



**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: Orville I. Hogan, Anthony Carty, Theon White**

Heard: April 28, 2016 in Toronto, Ontario  
Reasons for Decision: July 28, 2016

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

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Colleen Waring	Industry Representative
Robert C. White	Industry Representative

Appearances:

Sarah Glickman	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
	)	
Keir Turner	)	Counsel for the Respondents
	)	

## **Background**

1. We, the Hearing Panel, are here today to consider three (3) Settlement Agreements (the “Settlement Agreements”) between the Mutual Fund Dealers Association of Canada (the “MFDA”) and each of Orville Hogan, Anthony Carty, and Theon White (each a “Respondent”), pursuant to section 24.4 of MFDA By-law No. 1.
2. We have been provided with copies of the Settlement Agreements, submissions of MFDA Staff on the matters, and a book of authorities. The Hearing Panel has considered the Settlement Agreements. We have looked at the precedents in the book of authorities, and Staff’s submissions, and we have no difficulty in approving the Settlement Agreements.
3. We will not go *in camera* because we are going to approve the Settlement Agreements.
4. The three Settlement Agreements will be set out as Schedules “1”, “2” and “3” to the written version of these Reasons for Decision.
5. The three Respondents were in the same office, with the same Member, and the facts in question are quite similar. Therefore, it is convenient to have these three matters dealt with in one hearing.

## **Preliminary question**

6. One of our panelists, Mr. White, had a question and comment on the Settlement Agreements.
7. The question was for Staff and Respondents’ counsel. In paragraph 16 of the Settlement Agreements for Mr. White and for Mr. Carty, and paragraph 20 of the Settlement Agreement for Mr. Hogan, personal information is given about the earnings of the relevant Respondent. Why? It

is not the kind of information usually contained in settlement agreements, nor it is the kind of information we find useful or necessary in deciding whether to approve settlement agreements.

8. Staff and Respondents' counsel answered that they believed the information was pertinent in assessing the amount and appropriateness of the agreed penalties. Respondents' counsel stated that the information, in his view, could be relevant in a panel's assessment of the specific deterrent effect of the penalties, and reiterated that the Respondents had agreed to the disclosure of the information and were comfortable with this.

### **Decision**

9. Our decision is that we approve the Settlement Agreements and accept them because it is in the public interest to do so. It is in the public interest in that the penalties agreed to are within the parameters for the range of penalties in comparable cases. We believe that they do send a deterrent message to the Respondents as well as to the industry.

### **Reasons**

#### Allegations

10. The allegations are set out in detail in the Settlement Agreements. They deal with pre-signed forms and the improper use of them by each of the Respondents, and regarding the Respondent Mr. Hogan as manager, the improper approval of their use by the other Respondents.

#### Penalties

11. The penalty for each of Mr. Carty, and Mr. White is a fine of \$ 5,000, and for Mr. Hogan is a fine of \$10,000. Mr. Hogan was a branch manager and had branch manager responsibilities in supervising the other two Respondents and therefore it was appropriate that his penalty be higher than the others.

### Costs

12. The costs award against each Respondent is \$2,500.

### Relevant Factors

13. The factors we considered in this case are as follows:

### Seriousness of offence

14. Each of the Respondents admits that he violated the Rules. There must be consequences for violating the Rules, and we have to be satisfied that the agreed penalties are reasonable- they are not too severe and they are not too lax- taking into account precedent cases. The contraventions were relatively innocuous in that they did not contain any moral turpitude, any fraud, or any evidence of incompetence.

### Guidelines

15. We considered the guidelines of the MFDA which suggest a minimum of fine of \$5,000 per offense.

### No client harm

16. We took into account that there was no client harm.

### No complaints

17. Clients did not complain.

No financial benefit

18. There was no extra profit to the Respondents other than the profits they would normally earn from the transactions.

No past misconduct

19. There was no indication of past misconduct, either through investigations of the Member or through the MFDA.

Remorse

20. The Respondents are here in person and are remorseful. The Respondents have taken these matters seriously.

Precedents

21. The agreed penalties are four-square within the precedent cases outlined by Staff in its book of authorities.

Costs

22. The costs are reasonable under the circumstances.

This written version of the oral Reasons for Decision is  
**DATED** this 28<sup>th</sup> day of July, 2016.

“Paul M. Moore”

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Paul M. Moore, Q.C.

