



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 Wayne Nichol

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, David Wayne Nichol (the “Respondent”), 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 Mutual Fund Dealers Association of Canada (“MFDA”):
 - a) Between October 2014 and January 2019 the Respondent obtained, possessed, and in some instances, used to process transactions, 121 pre-signed account forms in respect of 53 clients, contrary to MFDA Rule 2.1.1; and

- b) In or around March 2015, the Respondent contributed to a client's account at the Member using his own monies, thereby engaging in personal financial dealings with a client that gave rise to a conflict or potential conflict of interest, which the Respondent failed to disclose to the Member or otherwise address by the exercise of reasonable business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.5.1, 1.1.2 and 2.1.1.
5. Staff and the Respondent agree and consent to the following terms of settlement:
- a) The Respondent shall be suspended 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 commencing on the third business day after the acceptance of this Settlement Agreement, pursuant to section 24.1.1(c) of MFDA By-law No. 1;
 - b) The Respondent shall pay a fine in the amount of \$25,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1;
 - c) The Respondent shall pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of By-law No. 1;
 - d) The Respondent shall in the future comply with MFDA Rules 2.1.1, 2.1.4, 2.5.1 and 1.1.2; and
 - e) The Respondent will attend the Settlement Hearing in person or via videoconference.
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 April 2007, the Respondent has been registered in British Columbia, Manitoba, Saskatchewan and Ontario as a dealing representative with Fundex Investments Inc. (the "Member"), a Member of the MFDA.

8. Since March 2019, the Respondent has been registered in Alberta as a dealing representative with the Member.

9. At all material times, the Respondent carried on business in the Winnipeg, Manitoba area.

Pre-Signed Account Forms

10. At all material times, the Member's policies and procedures prohibited its Approved Persons from holding, obtaining, or using pre-signed account forms.

11. Between October 2014 and January 2019, the Respondent obtained, possessed, and in some instances, used to process transactions, 121 pre-signed account forms in respect of 53 clients.

12. The pre-signed account forms consisted of Order Entry, Systemic Instruction, Transfer Authorization, Withdrawal Request, New Account Application, and Know-Your-Client ("KYC") Update forms.

Personal Financial Dealings With a Client

13. At all material times, the Member's policies and procedures prohibited its Approved Persons from lending money or extending credit to clients.

14. In March 2015, client DM advised the Respondent that he wished to make a contribution to his Tax Free Saving Account ("TFSA") prior to the expiry of a deadline specified by client DM's employer's benefit plan. Client DM was traveling at the time and was not able to meet the deadline to contribute to his TFSA. The Respondent issued a cheque payable to the client for \$810 using his own money and deposited it to client DM's TFSA so that the contribution could be made to the client's account by the deadline.

15. In or about March 2015, client DM reimbursed the Respondent for the \$810 he deposited into client DM's account.

16. The Respondent did not advise the Member that he deposited his own monies to client DM's account until the Member discovered a cheque from client DM to the Respondent during a review of the Respondent's branch as described below.

Member's Investigation

17. In February 2019, during an onsite branch review, the Member discovered the account forms that are the subject of this Settlement Agreement in client files maintained by the Respondent. The Member also discovered a personal cheque for \$810 from client DM payable to the Respondent that client DM had provided to the Respondent as repayment for the amounts the Respondent deposited into his account.

18. In May 2019, the Member sent audit letters to all of the clients whose accounts the Respondent serviced that asked the client to review and verify the accuracy of all trading activities executed in their accounts over the previous three years. For clients identified as having deficient forms containing KYC information, the Member also provided the client with their KYC information and asked the clients to review and verify the accuracy of the KYC information. No clients reported any concern to the Member.

19. On April 16, 2019, the Member placed the Respondent under close supervision for a period of five months.

20. On September 12, 2019, the Member issued a warning letter to the Respondent concerning the conduct described above.

Additional Factors

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

22. There is no evidence of any client loss, complaints, or that the transactions were unauthorized.

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 of 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. 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.

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 agrees to waive any rights to a full hearing, a review hearing or appeal 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 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.

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 18th day of February, 2022.

“David Wayne Nichol”

David Wayne Nichol

“AT”

Witness – Signature

AT

Witness – Print Name

“Charles Toth”

Staff of the MFDA
Per: Charles Toth
Vice-President, Enforcement



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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: David Wayne Nichol

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 MFDA By-law No. 1 in respect of David Wayne Nichol (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 MFDA By-law No. 1;

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

- a) Between October 2014 and January 2019 the Respondent obtained, possessed, and in some instances, used to process transactions, 121 pre-signed account forms in respect of 53 clients, contrary to MFDA Rule 2.1.1; and
- b) In or around March 2015, the Respondent contributed to a client's account at the Member using his own monies, thereby engaging in personal financial dealings with a client that gave rise to a conflict or potential conflict of interest, which the Respondent failed to disclose to the Member or otherwise address by the exercise of reasonable business judgment influenced only by the best interests of the client,

contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.5.1, 1.1.2 and 2.1.1.

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

1. The Respondent shall be suspended 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 commencing on the third business day after the acceptance of this Settlement Agreement, pursuant to section 24.1.1(c) of MFDA By-law No. 1;
2. The Respondent shall pay a fine in the amount of \$25,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1;
3. The Respondent shall pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of By-law No. 1;
4. The Respondent shall in the future comply with MFDA Rules 2.1.1, 2.1.4, 2.5.1 and 1.1.2; and
5. 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]