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: James Brewes Scholes

Heard: October 2, 2018 in Vancouver, British Columbia
Decision: October 2, 2018
Reasons for Decision: January 29, 2019

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Stephen D. Gill	Chair
Charlene Snell	Industry Representative

Appearances:

Christopher Corsetti	)	Counsel for the Mutual Fund Dealers Association of Canada
Tom Newnham	)	Counsel for the Respondent
James Brewes Scholes	)	Respondent, In person

Introduction

1. In a Settlement Agreement dated July 25, 2018 (the "Settlement Agreement") between MFDA Staff ("Staff") and the Respondent James Brewes Scholes ("Respondent") the Respondent admits that:

   a) between October 13, 2013 and January 31, 2017, the Respondent obtained, possessed, and in some instances used to process transactions, twenty-three pre-signed account forms in respect of sixteen clients, contrary to MFDA rule 2.1.1; and
   b) between August 19, 2013 and August 19, 2016, the Respondent falsified and used to process transactions ten client account forms in respect of nine clients, by altering the client account forms without having the clients initial the alterations, contrary to MFDA rule 2.1.1.

2. As terms of the Settlement Agreement, the Respondent agrees:

   a) he shall pay a fine of $11,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1 (b) of the MFDA By-law No. 1; and
   b) he shall pay costs in the amount of $2,500, in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of By-law No. 1.

3. A copy of the Settlement Agreement is attached hereto as Appendix "A".

Agreed Facts

4. In summary, the Respondent Registration history is:

   a) From May 18, 1999 to July 3, 2013 the Respondent was registered in British Columbia as a Dealing Representative within Investors Group Financial Services Inc. ("IGF");
   b) Since July 16, 2013 the Respondent has been registered in British Columbia as a mutual fund sales person (now known as a Dealing Representative) with Investia Financial Services Inc. ("Investia") a member of the MFDA; and
   c) At all material times, the Respondent carried on business in the Victoria, British Columbia area.

Pre-Signed Forms

5. At all material times, Investia's policies and procedures prohibited its Approved Persons from possessing and using pre-signed account forms. Between October 13, 2013 and January 31, 2017, the Respondent obtained, possessed, and in some instances used to process transactions, twenty-three pre-signed account forms in respect of sixteen clients.

6. The pre-signed account forms included:

a) One transfer fee disclosure form;
b) One free unit conversion form;
c) One service fee form;
d) Four service fee agreements;
e) Four new application forms;
f) Six trade tickets; and
g) Six Know-Your-Client update forms.

7. The Respondent admits that between August 19, 2013 and August 19, 2016 he falsified and used to process transactions ten client account forms in respect of nine clients, by altering the client account forms without having the client initial the alterations. The falsified account forms included nine trade tickets and one transfer fee disclosure form.

8. Between January 28, 2017 and February 2, 2017, Investia identified the forms that are the subject of the Settlement Agreement during a branch review of the Respondent's branch. On February 23, 2017, Investia placed the Respondent on strict supervision for a period of five months. Investia sent letters to all clients serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading; no clients reported any concerns to Investia.

9. As per the Settlement Agreement, there's no evidence the Respondent received any benefit from the conduct set out in the Settlement Agreement beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in proper manner. Further, there's no evidence of client loss or lack of authorization for the underlying transactions.

10. The Respondent has not previously been the subject of MFDA disciplinary proceedings. Further, by entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

11. MDFA Rule 2.1.1 sets forth the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each member and Approved Person: deal fairly, honestly and in good faith with clients; observe high standards of ethics and conduct in the transactions of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. (Excerpts of the MFDA Rules, Policies, By-law No. 1.)

12. "[P]re-signed account forms" is a generic term which applies to a variety of situations wherein an Approved Person seeks to rely on a client's signature on a document when the signature was not provided by the client at the time the document was completed. Most commonly, an Approved Person obtains a client's signature on a partially completed or completely blank account form, such as an order entry or Know-Your-Client form, completes the form, then uses the form to process transactions in the client's account.

13. Staff submitted, and we agree, that pre-signed forms may have serious consequences as they can:

a) Adversely affect the integrity and reliability of the documents;
b) Destroy the audit trails;
c) Impact the ability of Approved Persons to produce valid documentation to support transactions that come into question;
d) Mislead Member supervisory personnel;
e) Negatively affect the credibility of the Approved Persons;
f) Negatively affect member complaint handling; and
g) Facilitate other misconduct such as unauthorized trading, fraud and misappropriation of funds.

(MFDA Notice No. MSN-0066 dated October 31, 2007, updated March 4, 2013 and January 6, 2017.)

