



**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: David Ewart**

Heard: August 27, 2015 in Toronto, Ontario  
Reasons for Decision: September 11, 2015

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Mark J. Sandler	Chair
Brigitte J. Geisler	Industry Representative
Guenther Kleberg	Industry Representative

Appearances:

Sarah Glickman	)	For the Mutual Fund Dealers Association of
	)	Canada
	)	
	)	
David Ewart	)	The Respondent, self-represented

## **Introduction**

1. On July 17, 2015, the Mutual Fund Dealers Association of Canada (“the MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of MFDA By-law No. 1 in respect of David Ewart (the “Respondent”).
2. The Respondent entered into a Settlement Agreement with MFDA Staff, dated July 15, 2015, in which he agreed to a proposed settlement of matters.
3. On August 27, 2015, after hearing submissions from counsel, we approved the Settlement Agreement, and signed an Order reflecting that approval. These are our written reasons for doing so.

## **Agreed Facts**

### ***Registration History***

4. The Respondent has been registered in the mutual fund industry since 1986. Since May 2002, he has been registered as a mutual fund salesperson (now known as a Dealing Representative) in Ontario with FundEX Investments Inc. (“FundEX”), a member of the MFDA. At all material times, the Respondent conducted business in Richmond Hill, Ontario.

### ***Pre-Signed Account Forms***

5. At all material times, FundEX’s policies and procedures prohibited its Representatives, including the Respondent, from holding blank or partially complete pre-signed forms.
6. Between April 2008 and March 2013, the Respondent, obtained, maintained, and in some instances, used to process trades, a total of 47 blank pre-signed forms in respect of 26 clients. In particular, the Respondent:

- a) obtained and maintained six blank pre-signed order entry forms; and
- b) obtained and used to process trades, 40 photocopies of blank pre-signed order entry forms and one blank pre-signed order entry form.

### ***Altered Account Forms***

7. Between April 2008 and March 2013, the Respondent obtained, altered, and used to process transactions, five client account forms after those forms were signed by the client (including order entry forms and new client application forms) in respect of six clients.

8. The forms were altered for the purpose of correcting information to reflect client instructions.

### ***Post-Detection***

9. FundEX's compliance staff detected the misconduct as a result of an audit of the Respondent's client files on March 20, 2013.

10. As part of its investigation, FundEX sent letters to all clients serviced by the Respondent to determine whether he had engaged in any unauthorized trading in their accounts. None of the clients reported any concerns to FundEX.

11. At FundEX's request, the Respondent also obtained original signatures for all of the forms in question. During this process, the affected clients all confirmed they had authorized the transactions.

12. The Respondent had not obtained limited trade authorizations for any of the transactions set out in paragraphs 6 and 7 above.

13. On May 23, 2013, the Respondent acknowledged in writing that the use of pre-signed account forms contravenes the rules and stated, "the overwhelming reason/pressure for this

procedure has been for the convenience of the client. I might go further to say there may have been an element of convenience for myself.”

14. FundEX placed the Respondent under close supervision from May 2013 to September 2013 and charged the Respondent \$1,500 in respect of this supervision.

15. In February 2015, FundEX conducted a branch audit of the Respondent, which revealed no evidence of the use or maintenance of pre-signed forms.

### ***Additional Factors***

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

17. The Respondent cooperated with FundEX’s investigation into his conduct.

18. The Respondent now understands the seriousness of his actions.

19. The Respondent has not previously been the subject of MFDA disciplinary proceedings. However, during a routine compliance audit of the Respondent’s files conducted in June 2008, FundEX compliance staff detected two pre-signed blank forms in the Respondent’s client files. In August 2008, the Respondent signed an “Acknowledgement and Undertaking” form, in which he agreed to stop using pre-signed forms of any type in relation to transactions or other activities involving client accounts.

20. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing into the allegations.

