



**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: Brian Lundy Sonne**

Heard: April 9, 2020 in Toronto, Ontario

Decision: April 9, 2020

Reasons for Decision: May 11, 2020

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth  
Edward Jackson  
Selwyn Kossuth

Chair  
Industry Representative  
Industry Representative

Appearances:

Brendan Forbes	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Brian Lundy Sonne	)	Respondent, by teleconference
	)	
	)	

## **I. INTRODUCTION**

1. By Notice of Settlement Hearing, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened to consider whether, pursuant to s. 24.4 of By-law No. 1 of the MFDA, the Hearing Panel should accept a settlement agreement dated February 6, 2020, (“Settlement Agreement”) entered into by the Staff of the MFDA (“Staff”) and Brian Lundy Sonne (the “Respondent”).

2. At the outset of the proceeding, the Hearing Panel considered a joint motion by Staff and the Respondent to move the proceedings “*in camera*”. The Hearing Panel granted the motion. The Hearing Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Hearing Panel in determining whether or not to accept or reject the Settlement Agreement. The Hearing Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Hearing Panel’s reasons for doing so.

## **II. THE CONTRAVENTIONS**

3. In the Settlement Agreement, the Respondent admits that:

- a) Between September 2012 and October 2016, the Respondent altered and used to process transactions, 21 account forms in respect of 10 clients by altering information on the account forms without having the client initial the alterations contrary to MFDA Rule 2.1.1;
- b) Between August 2013 and September 2015, the Respondent obtained, possessed and in some instances, used to process transactions, 37 pre-signed account forms in respect of 9 clients, contrary to MFDA Rule 2.1.1; and
- c) Between February 2015 and November 2015, the Respondent cut and pasted client signatures from copies of account forms previously signed by two clients, onto a total of three new account forms, and submitted the account forms to the Member for processing, contrary to MFDA Rule 2.1.1.

### III. THE FACTS

4. In the Settlement Agreement, Staff and the Respondent agreed to the existence of a series of facts, which are set out in Part III of the said Settlement Agreement. The Settlement Agreement is attached as Appendix “A” to these Reasons.

5. As set out in the Settlement Agreement, the Respondent had been registered in the securities industry since January 1997. From January 1997 until September 2019, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Quadrus Investment Services Ltd. (the “Member”), a member of the MFDA. The Respondent was terminated by the Member in September 2019 and is no longer registered in the securities industry. At all material times, the Respondent conducted business in the Tecumseh, Ontario area.

### IV. DISCUSSION

6. The Hearing Panel was aware that prior to accepting a settlement agreement, a Hearing Panel must be satisfied that:

- a) The facts admitted by the Respondent constitute misconduct in contravention of MFDA By-law No. 1, MFDA Rules or policies, or provincial securities legislation; and
- b) The penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances.

7. The Hearing Panel accepted that 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 Mutual Inc. (Re)*, MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37.

*Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

8. The Hearing Panel also considered that settlement agreements are necessary to assist 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.

*British Columbia (Securities Commission) v. Seifert*, [2006] B.C.J. No. 225 at paras. 48-49 (S.C.), aff'd, [2007] B.C.J. No. 2186 at para. 31 (C.A) [*“British Columbia (Securities Commission)”*], SBA

9. 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.

*Bansal; (Re)*, MFDA File No. 201664, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated November 23, 2016.

*Balani (Re)*, MFDA File No. 201402, Hearing Panel of the Central Regional Council, Decision and Reasons dated January 15, 2015.

10. The Hearing Panel was advised that the MFDA has been warning Approved Persons against the use of pre-signed account forms for a number of years.

MFDA Staff Notice #MSN-0035 dated December 10, 2004

MFDA Staff Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017)

MFDA Bulletin #0661-E dated October 2, 2015

11. The Hearing Panel was mindful that when an Approved Person copies or cuts a client's signature from a previously signed account form, and applies the signature on a new account form, the Approved Person has engaged in conduct which is contrary to MFDA Rule 2.1.1.

12. The MFDA has previously warned Approved Persons against re-using or “cutting and pasting” client's signatures on account forms.

MFDA Notice #MSN-0035 dated December 10, 2004

MFDA Staff Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017)

MFDA Bulletin #0661-E dated October 2, 2015

13. Previous Hearing Panels have also held that re-using or “cutting and pasting” a client’s signature contravenes the standard of conduct under MFDA Rule 2.1.1.

