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: Nathan Charles Garries

Heard: October 24, 2016, in Edmonton, Alberta
Reasons for Decision: November 14, 2016

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

The Hon. René P. Foisy	Chair
Kathleen Jost	Industry Representative
James Samanta	Industry Representative

Appearances:

Justin Dunphy	)	Counsel for the Mutual Fund Dealers Association of Canada
Nathan Charles Garries	)	In Person

1. By Notice of Settlement Hearing dated August 8th, 2016, and duly served upon Nathan Garries (the "Respondent"), a Settlement Hearing was heard in Edmonton, Alberta on October 24, 2016.

2. Staff of the Mutual Fund Dealers Association of Canada ("MFDA Staff"), made the following Submissions:

3. MFDA Staff has entered into a settlement agreement dated July 31, 2016 (the "Settlement Agreement") with Nathan Charles Garries (the "Respondent"), in which the Respondent admits that:

a) between May 1, 2013 and October 31, 2013, he processed 306 authorized discretionary trades as part of a dollar-cost averaging strategy in relation to 38 clients, contrary to MFDA Rules 2.3.1 and 2.1.1;
b) between September 2, 2010 and June 3, 2014, he failed to record and maintain evidence of client trade instructions with respect to 340 transactions that he processed pursuant to Limited Trading Authorizations for 48 clients, contrary to MFDA Rules 2.1.1 and 5.1(b);
c) between November 12, 2008 and July 18, 2014, he obtained, possessed and, in some instances, used to process transactions, 54 pre-signed account forms or photocopies of pre-signed account forms in respect of 19 clients, contrary to MFDA Rule 2.1.1; and
d) between January 21, 2011 and May 23, 2014, he falsified and used to process transactions, 14 client account forms in respect of 13 clients, by altering client account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

4. The Respondent agrees, as a term of the Settlement Agreement, to a 1 month prohibition from conducting securities related business in any capacity while in the employ or associated with any Member of the MFDA, to pay a fine in the amount of $25,000, and to pay costs in the amount of $2,500.

AGREED FACTS

5. Since March 14, 2003, the Respondent has been registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with Quadrus Investment Services Ltd. ("Quadrus"), a Member of the MFDA.

6. At all material times, the Respondent has conducted business in the Edmonton, Alberta area.

Authorized Discretionary Trading

7. At all material times, Quadrus' policies and procedures prohibited its Approved Persons from engaging in discretionary trading.

8. Between May and October of 2013, the Respondent processed 306 trades in respect of 38 clients where he determined the amount and timing of the trades, thereby engaging in discretionary trading.

9. The Respondent states that he processed the majority of the discretionary trades to implement a dollar-cost averaging strategy. Dollar-cost averaging is a strategy whereby a client will invest a consistent dollar amount at regular intervals in order to diversify the purchase price for a unit of a given mutual fund. The result is that a client purchases more units when prices are low and fewer units when prices are high.

10. The Respondent states that he met with clients to secure client authorization for a single switch to be completed in each client's accounts. The Respondent then completed the switch as a series of smaller transactions spread over a period of six months (the "sub-switches").

11. The Respondent states that he discussed the nature of the dollar-cost averaging trades with each of the 38 clients during an initial discussion with each client. The Respondent did not

obtain specific client instructions for each sub-switch he undertook after receiving initial client instructions.

12. The Respondent exercised his discretion to determine the amount and date when each sub-switch was submitted to Quadrus for processing, without discussing these elements of the transactions with the clients in each instance.

Failure to Record and Maintain Evidence of Client Instructions

13. At all material times, Quadrus' policies and procedures required its Approved Persons to maintain a permanent record of all client instructions, and to make these instructions available to Quadrus upon request. Quadrus' policies and procedures further required Approved Persons to clearly indicate the date and time that the client instructions were received.

14. Between September 2, 2010 and June 3, 2014, the Respondent processed 340 trades in the accounts of 48 clients, pursuant to Limited Trading Authorizations ("LTA") that had been executed by the clients. The Respondent states that he received verbal instructions from each client in relation to the trades, but failed to make a written record to evidence the client instructions.

