



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: Marc Joseph Simard

Heard: March 9, 2018 in Winnipeg, Manitoba

Decision: March 9, 2018

Reasons for Decision: June 5, 2018

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh	Chair
Daniele Ayers	Industry Representative
James Samanta	Industry Representative

Appearances:

Justin Dunphy)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Kevin Williams)	Counsel for the Respondent
)	
)	
Marc Joseph Simard)	Respondent, in person
)	

I. Background

1. Proceedings were commenced against Marc Joseph Simard (“Respondent”) by Notice of Settlement Hearing dated December 13, 2017. The Settlement Hearing was held under section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (“MFDA”) on March 9, 2018 in respect of a proposed Settlement Agreement dated December 12, 2017 (“Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent.

2. The Respondent attended the hearing and was accompanied by counsel.

3. At the conclusion of the hearing the Hearing Panel accepted the Settlement Agreement. These are our Reasons for Decision.

II. Respondent's Admission of Violations

4. The Respondent admitted to the following violations of the Rules of the MFDA:

- a) between March 2014 and June 2016, the Respondent falsified and used to process transactions, 7 account forms in respect of 5 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 March 2014 and May 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 21 pre-signed account forms in respect of 15 clients, contrary to MFDA Rule 2.1.1.

III. Terms of Settlement

5. Staff and the Respondent agreed on the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$11,000 pursuant to s. 2.1.1.(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.

IV. Agreed Facts

6. A copy of the Settlement Agreement is attached to these Reasons as Schedule “1”. The facts which have been agreed to by the parties and which are relevant for the purposes of the Hearing Panel's decision are set out in section III of the Settlement Agreement.

V. Analysis

Role of the Panel

7. A Hearing Panel has two options when considering a Settlement Agreement - either to accept or reject the Settlement Agreement.

MFDA By-law No. 1, s.24.4.3

8. The role of a Hearing Panel at a Settlement Hearing is fundamentally different than the role a Panel performs at a contested hearing.

9. As stated by the Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

“...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.**” (in *Re Milewski*, [1999] I DACD No. 17)

(emphasis added)

Sterling Mutuals Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, LNCMFDA 16, at para.37

10. Hearing Panels have acknowledged that settlements which have been worked out by the parties should be respected, as Panels do not know what led to the settlement, or what was given up by the parties during the course of the negotiations. The presence of experienced legal counsel during the negotiation of a settlement agreement is also a factor to consider.

Fike (Re), MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017, at paras.22 and 23

11. The rationale for respecting settlements of the nature found in the Settlement Agreement in this case, was also articulated by the British Columbia Court of Appeal in a case which is frequently cited by Panels presiding over MFDA Settlement Hearings:

“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 to be resolved by way of a hearing.”

British Columbia (Securities Commission) v Seifert, 2007 BCCA 484, para.31

Factors Concerning Acceptance of a Settlement Agreement

12. The primary goal of all securities regulation is investor protection.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 at paras. 59 & 68

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

Pezim, supra, at paras. 59 & 68

14. MFDA Hearing Panels have taken into account the following criteria when considering whether to accept a proposed settlement:

1. That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;
2. That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;
3. That the agreement addresses the issues of both specific and general deterrence;
4. That the agreement is likely to prevent the type of conduct set out in the facts;
5. That the agreement will foster confidence in the integrity of the Canadian capital markets;
6. That the agreement will foster confidence in the integrity of the MFDA; and
7. That the agreement will foster confidence in the regulatory process itself. ...

Sterling Mutuals Inc. (Re), *supra*, at para.36

15. In determining the appropriateness of a proposed penalty, Hearing Panels also frequently cite the decision in *Breckenridge (Re)*, where the Panel stated that sanctions "... should be preventative, protective and prospective in nature ..." taking into account the following considerations:

- a) the protection of the investing public;
- b) the integrity of the securities markets;
- c) specific and general deterrence;
- d) the protection of the MFDA's membership; and
- e) protection of the integrity of the MFDA's enforcement processes.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, 2007 LNCMFDA 38, at paras. 75 &76

16. The Panel in *Breckenridge (Re)* set out the following additional factors which a Panel should consider, having regard to the specific circumstances of the case:

- a) The seriousness of the allegations proved against the respondent;
- b) The respondent's experience in the capital markets;
- c) The level of the respondent's activity in the capital markets;
- d) The harm suffered by investors as a result of the respondent's activities;
- e) The benefits received by the respondent as a result of the improper activity;
- f) The risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
- g) The damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- h) 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;
- i) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- j) Previous decisions made in similar circumstances.

