

Re Carter

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Roxanne Marie Carter

2024 CIRO 16

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: June 27, 2023, by electronic hearing

Decision: June 27, 2023

Reasons for Decision: January 15, 2024

Hearing Panel:

Thomas J. Lockwood, K.C., Chair

Edward Jackson, Industry Representative

Joseph Yassi, Industry Representative

Appearances:

Brendan Forbes and Tyler Beazer, Enforcement Counsel, Canadian Investment Regulatory Organization

Roxanne Marie Carter, Respondent

REASONS FOR DECISION

I. INTRODUCTION

¶ 1 By Notice of Hearing, dated the 22nd day of December, 2022, the following Allegations were made against Roxanne Marie Carter (“Respondent”):

Allegation #1: Between March 2017 and January 2020, the Respondent altered, and used to process transactions, 7 account forms in respect of 7 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

Allegation #2: Between January 2016 and March 2019, the Respondent obtained and possessed, and used to process transactions, 35 pre-signed account forms in respect of 6 clients, contrary to MFDA Rule 2.1.1.

¶ 2 On January 1, 2023, the Mutual Fund Dealers Association of Canada (“MFDA”) and the Investment Industry Regulatory Organization of Canada were consolidated into a single self-regulatory organization recognized under applicable securities legislation called the Canadian Investment Regulatory Organization (“CIRO” or the “Corporation”). CIRO adopted interim rules that, *inter alia*, incorporate the pre-amalgamation regulatory requirements contained in the by-laws, rules and policies of the MFDA.

¶ 3 The First Appearance in this proceeding took place on March 14, 2023. At the First Appearance, the parties agreed that the Hearing on the Merits would take place, by videoconference, on June 27, 2023, commencing at 10:00 a.m. (Eastern). An Order was made to this effect. On March 20, 2023, a news release was published announcing the date and time of the Hearing on the Merits.

¶ 4 On May 12, 2023, CIRO Staff and the Respondent entered into a Settlement Agreement. On June 26,

2023, CIRO issued a news release announcing that a Settlement Hearing would take place on June 27, 2023, at the date and time originally scheduled for the Hearing on the Merits.

¶ 5 On June 27, 2023, the Hearing Panel was formally presented with the executed Settlement Agreement. This Settlement Agreement had been prepared in accordance with Section 24.4 of MFDA By-law No. 1, with the exception that the notice of the Settlement Hearing did not comply with the time provisions set out in Rule 15.2(1) of the MFDA Rules of Procedure.

¶ 6 Rule 15.2(1) provides as follows:

“15.2 Notice and Public Access

(1.) Except where a settlement is reached after the commencement of the hearing of a proceeding on its merits, a Hearing Panel shall not consider a Settlement Agreement unless at least 10 days’ notice of the settlement hearing has been given by the Corporation in the same manner as a notice of penalty pursuant to section 24.5 (Publication of Notice and Penalties) of MFDA By-law No. 1 specifying:

- a) the date, time and place of the settlement hearing; and
- b) the purpose of the settlement hearing with sufficient information to identify the Member or person involved and the general nature of the allegations which are the subject matter of the settlement.”

¶ 7 At the opening of the Settlement Hearing, CIRO Staff and the Respondent made a joint written and oral request that the Hearing Panel exercise its discretion pursuant to Rules 1.5 and 2.2(1)(a) of the MFDA Rules of Procedure to abridge the ordinary requirement set out in Rule 15.2 that a Settlement Hearing be heard upon 10 days’ notice to the public. We were also mindful of the General Principles set out in Rule 1.3 of the MFDA Rules of Procedure.

¶ 8 Rules 1.3(1), 1.5(1)(b) and 2.2(1)(a) of the Rules of Procedure provide as follows:

“1.3 General Principles

(1) These Rules shall be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with the requirements of fairness.”

“1.5 General Powers of a Panel

- (1) A Panel may:
 - (b) waive or vary any of these Rules at any time, on such terms as it considers appropriate.”

