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: Ian David Peer

Heard: October 11, 2012 in Toronto, Ontario
Reasons for Decision: October 17, 2012

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
David W. Kerr	Industry Representative
T. Hugh McNabney	Industry Representative

Appearances:

H. C. Clement Wai	)	Enforcement Counsel, Mutual Fund Dealers
	)	Association of Canada ("MFDA")
Ian David Peer	)	Unrepresented
	)	

1. The Panel was convened to hear submissions as to a Settlement Agreement reached between the Respondent, Ian David Peer, and Staff of the MFDA on October 4, 2012. The Panel was required to consider whether, pursuant section 24.4 of the MFDA By-law No. 1, the Panel should accept the Settlement Agreement.

2. At the outset of the proceedings, we considered a joint motion by Staff and the Respondent to move the proceedings *in camera*. We granted that motion. We then considered, in detail, the provisions of the Settlement Agreement itself. We heard submissions as to the applicable law that should guide this Panel in determining whether to accept or reject the Settlement Agreement. We next heard submissions as to why this particular Settlement Agreement met the appropriate criteria. We then retired to consider both the Settlement Agreement and the applicable legal principles. After deliberation, we unanimously concluded that it was appropriate to accept the Settlement Agreement.

3. The investigation by Staff of the Respondent's activities disclosed that the Respondent had engaged in activity for which the Respondent could be penalized pursuant to section 24.1 of By-law No. 1. The specific allegation was that on June 12, 2011, the Respondent met with his clients KM and PM for the purposes of opening a joint non-registered account and a registered account for KM. On June 14, 2011 the Client Service Administrator for Investors Group advised the Respondent that the application could not be processed for the two reasons stated in paragraph 3 of the Notice of Hearing. The Client Service Administrator told the Respondent that he would need to correct the applications and would be required to get the initials of KM and PM. The Respondent made changes to the forms in his own handwriting and returned the application forms to the Client Service Administrator who became concerned with how quickly the Respondent was able to obtain the clients' initials. Subsequently an investigation indicated the Respondent had made changes to the account and falsified the initials of KM and PM. The Respondent admitted that he had done so. He had told clients KM and PM via telephone that he had initialed the documents on their behalf. The falsified initials gave effect to the clients' intentions with respect to the accounts. The Respondent met with the clients to show them what he had done. The falsifying the initials of clients KM and PM on the client account documents was conduct contrary to MFDA Rule 2.1.1.

4. It is important to note that no trades were executed on the bases of the falsified

documents nor did the Respondent receive any monetary or other benefit with respect to the falsifications.

5. The Respondent, by fax dated August 20, 2012, admitted the allegations in these words:

> My reply is that I do not deny any of the allegations and I wish the hearing committee to decide what the outcome will be without having to go through a long and drawn out period.
>
> I have always had a clean record for compliance with any of the dealers I have worked with - this is a strong blemish on my record and I wish that the case can be resolved in mutual agreement. I will abide by what the MFDA decides should be my reprimand.

6. Considering whether the proposed Settlement Agreement should be accepted, we have considered the principles as to whether it would be in the public interest and whether the penalties imposed will protect investors. We have also considered whether it is reasonable and proportionate having reference to the conduct of the Respondent.

7. We believe that the Settlement Agreement fairly addresses the concerns that we have, including the public interest, reasonableness, specific and general deterrence and the prevention of this type of conduct in the future. We believe that the Settlement Agreement will also foster confidence in the integrity of the Canadian capital markets, the MFDA and the regulatory process itself. We believe that each and every one of these factors was dealt with in an appropriate fashion by the Settlement Agreement.

8. In addition, we have carefully reviewed the MFDA Penalty Guidelines and the effect of these Penalty Guidelines on this type of conduct. The proposed penalty in the amount of $2,500.00 by way of a fine together with costs in the amount of $2,500.00 is entirely within a reasonable amount for a matter of this nature and should not be disturbed, notwithstanding the fact that this particular activity involves a matter of forgery.

9. In the decision of *Lamontagne (Re)*, [2009] IIROC No. 6, Alberta District Council, Panel

Decision dated January 27, 2009, the hearing panel distinguished between serious versus less egregious instances of forgery:

> Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. The trust and confidence between the registrant and the client is very often destroyed by the deceptive conduct on the part of the registrant. Forgery harms the Member firm as well. As a result, forgery often attracts severe sanctions. *While there is no such thing as a "minor case" of forgery, hearing panels may distinguish between more and less egregious examples of forgery.* [emphasis in text]

Enforcement counsel, quite properly, submitted that this was a less egregious example of forgery.

10. We have considered other matters, such as the fact that the Respondent has not been the subject of any previous MFDA disciplinary hearings. His admission was prompt and full as to the misconduct and by entering into the Settlement Agreement he has accepted full responsibility for his misconduct. This admission, of course, has eliminated the necessity of a full investigation and hearing. Enforcement counsel takes the position that the Respondent is truly remorseful when one considers his cooperation. There is no evidence of any client complaints, losses or harms in this case.

11. We are of the view that a negotiated settlement should not be disturbed provided that the penalties are within the reasonable range of appropriateness. In that regard, we have considered the remarks of the panel of the District Council in *Re Milewski*, [1999] I.D.A.C.D. No. 17, decided on July 28, 1999. The Panel made these comments at page 9:

> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement

> agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

12. In addition, we find that the fact situation in this case is very much akin to the fact situation in the *Griffiths* decision, reported at [2009] MFDA Prairie Regional Council, File No. 200916.

13. In addition we have considered all of those factors that normally should be considered when determining whether a penalty is appropriate as set forth in paragraph 10 of the submissions of Staff of the MFDA. We have also considered the ranges of penalty as set forth in the MFDA penalty guidelines. The Panel therefore imposes the following penalty and costs:

(a) a fine in the amount of $2,500.00, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
(b) the Respondent shall pay costs in the amount of $2,500.00, pursuant to section 24.2 of the MFDA By-law No. 1; and
(c) the Respondent shall in the future comply with MFDA Rule 2.1.1.

14. For all of the above reasons we accepted the Settlement Agreement and signed the appropriate order presented to us at the hearing. We agreed to provide reasons for our decision after the hearing. These are our reasons.

DATED this 17th day of October, 2012.

"John B. Webber"
The Hon. John B. Webber, Q.C.,
Chair

"David W. Kerr"
David W. Kerr,
Industry Representative

"T. Hugh McNabney"

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