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: Dean Edward Owen

Heard: November 23, 2017 in Saskatoon, Saskatchewan
Decision: November 23, 2017
Reasons for Decision: December 7, 2017

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC	Chair
James Samanta	Industry Representative

Appearances:

Justin Dunphy	)	Counsel for the Mutual Fund Dealers Association of Canada
Dean Edward Owen	)	Respondent, In Person

INTRODUCTION

1. On August 30, 2017 the Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Hearing pursuant to sections 20 and 24 of By-law No. 1 of the MFDA in respect of Dean Edward Owen, ("Respondent").

2. The hearing proceeded on November 23, 2017 however one of the panel members was unavailable at the appointed start time of 10 a.m. Central Time. The Chair of this Hearing Panel decided to proceed with a 2-member hearing panel in accordance with Rule 19.9(b) of the MFDA Rules.

3. The Respondent and the MFDA Staff entered into a proposed Settlement Agreement dated September 26, 2017 pursuant to which the Respondent would be penalized under s. 24.4 of By-law No. 1 of the MFDA.

4. In the proposed Settlement Agreement, the Respondent admitted to the below listed contraventions:

a) between June 2006 and October 2015, he obtained, possessed, and in some instances, used to process transactions, 164 pre-signed account forms in respect of 26 clients, contrary to MFDA Rule 2.1.1; and

b) between February 2007 and August 2015, he altered and used to process transactions, 11 account forms in respect of 7 clients by altering information on the forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

5. In the proposed Settlement Agreement, the Respondent has agreed to the following penalty:

a) a 2 month prohibition from conducting any securities related business with a Member of the MFDA;

b) a fine of $20,000; and

c) costs of $2,500.

6. In the proposed Settlement Agreement is contained the following Agreed Facts:

Registration History

7. From April 2006 to January 2016, the Respondent was registered in Saskatchewan and Alberta as a mutual fund salesperson (now known as a dealing representative) with Quadrus Investment Services Ltd. ("Quadrus"), a Member of the MFDA.

8. The Respondent is not currently registered in the securities industry in any capacity.

9. At all material times, the Respondent conducted business in the Saskatoon, Saskatchewan area.

Pre - Signed Account Forms

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

11. Between June 2006 and September 2015, the Respondent obtained, possessed, and in 136 instances, used to process transactions, 161 pre - signed account forms in respect of 26 clients.

12. The pre - signed account forms consisted of:
a) 119 mutual fund switch / conversion forms;
b) 12 subsequent investment forms;
c) 24 redemption forms;
d) 4 PAC, AWD, or RIF payment forms; and
e) 2 RRSP direct transfer forms.

13. In September 2015, the Respondent's branch manager identified some of the pre - signed account forms as described above. On or about October 1, 2015, Quadrus placed the Respondent on close supervision for a period of 12 months.

14. On or about October 21, 2015, while on close supervision, the Respondent obtained 3 additional pre - signed mutual fund switch/conversion forms, and submitted them to Quadrus for processing. The forms were detected by a Quadrus provincial compliance officer as a result of the Respondent being on close supervision at the time.

Altered Account Forms

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

16. Between February 2007 and August 2015, the Respondent altered 11 account forms in respect of 7 clients by altering information on the account forms without having the clients initial the alterations. The Respondent states that in each instance the clients approved the alterations verbally with the Respondent prior to altering the information on the account forms.

17. The altered account forms consisted of 10 mutual fund switch / conversion forms and 1 redemption form.

Quadrus' Investigation

18. In September 2015, the Respondent's branch manager identified some of the pre - signed account forms as described in paragraphs 12 and 13, above. Quadrus' compliance staff subsequently conducted a full review of the Respondent's practice and identified the remaining pre - signed and altered account forms that are the subject of this Settlement Agreement.

19. On or about October 14, 2015, Quadrus sent letters to the all of the clients whose accounts were serviced by the Respondent in order to determine whether the transactions in the clients' accounts were authorized. The clients did not report any concerns.

20. On or about November 19, 2015, Quadrus issued a warning letter to the Respondent for possessing and using pre - signed and altered account forms. In addition to placing the Respondent on close supervision, Quadrus required him to complete two online learning modules and review Quadrus' policies and procedures by a specified date.

21. On or about January 11, 2016, Quadrus terminated the Respondent's registration as a result of the Respondent's failure to complete the online learning modules by the specified deadline, and for obtaining and using additional pre - signed forms while under close supervision, as described above in paragraph 14.

7. Enforcement Counsel for MFDA submits the Settlement Agreement advances the public interest as it is reasonable and proportionate having regard to the nature and extent of the Respondent's misconduct in all the circumstances.

8. The Settlement Agreement also references additional factors in support of the submission that the terms should be accepted.

Additional Factors

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

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

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

12. 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.