Pre-Signed Account Forms

15. At all material times, Quadrus' policies and procedures prohibited its Approved Persons from using pre-signed account forms.

16. Between November 12, 2008 and July 18, 2014, the Respondent obtained, possessed and used to process transactions, 43 pre-signed account forms or photocopies of pre-signed account forms in respect of 19 clients. The pre-signed account forms consisted of:

i. Four Know Your Client ("KYC") Forms;
ii. One KYC Update Form;

iii. One Pre-Authorized Contribution Form;
iv. Two Redemption Forms;
v. Two RESP Educational Assistance Payment Forms;
vi. One Spousal RRSP Application Form;
vii. 26 Switch Forms;
viii. One TFSA Application Form; and
ix. Five Transfer Forms.

17. Between November 12, 2008 and July 18, 2014, the Respondent also obtained and possessed 11 pre-signed account forms in the files of seven of clients described in paragraph 16. The pre-signed account forms consisted of:

i. One Human Resources and Skills Development Canada Application Form;
ii. Four KYC Forms;
iii. Two RESP Educational Assistance Payment Forms;
iv. One Switch Form; and
v. Three Transfer Forms.

18. The Respondent states that he used the account forms described above for client convenience and, in some cases, to implement a dollar-cost averaging strategy to be carried out in client accounts between May and October, 2013.

Falsified Account Forms

19. Between January 21, 2011 and May 23, 2014, the Respondent altered and used to process transactions, 14 pre-signed account forms in respect of 13 clients. The pre-signed account forms consisted of:

i. Two Investment Application Forms;
ii. One Redemption Form;
iii. Three RESP Educational Assistance Payment Forms;

iv. Three Transfer Authorization for Registered Investments ("TARI") Forms; and

v. Two TFSA Application Forms.

20. In each case, the Respondent altered the forms to change information to reflect client instructions, without obtaining the clients' initials authorizing the change.

Member Response

21. In July 2014, Quadrus reviewed all of the 196 client files maintained by the Respondent. Quadrus did not detect any additional pre-signed account forms beyond those described in paragraphs 14 to 18 above. Quadrus also did not find evidence that the Respondent failed to record and maintain evidence of client trade instructions beyond the 48 clients described in paragraph 12 above.

22. As part of its investigation, Quadrus sent letters to all of the Respondent's clients on August 15, 2014, in order to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns.

23. On August 21, 2014, Quadrus issued a letter of reprimand to the Respondent, and required that he complete internal Member courses on "Know Your Conduct" and "Know Your Process". The Respondent completed these modules by August 26, 2014.

Additional Factors

24. In September 2009, Quadrus conducted an audit of the Respondent's client files and identified instances where he had maintained pre-signed account forms. At that time, Quadrus informed the Respondent of the seriousness of maintaining pre-signed account forms.

25. The Respondent has no prior disciplinary history with the MFDA.

26. There is no evidence of client harm in this matter.

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

28. The Respondent has cooperated fully with Staff during the course of the investigation, and by agreeing to the settlement, has avoided the necessity of a full hearing on the merits.

29. The Respondent has expressed remorse for his misconduct.

MFDA Rule 2.1.1 – High Standard of Ethics

30. 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 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.

MFDA Rule 2.1.1, MFDA Staff's Book of Authorities, Tab 1

Pre-Signed Account Forms are Not Permissible

31. In the present case, the Respondent admits that he obtained, possessed, and in some instances, used to process transactions, 54 pre-signed account forms or photocopies of pre-signed account forms in respect of 19 clients.

32. "Pre-signed account forms" is a generic term which applies to a variety of situations where an Approved Person seeks to rely on a client's signature on a document when the signature was not provided by the client at the time the document was completed. Most commonly, an Approved Person obtains a client's signature on a partially or completely blank account form, completes the form, then uses the form to process transactions in the client's account.