“2.2 Extension or Abridgement of Time

- (1) The time for performance of any obligation under these Rules may be extended or abridged:
 - (a) by a Panel, at any time on such terms as it considers appropriate;”

¶ 9 The parties jointly submitted that it was in the public interest that this Settlement Hearing be conducted in an expeditious manner and there would be no prejudice caused to members of the public if this request was granted because Settlement Hearings are held *in camera* and, therefore, even if the ordinary notice period was provided, members of the public would be excluded from the proceeding unless and until a settlement agreement was accepted by the Hearing Panel.

¶ 10 The Hearing Panel was also referred to a number of previous disciplinary decisions where this type of relief had been granted. These included:

- (a) *Lewis (Re)*, 2022 CanLII 128972 (CMFDA) at para 5.

- (b) *Investia Financial Services Inc. (Re)*, 2019 CanLII 12941 (CMFDA) at para 35.
- (c) *Gowan (Re)*, 2021 CanLII 143027 (CMFDA) at paras 6–9.
- (d) *Wilcott (Re)*, 2019 CanLII 23949 (CMFDA) at paras 1–15.

¶ 11 After considering both the written and oral submissions, as well as the appropriate legislative provisions and the applicable case law, the Hearing Panel was unanimously of the view that this matter should proceed and that we would exercise our discretion to abridge the 10-day notice period in Rule 15.2 of the MFDA Rules of Procedure.

¶ 12 The Hearing Panel then granted the joint request of the parties to move the proceedings “*in camera*” so that the Settlement Agreement could be considered in the absence of the public. This procedure is consistent with Rule 15.2(2) of the MFDA Rules of Procedure.

¶ 13 The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions, both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

¶ 14 After carefully considering the Settlement Agreement and the submissions of the parties, the Hearing Panel unanimously accepted the Settlement Agreement. We made an Order to this effect on June 27, 2023. At that time, we advised that written Reasons would follow. These are those Reasons.

II. SETTLEMENT AGREEMENT

¶ 15 The salient portions of the Settlement Agreement are as follows:

“II. CONTRAVENTIONS

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:
 - a) Between December 2019 and February 2020, the Respondent altered, and used to process transactions, three account forms in respect of two clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1); and
 - b) Between January 2016 and March 2019, the Respondent obtained and possessed, and used to process transactions, 35 pre-signed account forms in respect of three clients, contrary to MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1).

III. TERMS OF SETTLEMENT

5. Staff and the Respondent agree and consent to the following terms of settlement:
 - (a) The Respondent shall pay a fine in the amount of \$10,000 in certified funds, pursuant to s. 24.1.1(b) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b)) in accordance with the following schedule:
 - i) \$2,500 (fine) on or before the last business day of the first month following the date of acceptance of the Settlement Agreement;
 - ii) \$2,500 (fine) on or before the last business day of the second month following the date of acceptance of the Settlement Agreement;
 - iii) \$2,500 (fine) on or before the last business day of the third month following the date of acceptance of the Settlement Agreement; and
 - iv) \$2,500 (fine) on or before the last business day of the fourth month following the date of acceptance of the Settlement Agreement.
 - (b) The Respondent shall pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1 (now

Mutual Fund Dealer Rule 7.4.2);

- (c) if the Respondent fails to make any of the payments of costs and fine described above in subparagraphs (a) and (b) when the payments become due, then any outstanding balance of the fine and costs owed by the Respondent shall become immediately due and payable to the Corporation;
 - (d) the Respondent shall in the future comply with Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1); and
 - (e) the Respondent shall attend on the date set for the Settlement Hearing.
6. Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein and consent to the making of an Order in the form attached as Schedule "A".

IV. AGREED FACTS

Registration History

- 7. Between approximately July 2004 and October 7, 2022, the Respondent was registered in the securities industry.
- 8. Between June 23, 2015 and October 7, 2022, the Respondent was registered in Ontario as a dealing representative with Quadrus Investment Services Ltd. (the "Dealer Member") (formerly a Member of the MFDA).
- 9. Effective October 7, 2022, the Respondent resigned from the Dealer Member, and she is not currently registered in the securities industry in any capacity.
- 10. At all material times, the Respondent conducted business in the London, Ontario area.