Breckenridge (Re), *supra*, at para.77

MFDA Penalty Guidelines

17. The MFDA Penalty Guidelines ("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. The penalty types and ranges set out in the Guidelines are not mandatory or binding. They are intended to provide a basis upon which a Hearing Panel's discretion can be exercised consistently, in like circumstances.

18. In cases involving misconduct of the type admitted to in the present case, Staff submitted that the Penalty Guidelines recommend consideration of the following penalties and factors:

Breach	Penalty Type & Range	Specific Factors to Consider
Standard of Conduct (Rule 2.1.1) (Guidelines, p. 27)	<ul style="list-style-type: none"> • Fine (AP): Minimum of \$5,000 • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course) • Suspension • Permanent prohibition in egregious cases 	<ul style="list-style-type: none"> • Nature of the circumstances and conduct • Number of individuals affected • Whether the conduct is likely to bring the individual, the Member or the mutual fund industry into disrepute

Excerpts from the MFDA Penalty Guidelines at page 27

19. The Guidelines also explain why general deterrence is a factor to consider in determining an appropriate penalty, stating:

"A general deterrent is preventative. The notion of general deterrence is neither punitive nor remedial. A penalty that is meant to generally deter is a penalty designed to discourage or hinder like behavior in others. It is therefore reasonable to consider general deterrence as a factor in imposing an appropriate penalty."

MFDA Penalty Guidelines – Part I, at page 4, citing *Re Cartaway Resources Corp.*, [2004] 1 SCC 672 at para.60

Enhanced Penalties

20. In the present matter, Staff submitted that there is an additional consideration for the Hearing Panel to take into account, namely that in MFDA Bulletin #0661-E, dated October 2, 2015, Staff reminded Members and Approved Persons that "Signature Falsification" is not permissible under MFDA Rules. The term "signature falsification" includes conduct such as pre-signed account forms, altered account forms and the falsification of a client's signature. In the Bulletin, Staff advised Members and Approved Persons that Staff would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin.

Application in the Present Case

Staff's Submission

21. In its written submissions Staff identified that it took the factors set out above into account in reaching the Settlement Agreement with the Respondent, as follows:¹

i) Nature of the Misconduct: Pre-Signed Account Forms

18. The Respondent's misconduct is serious; he obtained, possessed, and in some instances, used to process transactions, 21 pre-signed account forms in respect of 15 clients.

19. MFDA Rule 2.1.1 sets the standard of conduct to be followed by all Approved Persons. The Rule is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. The Rule has been interpreted and applied in a purposive manner in a wide range of circumstances. As stated 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, Staff's Book of Authorities, Tab 13.

20. 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 which is unbecoming or detrimental to the public interest.

MFDA Rule 2.1.1, Staff's Book of Authorities, Tab 1.

¹ Excerpts taken from Staff's written submission, pages 7-12

21. 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), Staff's Book of Authorities, Tab 4.

MFDA Bulletin #0661-E: Signature Falsification, dated October 2, 2015, Staff's book of Authorities, Tab 5.

22. Hearing Panels of the MFDA, IIROC, and provincial securities commissions have also confirmed that the possession and use of pre-signed forms is prohibited.

Price (Re), *supra* at para. 135 and the decisions cited therein, Staff's Book of Authorities, Tab 13.

23. The MFDA Hearing Panel in *Price (Re)* identified the dangers posed by pre-signed forms which 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.

Price (Re), *supra*, at paras. 122 – 124, Staff's Book of Authorities, Tab 13.

24. 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.

Wellman (Re), MFDA File No. 201529, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015, at para. 10, Staff's Book of Authorities, Tab 14.

ii) Nature of the Misconduct: Falsified Account Forms

25. The Respondent also falsified 7 account forms in respect of 5 clients by altering information on the account forms without having the clients initial the alterations.

26. Hearing Panels have held that altering or falsifying forms is a contravention of the standard of conduct as set out in MFDA Rule 2.1.1.

Byce (Re), MFDA File No. 201311, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 4, 2013, Staff's Book of Authorities, Tab 15.

27. Like pre-signed account forms, the creation, possession or use of an altered or falsified form is considered serious misconduct. The reasoning in *Price (Re)*, above, at paragraph 21, for why pre-signed account forms affect the integrity and reliability of account documents also applies 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.

