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: Yangyi Xie

Heard: May 17, 2017 in Vancouver, British Columbia
Decision: May 17, 2017
Reasons for Decision: June 12, 2017

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Joseph A.Bernardo	Chair
Susan Monk	Industry Representative
Bob Sokugawa	Industry Representative

Appearances:

Christopher Corsetti	)	Counsel for the Mutual Fund Dealers Association of Canada
Yangyi Xie	)	Respondent, by teleconference

1. On May 17, 2017, a settlement agreement dated March 16, 2017 ("Settlement Agreement") between the Mutual Fund Dealers Association of Canada ("MFDA") and Yangyi Xie ("Respondent") was presented to the Hearing Panel for acceptance in closed session.

2. After hearing and considering the submissions of MFDA counsel and the Respondent, the Hearing Panel approved the Settlement Agreement. These are our reasons.

Agreed Facts

3. In summary, the MFDA and Respondent agree as follows:

(a) From May 20, 2014 to November 13, 2014, the Respondent was registered as a mutual fund salesperson and an Approved Person employed by BMO Investments Inc. (BMO), a Member of the MFDA, in Coquitlam, British Columbia.

(b) BMO permits its Approved Persons to accept telephone instructions from clients, provided the client has first signed a BMO Message Agreement Form and the Approved Person takes detailed notes when obtaining the client's instructions.

(c) On August 13, 2014, a BMO client serviced by the Respondent (the Client) signed a BMO Message Form authorizing the Respondent to receive instructions by telephone.

(d) On the Respondent's recommendation, the Client decided to invest a total of $165,000 in the BMO Bond Fund and the BMO Monthly High Income Fund II (the Target Portfolio) by purchasing the funds at periodic intervals through a dollar-cost averaging strategy.

(e) BMO's policies and procedures prohibited its Approved Persons from engaging in discretionary trading.

(f) On August 22, 2014, the Respondent exercised his discretion to determine the timing of the Client account's purchase of $40,000 in the BMO Bond Fund and $10,000 in the BMO Monthly High Income Fund II.

(g) On August 26, 2014, the Respondent exercised his discretion to determine the timing of the Client account's purchase of $11,596.44 in the BMO Bond Fund and $2,899.12 in the BMO Monthly High Income Fund II.

(h) In order to make the August 22 and 26, 2014 trades, the Respondent falsified the Client's signature on two trade forms.

(i) On September 15, 2014, the Respondent exercised his discretion to determine both the amount to be invested and the timing of the Client account's purchase of $25,000 in the BMO Monthly High Income Fund II. The Respondent made this trade without discussing it with the Client as required by the BMO Message Agreement.

(j) On September 26, 2014 and without the Client's authorization, the Respondent exercised his discretion to cause the Client's account to purchase two mutual funds that were different than those she had approved for her Target Portfolio. In order to make these trades, the Respondent falsified the Client's signature on the relevant trade and Know-Your-Client forms. The Client suffered a loss of $2,350.30 from these trades.

(k) On October 22, 2014, the Client complained to BMO about the unauthorized trades in her account.

(l) BMO reviewed 47 other client files serviced by the Respondent and did not identify any issues. No other clients complained about the Respondent's conduct.

(m) On November 13, 2014, BMO terminated the Respondent and compensated the Client.

(n) There is no evidence that the Respondent derived any financial benefit from his misconduct, apart from commissions ordinarily received from client account transactions.

(o) The Respondent has not previously been the subject of MFDA disciplinary proceeding and is not currently registered in the securities industry.

Misconduct

4. Approved Persons are subject to MFDA Rules 1.1.2 and 2.5.1, which obligate them to follow the supervisory policies and procedures of the Member firms that employ them, and to Rule 2.3.1, which explicitly prohibits them from engaging in discretionary trading. Above all, Approved Persons are required by MFDA Rule 2.1.1 to observe high ethical standards and to refrain from business conduct unbecoming or detrimental to the public interest.

