



**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: Alan Dickson Brenchley**

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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, Alan Dickson Brenchley (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 by 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 June 2006 and May 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 230 pre-signed account forms, and altered 5 accounts forms without obtaining client initials, in respect of 26 clients, 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 in the employ of or associated with a Member of the MFDA for a period of 2 months from the date this Settlement Agreement is accepted, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
  - b) the Respondent shall pay a fine of \$25,000 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
  - c) the Respondent shall pay costs of \$2,500 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.2 of MFDA By-law No. 1;
  - d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
  - e) 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 November 2005 to June 5, 2017, the Respondent was registered in Ontario and British Columbia as a mutual fund salesperson (now known as a Dealing Representative) with FundEX Investments Inc. ("FundEX"), a Member of the MFDA.
8. On June 5, 2017, the Respondent resigned from FundEX.
9. Since July 28, 2017, the Respondent has been registered in Ontario and British Columbia as a Registered Representative with Aligned Capital Partners Inc., a dealer regulated by the Investment Industry Regulatory Organization of Canada.

10. At all material times, the Respondent conducted business in the Toronto, Ontario area.

### **Pre-Signed Account Forms**

11. At all material times, FundEX's policies and procedures prohibited its Approved Persons from using pre-signed account forms.

12. Between March 2007 and March 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 230 pre-signed account forms in respect of 26 clients.

13. The pre-signed account forms consisted of order entry forms, deregistration/withdrawal forms, systematic instruction forms, investment account applications, transfer forms, and mutual fund trade tickets.

14. 197 of the 230 forms were B2B deregistration/withdrawal forms with respect to 8 clients which were used to provide cash to these clients from an investment fund with Barometer Capital Management (the "Barometer Fund"). The Respondent states that to avoid having clients come in and sign a form each month, he had clients execute an undated B2B deregistration/withdrawal form, which he would photocopy, date, and enter a cash amount each month to process the withdrawal.

15. The Respondent states that the practice was done for client convenience, since the distributions were made on a monthly basis over numerous years. While traditional PACs were unavailable to process the withdrawals, the Respondent recently became aware that alternate methods existed for him to process the withdrawals without using pre-signed forms.

### **Altered Forms**

16. At all material times, FundEX's policies and procedures prohibited its Approved Persons from altering or crossing out information on an account form without obtaining the client's initials.

17. Between April 2008 and April 2011, the Respondent altered 5 account forms in respect of 4 clients by altering information on the account forms without having the clients initial the alterations.

18. The altered forms consisted of transfer forms and an account application form. The alterations to the four transfer forms consisted of changes to the identification of the relinquishing institution, the client's account number, and in two instances, the quantum and investment to be transferred. The alteration to the account application form consisted of a change to the type of account to be opened.

### **FundEX's Response**

19. In June 2016, MFDA Sales Compliance Staff advised FundEX that it identified pre-signed account forms in client files serviced by the Respondent after a field review of the Respondent's branch location.

20. FundEX conducted a review of all of the client files serviced by the Respondent and sent letters to all of the Respondent's clients to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns.

21. On March 23, 2017, FundEX placed the Respondent under strict supervision and provided notice that it would terminate the Respondent's registration with FundEX on September 23, 2017. On June 5, 2017, the Respondent resigned from FundEX.

### **Previous Warnings**

22. On March 30, 2012, FundEX placed the Respondent under close supervision for 3 months after it identified 3 pre-signed account forms, 2 altered forms, and 2 instances of the Respondent copying and pasting a client signature onto account forms in client files serviced by the Respondent. The Respondent signed an Acknowledgement to FundEX stating that he would adhere to FundEX's policies and procedures, which prohibited using pre-signed account forms.

23. On July 4, 2012, FundEX issued a warning letter to the Respondent for the conduct described above in paragraph 22.

## **Additional Factors**

24. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above other than the commissions or fees he would ordinarily be entitled to had the transactions been completed in the proper manner.
25. None of the B2B deregistration/withdrawal forms were used to conduct trading activity. The forms were solely used to transfer the cash generated from the Barometer Fund in the clients' B2B accounts to their bank accounts.
26. There have been no client complaints as a result of the misconduct.
27. There is no evidence of discretionary trading, client loss, and/or lack of authorization.
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 on 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. 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](http://www.mfda.ca).
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 contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any 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. An electronic copy of any signature shall be effective as an original signature.

**DATED** this 10<sup>th</sup> day of June, 2019.

“Alan Dickson Brenchley”

\_\_\_\_\_  
Alan Dickson Brenchley

“TK”

\_\_\_\_\_  
Witness – Signature

TK

\_\_\_\_\_  
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. 2018102**



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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
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**ORDER**

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a News Release announcing 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 (the “Hearing Panel”) of the MFDA should accept the settlement agreement entered into between Staff of the MFDA (“Staff”) and the Respondent, Alan Dickson Brenchley (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 June 2006 and May 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 230 pre-signed account forms, and altered 5 accounts forms without obtaining client initials, in respect of 26 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 be prohibited from conducting securities related business in any capacity in the employ of or associated with a Member of the MFDA for a period of 2 months from the date this Settlement Agreement is accepted, pursuant to section 24.1.1(e) of MFDA By-law No. 1.
2. The Respondent shall pay a fine of \$25,000 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-law No. 1.
3. The Respondent shall pay costs of \$2,500 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.2 of MFDA By-law No. 1.
4. The Respondent shall in the future comply with MFDA Rule 2.1.1.
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]

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