



**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: Todd Sean Werboweski**

Heard: May 25, 2017 in Calgary, Alberta

Decision: May 25, 2017

Reasons for Decision: July 18, 2017

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, Q.C.

Chair

Nada Israeli

Industry Representative

Howard R. Mix

Industry Representative

Appearances:

Justin Dunphy

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Counsel for the Mutual Fund Dealers

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Association of Canada

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Todd Sean Werboweski

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Respondent, In Person

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## INTRODUCTION

1 On November 14, 2016 the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Hearing pursuant to sections 20 and 24 of By-law No. 1 of the MFDA in respect of Todd Sean Werboweski, (“Respondent”).

2. The Respondent and MFDA Staff proposed to enter into a settlement agreement dated March 13, 2017 (“Settlement Agreement”) pursuant to which the Respondent would be penalized under s 24.4 of By-law No. 1 of the MFDA.

3. The proposed Settlement Agreement provided that:

### ***Contraventions***

4. *The Respondent has admitted that:*

(a) *Between May 2015 and June 2015, he obtained and possessed 10 pre-signed account forms in respect of 2 clients, contrary to MFDA Rule 2.1.1.*

### ***Terms of Settlement***

5. *The Respondent has agreed, as a term of settlement, to a suspension for a period of 9 months and to pay costs in the amount of \$2,500.*

4. On May 25, 2017, after hearing representations by counsel, this Hearing Panel approved the Settlement Agreement, with written reasons to follow, and agreed to sign an Order to that effect. The written reasons for such approval are set out below.

5. The proposed Settlement Agreement set out the following Agreed Facts:

### ***Registration History***

7. *From October 11, 2012 to December 2, 2015, the Respondent was registered as a mutual fund salesperson (now known as a Dealing Representative) in Alberta with Investors Group Financial Services Inc. (“Investors Group”), a member of the MFDA.*

8. *The Respondent is not currently registered in the securities industry in any capacity.*

9. *At all material times, the Respondent conducted business in the Calgary, Alberta area.*

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

10. *At all material times, Investors Group’s policies and procedures prohibited its Representatives, including the Respondent, from holding blank or partially complete pre-signed account forms.*

11. *Between May 2015 and June 2015, the Respondent obtained and possessed 10 pre-signed account forms in respect of 2 clients.*

12. *The pre-signed account forms consisted of 1 client application form, 3 credit application and related forms, 4 transfer authorization forms, 1 investment instruction form, and 1 pre-authorized contribution agreement form.*

#### ***Prior Use of Pre-Signed Account Forms***

13. *In August 2014, Investors Group’s compliance department identified 1 pre-signed account form submitted by the Respondent for processing by Investors Group. Investors Group subsequently commenced an investigation and found an additional 10 pre-signed account forms for 5 client files.*

14. *On December 18, 2014, Investors Group issued a Warning Letter to the Respondent for possessing and using pre-signed account forms. On March 9, 2015, Staff issued a Cautionary Letter to the Respondent with respect to the same conduct.*

### ***Investors Group's Investigation***

15. *In June 2015, the Respondent's branch manager identified the 10 pre-signed account forms in the client files maintained by the Respondent that are the subject of this Settlement Agreement. Investors Group subsequently commenced an investigation.*

16. *As part of its investigation, Investors Group reviewed all of the client files maintained by the Respondent and did not, at that time, detect any other instances where the Respondent possessed or used pre-signed account forms. The Respondent was placed on close supervision on July 10, 2015.*

17. *On November 10, 2015, Investors Group issued a Reprimand Letter to the Respondent for possessing and maintaining pre-signed account forms.*

18. *On December 2, 2015, Investors Group terminated the Respondent's employment following the discovery of 2 additional forms that appeared to be pre-signed.*

### ***Additional Factors***

19. *The Respondent did not receive any financial benefit from engaging in the misconduct as described above, as none of the pre-signed account forms were used.*

20. *There is no evidence of client harm.*

21. *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.*

## LAW

### Applicable Provisions

6. As stated by Enforcement Counsel, the relevant MFDA provisions in this matter are MFDA Rule 2.1.1, Sections 20, 24.1.1, 24.1.4, 24.2, 24.4 of MFDA By-law No. 1, Rules 14 and 15 of the MFDA Rules of Procedure, MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013) and MFDA Bulletin #0661-E dated October 2, 2015.

