



**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: Donald Cameron Welsh**

Heard: December 8, 2014, in Toronto, Ontario  
Reasons for Decision: January 15, 2015

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth	Chair
Vasant Pachapurkar	Industry Representative
Casimir S. Litwin	Industry Representative

Appearances:

David Halasz	)	Senior Enforcement Counsel, Mutual Fund
	)	Dealers Association of Canada
	)	
Ellen Bessner	)	Counsel for the Respondent
	)	
	)	

1. By Notice of Settlement Hearing dated September 10, 2014, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) was convened to consider whether pursuant to section 24.4 of By-Law No. 1 of the MFDA, the Panel should accept a Settlement Agreement, dated September 2, 2014, entered into by Staff of the MFDA (“Staff”) and Donald Cameron Welsh (the “Respondent”).

2. The Respondent, Mr. Welsh, appeared with counsel.

3. At the outset of the proceedings, the Panel considered a motion by Staff to move the proceedings “in camera”. The motion was granted. The Panel then considered the Settlement Agreement, the Submissions of Staff on behalf of the MFDA made both in writing and orally, and a Brief of the applicable cases which were capably detailed by Staff. The above assisted this Panel in determining whether to accept or reject the Settlement Agreement.

## **THE ALLEGATIONS**

4. In the Settlement Agreement, which is marked as Schedule “1” to these Reasons for Decision, the Respondent admits that:

- a) Between December 2009 and November 2012, the Respondent falsified the initials of 12 clients on a total of 13 Know Your Client or New Account Application forms and made changes to the forms contrary to MFDA Rule 2.1.1.

5. The Panel heard submissions from Staff and the Respondent concerning the facts of this matter and as to why this particular Settlement Agreement should be accepted by the Panel. After deliberation, the Panel unanimously concluded that it was appropriate to accept the Settlement Agreement and to execute the necessary order with respect to disposition.

## **THE FACTS**

6. The facts with respect to the transgression are adequately set out in paragraphs 8 to 23 of the Settlement Agreement. The Respondent admits to same.

## **THE SETTLEMENT AGREEMENT**

7. As a Panel, we felt that the admitted conduct was serious, however, we believed that the Settlement Agreement fairly addressed the concerns arising from the facts.

8. In determining whether the Settlement Agreement should be accepted, the Panel considered a number of factors. Those factors included:

- a) 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, which is set out 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;
- g) whether the Settlement Agreement will foster confidence in the regulatory process itself;
- h) the penalty guidelines of the MFDA.

9. We believe that each and every one of those factors is dealt with in an appropriate fashion by the Settlement Agreement.

## SUBMISSION AS TO PENALTY

10. Staff confirmed a number of matters for the Panel: there was no evidence of material harm to any client; no client expressed concerns about the Respondent; there was no benefit to the Respondent; no clients have lost any money and the Respondent, after some initial hesitation, has both acknowledged his responsibility for his conduct and acknowledged the necessity for adherence to the proper conducts and procedures of the MFDA and the firm of Queensbury Strategies Inc. at which he carries on business.

11. In addition, Staff submitted further factors that should be considered as to the acceptance of the Settlement Agreement:

- a) the Respondent has not previously been the subject of MFDA disciplinary proceedings;
- b) the Respondent has been subject to additional supervisory measures imposed by the Member beginning in December 2012 and he has paid to the Member approximately \$15,000 in respect of the additional supervision; and
- c) the Respondent has accepted responsibility by admitting to the misconduct and entering into the settlement.
- d) by admitting to the misconduct, the Respondent has reduced the time and expense necessary to conduct a disciplinary hearing.

12. For all these reasons, the Panel has concluded that the Settlement Agreement is reasonable. In our considerations, the Panel has been mindful of the decision *Re Milewski* [1999] I.D.A.C.D. No. 17 decided on July 28, 1999. That particular Panel made the following comments on page 9:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the

penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

13. Accordingly, the following penalties and other terms of settlement are imposed upon the Respondent:

- a) the Respondent shall pay a fine of \$7,500, pursuant to section 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 the MFDA By-law No. 1;
- c) The Respondent shall in the future comply with MFDA Rules, By-law and Policies, including MFDA Rule 2.1.1; and
- d) If at any time a non-party to this proceeding requests production of, or access to, any material filed, or the record of, this proceeding, including all exhibits and transcript, 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 15<sup>th</sup> day of January, 2015.

