



**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: Quadrus Investment Services Ltd.**

Heard: January 20, 2017, in Toronto, Ontario  
Reasons for Decision: February 2, 2017

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Guenther W. K. Kleberg	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Paul Blasiak	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
Geoffrey P. Heyland	)	Vice President and General Counsel
	)	
Lesley A. Duffy	)	Chief Compliance Officer of Respondent

## **Background**

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held on Friday, January 20, 2017. The full Settlement Agreement, dated November 17, 2016, entered into between Staff of the MFDA and Quadrus Investment Services Ltd. (“Quadrus” or the “Respondent”) is available on the MFDA website and will not be set out in detail here. The Respondent was represented at the Settlement Hearing by Geoffrey P. Heyland, Vice President and General Counsel of the Respondent, and Lesley A. Duffy, the Chief Compliance Officer of the Respondent.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the January 20, 2017 hearing, with reasons to follow. These are our reasons for the decision.

3. The Respondent, whose head office is in London, Ontario, is registered in all provinces and territories in Canada as a mutual fund dealer and has been a Member of the MFDA since March 2002.

## **Alleged Conduct**

4. Staff of the MFDA conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized by a Hearing Panel pursuant to s. 24.1 of By-law No. 1.

5. Proceedings against the Respondent were commenced by a Notice of Settlement Hearing, dated November 15, 2016.

6. In the Settlement Agreement (paragraph 55) the Respondent admits contraventions of MFDA rules. The Respondent admits that:

- a) between March 2009 and July 2015, the Respondent failed to employ adequate supervision to prevent Approved Person RM from engaging in discretionary trading, engaging in personal financial dealings with clients by directly reimbursing trading

fees to clients without the Member's approval, and using pre-signed account forms, contrary to MFDA Rules 2.1.1, 2.1.4, 2.3.1 and 2.5.1; and

b) the Respondent failed to report to the MFDA, within 5 business days or at all:

- the Respondent's discoveries in March 2009 and September 2010, that Approved Person RM had, or may have, engaged in discretionary trading; and
- the Respondent's discovery in September 2010, that Approved Person RM had, or may have, engaged in personal financial dealings with clients;

contrary to MFDA Policy No. 6, subsections 6.1(b)(i) and (v).

7. At all material times, the Respondent's policies and procedures prohibited its Approved Persons, including RM, from engaging in discretionary trading in client accounts, engaging in personal financial dealings with clients, and using pre-signed forms.

8. RM has been registered as a mutual fund salesperson (now known as a dealing representative) with the Respondent in Ontario since September 1997, Alberta since November 2001, and British Columbia since July 2008. At all material times, RM conducted business in the Thunder Bay, Ontario area.

9. There are a large number of reported disciplinary cases relating to discretionary trading, engaging in personal financial dealings with clients, and using pre-signed forms. Such conduct has the potential to harm clients and prohibition of the conduct is well known to persons in the securities industry. The panel does not feel it is necessary for the purpose of this hearing to say more about such conduct by RM.

### **Terms of Settlement**

10. Staff of the MFDA and the Respondent agreed to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$75,000 pursuant to s. 24.1.2(b) of MFDA By-law No. 1;

- b) the Respondent shall pay costs in the amount of \$20,000 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rules 2.1.1, 2.1.4, 2.3.1 and 2.5.1, and MFDA Policy No. 6; and
- d) a senior officer of the Respondent will attend in person, on the date set for the Settlement Hearing.

### **Failure to Adequately Supervise RM**

11. Paragraphs 10 to 54 of the Settlement Agreement outline in detail the activities of RM and the failure of the Respondent to adequately supervise RM over the period 2009 to 2015.

12. In March 2009 the Respondent's Compliance Officer for the Thunder Bay region conducted a normal course review of RM's Branch office which included a review of four of RM's client files. During this review the Compliance Officer discovered that RM had, or may have, engaged in discretionary trading and engaged in personal financial dealings with a client.

13. Steps were taken to require RM and RM's branch manager to sign Branch Review Reports.

14. A further review was undertaken in 2010 and again the review discovered problems: discretionary trading, personal financial dealings with clients, and the use of pre-signed account forms.

15. In March 2011 the Regional Compliance Officer recommended to the then Chief Compliance Officer that RM "be put on close supervision whereby [RM's branch manager] would need to pre-approve all trades prior to placement." The Chief Compliance Officer replied by email, stating: "If internal discipline (close supervision) then we'd have to report this to the MFDA, and they would likely open an investigation. I don't believe there are serious enough issues for an MFDA investigation, just a lot of extra work and burden on our existing teams."

16. The follow-up review of nine of RM's client files did not find any discretionary trading, personal financial dealings, or the use of pre-signed account forms and so RM was not subject to

further review until 2014. In the 2014 review, pre-signed forms were found in respect of five corporate clients, but not in individual client files.