28. On the basis of the foregoing, by obtaining and using pre-signed and falsified forms as described in Part III of the Settlement Agreement, the Respondent engaged in conduct prohibited by MFDA Rule 2.1.1, and therefore, engaged in misconduct that should be regarded as serious.

iii) Post-Bulletin Misconduct

29. Staff notes that in this matter, 4 of the pre-signed account forms and 5 of the falsified forms were obtained after the MFDA issued MFDA Bulletin #0661-E on October 2, 2015. Staff considers this to be an aggravating factor, which has been discussed by hearing panels in several MFDA decisions.

Owen (Re), MFDA File No. 201784, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 7, 2017, at para. 35, Staff's Book of Authorities, Tab 16.

Lo (Re), MFDA File No. 201776, Hearing Panel of the Central Regional Council, Decision and Reasons dated February 7, 2018, at paras. 16, 18, Staff's Book of Authorities, Tab 17.

iv) The Respondent's Experience in the Securities Industry

30. The Respondent has been registered as a mutual fund dealing representative since May 1994.

Settlement Agreement, at para. 7.

v) The Respondent's Recognition of the Seriousness of his Misconduct

31. 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.

Settlement Agreement, at para. 25.

vi) Client Harm and Benefits Received by the Respondent

32. Staff's investigation did not reveal any evidence 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.

Settlement Agreement, at paras. 17, 19, 22.

vii) Deterrence

33. Staff considers a fine of \$11,000 to be a serious penalty which will be sufficient to achieve the goals of specific and general deterrence, having regard to the aggravating factors described above.

34. The penalty demonstrates that the Respondent’s misconduct in all of the circumstances is serious and has significant consequences. The penalty will also deter others in the capital markets from engaging in similar activity.

viii) Penalty Guidelines

35. Staff is seeking a penalty which exceeds the minimum fine recommended by the Penalty Guidelines for an Approved Person’s breach of the standard of conduct. This is primarily due to the number of forms at issue in the present matter, as well as the post-bulletin misconduct.

ix) Previous Decisions in Similar Cases

36. The following penalties have been imposed in similar circumstances:

Case	Facts	Outcome
<i>Nguyen (Re)</i> ¹	<ul style="list-style-type: none"> • The Respondent admitted that she obtained, maintained, and, in some instances, used, 16 pre-signed account forms in respect of 9 clients. • The Respondent falsified 1 account form in respect of 2 clients without having the clients initial the alterations. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • Fine of \$7,500 • Costs of \$2,500
<i>Meunier (Re)</i> ²	<ul style="list-style-type: none"> • The Respondent admitted that she, or her assistant for whom she was responsible, obtained, possessed, and used to process transactions, 29 pre-signed forms in respect of 20 clients. • The Respondent altered 1 form without having the client initial the alterations. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • Fine of \$8,500 • Costs of \$1,250
<i>Holowaty (Re)</i> ³	<ul style="list-style-type: none"> • The Respondent admitted that he obtained and possessed 6 pre-signed forms and 6 falsified account forms. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • Fine of \$7,500 • Costs of \$2,500

<i>Estabrooks (Re)</i> ⁴	<ul style="list-style-type: none"> • The Respondent admitted that he re-used existing order tickets on 2 occasions and submitted the altered trade tickets without having the clients initial the alterations. • The Respondent also obtained, possessed, and used to process transactions, 26 pre-signed account forms in respect of 13 clients. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • Fine of \$7,500 • Costs of \$2,500
<i>Gibson (Re)</i> ⁵	<ul style="list-style-type: none"> • The Respondent obtained, maintained, and in some instances used, 19 pre-signed forms in respect of 16 client accounts. • The Respondent falsified 5 account forms in respect of 6 clients. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • Fine of \$10,000 • Costs of \$2,500

¹ *Nguyen (Re)*, MFDA File No. 2016105, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated April 18, 2017, Staff's Book of Authorities, Tab 18

² *Meunier (Re)*, MFDA File No. 201657, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 5, 2016, Staff's Book of Authorities, Tab 19

³ *Holowaty (Re)*, MFDA File No. 201680, Hearing Panel of the Central Regional Council, Decision and Reasons dated March 29, 2017, Staff's Book of Authorities, Tab 20

⁴ *Estabrooks (Re)*, MFDA File No. 201638, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated August 31, 2016, Staff's Book of Authorities, Tab 2

⁵ *Gibson (Re)*, MFDA File No. 201620, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated May 4, 2016, Staff's Book of Authorities, Tab 22

Respondent's Submission

22. At the hearing, while not in any way detracting from the admissions that the Respondent made in the Settlement Agreement, counsel for the Respondent highlighted the following additional factors which are set out in paras. 19-25 of the Settlement Agreement:

19. 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.