LAW

Applicable Provisions

13. The relevant MFDA provisions in this matter are MFDA Rule 2.1.1, Sections 20, 24.1.1, 24.1.4, 24.2, 24.4 of MFDA By-law No. 1, Rules 14 and 15 of the MFDA Rules of Procedure, MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013) and MFDA Bulletin #0661-E dated October 2, 2015.

Factors Concerning Acceptance of a Settlement Agreement

14. 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.

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

16. This Hearing Panel also notes that as stated in *Sterling Mutuals Inc. (Re)*, *supra*, at para. 36 and the decisions cited therein, in past cases, MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

a) Whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
b) Whether the settlement agreement 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 in the settlement agreement from occurring again in the future;
e) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
f) Whether the settlement agreement will foster confidence in the integrity of the MFDA; and
g) Whether the settlement agreement will foster confidence in the regulatory process itself.

MFDA Penalty Guidelines

17. This Hearing Panel accepts that MFDA Penalty Guidelines are an additional resource that a Hearing Panel may consult when determining the appropriateness of the penalty to be imposed pursuant to a settlement agreement but notes they are not mandatory or binding but intended to provide a basis upon which a hearing panel's discretion can be exercised consistently in like circumstances.

Appropriateness of the Proposed Penalty

18. Enforcement Counsel reminded this Hearing Panel of the following statements of law in relation to the appropriateness of the proposed penalty in this instance.

19. The primary goal of securities regulation, whether in the context of a settlement hearing or a contested hearing, is protection of the investor.

> *Pezim* v *British Columbia (Superintendent of Brokers),* [1994] 2 SCR 557 (SCC) at paras. 59, 68
>
> *Breckenridge (Re)*, MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 74.

20. In addition to protection of the investor, the goals of securities regulation include fostering public confidence in the capital markets and the securities industry.

> *Pezim* v *British Columbia (Superintendent of Brokers)*, *supra*, at paras. 59, 68.

21. As stated in *Breckenridge (Re),* (supra), at para. 77 and the decisions cited therein, hearing panels frequently consider the following factors when determining whether a penalty is appropriate:

a) The seriousness of the allegations proved against the Respondent;
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 investors as a result of the Respondent's activities;
f) The benefits received by the Respondent as a result of the improper activity;
g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;

h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

i) 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 activity;

j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and

k) Previous decisions made in similar circumstances.

SUBMISSIONS OF ENFORCEMENT COUNSEL

22. Enforcement Counsel submitted that this Hearing Panel should also take into account the force and effect of MFDA Bulletin #0661-E, dated October 2, 2015 by reason that it specifically warned Members and Approved Persons that MFDA would seek enhanced penalties at MFDA disciplinary proceedings for conduct such as signature falsification, which includes possession of pre-signed account forms, altered account forms and falsification of a client signature.

23. As well, this Hearing Panel considered the following factors in determining the suitability of the terms of the Settlement Agreement with the Respondent in this instance:

Nature of the Misconduct: Pre-Signed Account Forms

24. The Respondent obtained, possessed, and in some instances, used to process transactions, 164 pre-signed account forms in respect of 26 clients.

25. As stated about MFDA Rule 2.1.1 by the MFDA Hearing Panel in *Breckenridge (Re)*: "The Rule articulates the most fundamental obligations of all registrants in the securities industry."

Breckenridge (Re), supra, at para. 71

Price (Re), MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011, at paras. 118 – 121

26. MFDA Rule 2.1.1 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 that is unbecoming or detrimental to the public interest.

27. The MFDA has made clear to Approved Persons since October 31, 2007, in both MFDA Staff Notices and Bulletins, that possessing and using pre-signed forms is contrary to the obligations of Rule 2.1.1.

Member Staff Notice 0066: Pre-Signed Forms, dated October 31, 2007 (updated March 4, 2013)

MFDA Bulletin #0661-E: Signature Falsification, dated October 2, 2015

28. As noted in *Price (Re)*, (supra) at para. 135 and the decisions cited therein, hearing panels of the MFDA, IIROC, and provincial securities commissions have also confirmed that the possession and use of pre-signed forms is prohibited.

29. The MFDA hearing panel in *Price (Re)* supra, at paras. 122 – 124, also usefully identified the dangers posed by pre-signed forms that can be summarized as follows:

(a) pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading;

(b) at worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client; and

(c) pre-signed forms subvert the ability of a Member to properly supervise trading activity.

30. As stated in *Wellman (Re)*, MFDA File No. 201529, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015, at para. 10, 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 forms, and whether the forms were actually used by the Approved Person for discretionary trading or other improper purposes.

Nature of the Misconduct: Altered Account Forms

31. The Respondent also altered and used to process transactions, 11 account forms in respect of 7 clients by altering information on the forms without having the clients initial the alterations.

