



**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: Steven Franklin Sopel**

Heard: September 30, 2021 by electronic hearing in Winnipeg, Manitoba

Decision: September 30, 2021

Reasons for Decision: March 1, 2022

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Sherri Walsh  
Birju Shah  
Greg Wiebe

Chair  
Industry Representative  
Industry Representative

Appearances:

Audrey Smith	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Steven Franklin Sopel	)	Respondent
	)	
	)	

## **I. INTRODUCTION**

1. By Notice of Settlement Hearing dated July 29, 2021 the Mutual Fund Dealers Association of Canada (the “MFDA”) gave notice that an electronic hearing would be held before a Hearing Panel of the Prairie Regional Council (the “Hearing Panel”) on September 30, 2021. The purpose of the hearing was to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, the Hearing Panel should accept the settlement agreement entered into between Staff of the MFDA (“Staff”) and Steven Franklin Sopel (the “Respondent”), dated July 28, 2021 (the “Settlement Agreement”)

2. The Respondent appeared on his own behalf at the Settlement Hearing, which was conducted by videoconference, on September 30, 2021.

3. At the commencement of the Settlement Hearing, the Hearing Panel granted Enforcement Counsel’s request, pursuant to the MFDA *Rules of Procedure* made in accordance with Rule 15.2(2) to move the proceedings “in camera” so that the Settlement Agreement could be considered in the absence of the public.

Rule 15.2(2) of the MFDA *Rules of Procedures*

4. The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions from both Enforcement Counsel and the Respondent, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

5. After considering the Settlement Agreement, the written and oral submissions made by Enforcement Counsel and hearing from the Respondent himself, the Hearing Panel accepted the Settlement Agreement and made an Order to that effect on September 30, 2021.

6. These are our reasons for that decision.

## **II. CONTRAVENTIONS**

7. In the Settlement Agreement, the Respondent admitted to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) Between October 6, 2015 and June 22, 2018, the Respondent obtained, possessed, and in some instances used to process transactions, 10 pre-signed account forms in respect of 7 clients, contrary to MFDA Rule 2.1.1; and
- b) Between February 1, 2015 and February 7, 2019, the Respondent altered and used to process transactions, 30 account forms in respect of 26 clients, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

### **III. TERMS OF SETTLEMENT**

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

- a) The Respondent shall pay a fine in the amount of \$16,000 in certified funds upon acceptance of the Settlement Agreement, 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 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
- c) The Respondent shall be prohibited from acting as a branch manager or in any supervisory capacity for a Member of the MFDA for three months commencing on the date the Settlement Agreement is accepted, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
- d) The Respondent shall successfully complete the branch manager's course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada prior to acting as a branch manager in the future, pursuant to s. 24.1.1(f) of MFDA By-law No 1;
- e) The Respondent shall in the future comply with MFDA Rule 2.1.1; and
- f) The Respondent will attend by videoconference on the date set of the Settlement Hearing.

### **IV. AGREED FACTS**

9. Staff and the Respondent agreed to the settlement on the basis of the facts set out in Part III of the Settlement Agreement. Those facts are reproduced below:

### **III. AGREED FACTS**

#### **Registration History**

7. Since December 2009, the Respondent has been registered in the securities industry.
8. Since November 25, 2014, the Respondent has been registered in Manitoba as a dealing representative with Investia Financial Services Inc. (the "Member"), a Member of the MFDA.
9. From February 9, 2016 to August 3, 2020, the Member designated the Respondent as a Branch Manager.
10. At all material times, the Respondent conducted business in the Crystal City, Manitoba area.

#### **Pre-signed Account Forms**

11. At all material times, the Member's policies and procedures prohibited its Approved Persons from holding or using pre-signed account forms.
12. Between October 6, 2015 and June 22, 2018, the Respondent obtained, possessed, and in some instances used to process transactions, 10 pre-signed account forms in respect of 7 clients.
13. The pre-signed account forms included:
  - a) 1 RESP Educational Assistance Payment form;
  - b) 4 Transfer forms;
  - c) 3 Know Your Client ("KYC") update forms; and
  - d) 2 Systematic Instruction forms.

