



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: Murray Harold Wellman and Michael John Wellman

Heard: October 29, 2015 in Toronto, Ontario
Reasons for Decision: December 21, 2015

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

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Kenneth P. Mann	Industry Representative
T. Hugh McNabney	Industry Representative

Appearances:

Paul Blasiak)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Ellen Bessner)	Counsel for the Respondents

1. The following reasons were delivered orally at the conclusion of the hearing on October 29, 2015.

Settlement Agreement

2. Staff and the Respondents have entered into a Settlement Agreement, dated August 9, 2015, (the "Settlement Agreement") in which Murray Harold Wellman and Michael John Wellman (collectively, "the Respondents") admit that:

- a) between about April 2011 and October 2013, they altered the risk tolerances, investment objectives, or investment instructions that were recorded on seven account forms in respect of six clients, contrary to MFDA Rule 2.1.1;
- b) between January 2011 and April 2013, they obtained, maintained, and in some instances, used to process trades, 29 pre-signed account forms, and one pre-signed cheque in respect of 16 clients, contrary to MFDA Rule 2.1.1; and
- c) on February 21, 2013, they processed a trade in a client account without documenting the client's authorization of the trade, contrary to MFDA Rule 2.1.1.

Agreed Penalty

3. As set out in the Settlement Agreement the Respondents have agreed to each pay a fine in the amount of \$10,000, and to each pay costs in the amount of \$1,000.

Decision

4. We accept the Settlement Agreement as the proposed resolution falls inside the reasonable range of appropriateness for penalties having regard to the nature of the conduct admitted by the Respondents and the MFDA's regulatory objective of protecting the public.

Facts

5. The relevant facts are set out in sections IV and V of the Settlement Agreement, which is attached hereto as Schedule '1'.

Reasons

6. The rules of the MFDA require that each 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 entering in any business conduct or practice which is unbecoming or detrimental to the public interest.

7. "Pre-signed forms" is a generic term which applies to a variety of situations where Approved Persons seek to rely on a client's signature on a document when a signature was not provided by the client at the time the document was completed. The MFDA has previously warned Approved Persons against the use of pre-signed account forms. Hearing panels have held, on several occasions, that obtaining or using pre-signed account forms is a contravention of the Standard of Conduct under MFDA Rule 2.1.1.

8. The reason for the rule is that the use of pre-signed account forms adversely affects the integrity and reliability of account documents, leads to the destruction of an audit trail, has a negative impact on Member compliant handling, and has the potential for misuse in the form of unauthorized trading, fraud, and misappropriation.

9. As the Hearing Panel in *Price (Re)[2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814* explained:

"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."

10. It is important to note that this prohibition on the use of pre-signed forms applies regardless of whether the clients were 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.

11. Altered account forms are also a serious matter. Like pre-signed account forms, the creation or use of an altered form is considered serious misconduct. The reasoning given in *Price (Re)*, referred to previously, for why pre-signed account forms affect the integrity and reliability of account documents also applies to altered forms. However, unlike pre-signed account forms where the client knows he or she is signing a blank form to be used in some way, in the case of a form altered by the Approved Person, the possibility exists that the client is unaware of the Approved Person's changes. For this reason, it is considered that this type of form is a more serious contravention of the standard of conduct under the MFDA Rule 2.1.1.

12. At all material times, FundEX Investments Inc., the Member involved, had in place policies and procedures that required that all trades processed by Approved Persons be accompanied by written documentation evidencing the client's authorization to trade. The MFDA has also previously advised Approved Persons of the requirement to maintain evidence of client trade instructions.

13. The failure by an Approved Person to document a client's authorization of a trade may give rise to ramifications that are similar to those that result from the use of pre-signed account forms and altered account forms. Such ramifications include the destruction of the audit trail and the frustration of the Member's ability to respond to inquiries and complaints from clients concerning propriety of trading activity in their accounts.

14. MFDA Rule 2.1.1 has a broad application. It provides for a standard that is able to encompass misconduct not directly captured by the Rules. By acting contrary to the Member's policies and procedures, the Respondents failed to meet the general standard.

