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: Zichao Wu

Heard: August 7, 2018 in Vancouver, British Columbia
Decision: August 7, 2018
Reasons for Decision: May 24, 2019

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Stephen D. Gill	Chair
Elizabeth Chichka	Industry Representative
Robert Sokugawa	Industry Representative

Appearances:

Christopher Corsetti	)	Counsel for the Mutual Fund Dealers Association of Canada
Zichao Wu	)	Respondent, in person

Introduction

1. This Panel was convened in respect of a Settlement Agreement dated June 3, 2018 ("Settlement Agreement") entered into by MFDA Staff and Zichao Wu ("Respondent"). In the Settlement Agreement, the Respondent admits that between August 29, 2016 and September 23, 2016, the Respondent signed the signatures of 4 clients on 6 account forms and submitted the forms to the Member for processing contrary to the MFDA Rule 2.1.1. Further, in the Settlement Agreement the Respondent agrees:

a) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with an MFDA Member for a period of 4 months, to commence on the date of the order;
b) The Respondent shall pay a fine of $5,000; and
c) The Respondent shall pay costs in the amount of $2,500.

2. MFDA Staff submitted that the Hearing Panel ought to accept the Settlement Agreement as the proposed resolution falls within the reasonable range of appropriateness given the circumstances of the case, and the proposed penalties are consistent with past MFDA cases with similar circumstances.

Agreed Facts

3. As per the Settlement Agreement, the following are the agreed facts in this case.

Registration History

7. Between January 15, 2015 and October 11, 2016, the Respondent was registered in British Columbia as a mutual fund salesperson (now known as a Dealing Representative) with BMO Investments Inc. ("BMO"), 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 carried on business in the Vancouver, British Columbia area.

Respondent Signed Client Signatures

10. At all material times, BMO prohibited its Approved Persons from signing client signatures.

11. Between August 29, 2016 and September 23, 2016, the Respondent signed the signatures of 4 clients on 6 account forms and submitted the forms to BMO for processing.

12. The account forms included:

a) 2 new account application forms;
b) 2 account transaction forms; and
c) 2 redemption forms.

Member Response

13. On or about September 29, 2016, BMO conducted a branch review of the Respondent's branch and identified the forms that are the subject of this Settlement Agreement.

14. On October 11, 2016, BMO terminated the Respondent's registration because of the events described above.

15. BMO conducted a review of the affected clients' accounts and contacted the clients. No clients reported any concerns to BMO.

Additional Factors

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

17. There is no evidence that:

a) the Respondent processed any trades or changes to client information without the authorization of the clients;
b) clients suffered any financial loss;
c) the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which he would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner; and
d) any clients have complained about the Respondent's conduct.

4. The following sections of the MFDA By-laws and MFDA Rules are applicable to this matter.

a) MFDA Rule 2.1.1 (Standard of Conduct);

b) Section 24.1.1 of MFDA By-law no. 1 (Penalties); and

c) Section 24.4 of MFDA By-law no. 1 (Settlements).

5. MDFA Rule 2.1.1 proscribes the standard of conduct applicable to registrants in the mutual funds 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 a transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

6. The prohibition against signing a client's signature exists regardless of the existence of client authorization or the motive behind the use of the forms; and, like pre-signed account forms, the MFDA has been warning Approved Persons against signing client's signatures on forms for a number of years (MFDA bulletin no. 00661-E dated October 2, 2015).

7. Pursuant to section 24.4.3 of MFDA By-law no. 1 a Hearing Panel has two options with respect to a Settlement Agreement. It may either accept the Settlement Agreement or reject it. In this case the Hearing Panel, having heard the submissions, and reviewed the Settlement Agreement, and the relevant authorities, determined that it was appropriate to accept the Settlement Agreement and so ordered.

8. It is well known that the role of a Hearing Panel at a Settlement Hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in re Sterling Mutuals Inc., quoting the reasoning in the IDA matter of re Milewski:

> "We also note that while in a contested hearing the panel attempts to determine the correct penalty in the 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)**
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> *Re Sterling Mutuals Inc*., 2008 MFDA 16 at para. 37;
> *Re Milewski*, (1999) IDACD no. 17 at page 11.

9. Staff of the MFDA submitted, and we agree, the principle that a Hearing Panel will not reject a Settlement Agreement unless the proposed penalty falls clearly outside the reasonable range of appropriateness, assists the MFDA to fulfill the regulatory objective of protecting the public. Settlement advances the regulatory objective by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and respondent.

10. *In British Columbia Securities Commission v. Seifert*, 2007 BCCA 484 para. 31 and 49, the Court cited the following *from R. v. 974649 Ontario Inc.,* 2001 SCC 81, (2001) 3 SCR 575 at para. 31:

> (49) 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 statue. 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 could settle some matters, and direct their resources to the matter that are in dispute, and therefore to be resolved by way of a hearing.

11. It is well settled that the primary goal as securities regulation is the protection of the investor: *Pezim v. British Columbia (Superintendent of Brokers*) (1994)2 SCR 557 (SCC) at paras. 59, 68 and 69.

