



**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: James Weller**

Heard: November 26, 2015 in Toronto, Ontario  
Reasons for Decision: February 19, 2016

**ORAL REASONS FOR DECISION FOR ACCEPTANCE OF  
SETTLEMENT AGREEMENT**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Linda J. Anderson	Industry Representative
Robert C. White	Industry Representative

Appearances:

Sarah Glickman	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
	)	
James Weller	)	Via Teleconference
	)	

1. We have decided that the settlement agreement is acceptable because it is in the public interest and for other reasons that will be given now.

2. MFDA Staff (“Staff”) and James Weller (the “Respondent”) have entered into a settlement agreement dated September 27, 2015 (the "Settlement Agreement") in which the Respondent admits that;

- a) between January 2010 and April 2014, he obtained, possessed, and in some instances, used to process transactions, 20 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1; and
- b) between October 2004 and May 2014, he altered information on 2 account forms in respect of 2 clients without obtaining client initials authorizing the changes, contrary to MFDA Rule 2.1.1.

#### Penalty

3. The Respondent agrees as a term of the Settlement agreement to pay a fine in the amount of \$10,000 and costs in the amount of \$2,500.

#### Facts

4. The relevant facts are set out in section 4 of the Settlement Agreement, a copy of which is attached as Schedule “1” to this document.

5. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule 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.

6. Hearing Panels have held that obtaining or using pre-signed account forms is a contravention of the standard of conduct under MFDA Rule 2.1.1. The use of pre-signed account forms adversely affects the integrity and reliability of account documents, leads to 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.

7. In the present case, the Respondent admits that he used liquid correction fluid to alter information on two (2) Know-Your-Client forms without obtaining client initials authorizing the changes.

8. Like pre-signed account forms, the prohibition against falsifying forms exists regardless of the existence of client authorization or the motive behind the use of the form, and, like pre-signed account forms, the MFDA has been warning Approved Persons against falsifying forms for a number of years.

9. Hearing Panels have held that falsifying forms is a contravention of the standard of conduct set out in MFDA Rule 2.1.1. Like pre-signed account forms, the creation, possession or use of a falsified form is considered serious misconduct. The reason is that pre-signed account forms affect the integrity and reliability of account documents, and this equally applies to falsified forms.

10. The authenticity of client signatures is one of the foundations upon which client trust is established and client instructions are carried out. Unlike pre-signed account forms where the client knows he or she is signing an incomplete form to be used in some way, in the case of a form falsified by the Approved Person the possibility exists that the client is unaware of the Approved Person's actions.

11. Several cases have held that falsifications of this nature are violation of the regulatory authority's standard of conduct provisions.

12. There are several factors a panel approving or accepting a Settlement Agreement must take into account. We have considered the factors that have been set out in Staff's submissions and will comment on some of the pertinent ones as follows.

#### *MFDA Penalty Guidelines*

13. MFDA penalty guidelines suggest that where an Approved Person fails to adhere to the standard of conduct, a minimum fine of \$5,000, plus possible other penalties should be imposed. In the present case, there were two (2) violations, and, therefore the penalty of \$10,000 meets the guideline suggestion.

#### *Nature of Misconduct*

14. The use of pre-signed account forms and of altered forms, are serious breaches of MFDA Rule 2.1.1.

#### *Client Harm*

15. In this case, there is no evidence of client harm. Indeed, all clients affected by the Respondent's misconduct confirmed that the transaction was authorized.

#### *Benefits received by the Respondent*

16. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding other than the commissions and fees he would ordinarily be entitled to receive had the transaction been carried out in the proper manner.

#### *Respondent's experience and level activity in the capital markets*

17. The Respondent has been registered in the mutual fund industry since 1988. He is a very experienced Dealing Representative and ought to have known and respected his Member's and the MFDA's compliance requirements.

### *Deterrence*

18. A fine in the amount of \$10,000 and costs in the amount of \$2,500 are significant and help send a message to the Respondent for specific deterrence and to others for general deterrence in the capital markets with regard to the seriousness of the misconduct at issue.

### *Respondent's past conduct*

19. The Respondent has not previously been subject to MFDA disciplinary proceedings.

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

20. The Respondent has told us today that he is sorry for his conduct, and he has co-operated with the MFDA. The MFDA is avoiding the time and expense of a full disciplinary hearing by entering into the Settlement Agreement. He also co-operated with the Member's internal investigation into his conduct.

### *Precedents*

21. Staff presented us with several cases. We compared the agreed penalties with penalties in those cases and are satisfied that the agreed penalties in our case are within the parameters of these other cases and are reasonable and appropriate in the circumstances.

22. A costs award against the Respondent in the amount of \$2,500 is appropriate in the circumstances, taking into account the usual expenses involved in a hearing of this nature.

This written version of the oral Reasons for Decision is  
**DATED** this 19<sup>th</sup> day of February, 2016.