14. The MFDA has been warning Approved Persons against the use of pre-signed account forms for a number of years: MFDA Staff Notice no. MSN-0035 dated December 20, 2004; MFDA Notice MSN-0066 dated October 31, 2007, updated March 4, 2013; MFDA Bulletin no. 00661-E dated October 2, 2015.

15. MFDA Bulletin no. 00661-E dated October 2, 2015 warns Approved Persons that the MFDA has recently been, and will continue seeking increased penalties in upcoming cases involving signature falsification; a portion of the conduct here occurred post bulletin. Hearing Panels have held that obtaining or using pre-signed account forms is a contravention of the standard of conduct under MFDA Rule 2.1.1.

16. 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 the forms were actually used by the Approved Person for discretionary trading or other improper purposes. (MFDA Notice no. MSN-0066 dated October 31, 2007, updated March 4, 2013)

17. In the Settlement Agreement, the Respondent agreed to the following monetary penalty: to pay a fine of $11,000 upon acceptance of the Settlement Agreement; and to pay costs in the amount of $2,500 upon acceptance of the Agreement.

18. With respect to the acceptance of Settlement Agreements, pursuant to section 24.4.3 of the MFDA By-law no. 1, a Hearing Panel has two options with respect to a Settlement Agreement: it may either accept the Settlement Agreement or reject it. (excerpts of the MFDA Rules, Policies and By-law No. 1).

19. The role of a Hearing Panel at a Settlement Hearing is fundamentally different than its role at a contested hearing. The MFDA hearing panel in Sterling Mutuals Inc. (re), quoting the reasoning in IDA matter of re Milewski:

> 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 the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."
>
> (*Re Sterling Mutuals*, 2008 MFDA 16 at para. 37)

(*Re Milewski* (1999) I.D.A.C.D. no. 17 at page 11)

20. Staff submitted, and we agree, that the principle that a Hearing Panel will not reject a Settlement Agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness assists the MFDA to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

21. In *BC Securities Commission v. Seifert*, 2007 BCCA 484 at para. 31 and 49, the Court cites the following from *R. v. 974649 Ontario Inc*., 2001 SCC 81, (2001) 3 S.C.R. 575 at para. 31:

> Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore be resolved by way of a hearing.

22. It is well settled that the primary goal of securities regulation is the protection of the investor: *Pezim v. British Columbia (Superintendent of Brokers)*, (1994) 2 S.C.R. 557 (SCC) at paras. 59 and 68.

23. MFDA Hearing Panels have taken into account the following considerations when determining whether a purposed 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 proposed settlement 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.

Jacobson (Re), 2007 MFDA 27, at page 9.

24. It is well accepted that a Hearing Panel should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness having regard to the conduct to the Respondent. (re Jacobson Supra at page 10.)

25. "Previous Hearing Panels have set out a number of additional factors which should be considered when determining an appropriate penalty. These include:

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."

Re Lucas Stemhorn-Russell, Reasons for Decision March 7, 2018, para. 16.

26. The MFDA penalty guidelines are an additional source of factors to be taken into account with regards to penalty. The penalty guidelines are not binding or mandatory but are intended to assist Hearing Panels, MFDA Staff, and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings. When an Approved Person fails to adhere to the standard of conduct, the MFDA penalty guidelines recommend one or all of the following: a minimum fine of $5,000; writing or re-writing an appropriate industry course; suspension; a permanent prohibition in egregious cases (MFDA Penalty guidelines).

27. The following factors are particularly relevant to the Settlement Agreement in this matter:

a) The use of pre-signed account forms are serious breaches of MFDA rule 2.1.1, especially considering the number of warnings in the industry to eliminate the practice over the past decade.
b) In this case there is no evidence clients suffered financial losses.
c) Further, there is no evidence that the Respondent received any financial benefits from engaging in the misconduct detailed in the Settlement Agreement, other than the commissions and fees that he would ordinarily be entitled to receive had the transaction been carried out in the proper matter.
d) The Respondent has been registered in the mutual fund industry since 1999 and in our view clearly he is an experienced Dealing Representative and knew, or ought to have known, and respected, his Members and the MFDA's compliance requirements.

28. With respect to deterrence, the fine of $11,000, and costs of $2,500 helps MFDA Staff send a message to the Respondent, and others in the capital markets, with regard to the seriousness of the misconduct described herein. We note that the Respondent has not previously been subject to MFDA disciplinary procedures.

29. Further, by entering into the Settlement Agreement the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing. It is agreed that the Respondent also cooperated with the investigation into his conduct.