### Factors Concerning Acceptance of a Settlement Agreement

7. This Hearing Panel is aware that its responsibility is to either accept the settlement agreement or reject it, 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 September 3, 2008 at para. 37,

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

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

*“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 their time and expense of a hearing.”*

9. This Hearing Panel also notes that as stated in *Sterling Mutuals Inc. (Re)*, *supra*, at para. 36 and the decisions cited therein, in past cases, MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

- (a) Whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- (b) Whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- (c) Whether the settlement agreement addresses the issues of both specific and general deterrence;
- (d) Whether the settlement agreement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- (e) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- (f) Whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- (g) Whether the settlement agreement will foster confidence in the regulatory process itself.

### **MFDA Penalty Guidelines**

10. This Hearing Panel accepts that MFDA Penalty Guidelines are an additional resource that a Hearing Panel may consult when determining the appropriateness of the penalty to be imposed

pursuant to a settlement agreement but notes they are not mandatory or binding but intended to provide a basis upon which a hearing panel's discretion can be exercised consistently in like circumstances.

11. Enforcement Counsel submitted that in cases involving misconduct of the type admitted to in the present case, the Penalty Guidelines recommend consideration of the following penalties and factors:

Breach	Penalty Type & Range	Specific Factors to Consider
Standard of Conduct (Rule 2.1.1) (Guidelines, p. 27)	Fine (AP): Minimum of \$5,000 Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course) Suspension Permanent prohibition in egregious cases	Nature of the circumstances and conduct Number of individuals affected Whether the conduct is likely to bring the individual, the Member or the mutual fund industry into disrepute

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

12. Enforcement Counsel reminded this Hearing Panel of the following statements of law in relation to the appropriateness of the proposed penalty in this instance:

13. The primary goal of securities regulation, whether in the context of a settlement hearing or a contested hearing, is protection of the investor.

*Pezim v British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557 (SCC) at paras. 59, 68,

*Breckenridge (Re)*, MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para 74.

14. In addition to protection of the investor, the goals of securities regulation include fostering public confidence in the capital markets and the securities industry.

*Pezim v British Columbia (Superintendent of Brokers)*, *supra*, at paras. 59, 68.

15. Hearing Panels frequently consider the following factors when determining whether a penalty is appropriate:

- (a) The seriousness of the allegations proved against the Respondent;
- (b) The Respondent's past conduct, including prior sanctions;
- (c) The Respondent's experience and level of activity in the capital markets;
- (d) Whether the Respondent recognizes the seriousness of the improper activity;
- (e) The harm suffered by investors as a result of the Respondent's activities;
- (f) The benefits received by the Respondent as a result of the improper activity;
- (g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- (h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- (i) 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;
- (j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- (k) Previous decisions made in similar circumstances.

*Breckenridge (Re)*, *supra*, at para. 77 and the decisions cited therein.

## SUBMISSIONS OF ENFORCEMENT COUNSEL

16. Enforcement Counsel submitted that the following factors should be considered in determining the suitability of the terms of the Settlement Agreement with the Respondent in this instance:

**i) Nature of the Misconduct: Pre-Signed Forms**

- (a) The Respondent's misconduct is serious; he obtained and possessed 10 pre-signed account forms in respect of 2 clients. This is the second time that the Respondent has been observed by the Member to possess pre-signed account forms.
- (b) MFDA Rule 2.1.1 sets the standard of conduct to be followed by all Approved Persons. The Rule 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 stated by the MFDA Hearing Panel in *Breckenridge (Re)*: "*The Rule articulates the most fundamental obligations of all registrants in the securities industry.*"

*Breckenridge (Re)*, *supra*, at para. 71.

*Price (Re)*, MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011, at paras. 118 – 121.

17. MFDA 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.

18. The MFDA has made clear to Approved Persons since October 31, 2007 that possessing and using pre-signed forms is contrary to the obligations of Rule 2.1.1.

19. Hearing Panels of the MFDA, IIROC, and provincial securities commissions have also confirmed that the possession and use of pre-signed forms is prohibited.

*Price (Re), supra* at para. 135 and the decisions cited therein.

