Reasons for Decision

File No. 201242

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: Mervyn Jacheil Fried

Heard: October 15, 2014, in Toronto, Ontario
Reasons for Decision: November 10, 2014

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. P. T. Galligan, Q.C.	Chair
Brigitte J. Geisler	Industry Representative
Robert C. White	Industry Representative

Appearances:

Shelly Feld	)))	Senior Enforcement Counsel, Mutual Fund Dealers Association of Canada
Robert Brush and Michael Byers	)))	For the Respondent, who appeared personally

1. The Staff of the Mutual Fund Dealers Association ("MFDA") and the Respondent entered into a settlement agreement which they had negotiated pursuant to s. 24.4.1 of MFDA By-law No. 1. They submitted the settlement agreement to this Hearing Panel, pursuant to Rule of Procedure 15.1, for approval or rejection. After considering the settlement agreement, the other material filed and upon hearing the submissions made by Enforcement Counsel and by counsel for the Respondent, we issued an order accepting the settlement agreement. These are our reasons for making that order.

PRELIMINARY MATTER

2. The Notice required by Rule 15 of MFDA Rules of Procedure was not given within the ten days required by that rule. Enforcement Counsel satisfied us that all persons who had a direct interest in the proceeding had been made aware of the Settlement Hearing and that the required notice had now been given. In the exercise of our powers under Rule 2.2, we abridged the time required so that the Settlement Hearing could proceed.

THE CONTRAVENTIONS

3. The Respondent has admitted to the following contraventions:

Allegation #1: Between June and July 2008, the Respondent failed to:

(a) use due diligence to learn the essential facts relative to clients DH and EH and two joint accounts that he opened for them in order to ensure, among other things, that any recommendations made and orders accepted for the clients would be suitable, contrary to MFDA Rule 2.2.1(a); and
(b) obtain a New Account Application Form ("NAAF") signed and dated by clients DH and EH in respect of each of the two joint accounts he opened for them, contrary to MFDA Rule 2.2.2.

Allegation #2: Between June 2008 and April 2009, the Respondent engaged in authorized discretionary trading in the two joint accounts of clients DH and EH by using blank order

entry forms signed by the clients, or photocopies of the blank signed order entry forms, to purchase mutual funds in the accounts without obtaining instructions from the clients with respect to:

(a) the mutual funds to be purchased; and
(b) the amount of each mutual fund to be purchased;

contrary to MFDA Rules 2.3[1] and 2.1.1 and the terms of his registration as a mutual fund salesperson.

Allegation #3: Between June 2008 and April 2009, the Respondent failed to ensure that the trades he made in the two joint accounts of clients DH and EH were suitable for the clients, in keeping with the clients' investment objectives, and within the bounds of good business practice, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #4: Between 2005 and 2010, the Respondent collected a total amount of approximately $9,953 in remuneration or fees from at least 21 clients in respect of business conducted by the Respondent on behalf of the member, contrary to MFDA Rules 2.4.1, 1.1.1(b) and 2.1.1.

Allegation #5: Between 2005 and 2010, the Respondent:

(a) obtained and maintained blank pre-signed forms for at least 9 clients, including at least 7 forms that could be used to process trades in client accounts;
(b) processed trades in 23 client accounts using documents containing client signatures photocopied from blank pre-signed forms;
(c) processed trades for 19 clients without a client signature or a limited trading authorization on file;
(d) processed trades for 8 clients (for whom there was a signed limited trading

[1] Amendments to the MFDA Rules were implemented in December 11, 2008. In this proceeding, Staff is relying on the version of MFDA Rule 2.3 that was in force in June 2008.

authorization on file) without a client signature or any records of trading instructions received from the client and without indicating on the trade ticket that the trade was processed using a limited trading authorization; and

(e) processed trades for 3 clients using the client signature of a third party who did not have trading authority on the client account and without evidence on file that the third party had been granted power of attorney or trading authorization on the account;

contrary to MFDA rules 2.3 and 2.1.1.

