



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: Donald William Shaw

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Donald William Shaw (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 MFDA:

- a) between October 4, 2013 and October 8, 2013, the Respondent provided a short term loan of \$440,000 to a client, thereby giving rise to a conflict or potential conflict of interest between the Respondent and the client, which the Respondent failed to address by the exercise of reasonable business judgment, influenced only by the best interests of the client, contrary to MFDA Rule 2.1.4;
- b) between November 2012 and November 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, 31 pre-signed account forms in respect of 18 clients, contrary to MFDA Rule 2.1.1; and
- c) between November 2014 and April 2015, the Respondent altered 4 account forms in respect of 2 clients by altering the date on the account forms without having the clients initial the alterations, 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 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 \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.1.4; 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. Since February 1997, the Respondent has been registered as a mutual fund salesperson (now known as a Dealing Representative) with Sun Life Financial investment Services (Canada) Inc. (“Sun Life”), a Member of the MFDA.

8. At all material times, the Respondent conducted business in the Rocky Mountain House, Alberta area.

Conflict of Interest

9. At all material times, Sun Life’s Code of Business Practice prohibited its Approved Persons, including the Respondent, from entering into a conflict or potential conflict of interest with clients. Sun Life’s Code of Business Practice further prohibited its Approved Persons, including the Respondent, from lending monies to a client.

10. At all material times, client BM was a client of Sun Life whose accounts were serviced by the Respondent. The Respondent states that client BM was a personal, family friend as well as a client.

11. In September 2013, client BM redeemed \$440,000 from a corporate account at Sun Life in order to complete the purchase of a business in Alberta. Client BM required the monies to be transferred via electronic fund transfer by October 4, 2013, in order to complete the business purchase. When the Respondent processed this request on behalf of client BM, the Respondent marked that the proceeds of the redemption were to be sent to client BM by regular mail, rather than ensuring the monies were deposited by electronic fund transfer to client BM’s account. As a result, client BM would not have sufficient monies to complete the business purchase at the time the transaction closed on October 4, 2013.

12. On or about October 2, 2013, client BM contacted the Respondent to advise that the redemption monies had not yet arrived. The Respondent contacted Sun Life and was advised that a cheque for the \$440,000 redemption had been mailed, and that an electronic fund transfer could not be arranged in sufficient time for client BM to complete the business purchase by October 4, 2013.

13. On or about October 4, 2013, the Respondent advanced client BM \$440,000 as a short term loan in order for client BM to complete his business purchase transaction by October 4, 2016.

14. On or about October 8, 2013, client BM repaid the Respondent.

Pre-Signed Account Forms

15. At all material times, Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining, or using pre-signed account forms.

16. Between November 2012 and November 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, pre-signed account forms in respect of 18 clients.

17. The pre-signed account forms consisted of:

- a) 4 order tickets;
- b) 2 Know-Your-Client forms;
- c) 6 pre-authorized chequing forms;
- d) 5 limited trading authorizations;
- e) 2 direct transfer forms;
- f) 2 mutual fund application forms; and
- g) 10 transfer authorization forms.

18. The Respondent submitted 28 of the pre-signed account forms to Sun Life to process transactions in the clients' accounts.

Altered Account Forms

19. At all material times, Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining, or using falsified account forms.

20. Between November 2014 and April 2015, the Respondent altered 4 account forms in respect of 2 clients by using correction fluid to alter the date on the account forms and then submitting the account forms to the Member for processing, without having the clients initial the alterations. The Respondent states that on both occasions, he was acting on the instruction of clients who lived in remote areas without access to computers and/or fax machines to initial the alterations.

21. The altered account forms consisted of 4 transfer authorization forms.

Sun Life's Investigation

22. In March 2016, Sun Life's compliance staff detected the conduct that is the subject of this Settlement Agreement as a result of an audit.

23. In April 2016, the Member placed the Respondent on close supervision for a period of 12 months.

24. In May 2016, as part of its investigation, Sun Life sent letters to all of the clients whose accounts were serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns.

25. On or about June 1, 2016, Sun Life issued a warning letter to the Respondent for possessing and using pre-signed and falsified forms, and for engaging in personal financial

dealings with client BM. Sun Life placed the Respondent on close supervision for a period of 12 months, and required the Respondent to complete an industry course.

Additional Factors

26. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct 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.

27. There is no evidence of any client loss or that the transactions were unauthorized.

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

29. 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

30. 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.

31. 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.

32. 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.

33. 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 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.

34. 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.

35. 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.

36. 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 3rd day of May, 2017.

“Donald William Shaw”

Donald William Shaw

“CH”

Witness – Signature

CH

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. 201749



Mutual Fund Dealers Association of Canada
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**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: Donald William Shaw

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 Donald William Shaw (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 the Respondent:

- a) between October 4, 2013 and October 8, 2013, provided a short term loan of \$440,000 to a client, thereby giving rise to a conflict or potential conflict of interest between the Respondent and the client, which the Respondent failed to address by the exercise of reasonable business judgment, influenced only by the best interests of the

- client, contrary to MFDA Rule 2.1.4;
- b) between November 2012 and November 2015, obtained, possessed, and in some instances, used to process transactions, 31 pre-signed account forms in respect of 18 clients, contrary to MFDA Rule 2.1.1; and
 - c) between November 2014 and April 2015, altered 4 account forms in respect of 2 clients by altering the date on the 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. 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;
2. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
3. The Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.1.4; and
4. 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]

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