14. Given the admissions made by the Respondent in the Settlement Agreement, particularly in respect of the contraventions and given the above case law, the Hearing Panel was satisfied that the allegations against the Respondent had been proven and constituted misconduct in contravention of MFDA By-law No. 1, MFDA Rules or policies, or provincial securities legislation.

15. The Hearing Panel then proceeded to consider the appropriateness of the proposed penalty as set out in the Settlement Agreement. In doing so, the Hearing Panel considered the submissions of Staff and the Respondent, the MFDA Sanction Guidelines and the substantial case law to which it was referred.

16. In doing so, the Hearing Panel was mindful that the primary goal of securities regulation is the protection of the investor. The Hearing Panel was further mindful that in addition to protection of the public, the goals of securities regulation also include fostering public confidence in the capital markets and the securities industry.

*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557.

*Breckenridge (Re)*, MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 71.

17. The Hearing Panel also accepted the submissions of Staff that the following factors are frequently considered by Hearing Panels when determining whether a penalty is appropriate:

- 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 activity;
- 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 activity in the capital markets; and
- k) Previous decisions made in similar circumstances.

*Breckenridge, supra.*

18. With respect to the specific considerations in the present matter, the Hearing Panel was mindful that:

- a) For the reasons described above, the use of pre-signed forms, altered forms or cut and pasted signatures on forms are serious breaches of MFDA Rule 2.1.1;
- b) The Respondent had acknowledged that his conduct constituted a serious contravention of MFDA Rules. By entering into the Settlement Agreement, the Respondent had accepted responsibility for his misconduct, and has saved the MFDA the time, resources and expense associated with a full disciplinary hearing;
- c) There was no evidence of any lack of authorization, client loss or client complaints resulting from the Respondent's conduct as described in the Settlement Agreement;
- d) There was no evidence that the Respondent received any financial benefit of his misconduct beyond any commissions and fees that he would ordinarily be entitled to receive had the transaction been carried out in the proper manner; and
- e) The Hearing Panel was satisfied that the penalties imposed satisfied the principles of both general and specific deterrence and would reinforce the message that pre-

signed or altered forms or forms with cut and pasted signatures will not be tolerated. Additionally, the penalty will also specifically deter the Respondent from engaging in similar activity by imposing a meaningful sanction.

19. Staff proposed that costs in an amount of \$2,500.00 be imposed against the Respondent. Staff's submissions satisfied the Hearing Panel that the costs incurred by Staff exceeded the proposed cost penalty and accordingly, the award of costs was justified. The Respondent, in the Settlement Agreement, concurred that the costs were appropriate.

## V. RESULT

20. For all the above reasons, the Hearing Panel concluded that the Settlement Agreement was reasonable and proportionate. Accordingly, the following penalties were imposed upon the Respondent:

- a) The Respondent shall pay a fine in the amount of \$20,000, pursuant to s. 24.1.1(b) of MFDA By-law No.1, in instalments as follows:
  - i. \$8,750 payable in certified funds on the date of this Order;
  - ii. \$11,250 payable in certified funds on August 7, 2020,
- b) The Respondent shall pay costs in the amount of \$2,500 in certified funds on the date of the Order, 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) If at any time a non-party to this proceeding, with the exception of the bodies set out in s. 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 11<sup>th</sup> day of May, 2020.

“Frederick W Chenoweth”

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Frederick W Chenoweth  
Chair

“Edward Jackson”

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Edward Jackson  
Industry Representative

“Selwyn Kossuth”

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Selwyn Kossuth  
Industry Representative

## Appendix “A”

Settlement Agreement

File No. 202013



**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: Brian Lundy Sonne**

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## **SETTLEMENT AGREEMENT**

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### **I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Brian Lundy Sonne (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 September 2012 and October 2016, the Respondent altered and used to process transactions, 21 account forms in respect of 10 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1;
  - b) between August 2013 and September 2015, the Respondent obtained, possessed and, in some instances, used to process transactions, 37 pre-signed account forms in respect of 9 clients, contrary to MFDA Rule 2.1.1; and
  - c) between February 2015 and November 2015, the Respondent cut and pasted client signatures from copies of account forms previously signed by two clients onto a total of three new account forms, and submitted the account forms to the Member for processing, contrary to MFDA Rule 2.1.1.
5. Staff and the Respondent agree and consent to the following terms of settlement:
- d) the Respondent shall pay a fine in the amount of \$20,000 in certified funds upon the acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
  - e) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
  - f) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
  - g) 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 January 1997, the Respondent was registered in the securities industry.