#### **Altered Account Forms**

14. Between February 1, 2015 and February 7, 2019, the Respondent altered and used to process transactions, 30 account forms in respect of 26 clients, by altering information on the account forms without having the client initial the alterations.
15. The altered account forms included:
  - a) 4 KYC Update forms;
  - b) 6 Order Instruction Forms;
  - c) 7 New Client Application forms;
  - d) 5 Transfer forms;
  - e) 7 Systematic Instruction forms; and
  - f) 1 RESP Educational Assistance Payment form.

16. The alterations to the account forms included alterations to client risk tolerance, withdrawal amounts, investment objectives, income, net worth, fund codes, and fund numbers.

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

17. During the course of a branch review, the Member discovered several of the account forms described above. In May 2019, the Member completed a full review of the client files serviced by the Respondent and discovered the remaining account forms.
18. On September 6, 2019, the Member sent letters to all clients whose accounts were serviced by the Respondent, which included a 3-year transaction history for each client. In respect of pre-signed or altered forms discovered by the Member that contained KYC information, the Member provided a copy of the client's KYC information on record and asked the clients to review the KYC information to ensure that it was recorded accurately. In respect of other types of pre-signed or altered account forms, the Member asked the clients to review their account history for accuracy and to contact the Member if any inconsistencies existed. No clients raised any concerns in response to the Member's letters.
19. On August 1, 2019, the Member placed the Respondent on strict supervision. During this period, the Respondent paid a total of \$1,043 to the Member consisting of an administration fee and a fee in respect of the letters sent to clients.

20. On August 8, 2019, the Respondent signed a Letter of Undertaking, agreeing to abide by the Member's policies and procedures going forward. On December 20, 2019, the Member completed its strict supervision of the Respondent and issued a warning letter to him in respect of the account forms described above.

#### **Additional Factors**

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

22. There is no evidence of client loss, client complaints, or a lack of authorization.

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

24. The Respondent states that he engaged in the conduct described in this Settlement Agreement for the purposes of client convenience.

25. 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. ANALYSIS**

### **Role of the Hearing Panel**

10. The role a Hearing Panel performs at a Settlement Hearing is fundamentally different from the role it performs at a Contested Hearing.

11. When considering a Settlement Agreement, a Hearing Panel has only two options: either to accept or reject the Settlement Agreement.

MFDA By-law No. 1, s. 24.4.3

12. 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." [1999] I.D.A.C.D. No. 17 at page 12

*Sterling Mutuals Inc. (Re)*, MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 3, 2008, at page 9

13. Hearing Panels have acknowledged that settlement agreements which have been worked out by the parties should be respected, because Hearing Panels do not know what led to the settlement, or what was given up by the parties during the course of their negotiations.

14. The rationale for respecting settlements of the nature found in the Settlement Agreement in this case, was further articulated by the British Columbia Court of Appeal:

"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

15. Although the *Seifert* decision dealt with an agreement that was before the British Columbia Securities Commission, the case has been frequently cited by Hearing Panels in MFDA Settlement Hearings.

## **Factors Concerning Acceptance of a Settlement Agreement**

### **Appropriateness of the Proposed Penalty**

16. Hearing Panels have repeatedly expressed the view that generally, settlement agreements should be accepted bearing in mind the following criteria:

- a) That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;
- b) That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;
- c) That the agreement addresses the issues of both specific and general deterrence;
- d) That the agreement is likely to prevent the type of conduct set out in the facts;
- e) That the agreement will foster confidence in the integrity of the Canadian capital markets;
- f) That the agreement will foster confidence in the integrity of the MFDA; and
- g) That the agreement will foster confidence in the regulatory process itself.