Altered Account Forms

- 11. At all material times, the Dealer Member's policies and procedures prohibited Approved Persons from altering or correcting any information on a signed document without having the client initial the document to show that the change was approved.
- 12. Between December 2019 and February 2020, the Respondent altered, and used to process transactions, three account forms in respect of two clients by altering information on the account forms without having the client initial the alterations.
- 13. The account forms consisted of:
 - a) one Switch Form; and
 - b) two Redemption Forms.
- 14. The alterations made by the Respondent consisted of alterations to: redemption amounts, a client signature field, a fund name and number, and dates.

Pre-Signed Account Forms

- 15. At all material times, the Dealer Member's policies and procedures prohibited Approved Persons from obtaining or using pre-signed account forms.
- 16. Between January 2016 and March 2019, the Respondent obtained and possessed, and used to process transactions, 35 pre-signed account forms in respect of three clients.
- 17. The account forms consisted of:
 - a) 19 Switch Forms;
 - b) seven Subsequent Investment Forms;
 - c) six Electronic Fund Transfer (EFT) Forms; and

- d) three Pre-Authorized Chequing (PAC) Forms.

The Dealer Member's Investigation

18. In September 2020, during a branch review, the Dealer Member discovered some of the account forms described above in client files maintained by the Respondent.
19. The Dealer Member commenced an investigation into the Respondent's conduct, and conducted a full review of client files maintained by the Respondent and discovered the remaining account forms described above.
20. The Dealer Member did not identify any additional instances of the Respondent altering account forms or using pre-signed forms based on its review of client files.
21. As part of the Dealer Member's investigation, in October and November 2020, it sent audit letters along with a portfolio summary to clients whose accounts the Respondent serviced in order to determine that the information on the portfolio summary was accurate and the underlying transactions were authorized. No clients contacted the Dealer Member with any concerns.

Additional Factors

22. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above.
23. There is no evidence of client loss or lack of authorization for the underlying transactions, and no clients have complained to Staff or the Dealer Member.
24. The Respondent has not previously been the subject of MFDA or Corporation disciplinary proceedings.
25. The Respondent states that she is currently unemployed, does not have any sources of income, and relies on credit and a small amount of savings to cover her expenses. As a result, the Respondent is limited in her ability to contribute additional amounts towards a fine and costs than the amounts agreed to in this Settlement Agreement. Staff has received evidence which corroborates the Respondent's information.
26. By entering into this Settlement Agreement, the Respondent has saved the Corporation the time, resources, and expenses associated with conducting a contested hearing on the allegations."

III. THE LAW

A. Standard of Conduct

¶ 16 MFDA Rule 2.1.1 states, in part, as follows:

"2.1.1 **Standard of Conduct.** Each Member and each Approved Person of a Member shall:

- (a) deal fairly, honestly and in good faith with its clients;
- (b) observe high standards of ethics and conduct in the transaction of business;
- (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; . . ."

¶ 17 Rule 2.1.1 is a rule of general application which prescribes the standard of conduct applicable to all registrants in the mutual fund industry. This Rule has been interpreted and applied in a purposive manner in a wide range of circumstances, including cases with similar misconduct as has been admitted to in the case before the Hearing Panel.

- (a) *Breckenridge (Re)*, 2007 CanLII 80232 (CMFDA) at para 71.
- (b) *Izhar (Re)*, 2022 CanLII 115350 (CMFDA) at para 5.
- (c) *Bell (Re)*, 2019 CanLII 12463 (CMFDA) at paras 9–11.

¶ 18 Consequently, it is clear that the Respondent's conduct contravened Rule 2.1.1.

B. Pre-Signed Account Forms

¶ 19 "Pre-signed account forms" is a generic term which applies to a variety of situations where an Approved Person seeks to rely on a client's signature on a document when the signature was not provided by the client at the time the document was completed. Most commonly, an Approved Person obtains a client's signature on a partially or completely blank account form, completes the form, then uses the form to process transactions in the client's account. Members and Approved Persons are only permitted to obtain, use and process forms that are executed by the client after all information on the form has been properly completed.

¶ 20 The use of pre-signed account forms adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation. As the Hearing Panel explained in *Price (Re)*:

"Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading . . . At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client . . . Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account."

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

¶ 21 The MFDA has been warning Approved Persons against the use of pre-signed account forms for a number of years.

Staff Notice #MSN-0035 dated December 10, 2004.

