



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: Tobias Wade Terrill

Heard: March 22, 2019 in Calgary, Alberta
Decision: March 22, 2019
Reasons for Decision: May 9, 2019

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC
James Samanta
Richard Sydenham

Chair
Industry Representative
Industry Representative

Appearances:

Sakeb Nazim)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Mark Hein)	Counsel for the Respondent
)	
)	
Tobias Wade Terrill)	Respondent, in person
)	
)	

Background

1. This matter concerns a Settlement Hearing under Section 24.4 of By-Law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The hearing was held on March 22, 2019. The full Settlement Agreement dated January 29, 2019 entered into between the Respondent Tobias Wade Terrill (the "Respondent") and MFDA Staff on behalf of MFDA is attached as Appendix "1" to these reasons for decision and its relevant provisions will not be repeated in detail here.
2. The Respondent was registered as a mutual fund dealing representative since January 2010.
3. Under the Settlement Agreement, the Respondent has admitted that:
 - a) In May 2017, the Respondent directed his assistant, for whom he was responsible, to alter information on 2 client account forms in respect of 1 client, and sign the client's initials on the forms, contrary to MFDA Rule 2.1.1;
 - b) In February 2015, the Respondent obtained, possessed, and used, 1 pre-signed account form in respect of 2 clients, contrary to MFDA Rule 2.1.1.

Terms of Settlement

4. Under the terms of the Settlement Agreement, it was agreed that:
 - a) The Respondent shall pay a fine in the amount of \$7,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of 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 section 24.2 of By-law No. 1;
 - c) The Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - d) The Respondent will attend the Settlement Hearing in person.
5. At the conclusion of the hearing, this Hearing Panel accepted the proposed Settlement Agreement with reasons to follow, which are set out below.

Agreed Facts

6. The Settlement Agreement contains the following agreed facts:

Registration History

7. Since January 2010, the Respondent has been registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc. (“IG”), a Member of the MFDA, and was an Approved Person of IG.

8. The Respondent is also registered as a dealing representative in British Columbia.

9. At all material times, the Respondent carried on business in the Lethbridge, Alberta area.

Falsified Client Initials

10. At all material times, IG’s policies and procedures prohibited its Approved Persons from altering any information on a signed document without the client initialling the document to show the change was approved.

11. On December 14, 2014, the Respondent signed an attestation for IG advising that he would not:

- a) collect, accept from a client, maintain for future use, or submit for processing, any form that was signed by a client prior to being completed in full; and
- b) alter any form that had been signed by a client, unless the Respondent had obtained the client’s signature or initials authorizing the changes.

12. On May 11, 2017, IG provided the Respondent with a rejection notice that advised the Respondent that a Registered Education Savings Plan form and a Canada Education Savings Grant application form in respect of 1 client that the Respondent had submitted for processing contained incorrect client information.

13. Rather than asking the client to make the necessary corrections in response to IG’s supervisory inquiry, the Respondent directed his assistant, for whom he was responsible, to alter

information on the two client account forms and sign the client's initials on the forms. Subsequently, the two client account forms were submitted to IG for processing.

Pre-Signed Account Forms

14. At all material times, IG's policies and procedures prohibited its Approved Persons from holding, obtaining, or using pre-signed account forms.

15. In February 2015, the Respondent obtained, possessed, and used, 1 pre-signed account form in respect of 2 clients.

16. The pre-signed account form consisted of a Member Investment Instruction form.

IG's Response

17. On May 22, 2017, the Respondent's former assistant advised IG that the Respondent had asked her and another assistant to alter information and enter client initials on account forms.

18. On June 2, 2017, IG conducted a review of the Respondent's files and identified the pre-signed form that is the subject of this Settlement Agreement.

19. On March 28, 2018, IG issued a Warning Letter to the Respondent for the misconduct described above and imposed a fine of \$2,000.

Additional Factors

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

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

22. 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.

23. The Respondent has cooperated in full with both IG and the MFDA. 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.

Analysis

24. This Hearing Panel concluded that the allegations admitted by the Respondent had been proven and constitute misconduct in contravention of the By-law and MFDA Rules. It then turned to the question of the appropriateness of the proposed penalty as set out in the Settlement Agreement.

25. This Hearing Panel is aware 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 Mutuals Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para.35

Milewski (Re), [1999] IDACD No. 17 at p. 10, Ontario District Council Decision dated July 28, 1999.

26. This Hearing Panel is also mindful of the effectiveness of Settlement Agreements in fulfilling the objective of the regulator as noted in the reasons for decision in *British Columbia Securities Commission v Seifert*, 2007 BCCA 484 at para. 31.

Enhanced Penalty

27. Enforcement Counsel cited an additional consideration for the Hearing Panel to take into account namely, MFDA Bulletin #0661-E, dated October 2, 2015, which reminded Members and Approved Persons that “Signature Falsification” is not permissible under MFDA Rules. This term includes conduct like pre-signed account forms, altered account forms and the falsification of a

client 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 on October 2, 2015.

28. All of the falsifications in this case were committed after the MFDA issued MFDA Bulletin #0661-E on October 2, 2015.

29. Previous hearing panels such as *Techer (Re)*, MFDA File No. 201662, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 5, 2016, at para. 44, and in *Owen (Re)*, MFDA File No. 201784, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 7, 2017, at para. 35 and have held that such “post-bulletin conduct” should be treated as an aggravating factor.

