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: Brent L. Barnai

Heard: March 5, 2015, in Toronto, Ontario
Reasons for Decision: March 17, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Guenther W.K. Kleberg	Industry Representative
Robert C. White	Industry Representative

Appearances:

Charles A. Toth	)	For the Mutual Fund Dealers Association of Canada
Brent L. Barnai	)	In person and not represented by Counsel

Decision

1. We, the Hearing Panel, approve the settlement agreement (the "Settlement Agreement") attached as Schedule '1' to these Reasons for Decision as being in the public interest; and, therefore we accept the Settlement Agreement under the Rules of the Mutual Fund Dealers Association of Canada (the "MFDA").

Contraventions

2. In the Settlement Agreement Brent L. Barnai (the "Respondent") admits that, between January and February 2012, he falsified the signatures of two clients on account forms, contrary to MFDA Rule 2.1.1.

3. The Respondent agrees, as a term of the Settlement Agreement, to a nine (9) month prohibition from conducting securities related business and to pay costs of $1,500.

Conduct in Issue

4. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. It requires that each Member and Approved Person: deal fairly, honestly, and in good with faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

5. Signature falsification involves situations where an Approved Person signs the client's signature or initials on a document. The Approved Person may engage in this conduct with or without the client's knowledge or consent.

6. Falsifying client signatures or initials is serious misconduct. Signature falsification (like the use of pre-signed 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.

7. As a Hearing Panel of the Investment Dealers Association (now IIROC) stated in *Bell (Re):*

> "Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole."
>
> Bell (Re), [2005] LD.A.C.D. No. 15, Alberta District Council, Panel Decision dated March 21, 2005, at para. 35.

8. Lamontagne (Re) reiterated the principle set out in Bell (Re), but went on to state that, where warranted, hearing panels may distinguish between serious and less egregious instances of falsification:

> "Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. . .forgery often attracts severe sanctions. While there is no such thing as a "minor case" of forgery, hearing panels may distinguish between more and less egregious examples of forgery."
>
> Lamontagne (Re), [2009] IIROC No. 6, Alberta District Council, Panel Decision dated January 27, 2009, at paras. 14 and 45. Wise (Re), 2012 LNCMFDA 79.

9. Acts of falsification which are performed without the knowledge of the client, or resulted in loss or disadvantage to the client or Member, will be treated as more serious forms of misconduct. Conversely, falsification which occurs with the knowledge or approval of the client, and can be shown to have given effect to the client's instructions, will generally be considered to be less serious misconduct.

10. The seriousness of the falsification of a client signature or initials also varies by the type or nature of the document involved. Falsification of a client's signature or initials on trade-related documents and Know-Your-Client ("KYC") forms will generally be treated more

seriously than similar conduct carried out in relation to non-transaction oriented documents because of the greater risk of client harm.

11. In the present case, the Respondent falsified the signatures of two clients on trading and KYC forms in order to give effect to transactions which the client's had authorized. The Respondent admits that his conduct contravened MFDA Rule 2.1.1.

General Considerations Concerning the Acceptance of a Settlement Agreement

12. The primary goal of securities regulation is the protection of the investor. Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 (S.C.C.) at paras. 59, 68.

13. MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
c) whether the settlement agreement addresses the issues of both specific and general deterrence;
d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
f) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
g) whether the settlement agreement will foster confidence in the regulatory process itself.

Jacobsen (Re), 2007 LNCMFDA *27*, at para. *68.*

14. A Hearing Panel should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness having regard to the conduct of the Respondent.

Jacobsen (Re), supra at para. 70.

Specific Factors Concerning the Appropriateness of the Penalty

15. Factors that Hearing Panels frequently consider when determining whether a penalty is appropriate include the following:

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

Headley (Re), 2006 LNCMFDA 3, at para. *85.*

16. The MFDA Penalty Guidelines are an additional source of factors to be taken into account with regards to penalty. The MFDA Penalty Guidelines are not mandatory but are intended to assist Hearing Panels, MFDA Staff and respondents in considering the appropriate penalties in MFDA disciplinary proceedings.

17. Where an Approved Person fails to adhere to the standard of conduct, the MFDA Penalty Guidelines recommend: a minimum fine of $5,000; writing or re-writing an appropriate industry course; suspension; and permanent prohibition in egregious cases.