5. On January 26, 2017, the MFDA commenced proceedings against the Respondent by issuing Notice of Hearing, alleging that:

> "Between August 22, 2014 and September 15, 2014, the Respondent processed 3 authorized discretionary trades as part of a dollar-cost averaging strategy in relation to 1 client, contrary to the Member's policies and procedures, and MFDA Rules 1.1.2, 2.5.1, 2.3.1, and 2.1.1.
>
> On September 26, 2014, the Respondent failed to comply with a client's trade instructions and engaged in unauthorized discretionary trading by processing 2 trades, contrary to MFDA Rules 2.3.1 and 2.1.1.
>
> Between August 2014 and October 2014, the Respondent falsified the signature of 1 client on 4 account forms, contrary to MFDA Rule 2.1.1."

6. In the Settlement Agreement, the Respondent admits to the misconduct set out in these allegations.

Standard

7. The Settlement Agreement came before the Hearing Panel under MFDA Rule 24.4.3, which confers upon Hearing Panels the discretion to approve or reject settlement agreements.

8. Within the securities regulatory context, where the overriding objective is public protection, it is well established that settlements are to be encouraged and supported. This is because an effective disciplinary regime is one that results in enforcement outcomes that are not only proportionate to misconduct, but also timely. Settlements are inherently efficient and their

proposed outcomes, having been negotiated by the persons most familiar with the relevant facts, tend to reflect nuanced assessments of the issues.

> *British Columbia Securities Commission v. Seifert*, 2007 BCCA 484 at paras. 26 and 31.

9. In considering whether to accept or reject a settlement agreement, a Hearing Panel's role is therefore not to decide whether it would have arrived at the same outcome as that proposed by the parties. Rather, a Hearing Panel should accept a settlement agreement "unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

> *Sterling Mutuals Inc. (Re),* 2008 MFDA 16, at para. 37, citing the reasoning in *Milewski (Re),* [1999] I.D.A.C.D. No. 17 at p. 11, Ontario District Council Decision dated July 28, 1999.

Decision

10. The sanctions contemplated by the Settlement Agreement are, in substance, as follows:

(a) $5,500 fine;
(b) $2,500 costs; and
(c) 18 month prohibition against conducting securities related business while employed or associated with any MFDA Member, except that the prohibition shall continue as long as any part of the fine and costs owed to the MFDA remains outstanding.

11. In assessing the appropriateness of these sanctions, the Hearing Panel considered the material elements disclosed by the facts.

(a) Misconduct that results in client losses is by definition serious, regardless of the amount. The Respondent's misconduct was relatively limited in scope, but only because it was brought to an early end by the Client's timely complaint and BMO's prompt investigation. While this ensured that overall losses would be

limited to $2,350.30, the fact remains that the Respondent's actions resulted in financial harm.

(b) By engaging in discretionary trading, the Respondent breached an explicit industry prohibition. He then compounded the breach by making fund purchases at his own discretion that outright disregarded the Client's expressed trade directions.

(c) To implement the discretionary trading, the Respondent falsified the Client's signature to create forged transaction records, which is to say, he engaged in purposeful deception.

(d) It is clear from the foregoing that the Respondent lacked the essential attribute required by his position, namely, acute self-awareness that the core obligation of an Approved Person is to carry out one's duties with probity.

(e) There is no evidence that the Respondent's misconduct extended beyond the Client's account or that he was motivated by financial gain.

(f) The Respondent has no prior disciplinary history.

12. The MFDA's Penalty Guidelines recommend a minimum fine of $5000 per offence, whereas the Settlement Agreement proposes a $5500 global fine for all three of the admitted allegations. The proposed 18 month prohibition, by contrast, is longer than the periods ordered in similar recent cases where the misconduct involved a greater number of improper actions.

John Joseph Moakler (Re) [2016] MFDA File No. 201571.

Robert Bowness (Re) [2013] MFDA File No. 201350.

13. The Penalty Guidelines and settlement outcomes approved in prior cases are important considerations. The essential question, however, is whether, as a practical matter, the likely deterrent effect of the proposed sanctions is more or less proportionate to the Respondent's misconduct.

14. Taking into consideration the circumstances and particular character of the misconduct of this case, it is the Hearing Panel's opinion that the sanctions agreed upon by the parties fall within the reasonable range of appropriateness.

DATED this 12th day of June, 2017.

"Joseph Bernardo"

Joseph Bernardo
Chair

"Susan Monk"

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Industry Representative

"Bob Sokugawa"

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Industry Representative

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