



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: William Andrew Castle Thackray

Heard: May 10, 2017 in Vancouver, British Columbia

Decision: May 10, 2017

Reasons for Decision: May 24, 2017

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

The Hon. Thomas R. Braidwood, Q.C.	Chair
Darlene Barker	Industry Representative
Susan Monk	Industry Representative

Appearances:

Christopher Corsetti)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Tom Newnham)	Counsel for the Respondent
)	
)	
William Andrew Castle Thackray)	Respondent, by teleconference

1. These proceedings were commenced to determine whether or not to approve and consent to a settlement agreement entered into between the parties on April 20, 2017.

2. The parties have agreed that between April and July 2014, the Respondent engaged in securities related business that was not carried on for the account or through the facilities of the Member by processing three redemptions on behalf of two former clients directly through the mutual fund companies, using trade documentation, the Respondent's representative code and a signature guarantee stamp from his former mutual fund dealer, contrary to the Member's policies and procedures and MFDA Rules 1.2.1, 2.5.1, 1.1.1, and 2.1.1.

3. The test that governs us as to whether or not such an agreement will be confirmed have often been discussed, but were stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, quoting the reasoning in the I.D.A. matter of *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), 2008 MFDA 16, at para. 37

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p. 11, Ontario District Council Decision dated July 28, 1999.

A. AGREED FACTS

Registration

4. Since December 3, 2013, the Respondent has been registered in British Columbia and Alberta as a mutual fund salesperson (now known as a Dealing Representative) with Portfolio Strategies Corporation ("PSC"), a Member of the MFDA.

5. From November 20, 1997 to December 2, 2013, the Respondent was registered as a mutual fund salesperson with IPC Investment Corporation ("IPC") (formerly Partners In Planning Financial Services Ltd.), a Member of the MFDA.

6. At all material times, the Respondent carried on business in the Victoria, British Columbia area.

Processing Redemptions Outside the Accounts and Facilities of the Member

7. On December 2, 2013, the Respondent ceased to be registered as a mutual fund salesperson with IPC, and IPC assigned the client accounts that the Respondent formerly serviced to another Approved Person at IPC.

8. After the Respondent ceased being registered with IPC, the Respondent sought to transfer clients from IPC to PSC, and became aware that the accounts of IPC clients LL and SP would not be able to be transferred to PSC.

9. At all material times, PSC had policies and procedures that required its Approved Persons to only engage in securities related business through PSC.

10. At all material times, IPC had policies and procedures in place that required its Approved Persons to return all IPC property, including documents and IPC signature guarantee stamps, when they ceased being registered with IPC.

11. Between April and July 2014, during the period that the Respondent was registered with PSC, he processed redemptions on behalf of IPC clients LL and SP (the "Redemptions") by submitting redemption requests directly to the mutual fund companies using his former IPC representative code on IPC Order Entry Forms, and using a signature guarantee stamp belonging to his former dealer, IPC, as follows:

Client	Transaction Date	Redemption Amount	Transaction Forms Used by the Respondent
LL	April 8, 2014	\$1,518.81	IPC Order Entry Form.
SP	June 4, 2014	\$40,223.33	IPC Order Entry Form.
SP	July 4, 2014	\$35,521.41	IPC Order Entry Form.
		Total: \$77,263.55	

12. The Respondent states that the Redemptions were completed by Respondent at the request of former clients LL and SP, who advised him that there was some urgency to processing these transactions.

13. The Respondent processed the Redemptions using IPC Order Entry Forms which he accessed through software called ScanTech and printed from ScanTech after he ceased to be registered with IPC. Furthermore, the Respondent used his former IPC representative code on the IPC Order Entry Forms, and used a signature guarantee stamp belonging to his former dealer.

14. The Respondent processed the Redemptions directly through the mutual fund companies, and not through the accounts and facilities of PSC or IPC, which had the result of impairing the Members' ability to supervise the Respondent's trading activity

15. By submitting the IPC Order Entry Forms using his former representative code, the Respondent wrongly represented to the mutual fund companies that he was registered as an Approved Person with IPC in order to facilitate the Redemptions outside of the accounts and facilities of IPC and PSC.

16. We note that the egregious aspect of this conduct is contained in paragraph 13 above, namely, that the Respondent processed the Redemptions using IPC Order Entry Forms, using his former IPC representative code and a signature guarantee stamp belonging to his former dealer.

Nature of Misconduct

17. The Respondent engaged in serious misconduct by engaging in off-book trading and circumventing the processes in place to ensure client protection and that a Member can supervise redemptions processed by the Respondent.

18. In the recent case of *Re Caicco*, the MFDA Panel noted the following regarding the seriousness of a breach of MFDA Rule 1.1.1:

It is important that persons approved by the MFDA conduct their securities transactions through a Member and with the Member's consent. The policy rationale underlying the prohibition on off-book business is that when transactions are carried out off a Member's books, the Member loses its ability to supervise the transaction and to take responsibility for the suitability of the transaction for the investor. The Rule protects both investors and Members.

Patrick Pasquale Caicco (Re), MFDA File No. 201503

19. In *Re Laverdière*, a Pacific Regional Council Panel stated the purpose of the Rule 1.1.1:

MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA. An Approved Person must not trade in securities other than through the firm employing him/her, and the firm must have knowledge and consent to those business dealings. The Rule enhances investor protection and strengthens public confidence in the Canadian Mutual Fund Industry, as it creates a regime whereby an approved person is only permitted to sell investment products that have first been approved for sale by the Member, and which are sold through the facilities of the member, thus ensuring the trading activity is subject to appropriate review and supervision.

Luc Marc André Laverdière, MFDA File No. 200936

Penalty Guidelines and Previous Decisions

20. In the two cases that we were cited, namely *Russell Chang (Re)*, MFDA File No. 201431 and *David Ewart (Re)*, MFDA File No. 201528, the parties conceded that the circumstances are much graver there than the circumstances before us.

21. The Penalty Guidelines are helpful and the proposed penalties are consistent with the Penalty Guidelines. The Penalty Guidelines suggest a minimum fine of \$10,000.00 per offence for a violation of MFDA Rule 1.1.1 (“Off Book Trading”), and a minimum fine of \$5,000.000 for a violation of MFDA 2.1.1 and 1.2.1 and 2.5.1 (Policy and Procedure) violation. The proposed fine of \$15,000.00 is in line with the penalty guideline minimums. The amount takes into account that the Respondent fully co-operated, admitted the misconduct, and it is the first disciplinary action taken against him by the MFDA in his career in the industry.

22. The proposed penalties by the parties are:

- a) the Respondent shall pay a fine in the amount of \$15,000.00, pursuant to section 24.1.1(b) of By-law No. 1; and
- b) the Respondent shall pay costs in the amount of \$2,500.00, pursuant to section 24.2 of By-law No. 1.

23. The Hearing Panel is of the opinion that the penalties agreed upon by the parties are reasonable in all of the circumstances.

DATED this 24th day of May, 2017.

“Thomas R. Braidwood”

The Hon. Thomas R. Braidwood, Q.C.
Chair

“Darlene Barker”

Darlene Barker
Industry Representative

“Susan Monk”

Susan Monk
Industry Representative

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