17. Following the 2014 review, the Respondent filed a report on the MFDA's Member Event Tracking System advising the MFDA of the 2014 Review Findings and in February 2015 placed RM on close supervision for a period of 12 months. The supervision required a number of supervisory actions outlined in paragraph 29 of the Settlement Agreement. Trade documentation, for example, was required for corporate client accounts, but not for individual client accounts. RM remains under close supervision.

18. In March 2015 a review was made of all 241 of RM's client files, which indicated that RM had, or may have, engaged in discretionary trading and used pre-signed forms. Some of the discretionary trading took place while RM was on close supervision. The pre-signed forms were dated prior to RM being on close supervision. Close supervision was increased. An October 2015 review did not find that RM had, or may have, engaged in discretionary trading, been involved in personal financial dealings, or used pre-signed account forms.

19. Paragraph 41 of the Settlement Agreement states: "By virtue of the Respondent's conduct described in this Settlement Agreement, the Respondent failed to employ adequate supervision to prevent RM from engaging in discretionary trading, engaging in personal financial dealings with clients, and using pre-signed account forms, contrary to MFDA Rules 2.1.1, 2.1.2, 2.3.1 and 2.5.1."

### **Failure to Report the 2009 and 2010 Review Findings**

20. Since July 2007, MFDA Policy No. 6, subsection 6.1(b)(i) has required a Member of the MFDA to report to the MFDA, within 5 business days, whenever a Member becomes aware that any of its Approved Person, have, or may have, contravened any regulatory requirements relating to, among other things, unauthorized trading.

21. As described above, the Respondent became aware in March 2009 and again in September 2010 that RM had engaged in discretionary trading. The Respondent did not report this conduct to the MFDA within 5 business days.

22. Since February 2010, MFDA Policy No. 6, subsection 6.1(b)(v) has required a Member of the MFDA to report to the MFDA within 5 business days, whenever a Member becomes aware that any of its Approved Persons have, or may have, contravened any regulatory requirement relating to personal financial dealings. As described above, the Respondent became aware of such conduct in September 2010.

23. Paragraph 47 of the Settlement Agreement states: “The Respondent failed to report to the MFDA within 5 business days or at all, the 2010 Review Findings, thereby failing to comply with the requirements of MFDA Policy No. 6, subsection 6.1(b)(v).

### **Acceptance of Settlement Agreement**

24. Failure to provide adequate supervision by the Member is a serious matter. Supervision is at the heart of effective securities regulation. Similarly, failure to report regulatory misconduct is serious because the regulator, the MFDA, cannot adequately supervise the conduct of the Member.

25. The conduct is particularly serious in this case because it occurred over a lengthy period of time. Despite the fact that the Respondent initially discovered in March 2009 that RM had, or may have, engaged in discretionary trading and personal financial dealings with a client, it was not until July 2015 that the Respondent implemented adequate corrective measures to ensure that RM was in compliance with MFDA regulatory requirements.

26. As stated above, the Panel accepted the terms of the Settlement Agreement. We found that the proposed penalty was reasonable and proportionate in the circumstances of this case. It provides specific deterrence to the Respondent and general deterrence to others in the industry.

27. There was no evidence of client harm. No clients serviced by RM have complained about his conduct. In May 2015 letters were sent to all of RM’s non-corporate clients. None of the clients reported any concerns to the Respondent.

28. The conduct involved only one Approved Person.

29. Steps were taken by the Respondent in the third quarter of 2014 to improve its Approved Person review procedures. For example, as described in paragraph 54 of the Settlement Agreement, if an apparent infraction is discovered during a branch review, the Approved Person is immediately reported on the MFDA Member Event Tracking System as required, placed on close supervision and an internal investigation is opened by the Respondent's head office complaints and investigations team.

30. Further, by entering into a Settlement Agreement, the Respondent has accepted responsibility for his misconduct, recognizes its seriousness, and has exhibited remorse.

31. The penalty imposed is not out-of-line with recent MFDA and IIROC cases cited by counsel: *Re Sterling Mutuals Inc.*, MFDA File No. 201619; *Re Industrial Alliance Securities*, 2014 IIROC 57; *Re RBC Dominion Securities*, 2014 IIROC 25; and *Re Desjardins Financial Security Investments Inc.*, MFDA File No. 200908. It is also consistent with the MFDA Penalty Guidelines.

32. The Respondent has been a Member of the MFDA since March 2002 and has never been the subject of a disciplinary proceeding by the MFDA. The Respondent cooperated with Staff during its investigation into its conduct. Moreover, by entering into the Agreement, the Respondent saved the MFDA the time, resources, and expense associated with conducting a full hearing of the allegations.

33. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

“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.”

34. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter.

35. As a recent Panel stated (*Re Keshet*, MFDA File No. 201419 at paragraph 7): “It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness.” There are many similar statements by MFDA Panels.

36. The penalty agreed to in this case clearly falls within “a reasonable range of appropriateness.”

37. For the above reasons we accepted the Settlement Agreement.

**DATED** this 2<sup>nd</sup> day of February, 2017.

“Martin L. Friedland”

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Martin L. Friedland, C.C., Q.C.  
Chair

“Guenther W. K. Kleberg”

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