## Analysis

21. The Respondent admits that, between April 2008 and March 2013, he obtained, maintained, and in some instances, used to process trades, 47 pre-signed forms in respect of 26 clients; and altered and used to process transactions, five client account forms in respect of six clients, contrary to MFDA Rule 2.1.1.

22. The Settlement Agreement provides that:

- a) the Respondent shall pay a fine in the amount of \$15,000 pursuant to Rule 24.1.1(b) of MFDA By-law No.1;
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No.1; and
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1.

23. As is reflected in our jurisprudence, a hearing panel should not interfere lightly in a negotiated settlement. More specifically, it should not reject a Settlement Agreement unless it views the proposed disposition as clearly falling outside the range of reasonableness. In our view, the Settlement Agreement is not contrary to the public interest, and falls within the range of reasonable outcomes available to us in the circumstances.

24. In so concluding, we have considered the following factors:

- a) The Nature of the Misconduct – A large number of pre-signed forms were obtained and/or maintained (47 in total), and in some instances used to process trades. As well, five client account forms were altered and used to process transactions. This constitutes serious misconduct.
- b) The Respondent's Prior Conduct – The Respondent has not been the subject of previous MFDA disciplinary proceedings. However, a significant aggravating feature here was that a routine compliance audit in June 2008 detected two pre-signed account forms in the Respondent's files. As a result, in August 2008, the Respondent

signed an Acknowledgement and Undertaking in which he agreed to stop using pre-signed account forms. His misconduct represented a violation of his own Acknowledgement and Undertaking.

- c) No Client Harm – There is no evidence of any client harm. The member canvassed all of the clients serviced by the Respondent to determine whether he engaged in any unauthorized trading activity. No client complaints were received. The Respondent's alteration of account forms was done to correct information so as to reflect client instructions.
- d) No Extraordinary Benefits Received by the Respondent – There is no evidence that the Respondent received any financial benefit from engaging in the misconduct, beyond the ordinary commissions or fees associated with the subject transactions.
- e) The Respondent's Acceptance of Responsibility – The Respondent has accepted responsibility for his misconduct, cooperated with the MFDA's investigation and, through the Settlement Agreement, spared the MFDA the costs associated with a contested hearing. The proposed fine and costs were paid by the Respondent already, and held in escrow, pending our consideration of the Settlement Agreement.

25. The Respondent is a very experienced Dealing Representative. He advised us that he never appreciated the importance of the prohibition against the use of pre-signed forms until someone explained to him how pre-signed forms could also be misused for malevolent purposes.

26. The use of pre-signed forms raises a host of concerns. For example, an unscrupulous Representative may utilize these forms to misappropriate or otherwise place client funds at risk. A pre-signed form also promotes sloppiness, and makes it more likely that a client's instructions will inadvertently not be followed. Properly completed forms better ensure informed decision-making, and also provide some protection for the Representative from an allegation that he or she misunderstood or failed to follow the client's instructions.

27. We accept that the Respondent may not have fully appreciated the importance of the prohibition against using pre-signed forms. However, it was his responsibility to ensure that he understood and complied with existing rules. More importantly, regardless of his views or level

of appreciation, he was obligated to comply with his undertaking not to use pre-signed forms. An undertaking is a solemn pledge that others are entitled to rely upon. Misconduct in violation of an undertaking is a significant aggravating factor.

28. We have also considered the existing precedents on penalty, as well as the MFDA non-binding Penalty Guidelines.

29. The proposed fine is a significant one for the Respondent. While a suspension might have also been imposed in the circumstances in light of the Respondent's disregard of his earlier undertaking, we are satisfied that the Settlement Agreement is not contrary to the public interest. It falls within the range of reasonable outcomes available to us.

### **Order**

30. For these reasons, the Settlement Agreement was approved.

31. We are grateful to the parties for their assistance.

**DATED** this 11<sup>th</sup> day of September, 2015.

“Mark J. Sandler”

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Mark J. Sandler  
Chair

“Brigitte J. Geisler”

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Brigitte J. Geisler  
Industry Representative

“Guenther Kleberg”

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