Staff Notice #MSN-0066 dated October 31, 2007, (updated March 4, 2013 and January 26, 2017).

MFDA Bulletin #0661-E dated October 2, 2015.

¶ 22 It is well-established that obtaining pre-signed forms after the publication of Bulletin #0661-E is an aggravating factor.

¶ 23 Hearing Panels have consistently held that obtaining or using pre-signed forms is a contravention of the standard of conduct prescribed under MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1).

Lok (Re), 2020 CanLII 80673 (CMFDA) at para 9.

Bell, supra para 17 at paras 9-10.

¶ 24 The prohibition on the use of pre-signed forms applies regardless of whether:

- (a) the client was aware, or authorized the use, of the pre-signed forms; or
- (b) the forms were used by the Approved Person for discretionary trading or
- (c) other improper purposes.

Price, supra, para 23 at paras 122-124, SBA at Tab 18.

C. Altered Account Forms Are Not Permissible

¶ 25 When an Approved Person alters information on an account form without having the client initial the alteration to show that the client is aware of the change and has authorized it, the Approved Person engages in conduct that is contrary to MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1).

Lok, supra para 20 at para 9.

Bell, supra para 17 at paras 9–10.

¶ 26 As with “pre-signed forms”, the MFDA has previously warned Approved Persons against altering account forms without having the client initial the form to show that they are aware of the change.

MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017).

MFDA Bulletin #0661-E dated October 2, 2015.

¶ 27 The above reasoning in *Price*, as to why pre-signed forms affect the integrity and reliability of account documents, also applies to altered forms. Unlike pre-signed account forms, where the client knows he or she is signing an incomplete form to be used in some way, in the case of a form altered by the Approved Person, the possibility exists that the client is unaware of the Approved Person’s actions.

¶ 28 In both MFDA Bulletin #0661-E, dated October 2, 2015, and Staff Notice #MSN-0066, updated on January 26, 2017, Approved Persons were advised that Staff would be seeking enhanced penalties for conduct which occurred after October 2, 2015.

¶ 29 Hearing Panels have accepted that conduct occurring post-Bulletin is an aggravating factor:

“In the view of this Hearing Panel, the amount of the fine in this instance together with the extent of the suspension are appropriate, taking into account the nature of the conduct, as well as the aggravating factor of its occurrence subsequent to the issuance of MFDA Bulletin #0661-E on October 2, 2015, the contents of which, the Respondent was, or should have been, well aware.”

Owen (Re), [2017] Hearing Panel of the Prairie Regional Council, MFDA File No. 201784, Panel Decision dated December 7, 2017, at para 44.

¶ 30 The Respondent admits that she altered, and used to process transactions, three account forms in respect of two clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1).

Settlement Agreement at para 4.

IV. PRINCIPLES AND FACTORS REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS

¶ 31 Investor protection is the primary goal of securities regulation. In addition to protecting investors from unfair, improper or fraudulent practices, the goals of securities regulation include fostering public confidence in the capital markets and the securities industry. Settlements play an important and necessary role in meeting these objectives.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 SCR 557.

Breckenridge, supra para 17 at para 10.

Lewis (Re), 2018 CanLII 43822 (CMFDA) at paras 16–17.

¶ 32 In our view, the role of a Hearing Panel in a Settlement Hearing is not the same as its role in making a penalty determination after a contested Hearing. In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

¶ 33 Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

- (i) Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors.
- (ii) Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct

of the Respondent as set out in the Settlement Agreement.

- (iii) Whether the Settlement Agreement addresses the issues of both specific and general deterrence.
- (iv) Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future.
- (v) Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets.
- (vi) Whether the Settlement Agreement will foster confidence in the integrity of the MFDA.
- (vii) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

Jacobson (Re), [2007], Hearing Panel of the Prairie Regional Council, MFDA File No. 200712, Reasons for Decision, dated July 13, 2007, at para 70.