TERMS OF SETTLEMENT

4. The Respondent agrees to the following terms of settlement:

(a) the Respondent is prohibited from re-applying for registration as an Approved Person or conducting securities related business while in the employ of or associated with any Member of the MFDA for a period of 4 months from the date that this Settlement Agreement is accepted by a Hearing Panel of the MFDA;

(b) the Respondent shall pay a fine in the amount of $30,000 within 30 days of the date when this Settlement Agreement is accepted by a Hearing Panel of the MFDA;

(c) the Respondent shall immediately make a voluntary payment to clients DH and EH in the amount of $25,000;

(d) the Respondent shall pay costs in the amount of $10,000 within 30 days of the date when this Settlement Agreement is accepted by a Hearing Panel of the MFDA;

(e) the Respondent shall successfully complete the Conduct and Practices Handbook course offered by the Canadian Securities Institute or another course acceptable to Staff of the MFDA within 12 months of the date when this Settlement Agreement is accepted by a Hearing Panel of the MFDA;

(f) if the Respondent fails to comply with:

i. subparagraphs (b), (c) and/or (d) above, then without further notice to the Respondent, the Respondent shall summarily be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA;

ii. subparagraph (c) above, then without further notice to the Respondent, the Respondent shall summarily be prohibited from conducting securities related business while in the employ of or associated with any Member of the MFDA until he has complied with subparagraph (e);

(g) the Respondent shall in the future comply with MFDA Rules 2.2, 2.3, 2.4.1, 1.1.1(b) and 2.1.1 by exercising due diligence to learn the essential facts relative to each client and each order and account accepted, ensuring that investment recommendations that are made and orders that are accepted for any account are suitable for the client, ensuring that fees collected from clients relating to any business engaged in by a Member of the MFDA are paid directly to the member and recorded on its books and records, by ceasing the collection or maintenance of forms that have been pre-signed by clients and the Respondent shall not engage in discretionary trading; and

(h) the Respondent will attend in person, on the date set for the Settlement Hearing.

THE CIRCUMSTANCES

5. The circumstances are set out in detail in paragraphs 6-73 of the Settlement Agreement. Those paragraphs form Appendix "A" to these reasons. The following is a very brief summary of them.

6. We start by noting that Enforcement Counsel stressed to us that there is not any suggestion of dishonesty on the part of the Respondent. It is recognized that he always intended to get the best results that he could for his clients when he invested their money.

7. DH and EH had been clients of the Respondent since April 2004. In June 2008 they sold their home. They intended to use the proceeds, approximately $268,000, to purchase a new home which would not be ready until the following year. They wished to invest that money securely in investments which could be readily liquidated so that they would have funds available to complete the purchase of their new home when it was ready. On June 26, 2008 they instructed the Respondent to invest that money for them. Unfortunately, by the time the investments were liquidated and their proceeds delivered to the clients, on April 29, 2009, the value of the investments had decreased by approximately $75,000.

8. The Respondent, as an Approved Person, neglected his obligations to his clients by failing to obtain New Account Application Forms ("NAAF") including new Know-Your-Client ("KYC") information for their new accounts. He also engaged in (authorized) discretionary trading and by selecting investments which were unsuitable for them having regard to their investment objectives, risk tolerance and time horizon.

9. As set out in Allegations #4 and #5, the MFDA investigation discovered that the Respondent collected remuneration from 21 clients in respect of business conducted by him on behalf of the Member and had blank signed forms in his files, and that he had processed trades incorrectly on behalf of a significant number of other clients.

SERIOUSNESS OF THE CONTRAVENTIONS

10. We take a very serious view of all of the contraventions. It is unnecessary to review the jurisprudence which consistently reminds us that each one of those contraventions is in itself a serious matter. The combination of contraventions #1, #2 and #3 led to a very serious loss for the clients. Thus the seriousness of them is particularly grave.