Chair

“Colleen Waring”

Colleen Waring  
Industry Representative

“Robert C. White”

Robert C. White  
Industry Representative

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**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: Orville I. Hogan**

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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, Orville I. Hogan, 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 August 2007 and February 2013, the Respondent obtained and used to process transactions, 4 pre-signed account forms in respect of 1 client, contrary to MFDA Rule 2.1.1; and

(b) between September 2007 and October 2013, the Respondent, acting in the capacity of branch manager, reviewed and approved the use of 28 pre-signed account forms in respect of 9 clients, contrary to MFDA Rules 2.1.1 and 2.5.5(d) (from September 2013 to present, MFDA Rule 2.5.5(f)).

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 (the “Fine”);

b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1 (“Costs”);

c) the Fine and Costs together shall be payable in 12 equal installments, the first of which is due on the date of the Settlement Hearing, with the remaining 11 installments due on the last business day of the 11 months following the date of the Settlement Hearing;

d) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.5.5(f); 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 May 1992, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with PFSL Investments Canada Ltd. (“PFSL”), a member of the MFDA.

8. The Respondent has been registered as a Branch Manager with PFSL since February 1995.

9. At all material times, the Respondent acted as the Branch Manager at his branch office and approved the trades submitted by other Approved Persons, including Theon White and Anthony Carty (“White” and “Carty”, respectively).

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

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

11. Between August 2007 and February 2013, the Respondent obtained and used to process transactions, 4 Redemption Request Forms in respect of 1 client (the “Client BM Forms”).

#### **Approval of Pre-Signed Account Forms**

12. Between September 2007 and October 2013, the Respondent, in his capacity as Branch Manager, reviewed and approved 24 pre-signed account forms in respect of 8 clients that were submitted by White and Carty.

13. All of the pre-signed account forms were used to process transactions.

14. The Respondent also approved the Client BM Forms in his capacity as Branch Manager.

### **PFSL's Investigation**

15. PFSL's compliance staff detected the conduct that is the subject of this Settlement Agreement as a result of a branch audit on October 8, 2013 and immediately commenced an investigation.

16. As part of its investigation, PFSL reviewed all client files in the branch in order to identify all pre-signed account forms either used or approved by the Respondent.

17. PFSL also sent letters to all affected current clients of PFSL to determine whether the Respondent, White and Carty had engaged in any unauthorized trading in their accounts. None of the clients reported any concerns to PFSL.

18. PFSL sent the Respondent a warning letter about his misconduct on February 7, 2014 and placed him on probation for the period of November 4, 2014 to November 4, 2015.

### **Additional Factors**

19. The Respondent did not receive any financial benefit from engaging in the misconduct as all of the pre-signed account forms used by the Respondent were redemption forms. Approved Persons working for PFSL do not receive any commissions or fees for redemption transactions.

20. In 2014, the Respondent earned less than \$15,000 working for PFSL.

21. There is no evidence of client harm.

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

23. 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**

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 29<sup>th</sup> day of January, 2016.

“LDH”  
\_\_\_\_\_  
Witness – Signature

LDH  
\_\_\_\_\_  
Witness – Print name

“Orville Hogan”  
\_\_\_\_\_  
Orville Hogan

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



**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: Orville I. Hogan**

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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 August 2007 and October 2013 the Respondent obtained and used to process transactions 4 pre-signed account forms in respect of 1 client and approved the use of 28 pre-signed account forms in respect of 9 clients contrary to MFDA Rules 2.1.1 and 2.5.5(f);

**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 (the “Fine”);
2. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No.1 (“Costs”);
3. The Fine and Costs together shall be payable in 12 equal installments, the first of which is due on the date of the Settlement Hearing, with the remaining 11 installments due on the last business day of the 11 months following the date of the Settlement Hearing;
4. The Respondent shall in future comply with MFDA Rules 2.1.1 and 2.5.5; and
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]



**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: Anthony Carty**

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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, Orville I. Hogan, 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: between December 2010 and October 2013, the Respondent obtained and used to process transactions, 13 pre-signed Redemption Request forms in respect of 2 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 \$5,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 (the “Fine”);
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1 (the “Costs”);
- c) the Fine and Costs together shall be payable in 12 equal installments, the first of which is due on the date of the Settlement Hearing, the remaining 11 installments due on the last business day of the 11 months following the date of the Settlement Hearing;
- 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**

#### **Background**

7. Since November 1992, the Respondent has been registered as a mutual fund salesperson (now known as a Dealing Representative) in Ontario with PFSL Investments Canada Ltd. (“PFSL”), a member of the MFDA.

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

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

9. Between December 2010 and October 2013, the Respondent obtained and used to process transactions, 13 pre-signed Redemption Request forms in respect of 2 clients.

### **PFSL's Investigation**

10. PFSL's compliance staff detected the conduct that is the subject of this Settlement Agreement as a result of a branch audit on October 8, 2013.

