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: Jacqueline Wise

Heard: October 11, 2012 in Toronto, Ontario
Reasons for Decision: October 16, 2012

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
David W. Kerr	Industry Representative
T. Hugh McNabney	Industry Representative

Appearances:

H. C. Clement Wai	)	Enforcement Counsel, Mutual Fund Dealers
	)	Association of Canada ("MFDA")
Jacqueline Wise	)	By telephone attendance, unrepresented
	)	

1. The Panel was convened to hear submissions as to a Settlement Agreement reached between the Respondent, Jacqueline Wise and Staff of the MFDA, signed October 9, 2012. The Panel was required to consider whether, pursuant section 24.4 of the MFDA By-law No. 1, the Panel should accept the Settlement Agreement.

2. At the outset of the proceedings, we considered a joint motion by Staff and the Respondent to move the proceedings *in camera*. We granted that motion. We then considered, in detail, the provisions of the Settlement Agreement itself. We heard submissions as to the applicable law that should guide this Panel in determining whether to accept or reject the Settlement Agreement. We next heard submissions as to why this particular Settlement Agreement met the appropriate criteria. We then retired to consider both the Settlement Agreement and the applicable legal principles. After deliberation, we unanimously concluded that it was appropriate to accept the Settlement Agreement.

3. The investigation by Staff of the Respondent's activities disclosed that the Respondent had engaged in activity for which the Respondent could be penalized pursuant to section 24.1 of By-law No. 1. The specific allegation was that the Respondent falsified a client's signature on one of two account documents dated June 6, 2011 in the process of opening the account, contrary to MFDA Rule 2.1.1. The facts supporting this allegation are found in paragraphs 8 to 13 of the Settlement Agreement.

4. In June 2011, the Respondent met with client MM to open a tax-free savings account ("TFSA"). The client completed and signed a transaction and account maintenance form at that time. On June 6, 2011, the Respondent submitted a TFSA application form dated June 6, 2011 and a transaction and account maintenance form dated June 6, 2011 for processing. The Respondent's branch manager on June 21, 2011 noticed a discrepancy between the client's signature as it appeared on the transaction and account maintenance form and the tax-free savings account form, as well as discrepancies on other documents. The Respondent admitted to falsifying the client's signature on one of the documents. Her reply, which was filed on September 19, 2012, states as follows:

> In reply for the Notice of Hearing I admit that yes I did regretfully falsify a clients [sic] signature as stated. I recall that it was done on the maintenance form for an

update. I understand that there should be a consequence. I have been out of work since last July. Again I cannot apologize enough.

5. It is important to note that no trades were executed on the basis of the falsified documents nor did the Respondent receive any monetary or other benefit with respect to the falsifications. Considering whether the proposed Settlement Agreement should be accepted, we have considered the principles as to whether it would be in the public interest and whether the penalties imposed will protect investors. We have also considered whether it is reasonable and proportionate having reference to the conduct of the Respondent.

6. We believe that the Settlement Agreement fairly addresses the concerns that we have, including the public interest, reasonableness, specific and general deterrence and the prevention of this type of conduct in the future. We believe that the Settlement Agreement will also foster confidence in the integrity of the Canadian capital markets, the MFDA and the regulatory process itself. We believe that each and every one of these factors was dealt with in an appropriate fashion by the Settlement Agreement.

7. In addition, we have carefully reviewed the MFDA Penalty Guidelines and the effect of these Penalty Guidelines on this type of conduct. The proposed penalty of a prohibition for a period of six months from conducting securities related business while in the employ of or associated with any Member of the MFDA, pursuant to section 24.1(c) of the MFDA By-law No. 1, and a payment of costs in the amount of $2,500.00 is a reasonable resolution for a matter of this nature and should not be disturbed, notwithstanding the fact that this particular activity involves a matter of forgery.

8. In the decision of *Lamontagne (Re)*, [2009] IIROC No. 6, Alberta District Council, Panel Decision dated January 27, 2009, the hearing panel distinguished between serious versus less egregious instances of forgery:

> Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. The trust and confidence between the registrant and the client is very often destroyed by the deceptive conduct on the part of the registrant. Forgery harms

> the Member firm as well. As a result, forgery often attracts severe sanctions. *While there is no such thing as a "minor case" of forgery, hearing panels may distinguish between more and less egregious examples of forgery.* [emphasis in text]

Enforcement counsel, quite properly, submitted that this was a less egregious example of forgery.

9. We have considered other matters, such as the fact that the Respondent has not been the subject of any previous MFDA disciplinary hearings. Her admission was prompt and full as to the misconduct and by entering into the Settlement Agreement she has accepted full responsibility for her misconduct. This admission, of course, has eliminated the necessity of a full investigation and hearing. Enforcement counsel takes the position that the Respondent is truly remorseful when one considers her cooperation and her resignation from the industry. There is no evidence of any client complaints, losses or harms in this case.

10. We are of the view that a negotiated settlement should not be disturbed provided that the penalties are within the reasonable range of appropriateness. In that regard, we have considered the remarks of the panel of the District Council in *Re Milewski*, [1999] I.D.A.C.D. No. 17, decided on July 28, 1999. The Panel made these comments at page 9:

> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement 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. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

11. In addition, we find that the fact situation in this case is very much akin to the fact situation in the *Griffiths* decision, reported at [2009] MFDA Prairie Regional Council, File No. 200916.

12. In addition we have considered all of those factors that normally should be considered when determining whether a penalty is appropriate as set forth in paragraph 10 of the submissions of Staff of the MFDA. We have also considered the ranges of penalty as set forth in the MFDA penalty guidelines.

13. The Panel therefore imposes the following penalty and costs:

(a) the Respondent shall be prohibited for a period of six (6) months from conducting securities related business while in the employ of or associated with any Member of the MFDA, pursuant to section 24.1.1(c) of the MFDA By-law No. 1;
(b) he Respondent shall pay costs in the amount of $2,500.00, pursuant to section 24.2 of the MFDA By-law No. 1; and
(c) the Respondent shall in the future comply with MFDA Rule 2.1.1.

14. For all of the above reasons we accepted the Settlement Agreement and signed the appropriate order presented to us at the hearing. We agreed to provide reasons for our decision after the hearing. These are our reasons.

DATED this 16th day of October, 2012.

"John B. Webber"
The Hon. John B. Webber, Q.C.,
Chair

"David W. Kerr"
David W. Kerr,
Industry Representative

"T. Hugh McNabney"
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