



**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: Brenden Mernagh**

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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, Brenden Mernagh 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 2013 and January 2014, the Respondent falsified the signatures of 10 clients on 13 account forms, 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 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 6 months from the date of the settlement hearing, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$1,000 pursuant to section 24.2 of MFDA By-law No. 2;
- 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. From October 31, 2011 to February 4, 2014, the Respondent was registered as a mutual fund salesperson (now known as a Dealing Representative) in Ontario with TD Investment Services Inc., ("TD"), a member of the MFDA. TD terminated his employment as a result of the misconduct that is the subject of this Settlement Agreement.

8. The Respondent is not currently registered in the securities industry in any capacity.

9. At all material times, the Respondent conducted business in the Mississauga, Ontario area.

10. Prior to December 2013, the Respondent worked with TD on a part-time basis during university.

### **Falsification of Client Signatures**

11. Between December 2013 and January 2014, the Respondent met the 10 clients in question for the purpose of completing trades. At these meetings, the 10 clients signed the trade forms required to complete the transactions.

12. The Respondent did not realize that certain supplementary documents, relating to suitability or internal transfers, also had to be signed by the clients (the “Supplemental Documents”).

13. Over the material time period, the Respondent submitted the trade forms to TD for processing, but not the Supplemental Documents.

14. After the trades were submitted, the Branch Compliance Officer notified the Respondent of his failure to submit the Supplemental Documents.

15. In order to rectify the issue, the Respondent falsified the signatures of 10 clients on 13 Supplemental Documents, which he then submitted to TD for processing.

### **TD’s Investigation**

16. TD’s compliance staff became aware of the conduct that is the subject of this Settlement Agreement on January 17, 2014, after the Respondent’s Branch Manager, in her review of that day’s trades, identified a suspect signature on one of the Supplemental Documents.

17. As part of its investigation into the Respondent’s conduct, TD then reviewed 25 of the Respondent’s client files, revealing the remainder of the signature falsifications.

18. On January 29, 2014, TD interviewed the Respondent about the Supplementary Documents. The Respondent admitted falsifying the client signatures in question.

19. The Respondent states that he was a relatively inexperienced fulltime employee at the time of the misconduct. He believed that if he did not provide the Supplemental Documents immediately, he would suffer negative consequences to his employment.

#### **Additional Factors**

20. There is no evidence the Respondent received any benefit from the conduct set out above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

21. There is no evidence of client harm. The affected clients all signed the related trade documents in person. There is no evidence that the Supplemental Documents did not accurately reflect the clients' instructions. No clients have filed client complaints in respect of the misconduct.

22. The Respondent recognizes the seriousness of his misconduct and has exhibited remorse.

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

24. 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 allegations.

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

25. 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.

26. 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.

27. 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.

28. 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 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.

29. 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.

30. 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.

31. 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 25<sup>th</sup> day of January, 2016.

“Brenden Mernagh”  
\_\_\_\_\_  
Brenden Mernagh

“Meghan Barron”  
\_\_\_\_\_  
Witness – Signature

Meghan Barron  
\_\_\_\_\_  
Witness – Print Name

“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 Brenden Mernagh (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 2013 and January 2014, the Respondent falsified the signature of 10 clients on 13 account forms.

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

1. 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 6 months from the date of the settlement hearing, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$1,000 pursuant to section 24.2 of MFDA By-law No. 1;
3. The Respondent shall comply in future 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]