



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: Joseph Terrance Sask

Heard: March 26, 2019 in Edmonton, Alberta

Decision: March 26, 2019

Reasons for Decision: May 8, 2019

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC
Kathleen Jost
Richard Sydenham

Chair
Industry Representative
Industry Representative

Appearances:

| | | |
|----------------------|---|---|
| Sakeb Nazim |) | Enforcement Counsel for the Mutual Fund |
| |) | Dealers Association of Canada |
| |) | |
| |) | |
| Shiv Ganesh |) | Counsel for the Respondent |
| |) | |
| |) | |
| Joseph Terrance Sask |) | Respondent, by teleconference |
| |) | |
| |) | |

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 March 26, 2019. The full Settlement Agreement dated March 19, 2019 entered into between the Respondent Joseph Terrance Sask (the "Respondent") and MFDA Staff on behalf of MFDA is attached as Appendix "1" to these reasons for decision and its relevant provisions will not be repeated in detail here.

2. From April 1993 to October 20, 2017, the Respondent has been registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc. (the "Member"), a Member of the MFDA.

3. Between April 1993 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.

4. Under the Settlement Agreement, the Respondent has admitted that:

- a) Between September 2011 and October 2015, he altered and used to process 26 account forms in respect of 16 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1. and
- b) Between June 2011 and September 2016, he obtained, possessed, and in one instance used, 6 pre-signed account forms in respect of 5 clients, contrary to MFDA Rule 2.1.1.

Terms of Settlement

5. Under the terms of the Settlement Agreement, it was agreed that:

6. The Respondent shall pay a fine in the amount of \$10,500, pursuant to section 24.1.1(b) of By-law No. 1;

7. The Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
8. Payment by the Respondent of the fine and costs shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$6,500 (costs and fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$6,500 (fine) on or before last business day of the first month following the acceptance of the Settlement Agreement by the Hearing Panel;
9. The Respondent shall in the future comply with MFDA Rule 2.1.1; and
10. The Respondent will attend the Settlement Hearing in person or via teleconference.
11. At the conclusion of the hearing, this Hearing Panel accepted the proposed Settlement Agreement with reasons to follow, which are set out below.

Agreed Facts

12. The Settlement Agreement contains the following agreed facts:

Registration History

13. From April 1993 to October 20, 2017, the Respondent has been registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc.¹ (the “Member”), a Member of the MFDA.
14. On October 20, 2017, The Member terminated the Respondent’s registration, and the Respondent is not currently registered in the securities industry in any capacity.
15. At all material times, the Respondent carried on business in the Grand Prairie, Alberta area.

¹ Between April 1993 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.

Altered Account Forms

16. Between September 2011 and October 2015, the Respondent altered 26 account forms in respect of 16 clients by altering information on the account forms without having the clients initial the alterations.

17. The altered account forms consisted of New Account Application, Transfer Authorization, Pre-Authorized Chequing and Know-Your-Client forms.

Pre-Signed Account Forms

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

19. Between June 2011 and September 2016, the Respondent obtained, possessed, and in one instance used, 6 pre-signed account forms in respect of 5 clients.

20. The pre-signed account forms consisted of Mutual Funds Trade Tickets and Transfer Authorization forms.

The Member's Investigation

21. In November 2016, the Member identified 2 of the altered forms that are the subject of this Settlement Agreement during an onsite branch review. The Member subsequently commenced a review of all of the client files serviced by the Respondent and identified the remaining altered and pre-signed account forms.

22. On November 8, 2016, the Member placed the Respondent under close supervision for a period of 12 months.

23. On December 15, 2016, as part of its investigation, the Member sent audit letters to all of the Respondent's mutual fund clients to determine if they had any unauthorized transactions in their accounts. The clients did not report any concerns.

24. On January 2, 2017, the Member issued a warning letter to the Respondent for using altered, re-used, and pre-signed account forms.
25. On October 20, 2017, the Member terminated the Respondent's registration.

Additional Factors

26. 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.
27. There is no evidence of any client loss or that the transactions were unauthorized.
28. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
29. 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.

Analysis

30. 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.
31. The role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, citing the I.D.A. Ontario District Council in *Milewski (Re)*:

“We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel “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.”
[Emphasis added.]

Sterling Mutuals Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para.35

Milewski (Re), [1999] IDACD No. 17 at p. 10, Ontario District Council Decision dated July 28, 1999.

32. 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.

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

- a) *Plunkett*, MFDA File No. 201682, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated January 17, 2017
- b) *Simard*, MFDA File No. 2017123, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated June 5, 2018
- c) *Sholes*, MFDA File No. 201882, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated January 29, 2019

34. In *Plunkett, supra*, the Respondent obtained, possessed, and used to process transactions, 33 pre-signed account forms and altered and used to process transactions, 3 account forms.

35. In *Simard, supra*, the Respondent obtained, possessed, and used to process transactions, 21 pre-signed account forms and altered and used to process transactions, 7 account forms.

36. In *Sholes, supra*, the Respondent obtained, possessed, and used to process transactions, 23 pre-signed account forms and altered and used to process transactions, 10 account forms.

