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: Emily Yu

Heard: April 2, 2019 in Vancouver, British Columbia
Decision: April 2, 2019
Reasons for Decision: May 15, 2019

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

The Hon. Thomas R. Braidwood, QC	Chair
Michelle Leung	Industry Representative

Appearances:

Sakeb Nazim	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Stewart Elworthy	)	Counsel for the Respondent
Emily Yu	)	Respondent, in person

1. This hearing was duly constituted by the Mutual Fund Dealers Association of Canada ("MFDA") to consider a settlement agreement dated March 21, 2019 (the "Settlement Agreement), between the MFDA and Emily Yu (the "Respondent").

Allegation(s)

2. The Settlement Agreement contains an allegation, which allegation by the terms of the agreement the Respondent admits. The allegation is as follows:

a) In or around October 2015, the Respondent altered two account forms in respect of one client by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

Terms of Settlement

3. The Respondent has agreed to the following penalty:

a) costs of $1,500.00; and

b) complete the Conduct and Practices Handbook course offered by the Canadian Securities Institute.

The Test

4. The role of the Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. 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."
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> *Sterling Mutuals Inc. (Re)*, MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 35

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

Agreed Facts

Registration History

5. The Respondent was registered in Alberta from April 19, 2012 to December 31, 2012 and in British Columbia from April 19, 2012 to December 31, 2015, with Portfolio Strategies Corporation ("PSC"), a Member of the MFDA.

6. The Respondent is not currently registered in the securities industry.

7. At all material times, the Respondent conducted business in the Vancouver, British Columbia area.

Altered Account Forms

8. At all material times, PSC had a policy and procedure in place that prohibited its approved persons from using pre-signed account and altered account forms that have been altered but not initialed.

9. In October 2015, the Respondent altered two account forms in respect of one client by altering information on the account forms without having the client initial the alterations.

10. The altered account forms consisted of one Letter of Direction and one Transfer Authorization Form.

Additional Factors

11. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.

12. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

Contravention

13. The Respondent admits that in or around October 2015, the Respondent altered two account forms in respect of one client by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

14. The following considerations are relevant 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.

Sterling Mutuals Inc. (Re), supra, at para.34 and the decisions cited therein

15. We have considered 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),* MFDA File No. 200718 Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at p. 21

Nature of Misconduct: Altered Account Forms

16. The Respondent altered two (2) account forms in respect of one client by altering information on the account forms without having the client initial the alterations.

17. 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 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 p. 20

18. 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 becoming or detrimental to the public interest.

MFDA Rule 2.1.1.

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

> Member Staff Notice 0066: Pre-Signed Forms, dated October 31, 2007 (updated March 4, 2013)

20. Altering or falsifying forms is a contravention of the standard of conduct as set out in MFDA Rule 2.1.1.

> *Byce (Re)*, MFDA File No. 201311, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 4, 2013

21. It was submitted by counsel for MFDA that there are dangers posed by pre-signed forms which they suggest can be summarized as follows:

a) pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading;

b) at worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms in harmful conduct towards a client; and

c) pre-signed forms subvert the ability of a Member to properly supervise trading activity.

> *Price (Re)*, MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011, at paras. 122-124

Mitigating Circumstances

22. The Respondent has not previously been disciplined by the MFDA.

23. 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 allegation

24. There is no evidence that the Respondent received any financial or other benefit through her conduct.

Deterrence

25. The proposed penalty is necessary and sufficient to achieve the goals of a specific and general deterrence, having regard to the factors described above. 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.

The Law / Previous Decisions in Similar Cases

26. The following penalties have been imposed in similar circumstances and it is acknowledged that they are somewhat more severe than the case before us:

CASE	FACTS	OUTCOME
Kumar, MFDA File No. 2016111, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 27, 2017, Staff's Book of Authorities, Tab 10.	• Respondent obtained, possessed, and in some instances, used 2 pre-signed forms • Respondent altered 2 account forms without having the clients initial the alterations • Respondent falsified 1 client signature on an account form • Reviewed and approved 3 PSF and altered account forms as a Branch Manager	• Costs of $1,500 • Complete the branch manager course • 6 months prohibition
Durotoye, MFDA File No. 201328, Hearing Panel of the Central Regional Council, Decision and Reasons dated May 20, 2014, Staff's Book of Authorities, Tab 11.	• Respondent obtained, possessed, and in some instances, used 5 pre-signed forms • Reviewed and approved 30 PSF as a Branch Manager	• Fine of $2,500 • Costs of$2,500 • 6 months Branch manager prohibition

Conclusion

27. Having regard to all of the foregoing factors, the Hearing Panel is unanimously of the opinion that the penalties proposed in the Settlement Agreement will advance the public interest and enhance investor protection and ensure high standards of conduct in the mutual fund industry.

28. Pursuant to the appropriate Rules and by unanimous consent, this Hearing proceeded with two panel members instead of the usual three.

DATED this 15th day of May, 2019.

"Thomas R. Braidwood"
The Hon. Thomas R. Braidwood, QC
Chair

"Michelle Leung"
Michelle Leung
Industry Representative

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