



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: Tarak Shah

Heard: October 29, 2015 in Toronto, Ontario
Reasons for Decision: December 21, 2015

**ORAL REASONS FOR DECISION FOR ACCEPTANCE OF
SETTLEMENT AGREEMENT**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Kenneth P. Mann	Industry Representative
T. Hugh McNabney	Industry Representative

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Melissa MacKewn)	Counsel for the Respondent
Savitri Gordian)	

1. The following reasons were delivered orally at the conclusion of the hearing on October 29, 2015.

Settlement Agreement

2. MFDA Staff (“Staff”) and Tarak Shah (the “Respondent”) have entered into a Settlement Agreement dated July 21, 2015 (the "Settlement Agreement") in which the Respondent admits that between June 2011 and September 2013 he obtained, maintained, and in some instances, used to process trades, 24 pre-signed account forms in respect of 19 clients, contrary to Rule 2.1.1 of the MFDA.

Agreed Penalty

3. The Respondent agrees to pay a fine in the amount of \$10,000 and costs in the amount of \$2,500.

Decision

4. We accept the Settlement Agreement (attached hereto as Schedule ‘1’) as proposed because it falls inside the reasonable range of appropriateness having regard to the nature of the conduct admitted by the Respondent and the MFDA's regulatory objective of protecting the public. In particular, we determine that the Settlement agreement is in the public interest. Secondly, and as part of that consideration, we determine that the Settlement Agreement penalties provide a reasonable deterrence, both specific to the Respondent, and generally to the industry at large with respect to this kind of conduct.

5. MFDA Rule 2.1.1 prescribes 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

transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

6. "Pre-signed account forms" is a generic term which applies to a variety of situations where 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. The MFDA has issued warnings concerning Approved Persons using pre-signed account forms for a number of years. Hearing Panels have held that obtaining or using pre-signed account forms is a contravention of the standard of conduct MFDA Rule 2.1.1. The use of pre-signed account forms adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation.

7. As the Hearing Panel in *Price (Re)[2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814* explained:

"Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading....At its worst, pre-signed forms create a mechanism for an Approved Person to engage acts of fraud, theft or other forms of harmful conduct towards a client....Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account."

8. It is important to note that this prohibition applies whether the client was aware or authorized the use of the pre-signed forms, or whether the forms were actually used by the Approved Person for discretionary trading or other improper purposes.

9. The primary goal of securities regulation is the protection of the investor. There are several factors that MFDA Hearing Panels have taken into account in determining whether a proposed settlement should be accepted. The factors that are relevant in this case are set out in the very able submission of Staff.

10. First and foremost, the use of pre-signed account forms is a serious breach of MFDA Rule 2.1.1.

11. In our case, there is no evidence of client harm. In our case, there is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, other than any commissions and fees he may (or may not) ordinarily be entitled to receive, had the transactions been carried out in the proper manner.

12. The Respondent has been registered in the mutual fund industry since 1999. He ought to have known and respected the MFDA and Member's requirements in respect of pre-signed account forms.

13. The Respondent has not previously been subject to MFDA disciplinary proceedings; however, during a routine compliance audit of the Respondent's files conducted in October 2009, the Member's compliance staff detected a pre-signed account form in a client file. After the discovery of the pre-signed account form, the Respondent signed both an "Acknowledgement and Undertaking" form, and a "Compliance Policies and Procedures Manual Acknowledgement" form, in which he agreed to stop using pre-signed account forms in his business practice. Had it not been for this 2009 occurrence, and the fact that these undertakings were not complied with, we may have considered the proposed penalty to be above the acceptable high side. But we consider this a serious matter in view of the breach of the previous Undertaking, and therefore, feel that the fine of \$10,000 is appropriate in this case. And I might point out that if the Respondent doesn't learn from this particular case, we would suspect that a subsequent Hearing Panel dealing with another violation would look at much more serious consequences, and of course, that could range as high as a prohibition against continuing in the industry.

14. The Respondent has recognized the seriousness of, and has accepted responsibility for, his misconduct by entering into the Settlement Agreement and avoiding the necessity of a full disciplinary hearing. The Respondent has also cooperated with the Member's internal investigation into his conduct, and has expressed remorse for his actions.

15. We looked at the penalty guidelines suggesting a minimum fine of \$5,000 for an MFDA Rule 2.1.1 violation. And while the agreed fine of \$10,000 is above that, it does reflect the fact that the Respondent had been previously warned against using pre-signed account forms, and signed an Acknowledgement and Undertaking form not to continue such practice.

16. We considered the cases referred to us by Staff and note that the agreed penalties fall within acceptable parameters.