15. The agreed penalty in the Settlement Agreement is \$10,000 for each of the Respondents as a fine; \$1,000 for each of the Respondents as payment of costs.

16. In addition, we note that the Member issued a reprimand to the Respondents and required the Respondents to pay \$500 per month during a period of 90 days of strict supervision.

17. The general principles regarding acceptance of a settlement are:

- a) the Panel decides that it is in the public interest;
- b) as part of that determination there should be adequate deterrence, both specific and general - specific meaning deterrence to the Respondents against any future violation, and general meaning deterrence to other members of the industry against similar practices; and
- c) that the proposed penalties are within the range of reasonable acceptability. That can be rather large, but taking into account all the circumstances, agreed penalties should not be lesser or greater than the acceptably reasonable range.

18. In looking at precedent cases referred to by Staff we note that there is no evidence of client harm in the case before us. After the Member detected the conduct that is the subject of the Settlement Agreement, the Member sent letters to all clients serviced by the Respondents to determine whether the Respondents had engaged in any unauthorized trading activity. None of the clients reported any concerns to the Member. There is no evidence that the Respondents received any financial benefit from engaging in the misconduct at issue in this proceeding, beyond the commissions or fees that they would ordinarily be entitled to receive, had the transactions been carried out in the proper manner.

19. The Respondent, Michael John Wellman, has been registered in the mutual fund industry since 1994. And the Respondent, Murray Harold Wellman, was registered in the mutual fund industry commencing in at least 1989. The Respondents are experienced dealing representatives who ought to have known and respected the MFDA's and the Member's compliance requirements.

20. The Respondents have not been the subject of previous MFDA disciplinary proceedings.

21. By entering into the Settlement Agreement, the Respondents have accepted responsibility for their misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary proceeding.

22. The proposed penalties are consistent with the penalty guidelines.

This written version of the oral Reasons for Decision is
DATED this 21st day of December, 2015.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Kenneth P. Mann”

Kenneth P. Mann
Industry Representative

“T. Hugh McNabney”

T. Hugh McNabney
Industry Representative



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Re: Murray Harold Wellman and Michael John Wellman

SETTLEMENT AGREEMENT

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 Respondents, Murray Harold Wellman and Michael John Wellman.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondents' activities. The investigation disclosed that the Respondents had engaged in activity for which the Respondents 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 Respondents recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondents agree to the settlement on the basis of the facts set out in Part IV herein and consent to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondents 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 Respondents 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 Respondents 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 IX) 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. Michael John Wellman has been registered in the mutual fund industry since 1994.

7. Michael John Wellman has been registered as a mutual fund salesperson (now known as a dealing representative) with FundEX Investments Inc. (“FundEX”), a Member of the MFDA, in Ontario since March 19, 2002 and British Columbia since October 10, 2008.

8. Murray Harold Wellman was registered in the mutual fund industry commencing in at least 1989.

9. Until he retired on December 31, 2013, Murray Harold Wellman was registered with FundEX in Ontario from March 19, 2002 and British Columbia from July 20, 2004. Murray Harold Wellman was also registered with FundEX in Newfoundland and Labrador from June 19, 2007 to December 24, 2009.

10. Murray Harold Wellman is not currently registered in the securities industry in any capacity.

11. At all material times, the Respondents conducted business in the Waterloo, Ontario area.

12. The Respondents jointly serviced the same client base.

Alteration of Forms Without Evidence of Client Approval

13. Chapter 5, Section III (A) of the January 2012 version of the FundEX Policies and Procedures Manual states that:

The use of liquid paper (i.e. white out, correction fluid) is strictly prohibited from being used to correct material changes on any documentation. The use of liquid paper to correct any errors placed on client documentation constitutes a change to the form (which is a legal document). Any material changes made to a client's trade documents, including address changes, must be initialed by the client.

