



**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: Thomas Earle Bott**

---

**SETTLEMENT AGREEMENT**

---

**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Thomas Earle Bott (the “Respondent”), 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 Mutual Fund Dealers Association of Canada (“MFDA”):

- a) between November 2006 and April 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 51 pre-signed account forms in respect of 18 clients, contrary to MFDA Rule 2.1.1; and
  - b) between October 2007 and February 2017, the Respondent altered, and used to process transactions, 3 account forms in respect of 3 clients by altering information on the account forms without having the clients initial the alterations, 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 be prohibited from engaging in securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 9 months, commencing on the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
  - b) the Respondent shall pay a fine in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No.1;
  - c) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No.1;
  - d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
  - e) 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 2004, the Respondent has been registered in the mutual fund industry.

8. From December 2006 to February 2018, the Respondent was registered as a mutual fund salesperson (now known as a Dealing Representative) in Ontario with FundEX Investments Inc. (“FundEX”), a Member of the MFDA.

9. The Respondent is no longer registered in the securities industry in any capacity.

10. At all material times, the Respondent conducted business in the Guelph, Ontario area.

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

11. Between November 2006 and April 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 51 pre-signed account forms in respect of 18 clients.

12. The pre-signed account forms consisted of order entry, transfer, Know-Your-Client (“KYC”) update, and KYC information forms.

### **Altered Account Forms**

13. Between October 2007 and February 2017, the Respondent altered, and used to process transactions, 3 account forms in respect of 3 clients by altering information on the account forms without having the clients initial the alterations.

14. The altered account forms consisted of order entry and KYC information forms.

### **FundEX’s Investigation**

15. On June 22, 2017, FundEX identified the pre-signed and altered account forms that are the subject of this Settlement Agreement as a result of a routine branch audit.

16. On August 15, 2017, FundEX sent a letter to all clients whose accounts the Respondent serviced in order to determine whether the Respondent engaged in unauthorized trading. No concerns were identified.

17. On August 11, 2017, FundEX placed the Respondent under strict supervision and provided notice that it would terminate the Respondent’s registration with FundEX on February 7, 2018.

### **Previous Use of Pre-Signed Forms**

18. On April 8, 2015, during the course of a branch audit, FundEX identified 5 pre-signed forms in a client file serviced by the Respondent.

19. On May 25, 2015, the Respondent signed an acknowledgement to the branch audit report that identified the 5 pre-signed forms. The branch audit report also advised the Respondent that pre-signed forms are not permitted under MFDA Rules, and that FundEX may take disciplinary action for pre-signed forms.

### **Additional Factors**

20. There is no evidence that the Respondent received any benefit from the conduct set out above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

21. There is no evidence of client loss or lack of authorization for the underlying transactions.

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

23. The Respondent states that as a result of his financial situation he is unable to pay any additional amounts towards a fine or costs. The Respondent acknowledges that absent his inability to pay, it would have been appropriate for him to be subject to a sanction that included a greater financial penalty due to the seriousness of the misconduct that is the subject of the Settlement Agreement.

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

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

25. 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.

26. 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. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA 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](http://www.mfda.ca).

27. 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.

28. 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 the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any 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.

29. 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.

30. 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.

31. 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 30<sup>th</sup> day of November, 2018.

“Thomas Earle Bott”

\_\_\_\_\_  
Thomas Earle Bott

“BB”

\_\_\_\_\_  
Witness – Signature

BB

\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”

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

## Schedule "A"

Order  
File No.



**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: Thomas Earle Bott**

---

### **ORDER**

---

**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 Thomas Earle Bott (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 the Respondent

- a) between November 2006 and April 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 51 pre-signed account forms in respect of 18 clients, contrary to MFDA Rule 2.1.1; and
- b) between October 2007 and February 2017, the Respondent altered, and used to process transactions, 3 account forms in respect of 3 clients by altering information

on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

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

1. The Respondent shall be prohibited from engaging in securities related business in any capacity while in the employ of or associated with a MFDA Member for a period of 9 months, commencing on the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.

2. The Respondent shall pay a fine in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No.1.

3. The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No.1.

4. The Respondent shall in the future comply with MFDA Rule 2.1.1.

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

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

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

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

Per: \_\_\_\_\_



[Name of Industry Representative]

DM 660781