8. From January 1997 until September 2019, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative)<sup>1</sup> with Quadrus Investment Services Ltd. (the “Member”), a Member of the MFDA.

9. The Respondent was terminated by the Member in September 2019 and he is no longer registered in the securities industry.

10. At all material times, the Respondent conducted business in the Tecumseh, Ontario area.

### **Altered Account Forms**

11. Between September 2012 and October 2016, while the Respondent was an Approved Person of the Member, he altered and used to process transactions, 21 account forms in respect of 10 clients by altering information on the account forms without having the client initial the alterations.

12. The altered account forms included: 10 Redemption Forms, 9 Switch or Conversion Forms, and 2 PAC, AWD or RIF Payment Forms.

13. The alterations made by the Respondent consist of changes to: fund codes, contribution amounts, redemption amounts, client signature dates and dates of redemption.

### **Pre-Signed Account Forms**

14. At all material times, the Member’s policies and procedures prohibited the use of pre-signed forms.

15. Between August 2013 and September 2015, while the Respondent was an Approved Person of the Member, he obtained, possessed and, in some instances, used to process transactions, 37 pre-signed account forms in respect of 9 clients.

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<sup>1</sup> In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

16. The pre-signed account forms included: 29 Switch or Conversion Forms, 5 Subsequent Investment Forms, 2 Redemption Forms and 1 RESP Withdrawal Form.

### **Cut and Pasted Previously Used Signatures**

17. Between February 2015 and November 2015, while the Respondent was an Approved Person of the Member, he cut and pasted client signatures from copies of account forms previously signed by 2 clients onto 3 new account forms and submitted the new account forms to the Member for processing.

18. The new account forms containing the cut and pasted signatures consisted of: 2 Redemption Forms and 1 Pre-Authorized Chequing Form.

### **The Member's Investigation**

19. In June 2018, the Member conducted an audit of the client files maintained by the Respondent and identified the pre-signed forms, altered forms and cut and pasted forms that are the subject of this Settlement Agreement.

20. In July 2018, as a result of the Member's findings during its audit, the Member placed the Respondent on close supervision for one year.

21. In July 2018, the Member sent audit letters to all clients whose accounts were serviced by the Respondent. This audit letter requested that each client confirm that all transactions within the client accounts were accurate.

22. In September 2018, the Member sent follow up audit letters to all clients who had not provided a response to the July 2018 audit letter.

23. The Member did not receive any client responses which indicated any unauthorized transactions within any client accounts.

### **Additional Factors**

24. 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.
25. There is no evidence of client loss or lack of authorization.
26. 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**

27. 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.
28. 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](http://www.mfda.ca).
29. 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.
30. 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 or 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.

31. 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.

32. 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.

33. 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 6<sup>th</sup> day of February, 2020.

“Brian Lundy Sonne”

\_\_\_\_\_  
Brian Lundy Sonne

“MS”

\_\_\_\_\_  
Witness – Signature

MS

\_\_\_\_\_  
Witness – Print Name

“Charles A. Toth”

\_\_\_\_\_  
Staff of the MFDA

Per: Charles A. Toth

Vice-President, Enforcement

**Schedule “A”**

**Order**

**File No. 202013**



**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: Brian Lundy Sonne**

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**ORDER**

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**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 Brian Lundy Sonne (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 2012 and October 2016, the Respondent altered and used to process transactions, 21 account forms in respect of 10 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1;

- b) between August 2013 and September 2015, the Respondent obtained, possessed and, in some instances, used to process transactions, 37 pre-signed account forms in respect of 9 clients, contrary to MFDA Rule 2.1.1; and
- c) between February 2015 and November 2015, the Respondent cut and pasted client signatures from copies of account forms previously signed by two clients onto a total of three new account forms, and submitted the account forms to the Member for processing, 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 \$20,000 in certified funds, 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 in certified funds, 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]

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