20. The MFDA Hearing Panel in *Price (Re)* identified the dangers posed by pre-signed forms which can be summarized as follows:

- i. pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading;
- ii. at 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; and
- iii. pre-signed forms subvert the ability of a Member to properly supervise trading activity.

*Price (Re), supra*, at paras. 122 – 124.

- iv. 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.

*Wellman (Re)*, MFDA File No. 201529, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015 at para 10.

## **ii) The Respondent's Past Conduct**

- (a) The Respondent was issued a warning letter by Investors Group on December 18, 2014, when Investors Group identified that the Respondent obtained and possessed 11 pre-signed account forms in respect of 5 clients. On March 9, 2015,

Staff of the MFDA issued a cautionary letter to the Respondent with respect to the same conduct.

- (b) In the matter of *Ewart (Re)*, MFDA File No. 201528, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 11, 2015, at paras. 24(b) and 27, the hearing panel commented on how the respondent had been previously detected with pre-signed account forms, and considered it to be an aggravating factor when considering penalty:

17.

[...]

*(b) The Respondent's Prior Conduct – The Respondent has not been the subject of previous MFDA disciplinary proceedings. However, a significant aggravating feature here was that a routine compliance audit in June 2008 detected two pre-signed account forms in the Respondent's files. As a result, in August 2008, the Respondent signed an Acknowledgement and Undertaking in which he agreed to stop using pre-signed account forms. His misconduct represented a violation of his own Acknowledgement and Undertaking.*

[...]

*27. We accept that the Respondent may not have fully appreciated the importance of the prohibition against using pre-signed forms. However, it was his responsibility to ensure that he understood and complied with existing rules. More importantly, regardless of his views or level of appreciation, he was obligated to comply with his undertaking not to use pre-signed forms. An undertaking is a solemn pledge that others are entitled to rely upon. Misconduct in violation of an undertaking is a significant aggravating factor.*

**iii) The Respondent's Experience in the Securities Industry**

- a) The Respondent has been registered as a mutual fund dealing representative since October 2012.

**iv) The Respondent's Recognition of the Seriousness of his Misconduct**

- a) By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the additional time and expense of a full contested hearing.

**v) Client Harm and Benefits Received by the Respondent**

- a) Staff's investigation did not reveal any evidence of unauthorized trades or client losses. There is no evidence to suggest that the Respondent received a financial or other benefit through his conduct, and there were no client complaints.

**vi) Deterrence**

- a) A suspension of 9 months is necessary and sufficient to achieve the goals of specific and general deterrence, having regard to the aggravating factors described above.
- b) The penalty demonstrates that the Respondent's misconduct in all of the circumstances is serious and has significant consequences. The penalty will also deter others in the capital markets from engaging in similar activity.

21. Enforcement Counsel also submitted that the 9-month suspension in lieu of a fine, was in fact a sanction higher than the minimum penalty recommended by the Penalty Guidelines for an Approved Person's breach of the standard of conduct, i.e., a \$5,000 fine.

22. Enforcement Counsel contended that a higher suspension is appropriate in the present case, having regard to the above noted aggravating factors, and the fact that "as a negotiation between the parties, MFDA was not seeking the payment of a fine in this matter".