“Frederick W. Chenoweth”

Frederick W. Chenoweth  
Chair

“Vasant Pachapurkar”

Vasant Pachapurkar  
Industry Representative

“Casimir S. Litwin”

Casimir S. Litwin  
Industry Representative

## Schedule “1”

Settlement Agreement

File No. 201366



**Mutual Fund Dealers Association of Canada**  
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### **SETTLEMENT AGREEMENT**

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#### **I. INTRODUCTION**

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the “Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Donald Cameron Welsh (the “Respondent”).

#### **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 IX) 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. Since 1993, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a “dealing representative”) with Queensbury Strategies Inc. (“Queensbury”), a Member of the MFDA.

7. At all material times, the Respondent conducted business in the Brampton, Ontario area.

## **Falsification of client initials on account forms**

### Client WC

8. In or about June 2012, the Respondent submitted to Queensbury for processing a Know Your Client (“KYC”) form for client WC that contained incorrect date of birth information for the client. Queensbury’s staff returned the KYC form to the Respondent, and requested that he resubmit the form containing a corrected date of birth along with the client’s initials acknowledging the correction.

9. The Respondent resubmitted the KYC form for client WC as requested by Queensbury. On July 5, 2012, Queensbury’s staff wrote the Respondent to advise that the corrected KYC form contained initials that did not appear to belong to client WC as compared to another example of the client’s initials contained on the same form. Queensbury staff requested that the Respondent advise whether the initials beside the date of birth were in fact those of client WC.

10. On July 5, 2012, the Respondent wrote Queensbury’s staff and confirmed that the initials contained in the corrected KYC form were those of client WC.

### Clients DN and JB

11. In or about November 2012, the Respondent submitted to Queensbury for processing a KYC form for client DN. Queensbury’s staff returned the KYC form to the Respondent because the client had signed the form without including a date beside the client’s signature. Queensbury’s staff requested that the Respondent resubmit the KYC form containing a signature date along with the client’s initials acknowledging the correction.

12. In or about November 2012, the Respondent submitted to Queensbury for processing a KYC form for client JB. Queensbury’s staff returned the form to the Respondent because the client’s portfolio objective had been changed on the form from “Balanced” to “Growth”, without having been initialed by the client. Queensbury’s staff requested that the Respondent resubmit



the form with the change to the portfolio objective initialed by client JB to acknowledge the correction.

13. On November 15, 2012, Queensbury's staff advised the Respondent that the initials on the resubmitted KYC forms pertaining to both clients DN and JB described above did not appear to be those of the clients as compared to other examples of the clients' initials. Queensbury's staff also reiterated their prior concern with respect to the initial of client WC, and requested that the Respondent provide comments in response to their concerns about the clients' initials.

14. On November 16, 2012, the Respondent admitted to Queensbury that he initialed the forms on behalf of clients WC, DN, and JB on the KYC forms described above. The Respondent advised Queensbury that he placed the initials on the forms to avoid inconveniencing the clients.

15. On November 16, 2012, Queensbury issued a warning letter to the Respondent for his conduct in falsifying the initials of clients WC, DN and JB.

16. On November 21, 2012, the Respondent wrote Queensbury and confirmed that he had not falsified any other client initials and would not falsify client initials in the future.

#### Other clients

17. On or about December 19, 2012, Queensbury commenced a review of the files of all clients serviced by the Respondent, and it identified a further 12 KYC forms containing falsified client initials.

