

Re Watts

IN THE MATTER OF:

The Mutual Fund Dealers Association of Canada

and

Robert George Watts

2024 CIRO 04

Canadian Investment Regulatory Organization
Hearing Panel (Manitoba District)

Heard: December 6, 2022

Decision: December 6, 2022

Reasons for Decision: January 8, 2024

Hearing Panel:

Richard L. Yaffe, K.C., Chair

Richard R. Sydenham, Industry Representative

Greg Wiebe, Industry Representative

Appearances:

Justin Dunphy, Enforcement Counsel for the Mutual Fund Dealers Association of Canada

Jonathan Kroft, Counsel for the Respondent

Robert George Watts, Respondent

REASONS FOR DECISION

OVERVIEW

¶ 1 In this matter, the Respondent altered client account forms and processed transactions using altered client account forms. He also obtained and, in some cases processed transactions using, pre-signed client account forms.

BACKGROUND AND CONTRAVENTIONS

¶ 2 By notice of a news release dated October 26, 2022, a hearing panel (the “Panel”) of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened via WebEx on December 6, 2022 to consider whether, pursuant to Section 24.4 of MFDA By-law No. 1, the Panel should accept a settlement agreement (the “Settlement Agreement”) entered into between staff of the MFDA and Robert George Watts (the “Respondent”) on December 5, 2022 with respect to matters for which the Respondent could be disciplined as an Approved Person pursuant to section 24.1.1 of By-law No. 1 of the MFDA.

¶ 3 Prior appearances, all related to procedural matters, were held on December 13, 2021, June 23, 2022, July 28, 2022 and October 25, 2022. It was ultimately decided that this matter could proceed by way of a Settlement Hearing.

¶ 4 The Settlement Agreement relates to allegations that the Respondent:

- (a) between June 2016 and August 2018, altered and used to process transactions, 10 account forms in respect of 9 clients by altering information on the account forms without having

the clients initial the alterations, contrary to MFDA Rule 2.1.1.; and

- (b) between March 2016 and June 2018, obtained, possessed, and in some cases, used to process transactions, 47 pre-signed account forms in respect of 24 clients, contrary to MFDA Rule 2.1.1.

FACTS

¶ 5 The Respondent has been registered in the Province of Manitoba since 1992 in the securities industry.

¶ 6 The Respondent was registered in Manitoba as a dealing representative with Manulife Securities Investment Services Inc. (“Manulife”), a Member of the MFDA, from November 2012 to April 1, 2016.

¶ 7 The Respondent has been registered in Manitoba as a dealing representative with Investia Financial Services Inc. (“Investia”), a Member of the MFDA, since April 11, 2016.

¶ 8 The Respondent was also registered as a dealing representative in Alberta, New Brunswick, Quebec, British Columbia, Newfoundland and Labrador, Saskatchewan and Ontario.

¶ 9 At all material times, the Respondent conducted business in the Winnipeg, Manitoba area.

¶ 10 At all material times, the policies and procedures maintained by Investia did not permit Approved Persons to obtain, possess or use pre-signed account forms, or to alter account forms after the clients had signed them.

¶ 11 Between June 2016 and August 2018, the Respondent altered and used 10 account forms in respect of 9 clients by altering information on the account forms. In some instances, the Respondent used liquid correction fluid to alter information on the account forms.

¶ 12 The altered account forms consisted of:

- (a) 1 dealer representative change form;
- (b) 2 new client account forms;
- (c) 5 order instructions forms;
- (d) 1 rebate form; and
- (e) 1 systematic instruction form.

¶ 13 The alterations by the Respondent that were made to the account forms included alterations to dates, amounts, fund names and codes, and clients’ net worth.

¶ 14 There is no evidence of any client loss, complaints, or that any transactions in relation to the altered account forms were unauthorized.

¶ 15 At all material times, Investia’s policies and procedures prohibited its Approved Persons from obtaining, holding, or using pre-signed account forms.

¶ 16 Between March 2016 and June 2018, the Respondent obtained, possessed, and, in some cases, used to process transactions, 47 pre-signed account forms in respect of 24 clients.

¶ 17 The pre-signed account forms consisted of:

- (a) 39 dealer representative change forms;
- (b) 1 investment application form;
- (c) 4 order instruction forms;
- (d) 1 redemption form;
- (e) 1 systematic instruction form; and
- (f) 1 trade ticket.

¶ 18 The Respondent stated that the dealer representative change forms obtained and used in paragraph 16(a) above were sent to the clients' respective mutual fund companies to inform them that the clients were to be represented by a new mutual fund dealer, and did not result in a change in the securities held by the clients.

¶ 19 The Respondent ceased to be registered with Manulife on April 1, 2016 and on April 11, 2016, he became registered with Investia.

