



**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: Daniel MacWhirter**

Heard: November 26, 2015 in Toronto, Ontario  
Reasons for Decision: February 19, 2016

**ORAL REASONS FOR DECISION FOR ACCEPTANCE OF  
SETTLEMENT AGREEMENT**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Linda J. Anderson	Industry Representative
Robert C. White	Industry Representative

Appearances:

Sarah Glickman	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
	)	
Daniel MacWhirter	)	In Person
	)	

1. The Panel has decided to accept the settlement agreement. We find that it is in the public interest and is within the acceptable parameters based on precedent cases.

#### Reasons

2. MFDA Staff (“Staff”) and Daniel MacWhirter (the “Respondent”) have entered into a Settlement Agreement dated September 8, 2015 (the "Settlement Agreement") in which the Respondent admits that:

- a) between December 2010 and March 2013, he obtained and possessed eleven (11) blank pre-signed forms in respect of eleven (11) clients, contrary to MFDA Rule 2.1.1; and
- b) between December 2010 and May 2014, he misled the Member by affirming that he did not obtain or possess any pre-signed forms when completing the Member’s Annual Attestations for Approved Persons, contrary to MFDA Rule 2.1.1.

#### Penalty

3. The Respondent agrees as a term of the Settlement Agreement to pay a fine in the amount of \$12,500 and costs in the amount of \$2,500.

#### Facts

4. The relevant facts are set out in section 3 of the Settlement Agreement, a copy of which is attached as Schedule “1” to this document.

5. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each Member and Approved Person deal fairly, honestly, and in good 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.

6. The use of pre-signed account 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 use of the form for unauthorized trading, fraud or misappropriation.

7. Hearing Panels have held that obtaining or using pre-signed account forms is a contravention of the standard of conduct under MFDA Rule 2.1.1.

8. In the present case, the Respondent admits that between December 2010 and May 2014 he misled the Member by affirming that he did not obtain or possess any pre-signed forms when completing the Member's Annual Attestations for Approved Persons.

9. Hearing Panels have held that misleading a Member during its investigation is a violation of the standard of conduct as set out in MFDA Rule 2.1.1.

10. The misleading of investigators or Compliance staff, whether of the MFDA or of the Member in fulfilling its regulatory obligations to supervise, interferes with the reasonable supervisory role and may result in an investigation being closed down prematurely or diverted down an avenue of inquiry that wrongly implicates others, both of which may result in misconduct going undetected.

11. The consequences of misleading the Member in its investigation are the same as when an Approved Person misleads the Member during its efforts to conduct a reasonable supervisory review.

12. In a similar situation to the present case, a hearing panel found a violation of MFDA Rule 2.1.1 when an Approved Person failed to accurately respond to the Member's Annual Attestation

by incorrectly affirming that he did not obtain or possess any pre-signed account forms (*Richardson Re 2015*, October 2, 2015, MFDA File No. 201536).

13. MFDA Rule 2.1.1 has a broad application. It provides for a standard that is able to encompass misconduct not directly captured by the Rules. In misleading the Member by affirming that he did not obtain or possess any pre-signed account forms the Respondent failed to meet this general standard.

14. Approved Persons must ensure they respond to the Member's compliance enquiries accurately with the highest degree of care and diligence. The purpose of such compliance enquiries is for the Member to ensure that the highest standard of ethics and conduct in the transaction of business is being met. The Respondent did not take the highest degree of care and diligence in his responses to the Member's Annual Attestations.

15. There are several factors that must be taken into account by a panel in deciding whether to accept a settlement agreement or not. Staff in its written submissions has set out these factors and has highlighted the ones that are relevant in this case.

16. First and foremost, the agreed penalties should provide deterrence against future possible violations by the Respondent and a general deterrence to those in the capital markets.

17. Secondly, they should be within acceptable parameters based on precedent cases.

18. They should be reasonable and proportionate to the conduct involved so that they will be fair and appropriate for the Respondent.

19. The MFDA penalty guidelines are an additional source of factors to be taken into account with regard to the appropriateness of an agreed penalty.

20. The guidelines provide that where an Approved Person fails to adhere to the standard of conduct the MFDA penalty guidelines recommend one or all of the following: a minimum fine

of \$5,000; writing or rewriting an appropriate industry course; suspension; a permanent prohibition in egregious cases.

21. In the present case, the settlement agreement takes into account the following:

*Nature of Misconduct*

22. The use of pre-signed account forms is a serious breach of MFDA Rule 2.1.1. The Respondent's related breach of MFDA Rule 2.1.1, misleading the Member by incorrectly affirming that the Respondent did not obtain or possess any pre-signed account forms in response to the Member's Annual Attestations, should be considered a serious breach of that Rule for the reasons set out above.

*Client Harm*

23. There is no evidence of client harm.

*No financial benefits to the Respondent*

24. There is no evidence that the Respondent received any financial benefits from engaging in the misconduct at issue in this proceeding other than the commissions and fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

*Respondent's experience and level of activity in the capital markets*

25. The Respondent has been registered in the mutual fund industry since 2003. The Respondent was also registered as a Branch Manager from 2006 to 2009.