12. MFDA Hearing Panels have taken into account the following considerations when determining whether a purposed settlement should be accepted:

> "We adopt the views expressed by the Hearing Panel in *Re Sterling Mutuals Inc.* (*supra* at para. 34) and the views of past hearing panels that, in general, settlement agreements should be accepted, bearing in mind the following:
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> > 1. "That it is in the public interest to do so and that the penalty proposed will be sufficient to protect investors;

2. That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;

3. That the agreement addresses the issues of both specific and general deterrence;

4. That the agreement is likely to prevent the type of conduct set out in the facts;

5. That the agreement will foster confidence in the integrity of the Canadian Markets;

6. That the agreement will foster confidence in the integrity of the MFDA: and

7. That the agreement will foster confidence in the regulatory process itself."

Re: Lucas Stemshorn-Russell, Reasons for Decisions dated March 7, 2018, para 11.

13. Factors that Hearing panels frequently consider when determining whether a penalty is appropriate include the following:

"Previous Hearing Panels have set out a number of additional factors which should be considered when determining an appropriate penalty. These include:

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."

Re: Lucas Stemhorn- Russell, Reasons for Decision dated March 7, 2018, para 16.

14. The MFDA Penalty Guidelines are an additional source of factors to be taken into account with regards to penalty. The Penalty Guidelines are not binding or not mandatory but are intended to assist Hearing Panels, MFDA Staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings.

15. Where an Approved Person fails to adhere to the standard of conduct, the MFDA Penalty Guidelines recommend one or all of the following: a minimum fine of $5,000; writing or re-writing an appropriate industry course; suspension; and permanent prohibition in egregious cases.

16. The following considerations apply to the present case.

17. With respect to the nature of the misconduct, signing a client's signature on account forms is a serious breach of MFDA Rule 2.1.1. However, there is no evidence that clients suffered financial loss as a result of the Respondent's misconduct. There is no evidence the Respondent received any financial benefit from engaging in the misconduct set forth in this proceeding other than the commissions and fees that he would ordinarily be entitled to receive had the transaction been carried out in the proper manner.

18. We note that the Respondent was registered in the Mutual Fund industry between January 2015 and October 2016, and was required to comply with his Members' requirements and the MFDA's Rules.

19. The Respondent has not previously been subject to MFDA disciplinary proceedings. Further, Staff submitted, and we agree, that a fine of $5,000 in combination with costs of $2,500, and a four month prohibition, is a significant penalty that will send a message to the Respondent and others in the industry with regard to the seriousness of the misconduct detailed herein.

20. Staff submitted, and we agree, that by entering into this Settlement Agreement, the Respondent has accepted responsibility for her misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

21. We note that the proposed penalties are consistent with the Penalty Guidelines.

22. Staff submitted that the proposed resolution is within the reasonable range of appropriateness considering comparable cases, and we agree. In *re Derrick Folay*, Settlement

Agreement accepted November 26, 2015, the facts where that in May 2014 the Respondent falsified two clients signatures on two KYC forms, contrary to MFDA Rule 2.1.1. The client lost $1,050. The penalty was a $6,000 fine and $2,500 in costs.

23. In *re Lucas Stemshorn- Russell*, Settlement Agreement Hearing on January 2, 2018, the facts were on or about June 2016 the Respondent cut and pasted the clients' signatures from account forms previously signed by two clients onto two new account forms. The penalty was a $2,500 fine and $2,500 costs, and a 6 month prohibition.

24. In *re David Sedlay*, Settlement Agreement accepted July 9, 2018, the facts were between January 21, 2016 and September 3, 2016, the Respondent signed the signatures of two clients on two account forms and submitted the forms to the Member for processing. The penalty was a $2,500 fine; $2,500 costs; and six month prohibition.

25. In this case the Settlement Agreement sets out that the Respondent Zichao Wu between August 29, 2016 and September 23, 2016 signed the signatures of four clients on six account forms, and submitted the forms to the Member for processing. The proposed penalty a $5,000 fine, $2,500 costs and a four month prohibition as per the Settlement Agreement.

26. We note there is no evidence that clients suffered financial losses as a result of the Respondent's misconduct, and 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 that he would ordinarily receive.

27. At the conclusion of the submissions, the Hearing Panel accepted the Settlement Agreement. In our view the proposed penalty is reasonable, proportionate to the misconduct in question, and is in keeping with the MFDA's mandate to enhance investor protection and strengthen public confidence in the Canadian Mutual Fund industry by ensuring high standards of conduct by Members and Approved Persons. In our view the penalty is clearly within a reasonable range of appropriateness. It is important to note that this is a Settlement Agreement, which both parties have agreed to, and which assists the regulatory process. We accept it is well established that Hearing Panels should "not interfere lightly in a negotiated settlement and should not reject a settlement agreement unless it views the penalty as clearly as falling outside a reasonable range of

appropriateness" (re: Professional Investments (Kingston) Inc. MFDA file no. 201644, Reasons for Decision dated February 2, 2017 at paras. 31 and 32.

28. Thus at the conclusion of the settlement hearing, the Panel informed the parties that the Settlement Agreement was accepted, and so ordered.

DATED this 24th day of May, 2019.

"Stephen D. Gill"
Stephen D. Gill
Chair

"Elizabeth Chichka"
Elizabeth Chichka
Industry Representative

"Robert Sokugawa"
Robert Sokugawa
Industry Representative

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