32. As noted in *Byce (Re)*, MFDA File No. 201311, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 4, 2013, altering or falsifying forms is a contravention of the standard of conduct as set out in MFDA Rule 2.1.1.

33. In *Price (Re)*, (supra), at para. 21, the hearing panel discussed why pre-signed account forms affect the integrity and reliability of account documents. In the view of this Hearing Panel, that reasoning applies equally to altered and falsified forms. With respect to altered or falsified forms in particular, there also exists the possibility that the changes are made to the forms without the clients' knowledge or consent. For these reasons, the creation, possession or use of an altered or falsified form is considered serious misconduct.

34. This Hearing Panel agrees that by obtaining and using pre-signed and altered forms as described in Part III of the Settlement Agreement, the Respondent engaged in conduct prohibited by MFDA Rule 2.1.1, and therefore, constitutes serious misconduct.

Post-Bulletin Misconduct

35. This Hearing Panel noted that 3 of the pre-signed account forms were obtained after the MFDA issued MFDA Bulletin #0661-E on October 2, 2015, which is an aggravating factor as noted in *Techer (Re),* MFDA File No. 201662, Hearing Panel of the Prairie Regional Council,

Decision and Reasons dated December 5, 2016, at para. 44, and *Ackerman (Re),* MFDA File No. 201734, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated September 13, 2017, at para. 29.

The Respondent's Experience in the Securities Industry

36. The Respondent was registered as a mutual fund dealing representative from April 2006 to January 2016.

The Respondent's Recognition of the Seriousness of his Misconduct

37. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the additional time and expense of a full contested hearing.

Client Harm and Benefits Received by the Respondent

38. There was no evidence presented to this Hearing Panel of unauthorized trades or client losses. There is no evidence to suggest that the Respondent received a financial or other benefit through his conduct, and there were no client complaints.

Deterrence

39. Enforcement Counsel submitted that:

a) a fine of $20,000 and a suspension of 2 months will be sufficient to achieve the goals of specific and general deterrence, having regard to the above listed aggravating factors.
b) The penalty demonstrates that the Respondent's misconduct in all of the circumstances is serious and has significant consequences.

c) The penalty will also deter others in the capital markets from engaging in similar activity.

40. Enforcement Counsel noted that it was seeking a penalty which exceeds the minimum fine recommended by the Penalty Guidelines for an Approved Person's breach of the standard of conduct by reason of both the number of forms at issue in the instant case and the post-bulletin misconduct.

41. Enforcement Counsel cited in support of his submission the penalties imposed in the following listed cases: *Williamson (Re),* MFDA File No. 201533, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated November 6, 2015, *Neeson (Re),* MFDA File No. 201525, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 11, 2015, *Burchill (Re),* MFDA File No. 201755, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 18, 2017, *Yargeau (Re),* MFDA File No. 201748, Hearing Panel of the Central Regional Council, Decision dated October 26, 2017, Reasons Pending, *Clarke (Re)*, MFDA File No. 201356, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated March 23, 2014.

42. This Hearing Panel noted that in *Williamson (Re)*, (supra) the Respondent obtained, and in some instances used some 136 pre-signed forms in respect of 69 client accounts. She was suspended for three weeks and agreed to pay a fine of $11,000 and costs of $2,500. That decision was rendered in November 2015. In *Neeson (Re)* (supra), the Respondent obtained and used 137 pre-signed forms in respect of 29 client accounts. He agreed to pay a fine of $10,000 plus costs of $2,500. That decision was rendered in September 2015. In *Burchill (Re)* (supra) the Respondent obtained and used 222 pre-signed account forms in respect of 92 clients. The agreement was to pay a fine of $20,000, to serve a 30-day suspension and to pay costs of $2,500. That decision was rendered in September 2017.

43. In the view of this Hearing Panel, the above-cited decisions are comparable to the case at hand and reveal that the severity of the fines and terms of suspension have increased significantly since 2015.

44. In the view of this Hearing Panel, the amount of the fine in this instance together with the extent of the suspension are appropriate, taking into account the nature of the conduct, as well as the aggravating factor of its occurrence subsequent to the issuance of MFDA Bulletin #0661-E on October 2, 2015, the contents of which, the Respondent was, or should have been, well aware.

ACCEPTANCE OF THE SETTLEMENT AGREEMENT

45. In conclusion, 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. The Settlement Agreement is attached as Schedule "1" to these reasons for decision.

46. This Hearing Panel thanks Enforcement Counsel for his helpful presentation and the Respondent for his cooperation during the hearing.

DATED this 7th day of December, 2017.

"Shelley L. Miller"

Shelley L. Miller, QC
Chair

"James Samanta"

James Samanta
Industry Representative

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