This written version of the oral Reasons for Decision is

DATED this 21st day of December, 2015.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Kenneth P. Mann”

Kenneth P. Mann
Industry Representative

“T. Hugh McNabney”

T. Hugh McNabney
Industry Representative

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Mutual Fund Dealers Association of Canada
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**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: Tarak Shah

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Tarak Shah.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in 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.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this 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.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part XI) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. The Respondent has been registered in the mutual fund industry since 1999.

7. Since May 19, 2009, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with FundEX Investments Inc. (“FundEX”), a member of the MFDA.

8. At all material times, the Respondent conducted his business in the Markham, Ontario area.

Blank Pre-Signed Account Forms

9. At all material times, FundEX's policies and procedures prohibited its Representatives, including the Respondent, from holding blank or partially complete pre-signed account forms.
10. Between June 2011 and September 2013, the Respondent obtained, maintained, and in some instances, used to process trades, a total of 24 blank pre-signed account forms in respect of 19 clients.
11. In particular, the Respondent:
 - (a) obtained and used to process trades, 18 photocopies of blank pre-signed order entry forms;
 - (b) obtained and maintained in one client file, 1 blank pre-signed fund application form and 3 blank pre-signed transfer authorization forms; and
 - (c) obtained and used to process trades, 2 photocopies of blank pre-signed Registered Education Savings Plan withdrawal forms.
12. The Respondent had not obtained limited trade authorizations for any of the transactions set out at paragraphs 10 and 11, above.
13. FundEX compliance staff detected the conduct that is the subject of this Settlement Agreement as a result of a routine compliance audit of the Respondent's client files conducted on December 5, 2013. FundEX immediately commenced an investigation into the Respondent's conduct.
14. As part of its investigation, FundEX compliance staff reviewed all of the client files maintained by the Respondent and did not detect any further use of blank pre-signed account forms, beyond the instances described above.

15. The Respondent states that all account forms that are the subject of this Settlement Agreement were completed in accordance with client instructions and the clients authorized all of the transactions.

16. As part of its investigation, FundEX sent letters to all clients serviced by the Respondent to determine whether the Respondent had engaged in any unauthorized trading activity in their accounts. None of the clients reported any concerns to FundEX.

17. On December 23, 2013, the Respondent provided a written statement to FundEX explaining his conduct and expressing his remorse. The Respondent acknowledged the severity of the situation, accepted responsibility for his actions, and stated that he understands the importance of adhering to FundEX compliance policies in the future. The Respondent further noted that in the future, he would address client convenience concerns by securing limited trading authorizations where appropriate and documenting the corresponding transaction requests by email.

18. On the same date, FundEX placed the Respondent under strict supervision for a period of 150 days and charged the Respondent \$500 per month in respect of this supervision.

Additional Factors

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

20. The Respondent cooperated with FundEX's investigation into his conduct.

21. The Respondent has expressed remorse for his actions.

22. The Respondent has not previously been the subject of MFDA disciplinary proceedings. However, during a routine compliance audit of the Respondent's files conducted in October

2009, FundEX compliance staff detected one blank pre-signed account form in a client file. At that time, the Respondent signed an “Acknowledgement and Undertaking” form and a “Compliance Policies and Procedures Manual Acknowledgement” form, in which he agreed to stop using pre-signed forms of any type in relation to transactions or other activities involving client accounts.

23. 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.

V. CONTRAVENTIONS

24. The Respondent admits that, between June 2011 and September 2013, he obtained, maintained and, in some instances, used to process trades, a total of 24 blank pre-signed forms in respect of 19 clients, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

25. The Respondent agrees to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$10,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- d) the Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

26. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts or contraventions set out in Parts IV and V of this Settlement Agreement, subject to the provisions of Part XI below. 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 Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

27. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

28. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his 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.

29. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then 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.

30. Staff and the Respondent agree that if this Settlement Agreement were accepted by the Hearing Panel, 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 him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

31. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of By-law No. 1 of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceedings may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

32. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule “A” is not made 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 this Settlement Agreement or the settlement negotiations.

33. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XI. DISCLOSURE OF AGREEMENT

34. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

35. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XII. EXECUTION OF SETTLEMENT AGREEMENT

36. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

37. A facsimile copy of any signature shall be effective as an original signature.

DATED this 21st day of July, 2015.

“Kiran Patel Shah”

Witness – Signature

Kiran Patel Shah

Witness – Print name

“Tarak Shah”

Tarak Shah

“Shaun Devlin”

Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement

Schedule “A”

Order

File No. 201530



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**IN THE MATTER OF A SETTLEMENT HEARING
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Re: Tarak Shah

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 Tarak Shah (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, between June 2011 and September 2013, the Respondent obtained, maintained, and in some instances, used to process trades, 24 pre-signed forms in respect of 19 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 \$10,000 pursuant to s. 24.1.1(b) of MFDA By-Law No. 1;
2. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-Law No. 1;
3. The Respondent shall comply in future with MFDA Rule 2.1.1; and
4. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or 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]