¶ 34 Previous Hearing Panels have also identified a number of additional factors which should be considered when determining whether the penalty sought to be imposed is appropriate. These include:

- (a) The seriousness of the allegations proved against the Respondent.
- (b) The Respondent's past conduct, including prior sanctions.
- (c) The Respondent's experience in the capital markets.
- (d) The level of the Respondent's activity in the capital markets.
- (e) Whether the Respondent recognizes the seriousness of the improper activity.
- (f) The harm suffered by investors as a result of the Respondent's activities.
- (g) The benefits received by the Respondent as a result of the improper activity.
- (h) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction.
- (i) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities.
- (j) 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.
- (k) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets.
- (l) Previous decisions made in similar circumstances.

Headley [Re], 2006, Hearing Panel of the Central Regional Council, MFDA File No. 200509, Reasons for Decision dated February 21, 2006 at para 85.

¶ 35 When determining whether a penalty agreed upon by the parties is appropriate, the Hearing Panel may also consider the MFDA's Sanction Guidelines ("Guidelines") which came in to effect on November 15, 2018. The Guidelines are not mandatory or binding on the Hearing Panel but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed above, which have been considered in previous decisions of MFDA Hearing Panels, are also reflected and described in the Guidelines.

V. CONSIDERATIONS IN THE PRESENT CASE

(a) Nature of the Misconduct

¶ 36 We agree with the submissions of Staff that the use of pre-signed forms and altered forms, as detailed in the Settlement Agreement, are serious breaches of MFDA Rule 2.1.1.

¶ 37 The conduct is further aggravated by the fact that the Respondent engaged in the misconduct after the

issuance of MFDA Bulletin #0661-E on October 2, 2015 and MSN-0066 on October 31, 2007. All of the account forms were obtained and altered post-Bulletin and Member Staff Notice.

(b) The Respondent's Past Conduct Including Prior Sanctions

¶ 38 The Respondent has not previously been the subject of MFDA disciplinary proceedings.

(c) The Respondent's Experience in the Capital Markets

¶ 39 The Respondent was registered in the securities industry from July 2004 to October 2022. We find that the Respondent was experienced in the industry and knew, or ought to have known, of her regulatory obligations as an Approved Person.

(d) The Respondent's Recognition of the Seriousness of her Misconduct

¶ 40 The Respondent's misconduct arose from transactions relating to five clients whose accounts she serviced. Upon discovery of deficient account forms in client files maintained by the Respondent, the Dealer Member conducted a full review of her client files. Apart from the deficient forms at issue in this proceeding, the Dealer Member's review did not identify any additional instances of the Respondent altering or obtaining pre-signed forms.

Settlement Agreement at paras 18–21.

¶ 41 Based on her admissions, the Respondent has acknowledged that her conduct constitutes a serious contravention of MFDA Rules. By entering into the Settlement Agreement, the Respondent has accepted responsibility for her actions, and has saved CIRO the time, resources and expenses associated with conducting a full disciplinary hearing to resolve the matter.

Settlement Agreement at para 26.

(e) Harms Suffered by Investors

¶ 42 There is no evidence of any lack of authorization or financial loss to clients resulting from the Respondent's conduct. No clients have complained to the Dealer Member or Staff.

Settlement Agreement at para 23.

(f) Financial Benefits Received by the Respondent

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

Settlement Agreement at para 22.

(g) Deterrence

¶ 44 In our view, the proposed penalty will specifically deter the Respondent from engaging in similar activity by imposing a meaningful sanction upon her which reflects the seriousness of the misconduct at issue.

¶ 45 The proposed penalty will also act as a general deterrent by reinforcing the message that obtaining and using pre-signed forms and altering account forms without obtaining client initials will not be tolerated within the mutual fund industry and will result in both a fine and prohibition against Approved Persons who engage in this misconduct.

(h) Respondent's Inability to Pay

¶ 46 The Respondent in this matter has advised Staff that she has limited financial means. The Respondent states she is currently unemployed, does not have any sources of income, and relies on credit and a small amount of savings to cover her expenses. As a result, she is unable to pay a monetary penalty that is greater than the total of the fine and cost amounts set out in the Settlement Agreement. CIRO Staff has advised the Hearing Panel that it has received evidence which corroborates the Respondent's statements.

Settlement Agreement at para 25.

¶ 47 The Guidelines state that a Respondent's ability to pay is one of the factors that may be considered when a Hearing Panel is assessing a proposed monetary sanction. The Guidelines also explicitly state that the burden is on the Respondent to raise the issue and to provide evidence of a bona fide inability to pay, which may result in the reduction or waiver of a fine.