23. Enforcement Counsel cited in support of his submission the penalties imposed in the following listed cases:

CASE	FACTS	OUTCOME
<i>Ewart supra, (Re),</i>	<ul style="list-style-type: none"> <li>The Respondent obtained, maintained, and in some instances used, 47 pre-signed account forms in respect of 26 clients and 5 altered account forms in respect of 6 clients.</li> <li>The Respondent previously signed an agreement and undertaking from the Member to stop using pre-signed account forms.</li> </ul>	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> <li>Fine of \$15,000</li> <li>Costs of \$2,500</li> </ul>
<i>Techer (Re), supra,</i>	<ul style="list-style-type: none"> <li>The Respondent admitted that she: <ul style="list-style-type: none"> <li>falsified 1 account form in respect of 1 client; and</li> <li>obtained, possessed, and in 3 instances, used, 9 pre-signed account forms in relation to 5 clients.</li> </ul> </li> <li>The Respondent obtained 1 pre-signed account form in October 2016, after being previously warned with respect to the other pre-signed and falsified account forms.</li> </ul>	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> <li>Fine of \$5,000</li> <li>3 month suspension</li> <li>Costs of \$2,500</li> </ul>
<i>Mark Courneya (Re), supra, Tab 17</i>	<ul style="list-style-type: none"> <li>The Respondent admitted that he obtained, possessed, and used 29 pre-signed account forms in respect of 10 clients.</li> <li>The Respondent, on 1 prior occasion, was found to have possessed pre-signed account forms and had signed an acknowledgement to not use them in the future.</li> </ul>	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> <li>Fine of \$10,000</li> <li>Costs of \$2,500</li> </ul>
<i>Paul Courneya (Re), supra,</i>	<ul style="list-style-type: none"> <li>The Respondent admitted that he obtained, possessed, and in some instances, used, 11 pre-signed account forms in respect of 5 clients.</li> <li>The Respondent, on two prior occasions, was found to have possessed pre-signed account forms and had signed acknowledgements on two occasions to not use pre-signed account forms.</li> </ul>	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> <li>Fine of \$17,500</li> <li>Costs of \$2,500</li> </ul>
<i>Hounsorne (Re)<sup>1</sup></i>	<ul style="list-style-type: none"> <li>The Respondent admitted to obtaining, maintaining, and using 62 pre-signed account forms.</li> <li>The Respondent assigned herself into bankruptcy prior to the MFDA hearing. Staff of the MFDA sought a suspension as a more appropriate penalty.</li> </ul>	<p>The Hearing Panel imposed the following penalty following an Agreed Statement of Facts:</p> <ul style="list-style-type: none"> <li>6 month suspension</li> <li>Costs of \$2,500</li> </ul>
<i>Mernagh (Re)<sup>2</sup></i>	<ul style="list-style-type: none"> <li>The Respondent admitted to falsifying the signatures of 10 clients on 13 account forms,</li> </ul>	<p>The Hearing Panel approved the settlement agreement with the</p>

<sup>1</sup> *Hounsorne (Re)*, MFDA File No. 201411, Hearing Panel of the Central Regional Council, Decision and Reasons dated June 23, 2015

<sup>2</sup> *Mernagh (Re)*, MFDA File No. 201612, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 8, 2016

CASE	FACTS	OUTCOME
	which were submitted for processing.	following terms: <ul style="list-style-type: none"> <li>• 6 month suspension</li> <li>• Costs of \$1,000</li> </ul>

## ACCEPTANCE OF THE SETTLEMENT AGREEMENT

24. This Hearing Panel reviewed other case authorities cited by Enforcement Counsel but noted that in the matters of *Shah (Re)*, MFDA File No. 201530, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015, at para 13, *Techer (Re)*, MFDA File No. 201662, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 5, 2016, and *Mark Courneya (Re)*, MFDA File No. 201639, Hearing Panel of the Central Regional Council, Decision dated October 27, 2016 (Reasons Pending), the hearing panels accepted what at first sight appeared to be more severe penalties than MFDA would normally seek due to the respondents in those matters having possessed and/or used pre-signed forms in the past.

25. This Hearing Panel noted that Enforcement Counsel had submitted that the discovery of additional pre-signed account forms after the Respondent was previously warned by the Member is a significant aggravating factor which warrants a greater penalty than what would normally be sought for a similar number of pre-signed forms in previous cases.

26. This Hearing Panel closely questioned Enforcement Counsel on the question whether a suspension in this case, albeit for a nine-month period, was in fact a more severe sanction than the recommended minimum \$5,000 fine.

27. This Hearing Panel observed that according to the agreed facts in the Settlement Agreement, the respondent was not currently a member of the securities industry and accordingly queried whether a suspension in the circumstances would have a material impact.

28. This Hearing Panel further observed that while the agreed facts in the settlement agreement stated that the Respondent was both issued a warning letter by Investors Group and a

cautionary letter from MFDA as a result of the previous possession of pre-signed forms prior to December 18, 2014, MFDA had elected not to institute disciplinary proceedings, for unspecified reasons.

29. As a result, this Hearing Panel was in some doubt as to the proper weight to be given to the previous related conduct of the Respondent.

30. This Hearing Panel observed that the majority of cases cited by Enforcement Counsel involving possession of pre-signed forms where the respondent had been given a previous warning resulted in the imposition of monetary fines ranging from \$5,000 to \$17,500.