30. Staff submitted, and we agree, that the proposed resolution is within a reasonable range of appropriateness with regard to other decisions made by MFDA Hearing Panels in similar circumstance. Some cases are:

a) Re Gregory Shearing: March 7, 2018; 16 PSF for 4 clients some post bulletin ap paid member fine of $5,000. Penalty: $2,500 fine and $2,500 cost.
b) Re Trevor Rosborough: July 24, 2018 Pacific Region; 23 PSF for 18 clients; some post bulletin; penalty: $10,000 fine and $2,500 cost.
c) Re Darrel McIntyre: September 27, 2018 Pacific Region; 35 PSF for 14 clients; 16 of the PSF were post bulletin; penalty: $11,000 fine and $2,500 cost.
d) In the present case the settlement describes 23 PSF for 16 clients and 10 altered forms for 9 clients; some post bulletin. Proposed penalty: $11,000 and $2,500 cost.

31. In our view the proposed resolution is within the reasonable range of appropriateness.

32. In conclusion, we accept the submissions of Staff, and counsel for the Respondent, that having regard to all the foregoing circumstances, the proposed penalty is reasonable, proportionate to the misconduct in question, and is in keeping with the MFDA's mandate to enhance investor protection and strengthen public confidence in the Canadian Mutual Fund industry by ensuring a high standard of conduct by Members and Approved Persons. The Settlement Agreement is accepted.

33. Due to travel difficulties affecting our 3rd panel member, with the consent of the parties, this Hearing was conducted by a Panel of two.

DATED this 29th day of January, 2019.

"Stephen D. Gill"
Stephen D. Gill
Chair

"Charlene Snell"
Charlene Snell
Industry Representative

DM 645864

Appendix "A"

Settlement Agreement

File No. 201882

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: James Brewes Scholes

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and James Brewes Scholes (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 Mutual Fund Dealers Association of Canada ("MFDA"):

a) between October 13, 2013 and January 31, 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 23 pre-signed account forms in respect of 16 clients, contrary to MFDA Rule 2.1.1; and

b) between August 19, 2013 and August 19, 2016, the Respondent falsified and used to process transactions, 10 client account form in respect of 9 clients, by altering the client account forms without having the clients 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 of $11,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to Section 24.1.1(b) of MFDA Bylaw 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 section 24.2 of Bylaw No. 1;

c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and

d) the Respondent will attend the Settlement Hearing in person.

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. Since July 16, 2013, the Respondent has been registered in British Columbia as a mutual fund salesperson (now known as a Dealing Representative) with Investia Financial Services Inc. ("Investia"), a Member of the MFDA.

8. From May 18, 1999 to July 3, 2013, the Respondent was registered in British Columbia as a Dealing Representative with Investors Group Financial Services Inc. ("IG").

9. At all material times, the Respondent carried on business in the Victoria, British Columbia area.

Pre-Signed Forms

10. At all material times, Investia's policies and procedures prohibited its Approved Persons from possessing and using pre-signed account forms.

11. Between October 13, 2013 and January 31, 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 23 pre-signed account forms in respect of 16 clients.

12. The pre-signed account forms included

a) 1 transfer fee disclosure form;
b) 1 free unit conversion form;
c) 1 service fee form;
d) 4 service fee agreements;
e) 4 new account application forms;
f) 6 trade tickets; and
g) 6 Know-Your-Client update forms.

Falsified Account Forms

13. Between August 19, 2013 and August 19, 2016, the Respondent falsified and used to process transactions, 10 client account form in respect of 9 clients, by altering the client account forms without having the clients initial the alterations.

14. The falsified account forms included 9 trade tickets and 1 transfer fee disclosure form.

Investia's Response

15. Between January 28, 2017 and February 2, 2017, Investia identified the forms that are the subject of this Settlement Agreement during a branch review of the Respondent's branch.

16. On February 23, 2017, Investia placed the Respondent on strict supervision for a period of 5 months.

17. Investia sent letters to all clients serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns to Investia.

Additional Factors

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

19. There is no evidence of client loss or lack of authorization for the underlying transactions.

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

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

IV. ADDITIONAL TERMS OF SETTLEMENT

22. 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.

23. 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.

24. 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.

25. 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 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. 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.

26. 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.

27. 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.

28. 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 25th day of July, 2018.

"James Brewes Scholes"
James Brewes Scholes

"DD"
Witness – Signature

DD
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.

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: James Brewes Scholes

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 James Brewes Scholes (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 October 13, 2013 and January 31, 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 23 pre-signed account forms in respect of 16 clients, contrary to MFDA Rule 2.1.1; and

b) between August 19, 2013 and August 19, 2016, the Respondent falsified and used to process transactions, 10 client account form in respect of 9 clients, by altering

the client account forms without having the clients 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 of $11,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to Section 24.1.1(b) of MFDA Bylaw 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 section 24.2 of Bylaw No. 1; and

3. 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]