



**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: Bhavin Prafullc Vyas**

Heard: March 30, 2021 by electronic hearing in Edmonton, Alberta

Decision: March 30, 2021

Reasons for Decision: June 7, 2021

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Sherri Walsh  
Howard Mix  
James Samanta

Chair  
Industry Representative  
Industry Representative

Appearances:

Sakeb Nazim	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Darcy McAllister	)	Counsel for the Respondent
	)	
	)	
Bhavin Prafullc Vyas	)	Respondent
	)	
	)	

## **I. INTRODUCTION**

1. On December 15, 2020, the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Settlement Hearing pursuant to Section 24.4 of MFDA By-Law No. 1 in respect of Bhavin Prafullc Vyas (“the Respondent”).
2. The Settlement Hearing related to a settlement agreement the Respondent entered into with MFDA staff (“Staff”), dated December 7, 2020 (the “Settlement Agreement”) pursuant to which the Respondent agreed to a proposed settlement of matters for which he could be disciplined under Sections 20 and 24.1 of MFDA By-Law No. 1.
3. The Settlement Hearing took place on March 30, 2021 by videoconference before a Hearing Panel of the Prairie Regional Council of the MFDA (the “Panel”) and was attended by both the Respondent and his legal counsel.
4. At the conclusion of the Hearing, the Panel accepted the Settlement Agreement and issued an Order to that effect. These are the Panel’s reasons for that decision.

## **II. CONTRAVENTIONS**

5. In the Settlement Agreement, the Respondent admitted to having committed the following violations of the MFDA’s By-Laws, Rules or Policies:
  - a) Between October 2017 and February 2019, the Respondent obtained, possessed, and in some instances, used to process transactions, 11 pre-signed account forms in respect of 7 clients, contrary to MFDA Rule 2.1.1; and
  - b) Between August 2018 and January 2019, the Respondent altered and used to process transactions 10 account forms in respect of 4 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

## **III. TERMS OF SETTLEMENT**

6. Staff and the Respondent agreed to the following terms of settlement:
  - a) the Respondent shall pay a fine in the amount of \$8,000 in certified funds pursuant to section 24.1.1(b) of By-law No. 1, upon acceptance of this Settlement Agreement;

- b) the Respondent shall pay costs in the amount of \$2,500 in certified [sic] pursuant to section 24.2 of By-law No. 1, upon acceptance of this Settlement Agreement;
- 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 (via videoconference).

#### **IV. AGREED FACTS**

7. The facts which Staff and the Respondent agreed would form the basis for the Settlement Agreement are set out at paragraphs 7 through 20 of that Agreement and are reproduced below:

##### **Registration History**

7. Commencing in June 2016, the Respondent has been registered in Alberta as a dealing representative with Investors Group Financial Services Inc. (“Member”), a Member of the MFDA.

8. At all material times, the Respondent carried on business in the Edmonton, Alberta area.

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

9. At all material times, the Member’s policies and procedures prohibited its Approved Persons from holding, obtaining, or using pre-signed account forms.

10. Between October 2017 and February 2019, the Respondent obtained, possessed, and in some instances, used to process transactions, 11 pre-signed account forms in respect of 7 clients.

11. The pre-signed account forms consisted of Transfer Authorization forms, Pre-Authorized Contribution Agreement forms and an unused Client Update form.

##### **Altered Account Forms**

12. Between August 2018 and January 2019, the Respondent altered and used to process transactions one account form by altering information on the account form without having the client initial the alteration.

13. The altered forms consisted of Pre-Authorized Contribution Agreement forms and the alterations made by the Respondent consisted of the Respondent altering fund code, client account number and bank information on the original signed form without obtaining client initials.

##### **Member’s Investigation**

14. In February 2019, the Member identified two of the forms that are the subject of this Settlement Agreement during an onsite branch review. The Member subsequently commenced a review of all of the client files serviced by the Respondent and identified the remaining pre-signed and altered forms that are the subject of this Settlement Agreement.

15. On September 9, 2019, the Member issued a warning letter to the Respondent and imposed a fine of \$2,000 for his use of pre-signed and altered forms.

16. In October 2019, the Member sent audit letters to affected clients, asking them to review and verify the accuracy of all trading activities executed in their accounts. No clients reported any concerns to the Member.

##### **Additional Factors**

17. The Respondent has not previously been the subject of a MFDA disciplinary proceeding.

18. 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.

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

20. 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.