*Sterling Mutuals Inc. (Re)*, *supra*, at page 9

17. 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

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

*Pezim v British Columbia (Superintendent of Brokers)*, *supra*, at paras. 59 & 68

19. In determining the appropriateness of a proposed penalty, Hearing Panels frequently cite the decision in *Breckenridge (Re)*, where the Hearing 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

20. The Hearing Panel in *Breckenridge (Re)* set out the following additional factors which a Hearing 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 Sanction Guidelines**

21. On November 15, 2018 the MFDA issued Sanction Guidelines (the “Guidelines”) to assist Staff and Respondents in conducting disciplinary proceedings and negotiating settlement agreements. The Guidelines are also intended to assist Hearing Panels in determining the fair and efficient disposition of settled and contested disciplinary proceedings.

22. The Guidelines, as their name suggests, are not mandatory. They state, under the heading “Purpose of the Sanction Guidelines”:

“... The determination of the appropriate sanction in any given case is discretionary and a fact specific process. The appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. The Sanction Guidelines are intended to provide a summary of the key factors upon which discretion may be exercised consistently and fairly in like circumstances, but are not binding on Hearing Panels. The list of key factors in the Sanction Guidelines is not exhaustive, and Hearing Panels may consider other aggravating and mitigating factors as appropriate.

Hearing Panels should always exercise judgement and discretion, and consider appropriate aggravating and mitigating factors in determining appropriate sanctions in every case. In addition, Hearing Panels should identify the basis for the sanctions imposed in the Reasons for Decision.”

MFDA Sanction Guidelines, p.1

23. The Guidelines recommend consideration of many of the same factors that have been identified and applied in the cases cited above.

### **Application of the factors listed above in the present case**

24. Having regard to the factors which a Hearing Panel should take into consideration in determining the appropriateness of the proposed penalty, cited above, the Hearing Panel makes the findings set out below.

## **Nature of the Misconduct**

25. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to all registrants in the mutual fund industry. The Rule requires, among other things, that:

Each Member and each Approved Person of a Member shall:

- (a) deal fairly, honestly and in good faith with its clients;
- (b) observe high standards of ethics and conduct in the transaction of business;
- (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest

26. The Rule is a broad rule that sets out the standard of conduct to be followed by all Approved Persons. It is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. It has been interpreted and applied in a purposive manner in a wide range of circumstances. As the Hearing Panel in *Breckenridge (Re)* stated:

The Rule articulates the most fundamental obligations of all registrants in the securities industry.

*Breckenridge (Re)*, MFDA File No. 200718, Hearing Panel of the Central Regional Council, 2007 LNCMFDA 38 at page 20

## **Pre-signed forms are not permissible**

27. In this case, as identified in the Settlement Agreement, the Respondent has admitted that he obtained and possessed 10 pre-signed account forms in respect of 7 clients, contrary to MFDA Rule 2.1.1.

28. As Enforcement Counsel identified in her written submission, the term “pre-signed forms” is a generic term that applies to account forms that were incomplete at the time they were signed.

29. Members and Approved Persons are only permitted to obtain, use and rely upon forms that are executed by the client after all information on the form has been properly completed.

30. MFDA Hearing Panels have consistently held, therefore, that obtaining or using pre-signed forms is a contravention of the standard of conduct prescribed under MFDA Rule 2.1.1.

*Lok (Re)*, [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202011, Hearing Panel Decision dated May 11, 2020 at para. 9

*Warr (Re)*, [2020] Hearing Panel of the Atlantic Regional Council, MFDA File No. 202037, Hearing Panel Decision dated September 25, 2020 at para. 13

31. Since October 31, 2007 the MFDA has made clear to Approved Persons, in its Staff Notices and Bulletins, that possessing and using pre-signed account forms is contrary to the obligations which are imposed by Rule 2.1.1. Among other things, these Notices and Bulletins have warned that the use of pre-signed 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.

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

MFDA Bulletin #0661-E dated October 2, 2015

32. As the Hearing Panel in *Price (Re)* explained:

Pre-signed forms present a legitimate risk that 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 in 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.

*Price (Re)*, [2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) dated April 18, 2011 at paras. 122-124

33. The prohibition on the use of pre-signed account forms applies regardless of whether:

- a) The client was aware, or authorized the use of the pre-signed account forms; and/or
- b) The forms were used by the Approved Person for the discretionary trading or other improper purposes.