18. During an interview with MFDA Staff on June 19, 2013, the Respondent admitted that, in addition to the instances of falsifying the initials of clients WC, DN, and JB described above, he placed falsified initials of clients alongside certain changes that he made to information on KYC and New Account Application forms for the following 10 clients:

No.	Client	Date of KYC	Change made to form
1	DJ	December 7, 2009	Risk tolerance changed to high risk from moderate risk
2	DF	December 7, 2009	Risk tolerance changed to high risk from moderate risk
3	LM	February 11, 2010	Risk tolerance changed to high risk from moderate risk
4	SW	February 26, 2010	The Respondent placed clients initials acknowledging disclosure of Member forms
5	DN <sup>1</sup>	September 27, 2010	Risk tolerance changed to high risk from moderate/high risk
6	EF	July 10, 2012	Risk tolerance changed to moderate-high from moderate risk
7	LCPC	December 7, 2011	The Respondent placed client initials on Personal Information Consent section
8	MLS	March 6, 2012	Changes to employment information and income and net worth information
9	GIL	April 10, 2012	Change to social insurance number
10	BO	July 19, 2012	Risk tolerance changed to high risk from moderate/high

19. On or about December 19, 2012, Queensbury imposed additional supervisory measures on the Respondent due to the additional forms it identified during its review of the client files, and due to the Respondent's misstatement to Queensbury on November 21, 2012 that he had not falsified any additional client initials. Queensbury has placed the Respondent on strict supervision, and, as of August 5, 2014, the Respondent has paid to Queensbury the amount of approximately \$14,700 in respect of the strict supervision.

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<sup>1</sup> This is another example of the Respondent falsifying the initials of client DN who is also referred to in paragraph 11 above.

20. The Respondent advised MFDA Staff that:
- a) he did not speak with clients DN and JB about the changes to their forms prior to placing the clients' initials beside the changes to their forms;
  - b) he did speak with clients SW and MLS about the changes to their forms prior to placing the clients' initials beside the changes to their forms;
  - c) he cannot recall whether he had spoken with the remaining eight clients about the changes prior to placing the clients' initials beside the changes to their forms;
  - d) he cannot locate in his files any notes pertaining to any discussions he may have had with the clients about the changes made to the forms; and
  - e) on November 21, 2012, when he advised Queensbury that he had not falsified any other client initials:
    - i. he believed that he had not falsified any other client initials on the forms; and
    - ii. he did not review his files to ensure he was making an accurate statement to Queensbury.

21. Queensbury sent letters to the clients on whose forms the Respondent had falsified their initials, in order to advise them of the Respondent's activities and to obtain updated KYC information. No clients expressed concerns about the Respondent in response to Queensbury's letters.

22. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond the commissions or fees to which he would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner.

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

## **V. CONTRAVENTION**

24. Between December 2009 and November 2012, the Respondent falsified the initials of 12 clients on a total of 13 Know Your Client or New Account Application Forms and made changes to the forms, contrary to MFDA Rule 2.1.1.

## **VI. TERMS OF SETTLEMENT**

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

- a) the Respondent shall pay a fine in the amount of \$7,500 pursuant to s.24.1.1(b) of the MFDA By-Law No. 1; and
- b) the Respondent shall pay costs in the amount of \$2,500, pursuant to s.24.2 of the MFDA By-Law No. 1.

## **VII. STAFF COMMITMENT**

26. 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 contravention described in Part V of this Settlement Agreement, subject to the provisions of Part IX 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**

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

28. 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 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.

29. 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.

30. 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**

31. 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**

32. 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.

33. 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**

34. 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.

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

## **XII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 2<sup>nd</sup> day of September, 2014.

“Donald Cameron Welsh”

Donald Cameron Welsh

“Gail Daniel”

Witness - Signature

“Gail Daniel”

Witness - Print name

“Shaun Devlin”

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President, Member Regulation - Enforcement



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**Re: Donald Cameron Welsh**

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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 Donald Cameron Welsh (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 December 2009 and November 2012, the Respondent falsified the initials of 12 clients on a total of 13 Know Your Client or New Account Application Forms and made changes to the 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 pay a fine in the amount of \$7,500 pursuant to s. 24.1.1(b) of the MFDA By-Law No. 1;
2. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of the MFDA By-Law No. 1;
3. The Respondent shall in the future comply with MFDA Rules, By-law and Policies, including 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], 2014.

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Name,  
Chair

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Name,  
Industry Representative

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Name,  
Industry Representative