MFDA Sanction Guidelines, *supra* para 35.

¶ 48 As discussed by the Hearing Panel in *Ramjohn*, in instances of a bona fide inability to pay, the imposition of a reduced fine as a result of a Respondent's limited financial means strikes an appropriate balance between the objective of imposing a penalty proportionate to the gravity of the misconduct and the competing general deterrence principle. An inability to pay argument "will not necessarily permit one to completely escape a monetary penalty" or other significant sanction.

Ramjohn (Re), 2021 CanLII 134670 (CMFDA) at para 24.

¶ 49 In our view, the proposed penalty appropriately considers the Respondent's limited financial resources.

(i) Previous Decisions Made in Similar Circumstances

¶ 50 Staff provided the Hearing Panel with a detailed chart seeking to show that the proposed resolution is within the reasonable range of appropriateness with regard to other decisions made by MFDA Hearing Panels in similar circumstances.

¶ 51 The following cases were discussed:

- (a) *Morra (Re)*, 2021 Can LII 49773 (CMFDA)
- (b) *Liu (Re)*, 2022 Can LII 70907 (CMFDA)
- (c) *McTavish (Re)*, 2022 CanLII 115325 (CMFDA)
- (d) *Ramjohn (Re)*, 2021 CanLII 134670 (CMFDA)
- (e) *Belsky (Re)*, 2023 CanLII 25858 (CMFDA)
- (f) *Johnstone (Re)* 2020 CanLII 99162 (CMFDA)

VI. DECISION

¶ 52 After a thorough review of the factors by which we should be guided, and the facts of this case, as reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing.

VII. ORDER

¶ 53 After accepting the Settlement Agreement, we made the following Order:

- (a) The Respondent shall pay a fine in the amount of \$10,000 in certified funds, pursuant to s. 24.1.1(b) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b)) in accordance with the following schedule:
 - (i) \$2,500 (fine) on or before July 31, 2023;
 - (ii) \$2,500 (fine) on or before August 31, 2023;
 - (iii) \$2,500 (fine) on or before September 29, 2023; and
 - (iv) \$2,500 (fine) on or before October 31, 2023.
- (b) The Respondent shall pay costs in the amount of \$5,000 in certified funds on the date of this Order, pursuant to s. 24.2 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.2);
- (c) If the Respondent fails to make any of the payments described above in paragraph (a) when the payments become due, then the unpaid balance owed by the Respondent shall immediately

become due and payable to CIRO;

- (d) The Respondent shall in the future comply with Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1); and
- (e) If at any time a non-party to this proceeding, with the exception of the bodies set out in the Mutual Fund Dealer Rule 6.3, requests production of or access to exhibits in this proceeding that contain personal information as defined by CIRO's Privacy Policy, then the Corporate Secretary's Office, Mutual Fund Dealer Division of CIRO 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 Mutual Fund Dealer Rules of Procedure.

Dated this 15 day of January, 2024.

"Thomas J. Lockwood"

Thomas J. Lockwood, K.C., Chair

"Edward Jackson"

Edward Jackson, Industry Representative

"Joseph Yassi"

Joseph Yassi, Industry Representative

IN THE MATTER OF:

THE MUTUAL FUND DEALER RULES¹

AND

ROXANNE MARIE CARTER

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA (the “Corporation”) will announce that it proposes to hold a hearing (the “Settlement Hearing”) to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, a hearing panel (the “Hearing Panel”) should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the Corporation (“Staff”) and Roxanne Marie Carter (the “Respondent”).
2. Staff and the Respondent, consent and agree to the terms of this Settlement Agreement.
3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

II. CONTRAVENTIONS

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:
 - a) Between December 2019 and February 2020, the Respondent altered, and used to process transactions, three account forms in respect of two clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1); and
 - b) Between January 2016 and March 2019, the Respondent obtained and possessed, and used to process transactions, 35 pre-signed account forms in respect of three clients, contrary to MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1).