33. The MFDA has warned Approved Persons against the use of pre-signed account forms for a number of years.

> MFDA Staff Notice #MSN-0035 dated December 20, 2004, MFDA Staff's Book of Authorities, Tab 3
> MFDA Staff Notice #MSN-0066 dated October 31, 2007, (updated March 4, 2013), MFDA Staff's Book of Authorities, Tab 4
> MFDA Bulletin #0661-E dated October 2, 2015, MFDA Staff's Book of Authorities, Tab 5

34. 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.

> *Byce (Re)*, [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201311, Panel Decision dated September 4, 2013, MFDA Staff's Book of Authorities, Tab 6
> *Price (Re)*, [2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) dated April 18, 2011, MFDA Staff's Book of Authorities, Tab 7

35. 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 misuse in the form of unauthorized trading, fraud and misappropriation. As the Hearing Panel explained in *Price (Re):*

> Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading….At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client…Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.
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> *Price (Re)*, *supra*, MFDA Staff's Book of Authorities, Tab 7, at paras 122-124

36. The prohibition on the use of pre-signed account forms applies regardless of whether:

(a) the client was aware, or authorized the use, of the pre-signed account forms; and

(b) the forms were used by the Approved Person for discretionary trading or other improper purposes.

Byce (Re), supra, MFDA Staff's Book of Authorities, Tab 6
Price (Re), supra, MFDA Staff's Book of Authorities, Tab 7

Falsifying Forms is Not Permissible

37. In the present case, the Respondent admits that he falsified and used to process transactions, 14 client account forms in respect of 13 clients, by altering client account forms without having the clients initial the alterations.

38. Like pre-signed account forms, the prohibition against falsifying forms exists regardless of the existence of client authorization or the motive behind the use of the form, and, like pre-signed account forms, the MFDA has been warning Approved Persons against falsifying forms for a number of years.

MFDA Staff Notice #MSN-0035 dated December 20, 2004. MFDA Staff's Book of Authorities, Tab 3
MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013), MFDA Staff's Book of Authorities, Tab 4
MFDA Bulletin #00661-E dated October 2, 2015, MFDA Staff's Book of Authorities, Tab 5

39. Hearing Panels have held that falsifying forms is a contravention of the standard of conduct as set out in MFDA Rule 2.1.1.

Byce (Re), supra, MFDA Staff's Book of Authorities, Tab 6
Ewart (Re), [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201528, Panel Decision dated September 11, 2015, MFDA Staff's Book of Authorities, Tab 8

40. Like pre-signed account forms, the creation, possession or use of a falsified form is considered serious misconduct. The reasoning in *Price (Re),* above, for why pre-signed account forms affect the integrity and reliability of account documents also applies to falsified forms.

41. MFDA Staff considers this type of form to be a more serious violation of the contravention of the standard of conduct under MFDA Rule 2.1.1. The falsification of a client signature or initials is particularly serious.

42. Unlike pre-signed account forms, where the client knows he or she is signing an incomplete form to be used in some way, in the case of a form falsified by the Approved Person, the possibility exists that the client is unaware of the Approved Person's actions.

Discretionary Trading is Not Permissible

43. Pursuant to MFDA Rule 2.3.1(a), Approved Persons are prohibited from engaging in discretionary trading.

MFDA Rule 2.3.1, MFDA Book of Authorities, Tab 1

44. An Approved Person is required to obtain express client instructions from a client with respect to each of the elements of every trade (including purchases, redemptions and switches) that are processed in a client account including:

(a) the specification of which security is to be traded;
(b) the amount of the trade (in either dollar value or the number of units to be traded);
(c) the timing of the trade; and
(d) the specific details of any costs for fees associated with executing the trade.

Smilestone (Re), [2013] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201129, Panel Decision dated August 8, 2013, MFDA Staff's Book of Authorities, Tab 9
O'Brien (Re), [2008] Hearing Panel of the Atlantic Regional Council, MFDA File No. 200809, Panel Decision dated November 25, 2008, MFDA Staff's Book of Authorities, Tab 10, at para 21

45. If an Approved Person fails to obtain instructions from a client with respect to one or more elements of the trade and exercises his or her own discretion with respect to any elements of the trade in order to process the trade, the Approved Person has engaged in discretionary trading.

