



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: David Ewart

SETTLEMENT AGREEMENT

I. INTRODUCTION

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

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

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

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

III. ACKNOWLEDGEMENT

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

IV. AGREED FACTS

Registration History

6. The Respondent has been registered in the mutual fund industry since 1986.

7. Since May 2002, the Respondent has been registered as a mutual fund salesperson in Ontario (now known as a Dealing Representative) with FundEX Investments Inc. (“FundEX”), a member of the MFDA.

8. At all material times, the Respondent conducted business in Richmond Hill, Ontario.

Pre-Signed Account Forms

9. At all material times, FundEX's policies and procedures prohibited its Representatives, including the Respondent, from holding blank or partially complete pre-signed forms.
10. Between April 2008 and March 2013, the Respondent, obtained, maintained, and in some instances, used to process trades, a total of 47 blank pre-signed forms in respect of 26 clients.
11. In particular, the Respondent:
 - a) obtained and maintained, 6 blank pre-signed order entry forms; and
 - b) obtained and used to process trades, 40 photocopies of blank pre-signed order entry forms and 1 blank pre-signed order entry form.

Altered Account Forms

12. Between April 2008 and March 2013, the Respondent obtained, altered, and used to process transactions, 5 client account forms after those forms were signed by the client (including order entry forms and new client application forms) in respect of 6 clients.
13. The forms were altered for the purpose of correcting information to reflect client instructions.

Post-Detection

14. FundEX's compliance staff detected the conduct that is the subject of this Settlement Agreement as a result of an audit of the Respondent's client files on March 20, 2013.
15. As part of its investigation, FundEX sent letters to all clients serviced by the Respondent to determine whether the Respondent had engaged in any unauthorized trading in their accounts. None of the clients reported any concerns to FundEX.

16. At FundEX's request, the Respondent also obtained original signatures for all of the forms in question. During this process, all the affected clients confirmed they authorized the transactions.

17. The Respondent had not obtained limited trade authorizations for any of the transactions set out above in paragraphs 9 and 12.

18. On May 23, 2013, the Respondent acknowledged in writing that the use of pre-signed account forms contravenes rules and stated, "the overwhelming reason/pressure for this procedure has been for the convenience of the client. I might go further to say there may have been an element of convenience for myself."

19. FundEX placed the Respondent under close supervision from May 2013 to September 2013 and charged the Respondent \$1,500 in respect of this supervision.

20. In February 2015, FundEX conducted a branch audit of the Respondent, which revealed no evidence of the use or maintenance of pre-signed forms.

Additional Factors

21. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond the commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

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

23. The Respondent now understands the seriousness of his actions.

24. The Respondent has not previously been the subject of MFDA disciplinary proceedings. However, during a routine compliance audit of the Respondent's files conducted in June 2008, FundEX compliance staff detected two pre-signed blank forms in the Respondent's client files.

In August 2008, the Respondent signed an “Acknowledgement and Undertaking” form, in which he agreed to stop using pre-signed forms of any type in relation to transactions or other activities involving client accounts.

25. 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.

V. CONTRAVENTIONS

26. The Respondent admits that, between April 2008 and March 2013, he:

- a) obtained, maintained, and in some instances, used to process trades, 47 pre-signed forms in respect of 26 clients; and
- b) altered and used to process transactions, 5 client account forms in respect of 6 clients;

contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall pay a fine in the amount of \$15,000 pursuant to Rule 24.1.1(b) of MFDA By-law No.1;
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of 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.

VII. STAFF COMMITMENT

28. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part XI below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

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

30. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

31. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

32. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with

this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

33. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceedings may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

34. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

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

XI. DISCLOSURE OF AGREEMENT

36. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this

Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

38. This 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 15th day of July, 2015.

“Morgan Whittal”

Witness – Signature

“David Ewart”

David Ewart

Morgan Whittal

Witness – Print name

“Shaun Devlin”

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



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**IN THE MATTER OF A SETTLEMENT HEARING
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Re: David Ewart

ORDER

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 David Ewart (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 April 2008 and March 2013:

- a) the Respondent obtained, maintained, and in some instances, used to process trades, 47 pre-signed forms in respect of 26 clients; and

b) the Respondent obtained, altered and used to process transactions, 5 client account forms in respect of 6 clients,

contrary to MFDA Rule 2.1.1.

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

1. the Respondent shall pay a fine in the amount of \$15,000 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; and

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

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]