“Paul M. Moore”

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Paul M. Moore, Q.C.  
Chair

“Linda J. Anderson”

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Linda J. Anderson  
Industry Representative

“Robert C. White”

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Robert C. White  
Industry Representative

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**Mutual Fund Dealers Association of Canada**  
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**IN THE MATTER OF A SETTLEMENT HEARING  
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**Re: James Weller**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, James Weller.

**II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in 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.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this 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.

### **III. ACKNOWLEDGEMENT**

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part XI) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

### **IV. AGREED FACTS**

#### **Registration History**

6. The Respondent has been registered in the mutual fund industry since 1988.

7. Since October 2004, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as Dealing Representative) with FundEX Investments Inc. (“FundEX”), a member of the MFDA.

8. At all material times, the Respondent conducted business in the Essex, Ontario area.

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

9. At all material times, FundEX's policies and procedures prohibited its Representatives, including the Respondent, from holding blank or partially complete pre-signed forms.

10. Between January 2010 and April 2014, the Respondent obtained, possessed, and in some instances, used to process trades, a total of 20 pre-signed account forms in respect of 11 clients.

11. The 20 pre-signed account forms, 16 of which were used to process trades, included Know-Your-Client ("KYC") forms, New Account Application, and order entry forms.

### **Altered Forms**

12. The Respondent also altered information on 2 KYC forms in respect of 2 clients, using liquid correction fluid to change material information on the KYC forms without obtaining client initials authorizing the changes. The KYC forms, which were undated, must have been altered after 2004, the year the Respondent joined FundEX.

### **Post-Detection**

13. FundEX compliance detected the conduct that is the subject of this Settlement Agreement as a result of a routine audit of the Respondent's client files in May 2014.

14. As part of its follow-up investigation into the Respondent's conduct, FundEX sent letters to all clients serviced by the Respondent to determine whether the Respondent had engaged in any unauthorized trading in their accounts. None of the clients reported any concerns to FundEX.

15. The Respondent provided letters from all 13 clients affected by his misconduct in which they indicate that the transactions in question were authorized by them.

16. On June 13, 2014, the Respondent provided the following written statement to FundEX explaining his misconduct:

Speaking as an advisor who has been in the business for 26 years, it is possible to become complacent when it comes to compliance. I think this is especially true when working with clients who I have known for 15, 20, or 25 years. This recent audit (May 2014) has certainly been a wake-up call for me. I have never had a client complaint in 26 years, but I realize I need to be more diligent in the area of compliance to make sure regulators are also just as satisfied.

17. FundEX placed the Respondent under close supervision for 90 days commencing July 11, 2014 and charged the Respondent \$1,500 in respect of this supervision.

### **Additional Factors**

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

19. The Respondent cooperated with FundEX's investigation into his conduct.

20. The Respondent understands the seriousness of his actions.

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

22. 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. CONTRAVENTIONS**

23. The Respondent admits that:

- a. between January 2010 and April 2014, he obtained, possessed, and in some instances, used to process transactions, 20 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1; and
- b. between October 2004 and May 2014, he altered information on 2 account forms in respect of 2 clients without obtaining client initials authorizing the changes, contrary to MFDA Rule 2.1.1.

## **VI. TERMS OF SETTLEMENT**

24. The Respondent agrees to the following terms of settlement:

- a. the Respondent shall pay a fine in the amount of \$10,000 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 pursuant to s. 24.2 of MFDA By-law No. 1;
- c. the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- d. the Respondent will attend in person, on the date set for the Settlement Hearing.

## **VII. STAFF COMMITMENT**

25. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part XI below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

## **VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT**

26. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

27. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his 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.

28. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then 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.

29. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, 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 him.

## **IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

30. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceedings may be heard and determined by a hearing

panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

## **X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT**

31. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule “A” is not made 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 this Settlement Agreement or the settlement negotiations.

32. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

## **XI. DISCLOSURE OF AGREEMENT**

33. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

34. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

## **XII. EXECUTION OF SETTLEMENT AGREEMENT**

35. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

36. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 27<sup>th</sup> day of September, 2015.

“Kevin Scoff”  
\_\_\_\_\_  
Witness – Signature

Kevin Scoff  
\_\_\_\_\_  
Witness – Print name

“James Weller”  
\_\_\_\_\_  
James Weller

“Shaun Devlin”  
\_\_\_\_\_  
Staff of the MFDA  
Per: Shaun Devlin  
Senior Vice-President,  
Member Regulation – Enforcement



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**Re: James Weller**

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**ORDER**

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of [Respondent] (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 between January 2010 and April 2014, the Respondent obtained, possessed, and in some instances, used to process transactions, a total of 20 pre-signed account forms in respect of 11 clients, and, altered information on 2 account forms in respect of 2 clients forms without obtaining client initials authorizing the changes;

**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 \$10,000 pursuant to s. 24.1.1(b) of MFDA By-law No.1:
2. the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No.1; and
3. the Respondent shall in the future comply with MFDA Rule 2.1.1; and
4. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or 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]