CIRCUMSTANCES OF MITIGATION

11. In determining an appropriate remedy it is always necessary to consider mitigating circumstances. The circumstances of mitigation which we take into account are:

i. The Respondent has no prior disciplinary history after many years of working in the financial services industry.
ii. There is no suggestion of dishonesty or improper motive on the Respondent's part.
iii. He cooperated fully with Staff in its investigation and has admitted his contraventions. That cooperation shows remorse and an intention to fully comply with what is expected of an honest person in the industry.
iv. His admission of the contraventions has resulted in a very shortened hearing with very significant saving to MFDA of precious resources.
v. His voluntary contribution to his clients' loss.

THE DUTY OF A HEARING PANEL AT A SETTLEMENT HEARING

12. It is well settled that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties in their settlement agreement. Rather, our duty is to determine whether the penalty is a reasonable one and whether it meets the objectives of the disciplinary process which are to maintain the integrity of the Investment Services Industry and to protect the public. In *Re Professional Investments (Kingston) Inc.*, [2009] LNCMFDA 9 at paragraph 13 the following appears:

> 13. 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. As has been said: "The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made."
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> Re: Clark (Re), [1999] I.D.A.C.D. No. 40 at page 3.

13. See also *Re Raymer*, [2009] LNCMFDA 15 at paragraph 4:

> 4. It is generally agreed that hearing panels should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness given the conduct of the Respondent. (See, for instance, *Re Rodney Jacobson*, June 11, 2007, Prairie Regional Council, No. 200712; *Re Clark*, [1999] I.D.A.C.D. No. 40, and *Re Milewski*, [1999] I.D.A.C.D. No. 17.).

14. The courts have addressed the importance of settlements and have approved of their place in the disciplinary process. See *B.C. Securities Commission v. Seifert*, [2006] BCJ No. 225, where the following appears at p. 49:

> 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. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. …

15. Finally we refer to the comments of an IIROC Hearing Panel in the recent case of *Re Vorstadt*, [2012] IIROC at p. 4:

> Before leaving this case we wish to stress the importance of respect for the settlement process. Settlement leads to fair, efficient and economical resolution of disciplinary matters. The settlement process should be encouraged and supported. In *Re Clarke*, [1999] I.D.A.C.D. No. 40, the Hearing Panel stated, at p. 3:
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> The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement. [Emphasis added.]
>
> We subscribe to that view.

GUIDELINES AND OTHER DECISIONS

16. In determining whether a settlement is a reasonable one, a hearing panel is entitled to look at regulatory guidelines and other decisions. Guidelines are not binding upon a hearing panel and cannot derogate from its responsibility to decide what might be an appropriate penalty in a given case. However, guidelines are useful in that they show what penalties members of the

industry consider to be generally appropriate. In this case the fine suggested, in its totality, is very much in line with cumulative individual penalties suggested for the applicable contraventions.

17. Decisions in other cases can often be of some assistance in helping to indicate what might be a reasonable range of penalties. It is always necessary to be cautious about relying too heavily on decisions in other cases because no two cases are ever the same. Enforcement counsel has provided us with summaries of nine other cases. The summaries are set out at pages 22-24 of his written submissions. No one of those cases is identical with this one. However when they are viewed broadly, we do not think that the penalties agreed to in this case are unreasonable ones.

IMPACT OF THE PENALTY

18. Monetary penalties are imposed to act as specific and general deterrence. The Respondent is an individual. He is not a large organization. The penalty composed of a fine of $30,000 and costs of $10,000 is a significant penalty. The penalty imposed, in our opinion, is sufficient to act as a specific deterrent to this Respondent and is sufficient to alert all Approved Persons that similar conduct will attract significant consequences.

DECISION

19. At the conclusion of the hearing we withdrew from the hearing room. We considered the circumstances of this case and reached the conclusion that the settlement was a reasonable one. Therefore we accepted it.

DATED this 10th day of November, 2014.

"P. T. Galligan"

The Hon. P. T. Galligan, Q.C.
Chair

“Brigitte J. Geisler”

Brigitte J. Geisler
Industry Representative

“Robert C. White”

Robert C. White
Industry Representative

APPENDIX “A”

AGREED FACTS

Registration History

6. From November 24, 2004 to September 27, 2010, the Respondent was registered in Ontario as a mutual fund salesperson with Equity Associates Inc. (“Equity”), a Member of the MFDA. The Respondent was terminated by Equity after it identified compliance deficiencies during an audit of the Respondent’s client files in August 2010.