## V. ANALYSIS

### Role of the Panel

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

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

MFDA By-law No. 1, s.24.4.3

10. 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

11. Hearing Panels have acknowledged that one of the reasons that settlement agreements which have been worked out by the parties should be respected, is 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. The presence of experienced legal counsel during the negotiation of a settlement agreement, as was the case in this matter, is also a factor for the Hearing Panel to consider.

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

12. 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

13. Although the *Seifert* decision, *supra*, 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**

14. 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 para.36

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

15. 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

16. 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

17. In determining the appropriateness of a proposed penalty, Hearing Panels frequently cite the decision in *Breckenridge (Re)*, where the Panel stated that sanctions "... should be

preventative, protective and prospective in nature ...” taking into account the following considerations:

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

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

18. 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**

19. On November 15, 2018, the MFDA issued Sanction Guidelines to assist Staff and Respondents in conducting disciplinary proceedings and negotiating settlement agreements and to

assist Hearing Panels in determining the fair and efficient disposition of settled and contested disciplinary proceedings, having regard to the imposition of appropriate sanctions.

20. The Sanction 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.”

21. The Sanction Guidelines set out a number of factors which a Hearing Panel may take into account in determining whether a sanction is appropriate. One of those factors is whether a sanction was imposed on the respondent for the same misconduct by the Member or another regulator. The Sanction Guidelines state that “a sanction imposed by the Member or another regulator against a respondent for the same misconduct may be considered a mitigating factor.”

## **Application of the Factors Listed Above in the Present Case**

### **Seriousness of the Allegations**

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

22. The Respondent has admitted that he obtained, possessed and used to process transactions, 11 pre-signed accounts forms contrary to MFDA Rule 2.1.1.

23. Rule 2.1.1 requires that each Member and Approved Person deal fairly, honestly, and in good faith with clients, observe high standards of ethics and conduct in the transaction of business and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

MFDA Rule 2.1.1

24. The Rule is a broad rule that establishes 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. The Rule has been interpreted and applied in a purposive manner in a wide range of circumstances. As the hearing panel in *Breckenridge (Re)*,

*supra*, held, the Rule articulates the most fundamental obligations of all registrants in the securities industry.

*Price (Re)*, MFDA No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011 at para. 134

*Breckenridge (Re)*, *supra*, at page 20

25. Since October 3, 2007 the MFDA has made clear to Members and Approved Persons, in its Staff Notices and Bulletins that possessing and using pre-signed and altered account forms is contrary to the obligations which are imposed by Rule 2.1.1.

Member Staff Notice 0066: Pre-Signed Forms, dated October 31, 2007 (updated March 4, 2013)

26. Hearing Panels of the MFDA, the Investment Industry Regulatory Organization of Canada ("IIROC") and provincial securities commissions have all confirmed that the possession and use of pre-signed forms is prohibited.

*Price (Re)*, *supra*, at para.135

27. Hearing Panels have also consistently held that obtaining or using pre-signed forms is a contravention of the standard of conduct required by MFDA Rule 2.1.1.

*Price (Re)*, *supra*, at para. 135

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

Pre-signed forms present a legitimate risk that they 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)*, *supra* at paras 122-124

29. The prohibition on the use of pre-signed account forms applies regardless of whether the client was aware or authorized the use of the pre-signed forms, and whether the forms were actually used by the Approved Person for discretionary trading or other improper purposes.

30. On the basis of the foregoing, the Panel finds that the Respondent engaged in conduct which was prohibited by MFDA Rule 2.1.1 and which we regard as serious misconduct.

ii) Nature of the Misconduct: Altered Account Forms

31. The Respondent also altered 10 account forms by altering information on the forms without having the clients initial the alterations.

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

33. Similar to the potential for harm caused by using pre-signed account forms, the creation, possession or use of an altered or falsified form is considered serious misconduct. The reasoning in *Price*, as to why pre-signed account forms affect the integrity and reliability of account documents applies equally to the use of altered and falsified forms. With respect to altered or falsified forms there also exists the possibility that the changes were made to the forms without the client's knowledge or consent.