46. If a trade is processed without the knowledge or approval of the client (even if it can be shown that the trade was processed with good intentions and even if the client benefits the client financially or otherwise) the trade is unauthorized and the processing of such a trade constitutes a contravention of the regulatory obligations of the Approved Person who processed it.

47. Even if prior to the processing of the trade, the client has expressed a clear intention to delegate authority to the Approved Person to exercise discretion with respect to one or more elements of the trade, such a trade is still a discretionary trade and an Approved Person is not permitted to accept authority to engage in discretionary trading.

48. In the case of *Rounthwaite (Re)*, the Hearing Panel stated that:

> Discretionary trading is fundamentally wrong. Subject to certain exceptions, which are not applicable here, Member Rule 2.3.1 absolutely prohibits it. We agree with the reasons which [Enforcement Counsel] submitted for the prohibition. It:
>
> (i) undermines the client's right and ability to make informed decisions about their financial affairs;
> (ii) subverts the ability of a Member to properly supervise trading activity; and
> (iii) destroys the integrity of the audit trail.
>
> Jurisprudence emanating from MFDA Hearing Panels is consistent that even when an Approved Person fully apprises a client of the details of a transaction,

after it has been made, a discretionary trade is still wrong. See Re O'Brien, [2008] LNCMFDA 17 and Re Price, [2011] MFDA Case No. 200814.

> *Rounthwaite (Re),* [2012] Hearing Panel of the Central Regional Council, MFDA File No. 201123, Panel Decision dated July 30, 2012, MFDA Staff's Book of Authorities, Tab 11, at paras 7-8

49. In the case of *O'Brien (Re),* an MFDA Hearing Panel also noted that discretionary trading exceeds the scope of a mutual fund salesperson's registration category.

> *O'Brien (Re)*, *supra*, MFDA Staff's Book of Authorities, Tab 10, at para 19

50. The Hearing Panel in *O'Brien* also described the significance of the existence of a limited trading authorization ("LTA") on file for the client and the obligations of an Approved Person who processes trades using an LTA as follows:

> An LTA is a document which authorizes an Approved Person to execute a trade in a client's account without the necessity of the client providing his or her written instructions. It does not in any way confer general discretionary trading authority.
>
> . . .
>
> The existence of an LTA for a client's account does not relieve an Approved Person of the ordinary-course obligation to obtain specific, express instructions from the client for each trade made pursuant to the LTA. In the absence of such instructions, there will be no written authorization or signature of the client against which to later verify the trade. That is why it is important to record and maintain evidence of client trade instructions including, among other things, the account to which the trade instructions apply, the time and date that the instructions were received, the amount of the trade, the price at which it was executed and, the specific details of any costs for fees associated with executing the trade. Such instructions should also include a note as to how the client's instructions were given to the approved person (e.g. by telephone, in person or by facsimile). See Recording and Maintaining Evidence of Client Trade Instructions, Member Regulation Notice MR-0035.

> *O'Brien*, *supra*, MFDA Staff's Book of Authorities, Tab 10, at paras 20 - 21

51. In the present case, the Respondent admits that he processed 340 trades in the accounts of 48 clients as part of a dollar cost averaging strategy. The Respondent relied on Limited Trading

Authorizations that had been executed by the clients, and while he states that he received verbal instructions from each client in relation to the trades, he failed to make a written record to evidence the client instructions.

Trades Processed Without Evidence of Client Authorization

52. Pursuant to MFDA Rule 5.1(b), Approved Persons are also required to maintain records of each order, and of any instruction given or received for the purchase or sale of securities, whether executed or unexecuted.

MFDA Rule 5.1(b), MFDA Staff's Book of Authorities, Tab 1

53. The MFDA has previously advised Approved Persons of the requirement to maintain evidence of client trade instructions.

MFDA Staff Notice #MSN-0035 dated December 10, 2004, MFDA Staff's Book of Authorities, Tab 3

54. The failure by an Approved Person to document a client's authorization of a trade may give rise to ramifications that are similar to those that result from the use of pre-signed account forms. Such ramifications include the destruction of the audit trail and the frustration of the Member's ability to respond to inquiries and complaints from clients concerning the propriety of trading activity in their accounts.