7. At all material times herein, the Respondent conducted business from a sub-branch office located in Vaughan, Ontario.

8. Prior to being registered with Equity, the Respondent was registered in Ontario as a mutual fund salesperson:

a) from September 2, 1999 to November 19, 2004, with FundEX Investments Inc. (“FundEX”), a member of the MFDA; and
b) from January 4, 1995 to September 1, 1999, with other mutual fund dealers.

9. The Respondent is not currently registered in the securities industry in any capacity.

Equity Associates Inc.

10. Equity Associates Inc. (“Equity”) became a Member of the MFDA on March 4, 2003.

Clients DH & EH

11. DH and EH are spouses.

12. In April 2004, DH and EH first met with the Respondent (who was then at FundEX). The Respondent had been recommended to them by their son-in-law.

13. DH was born in 1945. He had retired from his job in the fuel-purchasing department at Ontario Hydro in 2003. His investments consisted of some Guaranteed Investment Certificates ("GICs") and an RRSP account at another dealer in which he held some mutual funds.

14. EH was born in 1940. She was still working as a real estate agent but was approaching retirement. She also held some investments in an RRSP account at another dealer.

15. After meeting with the Respondent, EH opened two accounts at FundEX (an RRSP account and an open account) and transferred the investments that she held at the other dealer to FundEX. The Respondent was the mutual fund salesperson responsible for servicing her accounts at FundEX.

16. At the time client EH opened her accounts at FundEX, her New Account Application Form ("NAAF") recorded her investment knowledge as "Novice".

17. In November 2004, the Respondent transferred from FundEX to Equity.

18. On February 15, 2005, client DH opened an RRSP account and an open account at Equity in his own name and transferred the investments that he held at the other dealer to Equity. Client EH also transferred her RRSP account and open account from FundEx to Equity. The Respondent was the mutual fund salesperson at Equity responsible for servicing their respective accounts.

19. The investments that clients DH and EH held in their individual accounts at Equity were for the purpose of supplementing their retirement income. Client DH completed a NAAF for each of his individual accounts at Equity, as did client EH. The KYC section of the NAAFs recorded that they each had "minimal" investment knowledge; that their investment objectives

were "growth" and "income"; and that they had a "medium high" risk tolerance. Client DH identified his time horizon as 10+ years and client EH identified her time horizon as 6-9 years.

20. At all material times, clients DH and EH relied upon and deferred substantially or entirely to the Respondent for investment recommendations and advice.

Spring 2008 - Investment of proceeds from sale of home

21. In August 2007, clients DH and EH instructed the Respondent to change their mailing address on file with Equity because they had purchased a new home from a developer that was being constructed in Innisfil, Ontario and intended to sell their current home located in Newmarket, Ontario.

22. The agreement of purchase and sale for the new house granted the developer considerable flexibility with respect to moving up or pushing back the closing date on limited notice. The closing date was initially projected to be July 23, 2008.

23. The purchase price of the new house was $240,350. Clients DH and EH paid $5,000 in deposits, leaving a balance due on closing of $235,350 plus/less any adjustments and any taxes, fees and other costs. Clients DH and EH also anticipated that they would require money for expenses they expected to incur at or around the time of closing including lifestyle-related expenses.

24. In order to ensure that they had sufficient money available to pay for their closing costs and other expenses, clients DH and EH sold their existing home in June 2008, which yielded net sale proceeds of approximately $268,000.

Contravention #1 – Account Opening

25. On June 26, 2008, clients DH and EH met with the Respondent to discuss the investment of the sale proceeds. On the basis of discussions that occurred and information that was

conveyed to the Respondent at that meeting, the Respondent knew or ought to have known, among other things, that:

a) the projected closing date for the new house had been pushed back to November 26, 2008;
b) EH and DH would need all of the sale proceeds ($268,000) that they were investing with the Respondent to pay the balance due on closing of their new home and cover their other anticipated expenses; and
c) they would need to be able to redeem the investments purchased with the sale proceeds on short notice when the closing date on the new house was determined.

