



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: Nadine Wighton

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. On May 17, 2019, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to section 24.4 of MFDA By-law No. 1 in respect of Nadine Wighton (the “Respondent”).

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

II. JOINT SETTLEMENT RECOMMENDATION

3. 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 MFDA By-law No. 1.

4. 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”.

5. 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

6. 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 IX) 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

7. From August 31, 1998 to June 9, 2017, when she was terminated in connection with the events described herein, the Respondent was registered in Ontario as a dealing representative (formerly known as a mutual fund salesperson) with Scotia Securities Inc. (the “Member”), a Member of the MFDA.

8. The Respondent is not currently registered in the securities industry in any capacity; however, she remains employed with Scotiabank as a small business advisor.

9. At all material times, the Respondent carried on business from a branch located in Hamilton, Ontario.

Background

10. Client X’s family operates a business.

11. In or about December 2004, the Respondent started servicing the mutual fund accounts of client X and her extended family, including client X's father, siblings and other relatives. At all material times, the family were high net worth clients of the Member.

12. Client X held a Tax-Free Savings Account, Registered Retirement Savings Plan and Registered Education Savings Plan at the Member.

13. The Respondent continued servicing the mutual fund accounts of client X until approximately November 2013.

Respondent Failed to Record Accurate KYC Information

14. From January 21, 2010 to February 12, 2013, the Respondent prepared Know-Your-Client ("KYC") update forms for client X's accounts by reproducing the client's KYC information from KYC forms on file from previous years, without meeting or speaking with the client to determine whether any KYC information had changed.

15. During this period, the Respondent periodically dropped off client X's KYC update forms and other account documents at the family business for signature, and later returned to collect the account documents.

16. Client X did not sign the account documents.

17. When the Respondent returned to collect the account documents, the documents had signatures on them. The Respondent assumed that they had been signed by the client, but did not take adequate steps to ensure that the KYC update forms were signed by the client.

18. Client X's KYC update forms indicated that client X had "expert" or "high" investment knowledge and investment experience

19. At all material times, client X had "low" investment knowledge and limited investing experience.

20. On account documents dated December 24, 2009 and January 27, 2011, the Respondent recorded that client X was employed as an “Administrator” at the family business. The Respondent knew or ought to have known that X was not employed by the family business.

21. By engaging in the conduct described above, the Respondent failed to conduct adequate due diligence to learn, or accurately record on account documents, KYC information for client X, contrary to MFDA Rules 2.2.1 and 2.1.1

Respondent Improperly Disclosed Confidential Client Information

22. At all material times, the Member’s policies and procedures required that:

- personal client information be kept confidential in order to protect clients’ privacy and confidentiality; and
- client consent be obtained prior to disclosing any client’s personal or confidential information.

23. The Member generally sent client account statements to clients quarterly.

24. Between December 24, 2009 and February 12, 2013, without the knowledge, authorization, or consent of client X, the Respondent recorded client X’s address on file with the Member as that of the family business instead of client X’s residential address.

25. Consequently, client X’s account statements were sent to the family business and not to client X herself.

26. By arranging for client X’s account statements to be sent to a third party address instead of to client X’s residential address without the authorization of client X, the Respondent failed to ensure that reporting about client X’s investment accounts was maintained in confidence, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.5.1, 2.10, and 1.1.2.

Respondent Engaged in Unauthorized Trading

27. At all material times, the Member’s policies and procedures provided that the client’s specific instructions (or someone with trading authority or an involved party with signing authority) were required for any kind of investment direction.

28. On January 26, 2011, the Respondent received email instructions from MJ, an employee of the family business that instructed the Respondent to, among other things, process two deposits into and purchases for client X's accounts.

29. MJ was not a co-account holder and did not have trading or signing authority over the investment accounts of client X.

30. The Respondent did not communicate with client X to inform client X about the email that the Respondent had received from MJ or to obtain trading instructions from client X concerning the purchases that MJ had instructed the Respondent to process in the account of X.

31. The Respondent relied upon MJ's instructions and executed the two purchases in client X's accounts totaling approximately \$12,462 without the knowledge or consent of client X.

32. Throughout the history of the accounts, the Respondent only took instructions to make deposits into and purchases for X' accounts. There were not any redemptions made at any time from the accounts of client X.