### *Experience*

26. The Respondent was an experienced salesperson who ought to have known better than to place convenience above compliance. His branch manager training would have provided him with an even more fulsome understanding of the reasoning behind the prohibition against pre-signed account forms.

27. With respect to misleading the Member's Annual Attestations by incorrectly affirming that the Respondent did not obtain or possess any pre-signed account forms, similarly, given his experience, the Respondent ought to have understood the importance of such Member's compliance requests.

### *Respondent's past conduct*

28. The Respondent has not previously been subject to MFDA disciplinary proceedings.

### *Respondent's recognition of the seriousness of his misconduct*

29. The Respondent expressed to us today that he was deeply sorry and greatly regrets his conduct and finds the whole proceeding very embarrassing to him. In addition, by entering into this 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. We are satisfied that the Respondent does recognize the seriousness of his misconduct.

### *Penalty guidelines*

30. The proposed penalties are consistent with the penalty guidelines. The penalty guidelines suggest a minimum fine in the amount of \$5,000 per offence. The proposed fine of \$12,500 reflects all the considerations in the present case, including the existence of two (2) separate breaches of MFDA Rule 2.1.1.

31. MFDA Staff has provided us with a number of cases that are similar in circumstances to the case before us. We are satisfied that the agreed penalties in the settlement agreement are within the reasonable range of appropriateness with regard to the other decisions that hearing panels have made in similar circumstances.

*Costs*

32. An award of costs against the Respondent in the amount of \$2,500 is appropriate in the circumstances.

This written version of the oral Reasons for Decision is  
**DATED** this 19<sup>th</sup> day of February, 2016.

“Paul M. Moore”

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Paul M. Moore, Q.C.  
Chair

“Linda J. Anderson”

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Linda J. Anderson  
Industry Representative

“Robert C. White”

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Robert C. White  
Industry Representative



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**Re: Daniel MacWhirter**

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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, Daniel MacWhirter, 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) **Allegation #1**: between December 2010 and March 2013, the Respondent obtained and possessed 11 blank pre-signed forms in respect of 11 clients, contrary to MFDA Rule 2.1.1; and
- b) **Allegation #2**: between December 2010 and May 2014, the Respondent misled the Member by affirming that he did not obtain or possess any pre-signed forms when completing the Member's Annual Attestations for Approved Persons, 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 \$12,500 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 section 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 September 3, 2003, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investors Group Financial Services Inc. ("Investors Group"), a member of the MFDA.

8. The Respondent was registered in Ontario as a branch manager from January 1, 2006 to July 6, 2009.
9. The Respondent was also registered in Quebec from March 1, 2012 to February 10, 2014.
10. At all material times, the Respondent conducted business in the Kingston, Ontario area.

### **Pre-Signed Forms**

11. At all material times, Investors Group's policies and procedures prohibited its representatives, including the Respondent, from holding blank or partially complete pre-signed forms.
12. Between December 2010 and May 2014, the Respondent obtained and possessed (but did not use) 11 blank pre-signed account forms with respect of 11 clients.
13. These forms included Know-Your-Client forms, Pre-authorized Contribution Agreement ("PAC Agreement") forms, and Transfer Authorization forms.

### **Misleading the Member**

14. Between December 2010 and May 2014, the Respondent misled Investors Group about his use of pre-signed forms account when he affirmed, in Investors Group's Annual Attestations, that he has not, "...arranged for any client to sign pre-signed forms(s) and do(es) no maintain any pre-signed forms in any client file".

### **Investors Group's Investigation**

15. In May 2014, Investors Group's compliance staff detected the conduct that is the subject of this Settlement Agreement after a pre-signed account form was identified during a period of

close supervision over the Respondent's licensed associate who had been placed under close supervision as a result of a wage garnishment by the Canada Revenue Agency.

16. As part of its investigation, Investors Group conducted an audit of all of the Respondent's client files and identified the pre-signed forms as set out in paragraphs 11-13, above.

17. The Respondent states that all transactions were authorized by the clients.

18. On October 2, 2014, Investors Group issued a warning letter to the Respondent.

#### **Additional Factors**

19. There is no evidence that the Respondent received any benefit from obtaining and possessing the pre-signed forms beyond the commissions or fees that he would ordinarily be entitled to receive had the transactions been carried out in a proper manner.

20. There is no evidence of client harm.

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

22. The Respondent cooperated with Investors Group's investigation into his conduct.

23. 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 merits.

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

24. 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.

25. 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.

26. 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.

27. 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 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.

28. 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.

29. 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.

30. 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 8<sup>th</sup> day of September, 2015.

“Carol Powley”  
\_\_\_\_\_  
Witness – Signature

Carol Powley  
\_\_\_\_\_  
Witness – Print name

“Daniel MacWhirter”  
\_\_\_\_\_  
Daniel MacWhirter

“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 [Respondent] (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 2010 and December 2010 and March 2013, the Respondent obtained and possessed 11 pre-signed forms with respect to 11 clients and, between December 2010 and May 2014, the Respondent misled the Member by affirming that he did not obtain or possess any pre-signed forms when completing the Member's Annual Attestations for Approved Persons;

**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 \$12,500 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 the 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]