



**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: Mark Andrew Courneya**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Mark Andrew Courneya, consent and agree to settlement of this matter by way of this agreement (the “Settlement Agreement”).

2. Staff conducted an investigation of the Respondent’s activities which disclosed activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

**II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) between July 2010 and August 2013, the Respondent obtained, possessed, and used to process transactions, 29 pre-signed account forms in respect of 10 clients, contrary to MFDA Rule 2.1.1.

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 pursuant to s. 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;
- (c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- (d) the Respondent will attend in person, 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 Part III herein and consent to the making of an Order in the form attached as Schedule "A".

### **III. AGREED FACTS**

#### **Registration History**

7. Since October 2007, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with FundEX Investments Inc. ("FundEX"), a Member of the MFDA.

8. At all material times, the Respondent conducted business in the Ancaster, Ontario area.

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

9. At all material times, FundEX's policies and procedures prohibited its Approved Persons, including the Respondent, from obtaining or using pre-signed account forms.

10. Between July 2010 and August 2013, the Respondent, obtained, possessed, and used to process transactions, 29 pre-signed account forms in respect of 10 clients (in 8 client accounts). 18 of the pre-signed account forms were in respect of 2 clients.

11. The pre-signed account forms consisted of Order Entry Forms, Change of Dealer of Record forms, and Systemic Instruction forms.

### **Prior Use of Pre-Signed Account Forms**

12. In September 2009, FundEX identified 2 pre-signed account forms in the Respondent's client files during a branch audit. On November 5, 2009, the Respondent signed an Acknowledgment and Undertaking with FundEX where he undertook not to use pre-signed account forms.

### **FundEX's Investigation**

13. FundEX's compliance staff detected the misconduct that is the subject of this Settlement Agreement as a result of a branch audit in January 2014.

14. As part of its investigation, FundEX obtained confirmation that all affected clients serviced by the Respondent authorized the transactions in question.

15. Additionally, FundEX reviewed all of the Respondent's client files and sent a letter to all clients serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns.

16. The Respondent states that he obtained and used the pre-signed account forms for client convenience.

#### **Additional Factors**

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

18. There is no evidence of client harm.

19. The Respondent co-operated with FundEX's investigation into his conduct.

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

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

#### **IV. ADDITIONAL TERMS OF SETTLEMENT**

22. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

23. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the "Settlement Hearing"). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

24. 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

25. 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 respecting the Respondent in this matter;
- b) the Respondent waives any rights to a full hearing, a review hearing before the Board of Directors of the MFDA 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) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of if applicable: the facts and the 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. 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 s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1; 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.

26. 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 By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

27. Staff and the Respondent agree that the terms of the Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

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

**DATED** this 15<sup>th</sup> day of June, 2016.

“TL”  
\_\_\_\_\_  
Witness – Signature

TL  
\_\_\_\_\_  
Witness – Print name

“Mark Andrew Courneya”  
\_\_\_\_\_  
Mark Andrew Courneya

“Shaun Devlin”  
\_\_\_\_\_  
Staff of the MFDA  
Per: Shaun Devlin  
Senior Vice-President,  
Member Regulation – Enforcement



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**ORDER**

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Mark Andrew Courneya (the "Respondent");

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, 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 ss. 20 and 24.1 of By-law No. 1;

**AND WHEREAS** the Hearing Panel is of the opinion that between July 2010 and August 2013, the Respondent obtained, possessed, and used to process transactions, 29 pre-signed account forms in respect of 10 clients;

**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 pursuant to s.24.1.1(b) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
3. The Respondent shall in future comply with MFDA Rule 2.1.1; and
4. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

**DATED** this [day] day of [month], 20[ ].

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]