30. Enforcement Counsel cited the following cases in support of acceptance of the Settlement Agreement:

- a) *Wu*, MFDA File No. 201793, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated Jan 29, 2018.
- b) *Foley*, MFDA File No. 201547, Hearing Panel of the Central Regional Council, Decision and Reasons dated Feb 19, 2016.

31. *Wu, supra*, concerned 4 client signatures on 5 account forms. The penalties included a fine of \$3,500 and a prohibition of 6 months, as well as a costs award of \$2,500.

32. *Foley (Re)* concerned 2 client signatures on 2 account forms. The fine was \$6,000 and the costs award was \$2,500.

33. This Hearing Panel concluded that the misconduct of the Respondent in the case at hand was very serious. First, it was committed after the MFDA issued MFDA Bulletin #0661-E on October 2, 2015, before which date for a number of years MFDA had been warning Approved Persons against falsifying forms. Second, the Respondent when he knew or should have known such conduct was prohibited by MFDA Rules and By-laws, directed his assistant, for whom he was responsible, to alter information on two client account forms in respect of one client, and sign the client’s initials on the forms.

34. Hearing Panels have found that the Approved Person was responsible for the actions of his assistant, who obtained and used pre-signed account forms.

Barak (Re), MFDA File No. 201635, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 9, 2016.

Boucher (Re), MFDA File No. 201744, Hearing Panel of the Central Regional Council, Decision And Reasons dated December 8, 2017.

35. However the mitigating factors included the facts that no clients were harmed as a result of the Respondent's misconduct, there was no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, he had not previously been the subject of MFDA disciplinary proceedings and by entering into the Settlement Agreement, he accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary proceeding.

36. Accordingly, this Hearing Panel considered the increase in the amount of the monetary fine from previous cited cases as well as the fact that the amount was jointly proposed in this case was appropriate to meet the requirements of specific deterrence to this Respondent and general deterrence to other dealing representatives who may be tempted to engage in similar wrongful conduct.

37. Having regard to the foregoing, this Hearing Panel is satisfied that the Settlement Agreement is in the public interest, is reasonable and proportionate, and will foster public confidence in the integrity of the Canadian capital markets and the industry and, accordingly, approves the following penalties and directions:

- a) The Respondent shall pay a fine in the amount of \$7,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of 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 section 24.2 of By-law No. 1; and
- c) The Respondent shall in the future comply with MFDA Rule 2.1.1.

DATED this 9th day of May, 2019.

“Shelley L. Miller”

Shelley L. Miller, QC
Chair

“James Samanta”

James Samanta
Industry Representative

“Richard Sydenham”

Richard Sydenham
Industry Representative

DM 675144



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: Tobias Wade Terrill

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Tobias Wade Terrill (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) In May 2017, the Respondent directed his assistant, for whom he was responsible, to alter information on 2 client account forms in respect of 1 client, and sign the client's initials on the forms, contrary to MFDA Rule 2.1.1;
 - b) In February 2015, the Respondent obtained, possessed, and used, 1 pre-signed account form in respect of 2 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 \$7,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of 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 section 24.2 of By-law No. 1;
 - c) The Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - d) The Respondent will attend the Settlement Hearing in person.
6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule "A".

III. AGREED FACTS

Registration History

7. Since January 2010, the Respondent has been registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc. ("IG"), a Member of the MFDA.
8. The Respondent is also registered as a dealing representative in British Columbia.
9. At all material times, the Respondent carried on business in the Lethbridge, Alberta area.

Falsified Client Initials

10. At all material times, IG's policies and procedures prohibited its Approved Persons from altering any information on a signed document without the client initialing the document to show the change was approved.

11. On December 14, 2014, the Respondent signed an attestation for IG advising that he would not:

- a) collect, accept from a client, maintain for future use, or submit for processing, any form that was signed by a client prior to being completed in full; and
- b) alter any form that had been signed by a client, unless the Respondent had obtained the client's signature or initials authorizing the changes.

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IG's Response

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18. On June 2, 2017, IG conducted a review of the Respondent's files and identified the pre-signed form that is the subject of this Settlement Agreement.

19. On March 28, 2018, IG issued a Warning Letter to the Respondent for the misconduct described above and imposed a fine of \$2,000.

Additional Factors

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

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

22. 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.

23. The Respondent has cooperated in full with both IG and the MFDA. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

24. 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.

25. 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.

26. 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.

27. 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 contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any 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.

28. 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.

29. 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.

30. 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 29th day of January, 2019.

“Tobias Wade Terrill”

Tobias Wade Terrill

“JNT”

Witness – Signature

JNT

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. 201909**



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: Tobias Wade Terrill

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Tobias Wade Terrill (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) In May 2017, the Respondent directed his assistant, for whom he was responsible, to alter information on 2 client account forms in respect of 1 client, and sign the client’s initials on the forms, contrary to MFDA Rule 2.1.1;
- b) In February 2015, the Respondent obtained, possessed, and used, 1 pre-signed account form in respect of 2 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 \$7,500 pursuant to section 24.1.1(b) of By-law No. 1;
2. The Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
3. The Respondent shall in the future comply with MFDA Rules 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]