11. As part of its investigation, PFSL reviewed all of the Respondent's client files. This review, together with direction from the Respondent who self-reported the existence of several of the pre-signed accounts forms, lead to the identification of the pre-signed account forms at issue.

12. In addition, PFSL sent a letter to the one remaining current PFSL client affected by the Respondent's conduct in order to determine whether the Respondent had engaged in any unauthorized trading in the client's account. The client did not report any concerns to PFSL.

13. On February 24, 2014, PFSL sent the Respondent a warning letter.

14. The Respondent states that he used pre-signed account forms for client convenience.

### **Additional Factors**

15. The Respondent did not receive any financial benefit from engaging in the misconduct as all of the pre-signed account forms used by the Respondent were redemption forms. Approved Persons working for PFSL do not receive any commissions or fees for redemption transactions.

16. In 2014, the Respondent earned less than \$6,000 working for PFSL.

17. There is no evidence of client harm.

18. The Respondent has not previously been disciplined by the MFDA.
19. The Respondent self-reported the existence of several of the pre-signed account forms.
20. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conduct a full hearing on the allegations.

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

21. 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.
22. 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.
23. 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.
24. 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.

25. 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.

26. 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.

27. 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 10<sup>th</sup> day of February, 2016.

“CC”  
\_\_\_\_\_  
Witness – Signature

“Anthony Carty”  
\_\_\_\_\_  
Anthony Carty

CC  
\_\_\_\_\_  
Witness – Print name

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



**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: Anthony Carty**

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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 October 2013, the Respondent obtained and used to process transactions, 13 pre-signed Redemption Request forms in respect of 2 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 \$5,000 pursuant to s.24.1.1(b) of MFDA By-law No.1 (the “Fine”);
2. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No.1 (“Costs”);
3. The Fine and Costs together shall be payable in 12 equal installments, the first of which is due on the date of the Settlement Hearing, the remaining 11 installments due on the last business day of the 11 months following the date of the Settlement Hearing;
4. The Respondent shall in future comply with MFDA Rule 2.1.1; and
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]



**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: Theon White**

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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, Theon White, 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: between September 2007 and November 2011, the Respondent obtained and used to process transactions, 11 pre-signed account forms in respect of 6 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 \$5,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 (the “Fine”);
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1 (the “Costs”);
- c) the Fine and Costs together shall be payable in 12 equal installments, the first of which is due on the date of the Settlement Hearing, the remaining 11 installments due on the last business day of the 11 months following the date of the Settlement Hearing;
- 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**

#### **Background**

7. Since November 1992, the Respondent has been registered as a mutual fund salesperson (now known as a Dealing Representative) in Ontario with PFSL Investments Canada Ltd. (“PFSL”), a member of the MFDA.

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

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

9. Between September 2007 and November 2011, the Respondent obtained and used to process transactions, 11 pre-signed Redemption Request forms in respect of 6 clients.

### **PFSL's Investigation**

10. PFSL's compliance staff detected the conduct that is the subject of this Settlement Agreement as a result of a branch audit on October 8, 2013.

11. As part of its investigation, PFSL reviewed all of the Respondent's client files, identifying the pre-signed account forms at issue.

12. In addition, PFSL sent letters to all PFSL clients affected by the Respondent's conduct in order to determine whether the Respondent had engaged in any unauthorized trading in their accounts. None of the clients reported any concerns to PFSL.

13. On February 24, 2014, PFSL sent the Respondent a warning letter about his misconduct.

14. The Respondent states that he used pre-signed account forms for client convenience.

### **Additional Factors**

15. The Respondent did not receive any financial benefit from engaging in the misconduct as all of the pre-signed account forms used by the Respondent were redemption forms. Approved Persons working for PFSL do not receive any commissions or fees for redemption transactions.

16. In 2014, the Respondent earned less than \$1,500 working for PFSL.

17. There is no evidence of client harm.

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

19. 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**

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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 26<sup>th</sup> day of January, 2016.

“VW”  
\_\_\_\_\_  
Witness – Signature

“Theon White”  
\_\_\_\_\_  
Theon White

VW  
\_\_\_\_\_  
Witness – Print name

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



**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: Theon White**

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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 September 2007 and November 2011, the Respondent obtained and used to process transactions, 11 pre-signed Redemption Request forms in respect of 6 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 \$5,000 pursuant to s.24.1.1(b) of MFDA By-law No.1 (the “Fine”);
2. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No.1 (“Costs”);
3. The Fine and Costs together shall be payable in 12 equal installments, the first of which is due on the date of the Settlement Hearing, the remaining 11 installments due on the last business day of the 11 months following the date of the Settlement Hearing;
4. The Respondent shall in future comply with MFDA Rule 2.1.1; and
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]