### **Altered forms are not permissible**

34. MFDA Hearing Panels have consistently held that when an Approved Person alters information on an account form without having the client initial to show that they are aware of and have authorized the change, the Approved Person engages in conduct that is contrary to MFDA Rule 2.1.1.

*Lok (Re)*, *supra*, at para. 9

*Warr (Re)*, *supra*, at para. 13

35. As with pre-signed forms, the MFDA has previously warned Approved Persons that altering account forms without having the client initial the form to show that they are aware of the change is a violation of the MFDA Rules.

MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 27, 2017)

MFDA Bulletin #066-E dated October 2, 2015

36. The same risk and potential for harm to the client which apply to the use of pre-signed forms, referenced above, applies equally to the creation or use of altered forms. Both types of conduct are considered to be serious misconduct.

37. In this case, as identified in the Settlement Agreement, the Respondent admits that he altered and used to process transactions, 30 account forms in respect of 26 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

38. For the reasons cited above, the Hearing Panel finds that the Respondent's conduct which is the subject of these proceedings, constitutes serious breaches of MFDA Rule 2.1.1.

#### **Respondent's recognition of the seriousness of the misconduct**

39. The Respondent has acknowledged that his conduct constitutes a serious contravention of the MFDA Rules. By entering into the Settlement Agreement, he has accepted responsibility for his misconduct and has saved the MFDA the time, resources and expense associated with a full disciplinary hearing.

40. During the Settlement Hearing, the Hearing Panel gave the Respondent the opportunity to make an oral submission. He told us that he had "learned [his] lesson" and intended to "keep on going and representing to the best of [his] ability".

#### **Respondent's past conduct including prior sanctions**

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

#### **Harm suffered by the investors**

42. There was no evidence of any lack of authorization or client loss resulting from the Respondent's conduct as described in the Settlement Agreement.

## **Benefits received by the Respondent**

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

## **Deterrence**

44. Both the Supreme Court of Canada and MFDA Hearing Panels have held that deterrence is an appropriate factor to be taken into account when determining the appropriateness of a penalty.

*Cartaway Resources Corp. (Re)*, [2004] 1 NSCR 672 SCC at paras. 52-62

*Tonnies (Re)*, 2005 LNC MFDA 7, at para. 47

45. The effect of general deterrence should advance the goal of protecting investors. A penalty should be sufficient so as to affirm public confidence in the regulatory system and that the misconduct is not repeated by others in the industry. As the Supreme Court of Canada stated:

A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction ... The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged ...

*Cartaway Resources Corp. (Re)*, *supra*, at para. 61

46. The Hearing Panel agrees that taken as a whole, the proposed penalties identified in the Settlement Agreement will act as a general deterrent by reinforcing the message that the use of pre-signed and altered forms will not be tolerated within the mutual fund industry and will act as a specific deterrent to the Respondent from engaging in similar activity.

47. In particular, the Hearing Panel notes that in addition to having to pay a penalty, the Respondent has agreed that he will be prohibited from acting as a branch manager or in any supervisory capacity for a Member of the MFDA for 3 months commencing on the date the Settlement Agreement was accepted. He must also complete the branch manager's course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada prior to acting as a branch manager in the future.

48. This requirement is imposed regardless of any courses of a similar nature that the Respondent has taken in the past. If he wishes to act as a branch manager in the future, he must enroll in and successfully complete a new course offered by one of the entities listed above.

49. The prohibition from acting as a branch manager for a 3 month period and the requirement to take the branch manager’s course prior to acting as a branch manager in the future will ensure that should the Respondent return as a branch manager he will be much more aware of his obligations and will be better equipped to act in a supervisory role.

50. In her written submission, Enforcement Counsel also submitted that the fact that the Respondent has paid \$1,043 to the Member in respect of an administration fee and the letters and account statements that were mailed to clients during his strict supervision period, also provides a specific deterrent to him against engaging in similar behaviour in the future.

51. The Hearing Panel agrees with this submission and we have taken that fact into consideration in accepting the Settlement Agreement.