Considerations in the Present Case

(a) Nature of the Misconduct

18. Signature falsification is always serious misconduct. However, signature falsification which can be shown to have given effect to the client's instructions (as is the case here) will generally be considered to be *less* serious. *Bell (Re); Lamontagne (Re*).

19. The misconduct described in the Settlement Agreement was limited to two clients and three account forms.

20. When the Respondent's Member interviewed him with respect to the signature on the Transaction Form he submitted on behalf of client NS, the Respondent did not admit to the Member that he had signed the document. This is an aggravating factor with respect to penalty.

(b) Client Harm

21. The Respondent's conduct did not result in client harm. The Respondent states that he engaged in the conduct for the convenience of the clients and to facilitate their trading requests. None of the clients complained about the Respondent's conduct.

22. Generally, a lesser penalty is warranted where the evidence indicates that the Approved Person falsified signatures or initials to give effect to client instructions.

(c) The Benefits Received by the Respondent

23. The Respondent did not benefit from his conduct.

(d) Deterrence

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

(f) The Respondent's Recognition of the Seriousness of his Misconduct

25. By entering into a Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing. The Respondent has expressed remorse for his actions.

26. The Respondent cooperated with MFDA Staff and remedied any failure to cooperate. Notwithstanding that the Respondent's cooperation with MFDA Staff's investigation was provided after the fact, in the circumstances of this case, MFDA Staff has withdrawn Allegation #2 as part of the final settlement of this proceeding.

(g) Penalty Guidelines

27. The proposed penalty does not impose a minimum fine of $5,000 as suggested by the Penalty Guidelines. However, the Penalty Guidelines expressly acknowledge that:

> "Depending on the facts and circumstances of a case, MFDA Staff and Hearing Panels may determine that no purpose is served by imposing a penalty within the range stated in the Guidelines; i.e., that a penalty below the stated range, or no penalty at all, is appropriate."

28. The imposition of a nine (9) month prohibition takes into account the fact that a fine will not be imposed as a component of the settlement.

(h) Previous Decisions Made in Similar Circumstances

29. The proposed resolution is consistent with decisions made by other MFDA Hearing Panels in similar circumstances, especially the recent case of *Wise (Re)* 2012 LNCMFDA 79.

30. We are pleased that Staff has showed flexibility in this case by not insisting on a fine that would meet the suggested minimum in the MFDA Penalty Guidelines. Those guidelines are not mandatory and specifically contemplate cases such as this one where a fine would not produce the most appropriate result.

DATED this 17th day of March, 2015.

"Paul M. Moore"

Paul M. Moore, Q.C.
Chair

"Guenther W.K. Kleberg"

Guenther W.K. Kleberg
Industry Representative

"Robert C. White"

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Re: Brent L. Barnai

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing issued September 5, 2013, the Mutual Fund Dealers Association of Canada (the "MFDA") announced that it proposed to hold a hearing concerning a disciplinary proceeding commenced against the Respondent, Brent L. Barnai. Staff of the MFDA ("Staff") and the Respondent propose to make a request to the hearing panel of the MFDA Central Regional Council (the "Hearing Panel") to consider whether, pursuant to section 24.4 of By-law No. 1, the Hearing Panel should accept the settlement agreement entered into between Staff and the Respondent (the "Settlement Agreement").

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in 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.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule "A".

4. Staff and the Respondent agree that the terms of this 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.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part X) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. From November 22, 2010 to March 1, 2012, the Respondent was registered in Ontario as a mutual fund salesperson with TD Investment Services Inc. ("TDIS"), a Member of the MFDA.

7. The Respondent resigned from TDIS on March 1, 2012.

8. At all material times, the Respondent conducted business in Port Colborne, Ontario.

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

Allegation #1: Falsification of Client Signatures

a) **Client NS**

10. On February 10, 2012, the Respondent's branch manager noticed, while conducting daily trade reviews, that the Respondent had not submitted a Transaction and Account Maintenance Form ("Transaction Form") in respect of a redemption made by the Respondent in the account of client NS. The branch manager contacted the Respondent and requested that he provide a Transaction Form completed by client NS in respect of the redemption..