14. In December 2013, FundEX conducted a sales compliance review of the Respondents' client files. During the review, FundEX observed that 7 forms in 6 client files had been altered with white out. The clients had not initialed or otherwise indicated their approval of the changes. The dates on the altered forms ranged from April 8, 2011 to October 21, 2013.

15. Three of the altered forms recorded Know-Your-Client ("KYC") information updates and the changes that were made with white out adjusted the risk tolerances and investment objectives of the clients that were recorded on the forms.

16. Four of the altered forms were prepared to implement transactions for clients and the changes that were made with white out adjusted the trade instructions that were recorded on the forms.

17. None of the changes that were made to forms using white out resulted in complaints from clients or alleged client losses.

Pre-Signed Account Forms

18. Chapter 1, Section 1 (H) of the September 2008 version of the FundEX Policies and Procedures Manual states that:

Under no circumstances should a FundEX Associate be holding pre-signed documents in the client file unless they are accompanied by expressed written consent instructions (e.g. T2033 or for an upcoming maturing GIC). Any Associate found holding pre-signed documents may face disciplinary action which may in turn affect the Associate's ongoing and future registration.

19. During the December 2013 sales compliance review of the Respondents' client files, FundEX identified 29 trade forms in 15 client files that contained signatures, including faxed, scanned and photocopied signatures, that were signed by the clients prior to the completion of the forms. The dates on the forms ranged from January 7, 2011 to March 20, 2013. The forms consisted of:

- (a) 24 FundEX Order Entry Forms;
- (b) 3 RESP Educational Assistance Payment Forms;
- (c) 1 Mutual Fund Trade Ticket; and
- (d) 1 FundEX Systematic Instruction Form.

20. Some of the forms had been used to process transactions. The other forms were blank forms that contained client signatures but were never used to process transactions.

21. FundEX also observed correspondence dated April 22, 2013 with a client that confirmed the client's instructions to fill in a pre-signed cheque that was subsequently used to process a trade for the client.

22. Subsequent to the sales compliance review, the Respondents informed FundEX that they sometimes obtained pre-signed forms from clients to facilitate client convenience and to reduce the number of in-person meetings with clients.

23. There is no evidence that the Respondents have engaged in unauthorized or discretionary trading and the Respondents deny that they have ever processed trades without receiving prior instructions from the client.

Trade Processed Without Evidence of Client Authorization

24. Chapter 5, Section III (A) of the January 2012 version of the FundEX Policies and Procedures Manual states that:

For client name accounts Representatives must act only on written instructions from the client. Such directions must be documented in the form of a FundEX order entry form or fund company application. If a Limited Authorization Form ("LAF") is in place, trade instructions may be accepted verbally or by email if the client cannot sign an order entry form. If you are meeting with a client in person, it is expected that a client signature is obtained even in the case an LAF is on file. It is mandatory to attach the source and the details of the transactions.

[...]

For Nominee name accounts, a client signature is not necessary to process trades and a LAF is not required to take verbal and/or email instructions from the client. However detailed client notes evidencing client authorization are required for each trade before a transaction can take place. Discretionary trading is strictly prohibited.

25. During the December 2013 sales compliance review, FundEX observed that on February 21, 2013, a \$2,000 purchase had been processed in the account of a client using an order entry form that was not signed by the client. FundEX also observed that there were no notes evidencing the client's authorization of the purchase and that there was no limited trading authorization on file for the client.

Action Taken by the Member

26. On December 20, 2013, FundEX sent letters to all of the Respondents' clients providing transaction summaries for the previous three year period to determine whether the Respondents had engaged in any unauthorized trading in the client accounts. None of the clients reported any concerns to FundEX.

27. On December 20, 2013, FundEX also sent each of the Respondents a Letter of Reprimand and required that both Respondents sign and return an Acknowledgement stating that they are aware and agree to adhere to FundEX's policies and procedures.

28. The Respondents were also required to submit to internal strict supervision by FundEX for a period of 90 days from December 23, 2013 to March 25, 2014 and they were both required to pay a fine totaling \$1,500 (\$500 per month) during the period of strict supervision.