26. At the conclusion of the June 26th 2008 meeting, clients DH and EH instructed the Respondent to open a new joint account for them in which they would hold the investments to be purchased with the proceeds from the house sale. They told the Respondent not to deposit any of the sale proceeds into any of the existing accounts that they had previously opened in their individual names.

27. At the Respondent's request, clients DH and EH provided the Respondent with three cheques at the June 26th 2008 meeting:

a) a cheque payable to Equity in the amount of $200,000;
b) a cheque payable to Equity in the amount of $68,000; and
c) a cheque payable to the Respondent personally in the amount of $2,680.

28. DH and EH do not recall the Respondent explaining to them why he asked that the sale proceeds be divided into two separate cheques of $200,000 and $68,000, nor do they recall the Respondent explaining why he had requested that clients DH and EH provide him with an additional cheque in the amount of $2,680 payable to him personally.[2]

[2] In fact, the third cheque in the amount of $2,680 constituted a fee as described in further detail below.

29. The Respondent did not complete, nor did he ask clients DH or EH to complete, sign and date a NAAF or any KYC forms in respect of two joint accounts that he opened in their names after the June 26, 2008 meeting.

30. At the time, contrary to MFDA Rules, Equity did not require its Approved Persons to complete a new KYC when one or more new accounts were opened for an existing client. The Respondent, therefore, mistakenly believed that he could rely on the KYC information that had previously been recorded for individual accounts of DH and EH and did not have an obligation to complete a NAAF or KYC form for the new joint accounts that he was opening in their names for the investment of the proceeds from the sale of their home. The Respondent also did not prepare or maintain any notes or other documentation recording the clients' KYC information relative to the joint accounts or the content of his discussion with the clients, including in particular their investment objectives, risk tolerance and investment time horizon with respect to the investment of the sale proceeds.

31. When clients DH and EH left the June 26, 2008 meeting with the Respondent, they understood that the Respondent would invest the proceeds from the sale of their home in a manner that would preserve the principal amount invested and enable them to access the money on short notice when the sale of their new home was scheduled to close.

32. On July 4, 2008, the Respondent opened two new joint accounts at Equity in the names of clients DH and EH without NAAFs or KYC documents for the new accounts.

33. The Respondent admits that by failing to use due diligence to learn and record the essential facts relative to the two new joint accounts, including in particular the clients' risk tolerance, time horizon and investment objectives relative to two new joint accounts, the Respondent failed to comply with MFDA Rule 2.2.1(a) and that by failing to obtain a NAAF signed and dated by the clients in respect of each of the new joint accounts, the Respondent failed to comply with MFDA Rule 2.2.2.[3]

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[3] Amendments were made to MFDA Rule 2.2 in December 2010. In this proceeding, the applicable version of the Rule is the one that was in force in June 2008.

Contravention #2 – (Authorized) discretionary trading

34. During the June 26th meeting, the Respondent obtained the signatures of clients DH and EH on blank order entry forms that he used to process trades in client accounts at Equity.

35. On July 4, 2008, the Respondent arranged for the $68,000 cheque from clients DH and EH to be deposited into one of the two new joint accounts that he had opened (the "Small Joint Account") and the $200,000 cheque to be deposited into the other new joint account (the "Large Joint Account").

36. The Respondent made one or more photocopies of a blank order entry form that had been signed by clients DH and EH and filled in forms to purchase 7 mutual funds in the Small Joint Account and 16 mutual funds in the Large Joint Account. The Respondent also wrote in the date "July 4, 2008" next to the signatures of clients DH and EH. The Respondent exercised his discretion to determine the following elements of the purchases on the pre-signed and photocopied order entry forms:

a) the mutual funds to be purchased;
b) the amount of each mutual fund to be purchased; and
c) the timing of the purchases.