34. On the basis of the foregoing, by using an altered account form as described in the Settlement Agreement, the Respondent engaged in conduct which is prohibited by MFDA Rule 2.1.1 and, therefore, engaged in misconduct that should be regarded as serious.

iii) Post-Bulletin Misconduct

35. All of the forms which are the subject of this Settlement Agreement were processed after the MFDA issued MFDA Bulletin No. 0661-E on October 2, 2015. In that bulletin, Staff advised Members and Approved Persons that it would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the date of the bulletin's publication. Accordingly, MFDA Hearing Panels have considered post bulletin misconduct to be an aggravating factor.

iv) The Respondent's Experience in the Securities Industry

36. The Respondent has been registered as a mutual fund dealing representative since June 2016. As such, he ought to have been well aware of his obligations under the MFDA's By-Laws, Rules and Policies and his obligation to know and respect the compliance requirements of both the MFDA and the Member.

v) The Respondent's Past Conduct

37. The Respondent has not been previously disciplined by the MFDA.

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

38. By entering into the Settlement Agreement, the Respondent has acknowledged responsibility for his misconduct and has avoided the necessity for the MFDA to incur the additional time and expense of a contested hearing.

vii) Client Harm and Benefits Received by the Respondent

39. There is no evidence of client harm; nor was there a client complaint. There is also no evidence that the Respondent received any financial or other benefit as the result of his misconduct.

viii) Whether a Sanction was Imposed on the Respondent for the Same Misconduct by the Member or Other Regulator.

40. The Settlement Agreement confirms that on September 9, 2019 the Member issued a warning letter to the Respondent and imposed a fine of \$2,000.00 for the same misconduct which is the subject of these proceedings. Both Staff and counsel for the Respondent confirmed that the Member's sanction was taken into consideration in the negotiation of the Settlement Agreement.

ix) Deterrence

41. 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 SCR 672 (SCC), at paras. 52 – 62

*Tonnies (Re)*, *supra*, at para. 47

42. 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 ensure 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

43. The Panel agrees with Staff’s submission that the proposed fine of \$8,000.00 together with payment of costs of \$2,500.00 is a serious penalty which will achieve the goals of specific and general deterrence, having regard to the aggravating factors cited above. It demonstrates that the Respondent’s misconduct in all of the circumstances, is serious and has significant consequences.

x) Previous Decisions in Similar Cases

44. Staff provided the Panel with the following cases in which, it submitted, penalties had been imposed in similar circumstances:

CASE	FACTS	OUTCOME
<i>Gonzales</i> , MFDA File No. 201883, Hearing Panel of the Central Regional Council, Reasons for Decisions dated January 25, 2019, Staff’s Book of Authorities, Tab 13.	<ul style="list-style-type: none"> <li>Respondent obtained, possessed, and used to process transactions, 10 pre-signed account forms</li> <li>Respondent altered and used to process transactions, 7 account forms</li> <li>Post-bulletin conduct</li> </ul>	<ul style="list-style-type: none"> <li>Fine of \$8,500</li> <li>Costs of \$2,500</li> </ul>
<i>Parker</i> , MFDA File No. 201946, Hearing Panel of the Pacific Regional Council, Reasons for Decisions dated April 6, 2020, Staff’s Book of Authorities, Tab 14.	<ul style="list-style-type: none"> <li>Respondent obtained, possessed, and used to process transactions, 7 pre-signed account forms</li> <li>Respondent altered and used to process transactions, 12 account forms</li> <li>Post-bulletin conduct</li> </ul>	<ul style="list-style-type: none"> <li>Fine of \$9,000</li> <li>Costs of \$2,500</li> </ul>
<i>Rosborough</i> , MFDA File No. 201865, Hearing Panel of the Central Regional Council, Reasons for Decisions dated July 23, 2018, Staff’s Book of Authorities, Tab 15.	<ul style="list-style-type: none"> <li>Respondent obtained, possessed, and used to process transactions, 23 pre-signed account forms</li> <li>Post-bulletin conduct</li> </ul>	<ul style="list-style-type: none"> <li>Fine of \$10,500</li> <li>Costs of \$2,500</li> </ul>

45. The Panel agrees with Staff’s submission that these cases support the penalty which is proposed in the Settlement Agreement.

## VI. CONCLUSION

46. Having reviewed the Settlement Agreement and having considered the submissions from both Staff and counsel for the Respondent, the Panel is satisfied that the penalties proposed in the Settlement Agreement are reasonable and proportionate, having regard to the Respondent's conduct and all of the circumstances set out in the Agreement.

47. We find that the proposed penalties will deter the Respondent and other Approved Persons from engaging in the type of conduct that is the subject of these proceedings and will advance both the public interest and the MFDA's objective to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

48. The Panel, therefore, accepts the Settlement Agreement.

**DATED** this 7<sup>th</sup> day of June, 2021.

"Sheri Walsh"

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Sheri Walsh  
Chair

"Howard Mix"

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Howard Mix  
Industry Representative

"James Samanta"

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James Samanta  
Industry Representative

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