52. Further, as the Guidelines indicate, a Hearing Panel may consider any sanctions imposed by the Member or another regulator against the Respondent for the same misconduct when determining the appropriate sanction. We find that the monies the Respondent has paid to the Member for administration fees, fall within this category to be considered by the Hearing Panel.

53. As the facts in the Settlement Agreement identify, not only did the Member require the Respondent to pay it a total of \$1,043, it also required him to sign a Letter of Undertaking agreeing to abide by the Member’s policies and procedures going forward and, once it completed its strict supervision of him, the Member issued a warning letter to him with respect to the conduct regarding account forms. The Hearing Panel has taken all of these measures into account.

**Previous decisions made in similar circumstances**

54. Enforcement Counsel submitted that the proposed penalties are consistent with the penalties imposed by MFDA Hearing Panels in previous cases, as reflected in the examples cited in the chart below:

Case:	Contraventions:	Penalty:	Other Factors:
<i>Tse (Re)</i> , [2021] Hearing Panel of the Central Regional Council,	The Respondent: • obtained, possessed, and used to process transactions, 24	<b>Settlement</b>  Fine of \$14,000;	<b>The Respondent paid</b>  <b>\$866</b> to the Member in respect of an

Case:	Contraventions:	Penalty:	Other Factors:
<p>MFDA File No. 202112, Reasons for Decision dated, June 1, 2021, MFDA Staff's Book of Authorities, <b>Tab 14.</b></p>	<p>pre-signed account forms in respect of 15 clients; and</p> <ul style="list-style-type: none"> <li>altered and used to process transactions, 11 account forms in respect of 4 clients, by altering information on the account forms without having the client initial the alterations</li> </ul>	<p>Costs of \$2,500.</p>	<p>administration fee and a fee for each audit letter sent to clients</p> <p>Conduct occurred post-warning bulletin issued by MFDA.</p> <p>No client loss or lack of authorization.</p> <p>No financial benefit to the Respondent.</p> <p>No prior disciplinary history.</p>
<p><i>Warr (Re), supra</i>, Staff's Book of Authorities, <b>Tab 3.</b></p>	<p>The Respondent:</p> <ul style="list-style-type: none"> <li>Altered and used to process transactions, 4 account forms in respect of 4 clients by altering information on the account forms without having the client initial the alterations; and</li> <li>Obtained, possessed, and used to process transactions, 26 pre-signed account forms in respect of 16 clients.</li> </ul>	<p><b>Settlement</b></p> <p>Fine of \$14,000; Costs of \$2,500.</p>	<p>Conduct occurred post-warning bulletin issued by MFDA.</p> <p>No financial benefit to the Respondent</p> <p>No client loss or lack of authorization.</p> <p>No prior disciplinary history.</p>
<p><i>Prabhune, Aparna Nandkumar, (Re)</i>, [2020], Hearing Panel of the Central Regional Council, MFDA File No. 202042, Reasons for Decision dated December 18, 2020, MFDA Staff's Book of Authorities, <b>Tab 15.</b></p>	<p>The Respondent:</p> <ul style="list-style-type: none"> <li>obtained and possessed 10 pre-signed account forms in respect of 7 clients; and</li> <li>the Respondent altered and used to process transactions, 16 account forms in respect of 11 clients, by altering information on the account forms without having the client initial the alterations.</li> </ul>	<p><b>Settlement</b></p> <p>Fine of \$8,500 Costs of \$2,500</p>	<p>The Respondent's <b>Member reduced her commission percentage</b> as a result of the misconduct which amounted to \$7,000 for a one year period.</p> <p>Conduct occurred post-warning bulletin issued by MFDA.</p> <p>No client loss or lack of authorization.</p> <p>No financial benefit to the Respondent.</p> <p>No prior disciplinary history.</p>
<p><i>Nash (Re)</i>, [2018] Hearing Panel of the Atlantic Regional Council, MFDA File No. 2018113, Reasons for Decision dated February 7, 2019, MFDA Staff's</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> <li>Obtained, possessed, and in some instances, used to process transactions, 29 pre-signed account forms in respect of 23 clients; and</li> <li>Altered 1 account form in respect of 1 client by altering</li> </ul>	<p><b>Settlement</b></p> <p>Fine of \$13,000 Costs of \$2,500</p>	<p>Conduct occurred post-warning bulletin issued by the MFDA.</p> <p>No financial benefit to the Respondent</p>