37. Although clients DH and EH understood that the Respondent would be investing the sale proceeds that they had provided to him in mutual funds, the Respondent failed to adequately confer with DH and EH regarding the specific mutual funds that he intended to purchase for them or the rationale for the specific purchases in the two new joint accounts. Although the Respondent believes that he discussed the nature of the mutual funds with DH and EH at a high-level, the only specific investment recommendation that DH and EH recall the Respondent making at the June 26th meeting was that the clients consider investing at least $20,000 in a limited partnership product because of its potential tax advantages. Clients DH and EH declined this recommendation because they did not think that they understood the features of the product

and they feared that it would not be consistent with their need for a secure and accessible (liquid) investment.

38. The Respondent used the blank order entry forms that the clients signed at the June 26, 2008 meeting, or photocopies of the forms, to purchase the investments in the joint accounts.

39. The Respondent purchased all of the mutual funds on a "front end zero" basis, meaning that he did not receive a sales commission on the purchase of the funds, nor would the clients be subject to a deferred sales charge upon redemption. The Respondent was entitled to receive a trailing commission of approximately 1% per year on the value of the clients' holdings for the duration of the period that the clients owned the mutual funds and the Respondent continued to be the Approved Person responsible for servicing their accounts.

40. At all material times, MFDA Rule 2.3.1 and the terms of the Respondent's registration as a mutual fund salesperson prohibited the Respondent from exercising discretionary trading authority over a client's account, whether or not he was authorized to do so by the client, either expressly or by acquiescence.

41. The Respondent admits that by engaging in the conduct described above, between June 2008 and April 2009, the Respondent engaged in authorized discretionary trading in the joint accounts of clients DH and EH, contrary to MFDA Rules 2.34 and 2.1.1 and the terms of his registration as a mutual fund salesperson.

Contravention #3 – Suitability of investments

42. As described above, clients DH and EH intended that the sale proceeds be invested in a manner that would preserve the principal amount invested and enable them to access the money on short notice when the sale of their new home was scheduled to close.

[4]Amendments were made to MFDA Rule 2.3 in December 2003 and in December 2008, in this Settlement Agreement, the applicable version of Rule 2.3 is the one that was in force between December 2003 and December 2008.

43. However, the Respondent did not confine his selection of the mutual funds in which he invested the sale proceeds to low risk mutual funds.

44. The Respondent allocated the $68,000 deposited in the Small Joint Account approximately as follows:

- 37% (i.e.; $25,000) in 2 equity mutual funds with a low to moderate risk level;
- 26% in 2 equity mutual funds with a moderate risk level;
- 22% in 2 equity mutual funds with a moderate to high risk level; and
- 15% in 1 equity mutual fund with a high risk level.

45. The Respondent allocated the $200,000 deposited in the Large Joint Account approximately as follows:

- 5% (i.e.; $10,000) in 1 equity mutual fund with a low to moderate risk level;
- 57% in 9 equity mutual funds with a moderate risk level;
- 20% in 3 equity mutual funds with a moderate to high risk level; and
- 17% in 3 equity mutual funds with a high risk level.

46. In total, the Respondent invested approximately $223,000 of the total $268,000 in house sale proceeds (or 83%) in mutual funds with a "moderate" risk rating or higher and $45,000 of the $268,000 (or 17%) was invested in high risk mutual funds.

47. Several weeks after the sale proceeds had been invested in the joint accounts, clients DH and EH informed the Respondent that the projected closing date for the purchase of their new home had been pushed back further from November 2008 to April 2009.

48. Between November 2008 and February 2009, the Respondent reassured client DH that in spite of the market downturn that had been reported in the media, the Respondent believed that investments that DH and EH purchased in June 2008 would be fine.

49. Although clients DH and EH do not recall any discussions with the Respondent about actual value of the investments held in their joint accounts at Equity prior to the redemption of their investments in April 2009, the Respondent assumed that the clients were receiving account statements from Equity and were aware of the value of the investments held in their joint accounts.

50. Clients DH and EH left on a trip to Europe in March 2009. Prior to their departure, they asked the Respondent to redeem the investments in their joint account and transfer the redemption proceeds to their bank account so that they would have the monies available to pay the closing costs for the new house purchase in April 2009.