37. In *Plunkett, supra*, the approved Settlement Agreement provided for a fine of \$11,250 and costs of \$2,500. The other cited cases provided for fines of \$11,000 and costs of \$2,500.

38. This Hearing Panel concluded that the misconduct of the Respondent in the case at hand was very serious.

39. However, the mitigating factors included the facts that no clients were harmed as a result of the Respondent's misconduct beyond any commissions and fees that he would ordinarily be

entitled to receive had the transactions been carried out in the proper manner, there was no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, he had not previously been the subject of MFDA disciplinary proceedings and by entering into the Settlement Agreement, he accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary proceeding.

40. Having regard to the foregoing factors, and the range of penalties in the above cited cases, this Hearing Panel considered the amount of the monetary fine 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.

41. Accordingly, 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 the following penalties and directions:

- a) The Respondent shall pay a fine in the amount of \$10,500, pursuant to section 24.1.1(b) of By-law No. 1;
- b) The Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
- c) Payment by the Respondent of the fine and costs shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$6,500 (costs and fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$6,500 (fine) on or before last business day of the first month following the acceptance of the Settlement Agreement by the Hearing Panel; and
- d) The Respondent shall in the future comply with MFDA Rule 2.1.1.

DATED this 8th day of May, 2019.

“Shelley L. Miller”
Shelley L. Miller, QC
Chair

“Kathleen Jost”
Kathleen Jost
Industry Representative

“Richard Sydenham”
Richard Sydenham
Industry Representative

DM 675145



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: Joseph Terrance Sask

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and Joseph Terrance Sask, (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 September 2011 and October 2015, the Respondent altered 26 account forms in respect of 16 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.; and
 - b) Between June 2011 and September 2016, the Respondent obtained, possessed, and in one instance used, 6 pre-signed account forms in respect of 5 clients, 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 \$10,500, pursuant to section 24.1.1(b) of By-law No. 1;
 - b) The Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
 - c) Payment by the Respondent of the fine and costs described above in paragraphs 5(a) and (b) shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$6,500 (costs and fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$6,500 (fine) on or before last business day of the first month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - d) The Respondent shall in the future comply with MFDA Rules 2.1.1; and
 - e) The Respondent will attend the Settlement Hearing in person or via teleconference.
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 April 1993 to October 20, 2017, the Respondent has been registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc.² (the “Member”), a Member of the MFDA.

8. On October 20, 2017, The Member terminated the Respondent’s registration, and the Respondent is not currently registered in the securities industry in any capacity.

9. At all material times, the Respondent carried on business in the Grand Prairie, Alberta area.

Altered Account Forms

10. Between September 2011 and October 2015, the Respondent altered 26 account forms in respect of 16 clients by altering information on the account forms without having the clients initial the alterations.

11. The altered account forms consisted of New Account Application, Transfer Authorization, Pre-Authorized Chequing and Know-Your-Client forms.

Pre-Signed Account Forms

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

13. Between June 2011 and September 2016, the Respondent obtained, possessed, and in one instance used, 6 pre-signed account forms in respect of 5 clients.

14. The pre-signed account forms consisted of Mutual Funds Trade Tickets and Transfer Authorization forms.

² Between April 1993 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.

The Member's Investigation

15. In November 2016, the Member identified 2 of the altered forms that are the subject of this Settlement Agreement during an onsite branch review. The Member subsequently commenced a review of all of the client files serviced by the Respondent and identified the remaining altered and pre-signed account forms.

16. On November 8, 2016, the Member placed the Respondent under close supervision for a period of 12 months.

17. On December 15, 2016, as part of its investigation, the Member sent audit letters to all of the Respondent's mutual fund clients to determine if they had any unauthorized transactions in their accounts. The clients did not report any concerns.

18. On January 2, 2017, the Member issued a warning letter to the Respondent for using altered, re-used, and pre-signed account forms.

19. On October 20, 2017, the Member terminated the Respondent's registration.

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 he 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 has not previously been the subject of MFDA disciplinary proceedings.

23. 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

24. 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.

25. 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.

26. 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.

27. 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 contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any 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.

28. 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.

29. 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.

30. 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 19th day of March, 2019.

“Joseph Terrance Sask”

Joseph Terrance Sask

“GS”

Witness – Signature

GS

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. 201858**



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: Joseph Terrance Sask

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 Joseph Sask (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:

- a) between September 2011 and October 2015, the Respondent altered 26 account forms in respect of 16 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) between June 2011 and September 2016, the Respondent obtained, possessed, and in one instance used, 6 pre-signed account forms in respect of 5 clients, 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 \$10,500, pursuant to section 24.1.1(b) of By-law No. 1;

2. The Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;

3. Payment by the Respondent of the fine and costs described above in paragraphs 1 and 2 shall be made to and received by MFDA Staff in certified funds as follows:

a) \$6,500 (costs and fine) upon acceptance of the Settlement Agreement by the Hearing Panel; and

b) \$6,500 (fine) on or before April 30, 2019.

4. The Respondent shall in the future comply with MFDA Rules 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]