b) Whether it is reasonable and proportionate having regard to the conduct of the Respondent as set out in the settlement agreement;
- c) Whether the settlement agreement addresses the issues of both specific and general deterrence;
- d) Whether the settlement agreement will prevent the type of conduct described therein from occurring again in the future.

Specific Factors Concerning the Appropriateness of the Penalty

15. In exercising its discretion on whether to accept or reject a proposed settlement agreement some of the factors a Hearing Panel should consider are:

- a) The protection of the investing public;
- b) The integrity of the securities market;
- c) Specific and general deterrence.

16. Hearing Panels have also considered other factors in assessing whether proposed penalties in a settlement agreement are appropriate, including:

- a) The seriousness of the allegations proved;
- 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 the investors as a result of the improper activity;
- f) The benefits received by the Respondent as a result of the improper activity;
- g) 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 activities;
- h) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- i) Previous decisions made in similar circumstances.

Headley (Re) 2007 LNCMFDA 3 at pp. 25-26

Considerations in the Present Case

17. Obtaining and possessing pre-signed account forms are serious breaches of MFDA Rule 2.1.1 and in the present case the improper activity was aggravated by the fact that some of the forms were obtained after MFDA issued Bulletin #0661-E. Furthermore, the Member issued a warning letter to the Respondent in March 2015 after it discovered the Respondent had used 2 pre-signed account forms and some of the account forms described in the Settlement Agreement were obtained by the Respondent after he had received the warning letter.

18. Other Hearing Panels have noted that this type of improper activity by Approved Persons continues to occur. Imposing meaningful penalties on those who obtain and possess pre-signed account forms is an effective deterrence within the industry. The penalties proposed in the Settlement Agreement are meaningful and should serve as a deterrence to others in the industry from improper use of these forms.

19. In the present case it is an aggravating factor that the Respondent falsely represented to the Member on its annual compliance confirmations that he did not accept, solicit, or maintain any pre-signed account forms.

Mitigating Factors

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

21. There is no evidence the Respondent received any financial benefit as a result of wrongfully obtaining and maintaining the pre-signed account forms. There is no evidence of any client loss or complaints, or lack of authorization.

22. By entering the Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

Previous Decisions Made in Similar Circumstances

23. Counsel referred us to the following decisions as setting the parameters for penalties in circumstances involving the use of pre-signed account forms and misleading Members on annual compliance questionnaires:

Roy, Daniel (Re) [2019] Hearing Panel of the Central Regional Council, MFDA File No. 2018107, Decision dated February 28, 2019

Church (Re) [2021] Hearing Panel of the Prairie Regional Council, MFDA File No. 202138, Order dated September 30, 2021, Settlement Agreement dated July 30, 2021

Weiler (Re) [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202131, Decision dated September 24, 2021

Bates, Keith (Re) [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202049, Decision dated December 4, 2020

Barrett (Re) [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201709 Decision dated October 20, 2017

Tilley (Re) [2017] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201698, Decision dated May 17, 2017

Myers (Re) [2021] Hearing Panel of the Central Regional Council, MFDA File No.202145 Decision dated January 10, 2022

24. A Hearing Panel must either accept or reject proposed settlement agreements. It has no jurisdiction to amend such agreements.

Section 24.4.3, MFDA By-Law No. 1

25. Furthermore, a Hearing Panel should not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness.

Sterling Mutuals Inc. (Re) 2008 LNCMFDA 16 at para. 37

26. Taking into account the general and specific considerations for approval referenced above, and after reviewing the cases referred to us, we find that the proposed penalties in the Settlement

Agreement fall within the range of those imposed in similar cases and are reasonable and proportionate. We approve the Settlement Agreement.

DATED this 26th day of April, 2022.

“Michael Carroll”

Michael Carroll, Q.C.
Chair

“Barbara Fraser”

Barbara Fraser
Industry Representative

“David B. Webb”

David B. Webb
Industry Representative

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