¶ 20 The Respondent stated that he was required to transfer approximately 600 Manulife clients to Investia, and therefore had to complete dealer representative change forms and send them to the applicable mutual fund companies in order to advise the mutual fund companies that the clients' mutual funds were now held through Investia. Between April 14, 2016 and April 19, 2016, the Respondent, or his assistants, in the 39 instances referred to in paragraph 17(a) above, sent incomplete dealer representative change forms to clients for signature, which the Respondent or his assistants subsequently copied, to which they added the relevant mutual fund account details and date, and which they sent to every mutual fund company in which the clients held mutual funds through Manulife.

¶ 21 The Respondent stated that after April 19, 2016, he and his assistants, at their own direction, stopped the practice of sending incomplete dealer representative change forms to clients for signature and stopped copying those forms for subsequent use, and he stated that they took steps to ensure that any forms in the future would be fully completed prior to being signed by the clients.

¶ 22 There is no evidence of any client loss, complaints, or that any transactions were unauthorized with respect to the pre-signed account forms.

¶ 23 In September 2019, during the course of a full review of client files maintained by the Respondent, Investia identified the altered and pre-signed account forms that are the subject of the Settlement Agreement.

¶ 24 On or about November 8, 2019, Investia placed the Respondent on strict supervision.

¶ 25 On or about January 10, 2020, Investia sent letters to all clients whose accounts the Respondent serviced, along with a three-year transaction history, in order to determine whether the transactions in the clients' accounts were authorized. Where Investia identified pre-signed or altered account forms containing Know-Your-Client ("KYC") information, Investia sent clients letters that included the clients' KYC information in order to determine whether the KYC information was accurate. No clients reported any concerns in response to Investia's letters.

¶ 26 The Respondent paid to Investia a \$500 administration charge and \$1,680 mailing charge with respect to the letters to clients.

¶ 27 On or about March 18, 2020, Investia issued a warning letter to the Respondent.

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

¶ 29 The Respondent has not been the subject of prior MFDA disciplinary proceedings.

¶ 30 By entering into the Settlement Agreement, the Respondent saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

DISCUSSION

¶ 31 There are several mitigating factors that the Panel considered. These include (a) the fact that there is no evidence that the Respondent received any financial benefit from his conduct set out above, beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner; (b) the fact that there is no evidence of client loss, client complaints, or a lack of authorization, and (c) the fact that the Respondent in his long career in the industry had not previously been the subject of a MFDA disciplinary proceeding. In addition, the Respondent has cooperated with MFDA staff throughout the course of its investigation and these proceedings, was present at the Hearing, and has admitted the allegations; by admitting the facts and contraventions described above, the Respondent has saved the MFDA

significant time and resources associated with conducting a full hearing on the allegations.

¶ 32 MFDA hearing panels have considered the following when determining whether a proposed settlement should be accepted.¹ Hearing panels agree that these factors remain relevant as guidelines in determining whether or not to accept a proposed settlement agreement:

- (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 satisfactorily addresses the issues of both specific and general deterrence with respect to the Respondent and the industry, respectively;
- (d) whether the proposed settlement 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.

¶ 33 The Panel considered the factors listed in paragraph 32 above. The Panel also considered the precedent cases with similar fact situations and the penalties imposed in those cases, as presented in the submission of MFDA Enforcement Counsel. The Panel took into account Enforcement Counsel's observation that penalties imposed in recent similar cases have been increasing consistently. Finally, Enforcement Counsel pointed out that the Respondent paid to Investia an administration charge and postage fee, and the Panel took this into account.

¶ 34 The MFDA considers the protection of investors to be the primary goal of securities regulation. The goals of securities regulation also include fostering public confidence in the capital markets and the securities industry.²

¶ 35 The penalties that are imposed must be sufficient to affirm public confidence in the regulation of the mutual fund industry, and to ensure deterrence.

¶ 36 When asked by the Panel if he had anything to add, the Respondent and his counsel reiterated that they believe that the penalties imposed in the Settlement Agreement are appropriate.

¶ 37 The Panel may accept or reject the recommended Settlement Agreement (Section 24.4.3 of MFDA By-law No. 1). It is accepted practice that hearing panels should not interfere lightly in a negotiated settlement.

DISPOSITION

¶ 38 At the conclusion of the Hearing, the Panel approved a Settlement Agreement entered into by the parties which, *inter alia*, provides as follows:

- (a) the Respondent shall pay a fine in the amount of \$20,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- (b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-law No. 1;
- (c) the Respondent shall in the future comply with MFDA Rule 2.1.1.; and

¹ *Sterling Mutuals Inc. (Re)*, Hearing Panel of the Central Regional Council, File No. 200820, Decision and Reasons dated August 21, 2008

² *Pezim v British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557

- (d) if at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

¶ 39 We are satisfied that the penalty agreed upon is reasonable and that the public's interest is served by the Settlement Agreement, and we agree unanimously that the Settlement Agreement should be accepted.

DATED this 8 day of January 2024

“Richard L. Yaffe”

Richard L. Yaffe, K.C.
Chair

“Richard R. Sydenham”

Richard R. Sydenham
Industry Representative

“Greg Wiebe”

Greg Wiebe
Industry Representative

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