51. The Respondent recommended that clients DH and EH keep their money invested until they returned from their trip. Clients DH and EH accepted the Respondent's recommendation to remain invested. DH and EH recall telling the Respondent that they would provide him with instructions during their trip when the redemption proceeds were required.

52. On Tuesday April 14th and Friday April 17, 2009, clients DH and EH sent e-mails to the Respondent to request the transfer of the proceeds from the redemption of their investments to their bank account by Monday, April 20, 2009.

53. On Monday, April 20, 2009, the Respondent responded to clients DH and EH and informed them that he believed it was an inopportune time to liquidate their investments. The Respondent recommended that clients DH and EH redeem only a portion of the investments.

54. Clients DH and EH instructed the Respondent to redeem all of the money in the joint accounts in order to meet their obligations on the scheduled date of closing of their new home

55. Due to delays associated with liquidating their investments, clients DH and EH ended up borrowing the money that they required to pay the balance of their closing costs from a line of credit.

56. As of April 29, 2009, the day of the house closing, clients DH and EH had received deposits in their bank account comprising the proceeds of the redemptions of the investments in the joint accounts. The redemption proceeds amounted to $193,573.39 of the $270,680 that they had provided to the Respondent at the meeting on June 26, 2008. From June 26, 2008 to April 29, 2009, a period of approximately 10 months, the value of the clients' investments had declined by approximately $75,000.

57. As a consequence, clients DH and EH were unable to use the redemption proceeds to repay the full amount that they had borrowed from their line of credit or to pay the other expenses that they had anticipated they would incur at or around the time of closing.

58. By letter dated June 8, 2009, clients DH and EH submitted a complaint to Equity and requested compensation for their losses.

59. The Respondent admits that the mutual funds purchased in the joint accounts were not suitable for clients DH and EH having regard to, among other things, their personal and financial circumstances, including their risk tolerance, investment objectives and investment time horizon for the joint accounts and their inability to withstand investment losses.

60. The Respondent admits that between June 2008 and April 2009 the Respondent failed to ensure that the trades he made in the joints account of clients DH and EH were suitable for the clients, in keeping with the clients' investment objectives, and within the bounds of good business practice, contrary to MFDA Rules 2.2.1 and 2.1.1.

Contravention #4 - Fees and remuneration

61. As described above, at the June 26, 2008 meeting the Respondent requested that clients DH and EH provide him with a cheque payable to him personally in the amount of $2,680.5.

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[5] See paragraphs 27-28 above.

62. Clients DH and EH did not request, and were not aware that they were receiving, any services from the Respondent other than his usual services as the mutual fund salesperson responsible for handling their accounts.

63. During the course of the investigation of this matter, an invoice dated June 26, 2008 addressed to clients DH and EH was found in the Respondent's files. The invoice recorded the amount of $2,600 plus $147.17 in GST and stated that it was for, among other things, "Tax & Business Proposal- formulating of the plan and presentation". Clients DH and EH do not recall and have no record of being provided with a copy of this invoice, and never received any physical work product of the type described on the invoice.

64. During the course of an audit that Equity conducted of the Respondent's client files after receiving the complaint from clients DH and EH, Equity discovered approximately 23 additional invoices or similar documents in the files of 19 other clients which indicated that the Respondent had invoiced and collected a total amount of approximately $7,273 in fees directly from those 19 clients. In total, the Respondent collected approximately $9,953 in remuneration and fees from a total of 21 clients (including the $2,680 he obtained from clients DH and EH). None of the fees or remuneration was processed for the account or through the facilities of Equity.

65. In addition to providing investment advice to clients in his capacity as an Approved Person of Equity, the Respondent was authorized to provide services and earn additional income for preparing tax returns, selling insurance products and financial planning. The Respondent believes that he had discussions with clients about the provision of services referenced in these invoices and the fees that would be charged prior to collecting such fees. However, the Respondent does not have notes of such discussions or documentary records showing that such services were provided to or requested by clients in exchange for the fees referenced in the invoices obtained by Equity from the Respondent's client files.