11. The Respondent falsified client NS's signature on a Transaction Form populated with the details of the redemption and submitted it to the branch manager on February 13, 2012.

12. The branch manager reviewed the Transaction Form and noticed that the signature on the Transaction Form did not match client NS's signature on prior account documents. As a result, TDIS commenced an internal investigation of the Respondent's dealings with client NS.

13. On February 23, 2012, TDIS interviewed the Respondent as part of its investigation. During the interview, the Respondent advised TDIS that:

a) the Respondent met client NS on February 9, 2012 and received instructions to process the redemption in client NS's account;
b) as a result of problems with his computer, the Respondent was unable, during the meeting, to generate a Transaction Form for client NS to sign; and
c) the Respondent therefore arranged for client NS to return to his office on a later date to sign the Transaction Form.

14. During the course of its investigation, TDIS spoke with client NS, who acknowledged that she had authorized the redemption in her account. MFDA Staff subsequently interviewed client NS who, in addition to confirming that she had authorized the redemption in her account,

stated that the signature on the Transaction Form was not hers and that she had not signed the Transaction Form on either February 9, 2012 or thereafter.

15. On March 1, 2012, the Respondent resigned from TDIS.

b) Client OB

16. After the Respondent resigned, TDIS conducted a review of all of the accounts serviced by the Respondent to determine whether he had falsified client signatures in other accounts.

17. During this review, TDIS identified two forms in relation to the account of client OB, namely a Transaction Form, dated January 23, 2012, and a New Client Information Profile ("Client Profile") recording the client's Know-Your-Client ("KYC") information, dated January 27, 2012, on which the Respondent had falsified the client's signature.

18. The Transaction Form and the Client Profile related to a $1,000 contribution to client OB's RRSP account that the Respondent had processed.

19. The Respondent had resigned from TDIS before TDIS was able to question him about the forms relating to client OB. TDIS confirmed with client OB that she had authorized the transaction in her RRSP. Client OB subsequently confirmed for MFDA Staff that the signatures on the Transaction Form and the Client Profile submitted to TDIS by the Respondent were not hers.

Additional Factors

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

21. The Respondent's conduct did not result in client harm. The Respondent states that he engaged in the conduct for the convenience of the clients and to facilitate their redemption requests.

22. The Respondent did not benefit from his conduct.

23. The Respondent has expressed remorse for his actions.

24. Following the publication of the Notice of Hearing, the Respondent has cooperated with Staff and has remedied his failure to cooperate by submitting to a telephone interview with Staff and entering into this Settlement Agreement concerning the subject matter of Allegation #1, which includes an admission of misconduct. As a consequence, notwithstanding that the Respondent's cooperation with Staff's investigation was provided after the fact, in the circumstances of this case, Staff has withdrawn Allegation #2 as part of the final settlement of this proceeding.

V. CONTRAVENTIONS

25. The Respondent admits that, between January and February 2012, he falsified the signatures of two clients on account forms, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

a) the Respondent shall, for a period of nine (9) months, be prohibited from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
b) the Respondent shall pay costs of $1,500, 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;
d) Staff shall withdraw Allegation #2 in the Notice of Hearing; and
e) the Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

27. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part X below. 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 Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, 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

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

28. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

29. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive its his 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.

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

31. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, 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 him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

32. 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 section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the 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.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

33. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made 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 this Settlement Agreement or the settlement negotiations.

34. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XI. DISCLOSURE OF AGREEMENT

35. 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.

36. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XII. EXECUTION OF SETTLEMENT AGREEMENT

37. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

38. A facsimile copy of any signature shall be effective as an original signature.

DATED this 29th day of July, 2014.

"Sarah Glickman"
Witness – Signature

Sarah Glickman
Witness – Print name

"Brent L. Barnai"
Brent L. Barnai

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

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Re: Brent L. Barnai

ORDER

WHEREAS on September 5, 2013, 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 Brent L. Barnai (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [insert] (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 January and February 2012, the Respondent falsified the signatures of two clients on account forms, 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, for a period of nine (9) months, be prohibited from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

2. The Respondent shall pay costs of $1,500, pursuant to s. 24.2 of MFDA By-law No. 1;

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

4. Staff has withdrawn Allegation #2 in the Notice of Hearing;

5. 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]

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