33. By accepting and acting upon trade instructions regarding two purchases in client X's investment account that the Respondent received from a third party who did not possess trading or signing authority over the investment accounts of client X, and submitting the trades for processing without obtaining authorization from client X, the Respondent engaged in unauthorized trading, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.5.1, 2.10, and 1.1.2.

Additional Factors

34. The Respondent has not been the subject of previous MFDA disciplinary proceedings.

35. Aside from the complaint of client X, there have been no client complaints regarding this matter to the Member or to the MFDA.

36. The Respondent only accepted instructions for deposits and two purchases to client X' accounts (most often on an annual basis to maximize X's RRSPs and RESPs). No redemptions were ever made from the accounts by X or any other party.

37. The Respondent cooperated with Staff's investigation, and sought an early resolution of this matter.

38. By entering into this Settlement Agreement, the Respondent has saved the MFDA time, resources, and expenses associated with conducting a full hearing of the allegations.

V. CONTRAVENTIONS

39. The Respondent admits:

- a) between December 24, 2009 and February 12, 2013, the Respondent failed to conduct adequate due diligence to learn, or accurately record on account documents, Know-Your-Client information for client X, contrary to MFDA Rules 2.2.1 and 2.1.1;
- b) between December 24, 2009 and February 12, 2013, the Respondent arranged for client X's account statements to be delivered to a third party without taking adequate steps to determine whether client X had authorized and was aware of the address change, thereby failing to ensure that the confidential information relating to client X was maintained in confidence, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.5.1, 2.10, and 1.1.2; and
- c) on January 26, 2011, the Respondent accepted and acted upon trade instructions regarding two deposits and purchases in client X's investment account that the Respondent received from a third party who did not possess trading or signing authority over the investment accounts of client X, and submitted the trades for processing without obtaining authorization from client X, thereby engaging in unauthorized trading, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.5.1, 2.10, and 1.1.2.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall pay a fine in the amount of \$20,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

- b) the Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rules 2.2.1, 2.5.1, 2.10, 1.1.2, and 2.1.1; and
- d) the Respondent will attend in person on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

41. 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 and the contraventions set out in this Settlement Agreement, subject to the provisions of Part IX 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 this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in this Settlement Agreement, 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

42. 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. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

43. 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 her 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.

44. 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. 24.1.1 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of MFDA By-law No. 1.

45. 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 her.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

46. 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 proceeding(s) 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

47. 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 MFDA By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations

48. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that she 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

49. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

51. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

52. A facsimile copy of any signature shall be effective as an original signature.

DATED this 27th day of January, 2020.

“Nadine Wighton”

Nadine Wighton

“JB”

Witness – Signature

JB

Witness – Print Name

“Shaun Devlin”

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement

Schedule “A”

Order

File No. 2018123



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: Nadine Wighton

ORDER

WHEREAS on May 17, 2019, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to section 24.4 of MFDA By-law No. 1 in respect of Nadine Wighton (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated January 27, 2020 (“Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to sections 20 and 24.1 of MFDA By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that:

- i. between December 24, 2009 and February 12, 2013, the Respondent failed to conduct adequate due diligence to learn, or accurately record on account documents, Know-Your-Client information for client X, contrary to MFDA Rules 2.2.1 and 2.1.1;

- ii. between December 24, 2009 and February 12, 2013, the Respondent arranged for client X's account statements to be delivered to a third party without taking adequate steps to determine whether client X had authorized and was aware of the address change, thereby failing to ensure that the confidential information relating to client X was maintained in confidence, contrary to the policies and procedures of the Member and MFDA Rule 2.1.1, 2.5.1, 2.10, and 1.1.2; and
- iii. on January 26, 2011, the Respondent accepted and acted upon trade instructions regarding two deposits and purchases in client X's investment account that the Respondent received from a third party who did not possess trading or signing authority over the investment accounts of client X, and submitted the trades for processing without obtaining authorization from client X, thereby engaging in unauthorized trading, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.5.1, 2.10, and 1.1.2.

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

- i. the Respondent shall pay a fine in the amount of \$20,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, by February 6, 2020;
- ii. the Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1, by February 6, 2020;
- iii. the Respondent shall in the future comply with MFDA Rules 2.2.1, 2.5.1, 2.10, 1.1.2, and 2.1.1; and
- iv. 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*.

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

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

DM 723322