66. The fees and the remuneration that the Respondent collected directly from the 21 clients were in addition to the sales and trailing commissions that the Respondent received from Equity in relation to the clients' accounts.

67. In June 2010, Equity sent a cheque to clients DH and EH in the amount of $2,768 to reimburse them for the fee that the Respondent had collected from them directly. Prior to the commencement of this proceeding, no other compensation had been paid to clients DH and EH by Equity or the Respondent.

68. The Respondent admits that he collected remuneration and fees totaling approximately $9,953 directly from 21 clients in relation to business carried on by the Respondent on behalf of the Member, contrary to MFDA Rules 2.4.1,6 1.1.1(b) and 2.1.1.

Contravention #5 - Use Of Blank Signed Forms And Photocopied Signatures

69. During the course of a routine sales compliance examination of Equity by the MFDA Compliance department, Staff reviewed client DH and EH's complaint and observed that the trades that were the subject of the complaint appeared to have been processed by the Respondent using photocopies of blank pre-signed order entry forms on which the Respondent had populated the particulars of the trades and then submitted the forms for processing.

70. On August 26 and 27, 2010, in response to the concerns identified by Staff, Equity compliance staff attended at the Respondent's sub-branch to conduct a review of the Respondent's client files. During this review, Equity compliance staff discovered the following documentation in the Respondent's client files relating to the period 2005 to August 2010:

(a) unprocessed blank forms signed by 9 clients of Equity and 2 unknown individuals including: 4 order entry forms, 2 MRS trade tickets, a Manulife withdrawal form, 3 T2033 account transfer forms, 2 new account application forms, and 1 B2B Trust financial account change form;

[6] MFDA Rule 2.4.1 was amended in March 2010. The version of the Rule that is applicable to this Settlement Agreement is the version that was in force prior to March 2010.

(b) 23 client files that each contained between 1 and 5 order entry forms which bore photocopied client signatures that had been used to process trades in the clients' accounts;

(c) 11 client communications (e-mails or faxes) to the Respondent associated with the accounts of 4 clients that communicated trade instructions to the Respondent on the same date that order entry forms were processed for the clients ostensibly bearing client signatures, which appears to indicate that the Respondent had processed the trades using blank pre-signed order entry forms or order entry forms that contained photocopied signatures;7

(d) Trade tickets with no client signatures that had been used to process trades for 19 clients, none of whom had granted the Respondent a limited trading authorization and for which the Respondent was unable to produce any notes or records of instructions received from any of the 19 clients in connection with the trades;

(e) Trade tickets with no client signatures that had been processed on behalf of 8 clients for whom there was a signed limited trading authorization on file but the Respondent had not indicated on the trade ticket that he was relying on a limited trading authorization to process the trades and he was unable to produce any records of trading instructions received from the clients on behalf of whom the trades had been processed; and

(f) 3 order entry forms that had been processed on the basis of a signature obtained from a third party (family member) who did not have trading authority on the client account.

71. Although the Respondent states that he carried out the above activities with a view to facilitating client convenience and expediting the processing of transactions for clients and states that transactions processed without original client signatures were nevertheless processed with the knowledge and/or consent of the clients in question, he recognizes that this conduct was unacceptable and inconsistent with the standard of conduct applicable to Approved Persons.

[7] Equity concluded it was "highly suspicious and unlikely that the client would have met with the [Respondent] the same day as the [emailed or faxed] instructions were given".

72. Aside from the complaint of DH and EH that is referred to above, neither Staff nor the Respondent are aware of other complaints against the Respondent with respect to the Respondent's practice of obtaining, creating or using blank pre-signed forms, forms bearing photocopied client signatures or forms lacking client signatures to conduct securities related business for Equity.

73. The Respondent admits that collecting and using pre-signed forms and using photocopied client signatures on transaction forms to process trades constitutes conduct unbecoming an Approved Person and is inconsistent with the high standards of ethics and practice in the transaction of business expected of an Approved Person, contrary to MFDA Rules 2.1.1.

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