20. The Respondent acknowledges that he failed to follow proper procedures with respect to the falsified and pre-signed account forms, as described above.

21. The Respondent states that the use of the falsified and pre-signed account forms were at all times authorized by the clients, and were only used, albeit inappropriately, for the clients' convenience.

22. There is no evidence of any client loss or that any transactions were unauthorized.
23. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
24. The Respondent cooperated fully with Quadrus' investigation, and with Staffs investigation.
25. 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.

Conclusion

23. Having reviewed the written submissions of Staff and having heard oral submissions from both Staff and counsel for the Respondent, the Panel is satisfied, based on the totality of the evidence that the proposed penalty which has been agreed upon by the parties and set out in the Settlement Agreement, falls within a reasonable range of appropriateness.

24. The Panel finds that the penalty is reasonable and proportionate having regard to the Respondent's conduct. It appropriately addresses issues of both specific and general deterrence and satisfies the primary goal of securities regulation – being the protection of investors.

25. Accordingly, the Panel accepts the Settlement Agreement.

DATED this 5th day of June, 2018.

“Sherri Walsh”

Sherri Walsh
Chair

“Daniele Ayers”

Daniele Ayers
Industry Representative

“James Samanta”

James Samanta
Industry Representative

DM 616483



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: Marc Joseph Simard

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Marc Joseph Simard ("Respondent"), consent and agree to settlement of this matter by way of this agreement ("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 March 2014 and June 2016, he falsified and used to process transactions, 7 account forms in respect of 5 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 March 2014 and May 2016, he obtained, possessed, and in some instances, used to process transactions, 21 pre-signed account forms in respect of 15 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 \$11,000 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.

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 December 2000, the Respondent has been registered in Manitoba and Ontario as a mutual fund salesperson (now known as a dealing representative) with Quadrus Investment Services Ltd. (“Quadrus”), a Member of the MFDA.

8. From May 1994 to September 2000, the Respondent was registered in Manitoba as a mutual fund salesperson with Royal Mutual Funds Inc., a Member of the MFDA.

9. At all material times, the Respondent conducted business in the Winnipeg, Manitoba area.

Falsified Account Forms

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

11. Between March 2014 and June 2016, the Respondent the Respondent falsified and used to process transactions, 7 account forms in respect of 5 clients by altering information on the account forms without having the clients initial the alterations.

12. The falsified account forms consisted of:

- a) 4 redemption forms;
- b) 2 pre-authorized chequing forms; and
- c) 1 subsequent investment form.

Pre-Signed Account Forms

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

14. Between March 2014 and May 2016, the Respondent obtained, possessed, and in 19 instances, used to process transactions, 21 pre-signed account forms in respect of 15 clients.

15. The pre-signed account forms consisted of:

- a) 5 pre-authorized chequing forms;
- b) 6 redemption forms;
- c) 4 RESP educational assistance payment forms;
- d) 1 subsequent investment form; and
- e) 5 switch / conversion forms.

Quadrus' Investigation

16. On or about July 6, 2016, Quadrus' compliance staff conducted a branch audit of the Respondent's client files and detected the pre-signed and falsified account forms that are the subject of this Settlement Agreement. Quadrus subsequently commenced an investigation.

17. As part of its investigation, Quadrus sent letters to all the clients whose accounts were serviced by the Respondent in order to determine if the transactions in the clients' accounts were authorized. The clients did not report any concerns.

18. On or about July 14, 2016, Quadrus issued a warning letter to the Respondent and placed him on close supervision for a period of 12 months.

Additional Factors

19. 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.

20. The Respondent acknowledges that he failed to follow proper procedures with respect to the falsified and pre-signed account forms, as described above.

21. The Respondent states that the use of the falsified and pre-signed account forms were at all times authorized by the clients, and were only used, albeit inappropriately, for the clients' convenience.

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

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

24. The Respondent cooperated fully with Quadrus' investigation, and with Staff's investigation.

25. 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

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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 12th day of December, 2017.

“Marc Joseph Simard”

Marc Joseph Simard

“MM”

Witness – Signature

MM

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. 2017123



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: Marc Joseph Simard

ORDER

(ARISING FROM SETTLEMENT HEARING ON MARCH 9, 2018)

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Marc Joseph Simard (“Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (“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 the Respondent:

- a) between March 2014 and June 2016, falsified and used to process transactions, 7 account forms in respect of 5 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 March 2014 and May 2016, obtained, possessed, and in some instances, used to process transactions, 21 pre-signed account forms in respect of 15 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 \$11,000 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 in the future comply with MFDA Rule 2.1.1; and
4. 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]