III. TERMS OF SETTLEMENT

5. Staff and the Respondent agree and consent to the following terms of settlement:

¹ On January 1, 2023, the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Mutual Fund Dealers Association of Canada (the “MFDA”) were consolidated into a single self-regulatory organization that is temporarily called the New Self-Regulatory Organization of Canada (referred to herein as the “Corporation”) and is recognized under applicable securities legislation. The Corporation adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the “Interim Rules”). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Pursuant to Mutual Fund Dealer Rule 1A and s. 14.6 of By-law No. 1 of the Corporation, contraventions of former MFDA regulatory requirements may be enforced by the Corporation. Pursuant to Mutual Fund Dealer Rule 1A, MFDA By-law No. 1 continues to be applicable to this proceeding.

- a) The Respondent shall pay a fine in the amount of \$10,000 in certified funds, pursuant to s. 24.1.1(b) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b)) in accordance with the following schedule:
 - i. \$2,500 (fine) on or before the last business day of the first month following the date of acceptance of the Settlement Agreement;
 - ii. \$2,500 (fine) on or before the last business day of the second month following the date of acceptance of the Settlement Agreement;
 - iii. \$2,500 (fine) on or before the last business day of the third month following the date of acceptance of the Settlement Agreement; and
 - iv. \$2,500 (fine) on or before the last business day of the fourth month following the date of acceptance of the Settlement Agreement.
- b) The Respondent shall pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.2);
- c) if the Respondent fails to make any of the payments of costs and fine described above in subparagraphs (a) and (b) when the payments become due, then any outstanding balance of the fine and costs owed by the Respondent shall become immediately due and payable to the Corporation;
- d) the Respondent shall in the future comply with Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1); and
- e) the Respondent shall attend on the date set for the Settlement Hearing.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein and consent to the making of an Order in the form attached as Schedule "A".

IV. AGREED FACTS

Registration History

- 7. Between approximately July 2004 and October 7, 2022, the Respondent was registered in the securities industry.
- 8. Between June 23, 2015 and October 7, 2022, the Respondent was registered in Ontario as a dealing representative with Quadrus Investment Services Ltd. (the "Dealer Member") (formerly a Member of the MFDA).
- 9. Effective October 7, 2022, the Respondent resigned from the Dealer Member, and she is not currently registered in the securities industry in any capacity.
- 10. At all material times, the Respondent conducted business in the London, Ontario area.

Altered Account Forms

- 11. At all material times, the Dealer Member's policies and procedures prohibited Approved Persons from altering or correcting any information on a signed document without having the client initial the document to show that the change was approved.
- 12. Between December 2019 and February 2020, the Respondent altered, and used to process transactions, three account forms in respect of two clients by altering information on the account forms without having the client initial the alterations.
- 13. The account forms consisted of:
 - a) one Switch Form; and
 - b) two Redemption Forms.

14. The alterations made by the Respondent consisted of alterations to: redemption amounts, a client signature field, a fund name and number, and dates.

Pre-Signed Account Forms

15. At all material times, the Dealer Member's policies and procedures prohibited Approved Persons from obtaining or using pre-signed account forms.

16. Between January 2016 and March 2019, the Respondent obtained and possessed, and used to process transactions, 35 pre-signed account forms in respect of three clients.

17. The account forms consisted of:

- a) 19 Switch Forms;
- b) seven Subsequent Investment Forms;
- c) six Electronic Fund Transfer (EFT) Forms; and
- d) three Pre-Authorized Chequing (PAC) Forms.

V. The Dealer Member's Investigation

18. In September 2020, during a branch review, the Dealer Member discovered some of the account forms described above in client files maintained by the Respondent.

19. The Dealer Member commenced an investigation into the Respondent's conduct, and conducted a full review of client files maintained by the Respondent and discovered the remaining account forms described above.

20. The Dealer Member did not identify any additional instances of the Respondent altering account forms or using pre-signed forms based on its review of client files.

21. As part of the Dealer Member's investigation, in October and November 2020, it sent audit letters along with a portfolio summary to clients whose accounts the Respondent serviced in order to determine that the information on the portfolio summary was accurate and the underlying transactions were authorized. No clients contacted the Dealer Member with any concerns.

Additional Factors

22. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above.

23. There is no evidence of client loss or lack of authorization for the underlying transactions, and no clients have complained to Staff or the Dealer Member.