MFDA Staff Notice #MSN-0035 dated December 10, 2004, MFDA Staff's Book of Authorities, Tab 3

55. In the present case, the Respondent admits that he processed 340 trades in the accounts of 48 clients pursuant to Limited Trading Authorizations that had been executed by the clients. The Respondent states that he received verbal instructions from each client in relation to the trades, but failed to make a written record to evidence the client instructions.

General Principles Regarding the Acceptance of Settlement Agreements

56. For the reasons set out below, it is in the public interest for the Hearing Panel to accept the Settlement Agreement having regard to the nature of the conduct admitted to by the Respondent and the MFDA's mandate to protect the public.

57. Pursuant to s. 24.4.3 of MFDA By-law No. 1, a Hearing Panel has two options with respect to a settlement agreement. It may either accept the settlement agreement or reject it.

> MFDA By-law No. 1, s. 24.4.3, MFDA Staff's Book of Authorities, Tab 2

58. The role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As was stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, quoting the reasoning in the I.D.A matter of *Milewski (Re):*

> We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "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 <u>not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness</u>. [Emphasis added.]
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> > *Sterling Mutuals Inc. (Re)*, [2008] Hearing Panel of the Central Regional Council, MFDA File No. 200820, Panel Decision dated August 21, 2008, MFDA Staff's Book of Authorities, Tab 12, at page 9

59. The principle that a Hearing Panel will not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness assists the MFDA to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

> *British Columbia Securities Commission* v. *Seifert*, 2007 BCCA 484, MFDA Staff's Book of Authorities, Tab 13, at para 31

General Considerations Concerning the Acceptance of a Settlement Agreement

60. The primary goal of securities regulation is the protection of the investor.

> *Pezim* v. *British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557 (SCC) MFDA Staff's Book of Authorities, Tab 14, at paras 59, 68

61. In the past, 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.

> *Jacobson (Re)*, [2007] Hearing Panel of the Prairie Regional Council, MFDA File No. 200712, Panel Decision dated July 13, 2007, MFDA Staff's Book of Authorities, Tab 15, at page 9

62. 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.

Jacobson (Re), *supra*, MFDA Staff's Book of Authorities, Tab 15, at page 10

Specific Factors Concerning the Appropriateness of the Penalty

63. 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), [2005] Hearing Panel of the Ontario Regional Council, MFDA File No. 200509, Panel Decision dated February 21, 2006, MFDA Staff's Book of Authorities, Tab 16, at pages 25-26

64. 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.

65. In cases involving misconduct of the type admitted to in the present case, the Penalty Guidelines recommend consideration of the following penalties and factors:

BREACH	**PENALTY TYPE & RANGE**	**SPECIFIC FACTORS TO CONSIDER**
Discretionary Trading (Rule 2.3.1) (Guidelines, p. 26)	• Fine (AP): Minimum of $5,000 • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course) • Period of increased supervision • Suspension • Permanent prohibition in egregious cases	• Number of trades • Whether client provided verbal authority to engage in discretionary trading • Underlying reason for engaging in trading or (e.g. For personal financial gain) • The number of clients affected • Period of time over which the trading took place • Suitability of trades • Extent of client losses
Standard of Conduct (Rule 2.1.1) (Guidelines, p. 27)	• Fine (AP): Minimum of $5,000 • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course) • Suspension • Permanent prohibition in egregious cases	• Nature of the circumstances and conduct • Number of individuals affected • Whether the conduct is likely to bring the individual, the Member or the mutual fund industry into disrepute
Books and Records (Rule 5.1) (Guidelines, p. 7)	• Fine (AP): Minimum of $5,000 • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course) • Suspension • Permanent prohibition in egregious cases	• The nature of the inaccurate or missing information • The materiality of the inaccurate or missing information • The extent of any client losses • Whether there was an intentional disregard for the requirements or if the failure was due to carelessness or inadvertence

Considerations in the Present Case

66. We accept that the MFDA Staff has taken the factors set out above into account in reaching its Settlement Agreement with the Respondent. Set out below are a number of factors particularly relevant to the Settlement Agreement.