31. There were however two decisions in which suspensions were imposed in lieu of a monetary fine. The first, *Hounsome (Re)* supra, was also a case where the respondent was not at the material time currently registered and the securities industry in any capacity. It was expressly stated at page 9 of that decision that the respondent assigned herself into bankruptcy and was impecunious.

32. The second decision, *Mernagh (Re)*, supra, contained an explanation in the settlement agreement that the respondent there was “a relatively inexperienced full-time employee at the time of the misconduct and believed that if he did not provide the supplemental documents and immediately he would suffer negative consequences to his employment.

33. The background information in *Mernagh (Re)*, supra, also revealed that the respondent there had worked on a part-time basis during university just prior to the date of the misconduct.

34. This Hearing Panel concludes from a review of the reasons in those decisions, that exceptional circumstances such as impecuniosity of the respondent or extremely poor judgment due to youthful inexperience may well justify the imposition of a suspension in place of the minimum monetary fine on the basis that the suspension itself operates as an equal or more severe sanction.

35. In the case at hand, this Hearing Panel was initially concerned that there was no evidence of exceptional circumstances such as those shown in *Hounsome (Re)*, supra or *Mernagh (Re)*, supra and that accordingly, the evidence did not support the result suggested by the Penalty Guidelines or the relevant applicable cases cited.

36. However, this Hearing Panel eventually gained additional comfort from the reasons for decision in *Mernagh (Re)*, supra, where the hearing panel there cited at paragraph 24 an additional decision of *Re Li* (File no. 201527) where a four month penalty and no costs was imposed, on facts where client signatures were falsified. In the view of this Hearing Panel, such intentional misconduct is far more severe than conduct of merely being in possession of pre-signed forms.

37. Moreover, when this Hearing Panel, during oral submissions, solicited further information as to the rationale for seeking no financial penalty, the parties consented to supplement the facts tendered to include information that the financial circumstances of the Respondent in this instance were a relevant factor.

38. During its deliberations as to whether to accept or reject the Settlement Agreement, this Hearing Panel was concerned that on the facts of this case, it might not be able to satisfy itself as to the conditions set out in *Sterling Mutuals Inc. (Re)*, and in particular:

- a) Whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- b) Whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- c) Whether the settlement agreement addresses the issues of both specific and general deterrence;
- d) Whether the settlement agreement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- e) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;

- f) Whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- g) Whether the settlement agreement will foster confidence in the regulatory process itself.

39. This Hearing Panel did not locate clear guidance either from the MFDA Penalty Guidelines or the prevailing case authority as to when the nature of the circumstances and conduct justify the imposition of the suspension in place of a minimum monetary fine, particularly where the Respondent is not currently a member of the securities industry.

40. The concern of this Hearing Panel is that such settlement agreements may undermine, rather than foster confidence in the integrity of the Canadian capital markets, the MFDA and the regulatory process itself.

41. As a result of its deliberations, this Hearing Panel concluded that in circumstances such as these, the submissions should clearly articulate the existence of unusual or special circumstances to demonstrate that the suspension will have more than a nominal specific deterrent impact on the Respondent, and likely have a persuasive general deterrent impact on the other participants in the securities industry.

42. After careful weighing of all the foregoing, this Hearing Panel concluded that while the foundation for accepting the sanctions in this case were not as strong as those in the cases cited, there was nevertheless sufficient basis in this instance to approve the Settlement Agreement by reason that the Respondent here had relevant meaningful financial hardship. This Hearing Panel considers this conclusion should be subject to the proviso that this case should be confined to its own facts rather than be regarded as authority for the proposition that suspensions may typically be considered to be as effective a deterrent as a minimum monetary fine of \$5,000.

43. In conclusion, 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 its terms. The Settlement Agreement is attached as Schedule “1” to these reasons for decision.

44. This Hearing Panel thanks Enforcement Counsel for his helpful presentation and the Respondent for his cooperation during the hearing.

**DATED** this 18<sup>th</sup> day of July, 2017.

“Shelly Miller”

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Shelley L. Miller, Q.C.  
Chair

“Nada Israeli”

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Nada Israeli  
Industry Representative

“Howard Mix”

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Howard R. Mix  
Industry Representative

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