24. The Respondent has not previously been the subject of MFDA or Corporation disciplinary proceedings.

25. The Respondent states that she is currently unemployed, does not have any sources of income, and relies on credit and a small amount of savings to cover her expenses. As a result, the Respondent is limited in her ability to contribute additional amounts towards a fine and costs than the amounts agreed to in this Settlement Agreement. Staff has received evidence which corroborates the Respondent's information.

26. By entering into this Settlement Agreement, the Respondent has saved the Corporation the time, resources, and expenses associated with conducting a contested hearing on the allegations.

VI. ADDITIONAL TERMS OF SETTLEMENT

27. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.4) and Rules 14 and 15 of the Mutual Fund Dealer Rules of Procedure.

28. The Settlement Agreement is subject to acceptance by the Hearing Panel. At or following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law

No. 1 (now Mutual Fund Dealer Rule 7.3.5) and Rule 15.2(2) of the Mutual Fund Dealer Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

29. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

30. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted at the settlement hearing, subject to Rule 15.3 of the Mutual Fund Dealer Rules of Procedure;
- b) the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal before the Board of Directors of the Corporation or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;
- c) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the Mutual Fund Dealer Rules against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in this Settlement Agreement, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to section 24.1.1 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.5); and
- e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

31. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under Mutual Fund Dealer Rule 7.4.3 against the Respondent based on, but not limited to, the facts set out in this Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

32. If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 (now Mutual Fund Dealer Rules 7.3 and 7.4), unaffected by the Settlement Agreement or the settlement negotiations.

33. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law. The terms of the Settlement Agreement, including the attached Schedule "A", will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

34. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile or electronic copy of any signature shall be as effective as an original signature.

DATED this 12th day of May, 2023.

“Roxanne Carter”

Roxanne Carter

“RW”

Witness – Signature

RW

Witness – Print name

“Charles Toth”

Per: Charles Toth

New Self-Regulatory Organization of Canada,
Vice-President, Enforcement (Mutual Fund Dealers)

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Roxanne Marie Carter

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 (now Mutual Fund Dealer Rules 7.3 and 7.4) in respect of a disciplinary proceeding commenced against Roxanne Marie Carter (the "Respondent");

AND WHEREAS on January 1, 2023, the MFDA and the Investment Industry Regulatory Organization of Canada ("IIROC") consolidated to form the New Self-Regulatory Organization of Canada (the "Corporation");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the Corporation dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to sections 20 and 24.1 of MFDA By-law No. 1 (now Mutual Fund Dealer Rules 7.3 and 7.4.1);

AND WHEREAS on [date], the Corporation provided notice to the public of a Settlement Hearing in respect of the Respondent;

AND WHEREAS based upon the admissions of the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that the Respondent:

- a) Between December 2019 and February 2020, the Respondent altered, and used to process transactions, three account forms in respect of two clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1); and
- b) Between January 2016 and March 2019, the Respondent obtained and possessed, and used to process transactions, 35 pre-signed account forms in respect of three clients, contrary to MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1).

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

¶ 1 The Respondent shall pay a fine in the amount of \$10,000 in certified funds, pursuant to s. 24.1.1(b) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b)) in accordance with the following schedule:

- a) \$2,500 (fine) on or before [Date];
- b) \$2,500 (fine) on or before [Date];
- c) \$2,500 (fine) on or before [Date]; and
- d) \$2,500 (fine) on or before [Date];

¶ 2 The Respondent shall pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.2);

¶ 3 If the Respondent fails to make any of the payments of the fine and costs described above in paragraphs (1) and (2) when the payments become due, then any outstanding balance of the fine and costs owed by the Respondent shall become immediately due and payable to the Corporation;

¶ 4 The Respondent shall in the future comply with Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1); and

¶ 5 If at any time a non-party to this proceeding, with the exception of the bodies set out in Mutual Fund Dealer Rule 6.3 (formerly 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 Corporation's Privacy Policy, then the Corporate Secretary's Office, Mutual Fund Dealer Division of the Corporation 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 Mutual Fund Dealer Rules of Procedure.

DATED this [day] day of [month], 202[].

Name,

Chair

Name,

Industry Representative

Name,

Industry Representative

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