(a) Nature of the Misconduct

67. Engaging in discretionary trading is considered serious misconduct.

> *Griffith (Re)*, [2014] Hearing Panel of the Central Regional Council, MFDA File No. 201329, Panel Decision dated August 19, 2014, Staff's Book of Authorities, Tab 18, at para 7

68. As well, the use of pre-signed and falsified account forms is a serious breach of MFDA Rule 2.1.1.

> *Byce (Re), supra*, MFDA Staff's Book of Authorities, Tab 6
> *Ewart (Re), supra*, MFDA Staff's Book of Authorities, Tab 8

69. Finally, in *Moalker (Re)*, the Hearing Panel commented on the seriousness of the misconduct where an approved person engaged in unauthorized discretionary trading and failed to maintain adequate records of clients instructions received.

> *Moalker (Re)*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201571, Panel Decision dated May 24, 2016, MFDA Staff's Book of Authorities, Tab 19

(b) Client Harm

70. There is no evidence of client harm.

> Settlement Agreement, para 28

(c) Benefits Received by the Respondent

71. There is no evidence that the Respondent received any financial benefit 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.

Settlement Agreement, para 29

(d) Respondent's Experience and Level of Activity in the Capital Markets

72. The Respondent has been registered in the mutual fund industry since 2003. He ought to have known and respected the compliance requirements of the Member and the MFDA.

Settlement Agreement, para 7

(e) Deterrence

73. The proposed fine and costs are significant and help the MFDA send a message to the Respondent and others in the capital markets about the seriousness of the misconduct at issue.

(f) Respondent's Past Conduct

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

Settlement Agreement, para 27

(g) Respondent's Recognition of the Seriousness of His Misconduct

75. 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 full disciplinary hearings.

Settlement Agreement, para 30

(h) Penalty Guidelines

76. The proposed penalty of a 1 month suspension in engaging in any securities related business, a fine of $25,000, and costs of $2,500 is greater than the $5,000 suggested minimum penalty for the violations as set out in the Penalty Guidelines above. This is due to the number of MFDA Rule violations in total, in addition to the number of discretionary trades and the number of pre-signed account forms and falsified forms, all of which merit a higher penalty than the suggested minimums.

(i) Previous Decisions Made in Similar Circumstances

77. The proposed resolution is within the reasonable range of appropriateness with regard to other decisions made by MFDA Hearing Panels in similar circumstances:

Case:	Facts:	Penalties:
Smilestone (Re), supra, Tab 9	• The Respondent falsified an unknown number client signatures and initials in order to open and execute trades in client accounts and falsely provided signature guarantees on trade tickets with respect to one client. • The Respondent engaged in authorized and unauthorized discretionary trading in respect of an unknown number of clients. • The Respondent failed to comply with the Member's conditions with respect to an outside business activity. • The Respondent provided false responses to the Member's compliance staff during a course review	The Hearing Panel approved the settlement agreement with the following terms: • A two year suspension • Completion of an ethics course • Fine of $10,000 • Costs of $5,000
Moalker (Re), [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201571, Panel Decision dated May 24, 2016, MFDA Staff's Book of Authorities, Tab 19	• The Respondent engaged in unauthorized discretionary trading in the accounts of 17 clients. • The Respondent failed to maintain adequate records of client instructions in the accounts of 9 clients.	The Hearing Panel approved the settlement agreement with the following terms: • A 6 month suspension • Fine of $15,000, failure of which to pay would lead to a permanent prohibition • Costs of $5,000
Mohamed (Re), [2012] Hearing Panel of the Central Regional Council,	• The Respondent obtained, maintained, and in some instances used to process transactions 43 pre-signed account forms in respect of 30 clients.	The Hearing Panel approved the settlement agreement with the following terms:

MFDA File No. 201229, Panel Decision dated December 21, 2012, MFDA Staff's Book of Authorities, Tab 20	• The Respondent engaged in 22 instances of authorized discretionary trading in respect of 7 clients. • The Respondent provided misleading information to the Ontario Securities Commission with respect to his conduct.	• One month suspension • Completion of the IFSE Mutual Fund Dealer Compliance Course • Fine of $20,000 • Costs of $5,000
Bowness (Re), [2013] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201350, Panel Decision dated January 16, 2014, MFDA Staff's Book of Authorities, Tab 21	• The Respondent obtained and maintained 68 pre-signed account forms in respect of 26 clients. • The Respondent engaged in 8 instances of authorized discretionary trading with respect of one client. • The Respondent falsified 16 account forms with respect to 6 clients.	The Hearing Panel approved the settlement agreement with the following terms: • A one year suspension • Fine of $5,000 • Costs of $2,500
Chen (Re), [2010] Hearing Panel of the Pacific Regional Council, MFDA File No. 201006, Panel Decision dated April 18, 2011, MFDA Staff's Book of Authorities, Tab 22	• The Respondent engaged in an unknown number of instances of authorized discretionary trading in respect of 3 clients. • The Respondent entered into a settlement agreement with a client without the Member's consent.	The Hearing Panel approved the settlement agreement with the following terms: • Fine of $18,000 • Completion of an investment funds course • Costs of $5,000
Man (*Re*), [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201314, Panel Decision dated May 5, 2014, MFDA Staff's Book of Authorities, Tab 23	• The Respondent falsified account transfer forms with respect of 2 clients by altering the transfer information • The Respondent obtained, maintained, and used one pre-signed account form with respect to one client. • The Respondent engaged in discretionary trading with respect of 2 clients.	The Hearing Panel issued the following penalty: • A 3 month suspension • Fine of $5,000 • Costs of $5,000

Costs

78. An award of costs in the amount of $2,500 is appropriate in the circumstances.

Conclusion

79. Having regard to all the foregoing circumstances, the proposed penalties are reasonable, proportionate to the misconduct in question, and are in keeping with the MFDA's mandate to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by Members and Approved Persons.

The Settlement Agreement is accepted.

80. The formal Order is attached as Schedule "A" hereto.

DATED this 14th day of November, 2016.

"René P. Foisy"

The Hon. René P. Foisy
Chair

"Kathleen Jost"

Kathleen Jost
Industry Representative

"James Samanta"

James Samanta
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: Nathan Charles Garries

ORDER

(ARISING FROM SETTLEMENT HEARING ON OCTOBER 24, 2016)

WHEREAS on October 24, 2016, 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 Nathan Garries (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated July 31, 2016 (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent:

a) between May 1, 2013 and October 31, 2013, processed 306 authorized discretionary trades as part of a dollar-cost averaging strategy in relation to 38 clients, contrary to MFDA Rules 2.3.1 and 2.1.1;

b) between September 2, 2010 and June 3, 2014, failed to record and maintain evidence of client trade instructions with respect to 340 transactions that he processed pursuant to Limited Trading Authorizations for 48 clients, contrary to MFDA Rules 2.1.1, and 5.1(b);
c) between November 12, 2008 and July 18, 2014, obtained, possessed and, in some instances, used to process transactions, 54 partially complete pre-signed account forms or photocopies of partially complete pre-signed account forms in respect of 19 clients, contrary to MFDA Rule 2.1.1; and
d) between January 21, 2011 and May 23, 2014, falsified and used to process transactions, 14 client account forms in respect of 13 clients, by altering client account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

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

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

2. The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ or associated with any Member of the MFDA for a period of one month from the date of the settlement hearing, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

3. the Respondent shall pay a fine in the amount of $25,000 pursuant to section 24.1.1(b) of By-law No. 1;

4. the Respondent shall pay costs in the amount of $2,500 pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement; and

5. the Respondent shall in the future comply with MFDA Rules 2.1.1 , 2.3.1 and 5.1.

DATED this 24th day of October, 2016.

"Rene P. Foisy"

The Hon. Rene P. Foisy
Chair

"Kathleen Jost"

Kathleen Jost
Industry Representative

"James Samanta"

James Samanta
Industry Representative

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