29. No additional contraventions of FundEX's policies and procedures were discovered during the period of internal strict supervision.

Additional Factors

30. No clients serviced by the Respondents have complained about their conduct.

31. There is no evidence that the Respondents received any financial benefit from engaging in the misconduct described above, beyond the commissions or fees that they would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

32. The Respondents cooperated with FundEX's internal investigation into their conduct.

33. The Respondents have not previously been the subject of MFDA disciplinary proceedings.

34. By entering into this Settlement Agreement, the Respondents have saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

V. CONTRAVENTIONS

35. The Respondents admit that:

- (a) between about April 2011 and October 2013, they altered the risk tolerances, investment objectives or investment instructions that were recorded on 7 account forms in respect of 6 clients, contrary to MFDA Rule 2.1.1;
- (b) between about January 2011 and April 2013, they obtained, maintained and, in some instances, used to process trades, 29 pre-signed account forms and 1 pre-signed cheque in respect of 16 clients, contrary to MFDA Rule 2.1.1; and
- (c) on February 21, 2013, they processed a trade in a client account without documenting the client's authorization of the trade, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

36. The Respondents agree to the following terms of settlement:

- (a) Murray Harold Wellman shall pay a fine in the amount of \$10,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- (b) Michael John Wellman shall pay a fine in the amount of \$10,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- (c) Murray Harold Wellman shall pay costs in the amount of \$1,000 pursuant to s. 24.2 of MFDA By-law No. 1;
- (d) Michael John Wellman shall pay costs in the amount of \$1,000 pursuant to s. 24.2 of MFDA By-law No. 1;
- (e) the Respondents shall in the future comply with MFDA Rule 2.1.1; and
- (f) the Respondents will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

37. 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 Respondents 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 IX 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 Respondents from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

38. 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 Respondents.

39. Staff and the Respondents may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondents 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 Respondents in this matter, and the Respondents agree to waive their 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.

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

41. Staff and the Respondents agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondents will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondents from making full answer and defence to any civil or other proceedings against them.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

42. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondents fail 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 Respondents 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 Respondents agrees that the proceeding(s) 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

43. 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 Respondents 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.

44. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondents agree that they 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

45. 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 Respondents and Staff or as may be required by law.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 9th day of August, 2015.

“Paula Wellman”

Witness – Signature

“Murray Harold Wellman”

Murray Harold Wellman

Paula Wellman

Witness – Print name

“Paula Wellman”

Witness – Signature

“Michael John Wellman”

Michael John Wellman

Paula Wellman

Witness – Print name

“Shaun Devlin”

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



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**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: Murray Harold Wellman and Michael John Wellman

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 MFDA By-law No. 1 in respect of Murray Harold Wellman and Michael John Wellman (the "Respondents");

AND WHEREAS the Respondents entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which the Respondents agreed to a proposed settlement of matters for which the Respondents 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) between about April 2011 and October 2013, the Respondents altered the risk tolerances, investment objectives or investment instructions that were recorded on 7 account forms in respect of 6 clients, contrary to MFDA Rule 2.1.1.

- (b) between about January 2011 and April 2013, the Respondents obtained, maintained and, in some instances, used to process trades, 29 pre-signed account forms and 1 pre-signed cheque in respect of 16 clients, contrary to MFDA Rule 2.1.1; and
- (c) on February 21, 2013, the Respondents processed a trade in a client account without documenting the client's authorization of the trade, 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, Murray Harold Wellman shall pay:
 - (a) a fine in the amount of \$10,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
 - (b) costs in the amount of \$1,000 pursuant to s. 24.2 of MFDA By-law No. 1.
2. The Respondent, Michael John Wellman shall pay:
 - (a) a fine in the amount of \$10,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
 - (b) costs in the amount of \$1,000 pursuant to s. 24.2 of MFDA By-law No. 1.
3. The Respondents shall in the future comply with MFDA Rule 2.1.1.
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]