Case:	Contraventions:	Penalty:	Other Factors:
Book of Authorities, <b>Tab 16.</b>	information on the account form without having the client initial the alterations.		No client loss or lack of authorization No prior disciplinary history.
<i>Baksh (Re)</i> [2021] Hearing Panel of the Central Regional Council, MFDA File No. 201939, Reasons for Decision dated, September 20, 2019, MFDA Staff's Book of Authorities, <b>Tab 17.</b>	The Respondent: <ul style="list-style-type: none"> <li>Obtained and possessed, 31 pre-signed account forms in respect of 13 clients, contrary to MFDA Rule 2.1.1.</li> </ul>	<b>Settlement</b> Fine of \$13,000 Costs of \$2,500	Conduct occurred pre and post warning bulletin issued by the MFDA. No client loss or lack of authorization No financial benefit to the Respondent No prior disciplinary history Required to complete Conduct and Practices Handbook Course

55. In her oral submissions, Enforcement Counsel carefully reviewed the facts and findings in each of these decisions for the Hearing Panel's benefit, in order to demonstrate their relevance to the Hearing Panel's consideration of the proposed penalty in this matter.

56. Among other things, in highlighting the similarities between the facts in the decisions cited above, to the facts in this case, Enforcement Counsel noted whether the conduct in each case occurred after the MFDA had issued Bulletin #0661-E on October 2, 2015.

57. This is because that Bulletin said that as the date it was issued, the MFDA had recently been and would continue to seek increased penalties in upcoming cases involving the improper use of forms.

58. MFDA Hearing Panels have acknowledged that conduct which occurred after this bulletin was issued should be considered an aggravating factor when determining the appropriateness of a proposed penalty.

*Lok (Re), supra*, at para. 16

59. During the Settlement Hearing Enforcement Counsel acknowledged that post bulletin conduct is an aggravating factor and that most of the forms that were the subject of the contraventions in this case were obtained after that Bulletin was issued. She confirmed that this was something that Staff had considered in negotiating the Settlement Agreement.

60. In addition to the cases set out in the above chart at the hearing, Enforcement Counsel provided the Panel with a further case which involved similar conduct: *Koo*, MFDA File No. 202058, a decision of the Hearing Panel of the Central Regional Council, Reasons for Decision dated March 12, 2021. In that case the Respondent, who was a branch manager, altered 28 account forms - fewer than the forms in the current matter. The Respondent in *Koo* was ordered to pay a fine of \$12,000, received a 3 month prohibition against working as a branch manager and was required to complete the branch manager course prior to becoming a branch manager in the future if he wished.

### **The Respondent's experience in the securities industry**

61. The Respondent has been registered in the securities industry since December 2009 and from February 9, 2016 to August 30, 2020 he was designated by the Member as a branch manager.

62. As such, the Respondent ought to have known that obtaining, possessing and using to process transactions, pre-signed account forms and altering and using to process transactions account forms, without having the client initial the alterations, was contrary to the requirements of Rule 2.1.1.

## **VI. CONCLUSION**

63. Having reviewed the Settlement Agreement and having considered the submissions from Staff and hearing from the Respondent himself, the Hearing Panel is satisfied that the penalty proposed in the Settlement Agreement is reasonable and proportionate having regard to the Respondent's conduct and all of the circumstances set out in the Settlement Agreement.

64. The penalty will deter the Respondent and other Approved Persons from engaging in the type of conduct that is the subject of these proceedings. It will also advance the public interest and the MFDA's objectives to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

65. The Hearing Panel, therefore, accepts the Settlement Agreement.

**DATED** this 1<sup>st</sup> day of March, 2022.

“Sherri Walsh”

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Sherri Walsh  
Chair

“Birju Shah”

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Birju Shah  
Industry Representative

“Greg Wiebe”

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Greg Wiebe  
Industry Representative

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