



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: Kenneth Daniel Foster

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Kenneth Daniel Foster (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 September 2013 and June 2019, the Respondent obtained, possessed, and in some instances, used to process transactions, 96 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1; and
 - b) on or about September 29, 2017, the Respondent cut and pasted a client signature from an account form previously signed by the client, and maintained the account form in the client's file, 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 \$2,500, pursuant to section 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:
 - i. \$500, in certified funds, on or before the last business day of the first month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$500, in certified funds, on or before the last business day of the second month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - iii. \$500, in certified funds, on or before the last business day of the third month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - iv. \$500, in certified funds, on or before the last business day of the fourth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - v. \$500, in certified funds, on or before the last business day of the fifth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
 - 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 August 1996 to July 2019, the Respondent was registered in Newfoundland and Labrador as a mutual fund salesperson (now known as a dealing representative) with Quadrus Investment Services Inc. (the “Member”), a Member of the MFDA.

8. At all material times, the Respondent conducted business in the St. John’s, Newfoundland and Labrador area.

9. Effective July 8, 2019, the Member suspended the registration of the Respondent for a period of 3 months, as a result of the conduct described herein. The Respondent is not currently registered in the securities industry in any capacity but has applied to be reinstated by the Superintendent of Securities of Newfoundland and Labrador.

Pre-Signed Account Forms

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

11. In March 2015, October 2016 and September 2017, the Respondent completed the Member’s annual Statement of Acknowledgment wherein he confirmed that he would comply with the Member’s policies and procedures with respect to pre-signed account forms.

12. Between September 2013 and June 2019, the Respondent obtained, possessed, and in some instances, used to process transactions, 96 pre-signed account forms in respect of 8 clients.

13. The pre-signed account forms consisted of:

- a) 7 Electronic Fund Transfer One Time Payment Withdrawal Authorization forms;
- b) 5 Subsequent Investment forms;
- c) 38 Transfer Authorization for Registered Investments (“TARI”) forms;
- d) 4 In-Kind Transfer Authorization forms;
- e) 2 Switch forms;
- f) 4 In-Kind Letter of Direction forms;

- g) 19 Agent of Record Transfer Request forms;
- h) 2 Investment Application forms;
- i) 2 Income Application forms;
- j) 10 Resolution of Signing Authority forms;
- k) 1 Know Your Client form;
- l) 1 Redemption form; and
- m) 1 Registered Education Savings Plan Withdrawal form.

Cut and Pasted Client Signature

14. On or about September 29, 2017, the Respondent cut and pasted a client's signature onto a TARI account form from an account form previously signed by the client, and maintained the TARI account form in the client's file.

The Member's Investigation

15. On or about July 11, 2018, the Member identified the majority of the account forms that are the subject of this Settlement Agreement, as a result of a file review. As part of its investigation, the Member reviewed all of the client files serviced by the Respondent.

16. On July 23, 2018, the Member issued a disciplinary letter to the Respondent which imposed on him a one-year period of close supervision, required him to confirm that he would abide by the Member's policies and procedures, and required him to complete internal training. The Respondent has completed these requirements.

17. On July 24, 2018, the Member sent a letter with a portfolio summary to all clients whose accounts the Respondent serviced so that the clients could review and confirm the information in their portfolio summaries. No clients responded with any concerns.

18. On August 27, 2018, the Member sent follow-up letters to the clients that did not respond to its July 24, 2018 letter. The Member requested that the clients respond with any concerns. No clients reported any concerns.

19. On or about June 7, 2019, as part of the Member's close supervision of the Respondent, the Respondent's branch manager identified that the Respondent had submitted to the Member for

processing two new account opening forms that were not complete. The branch manager advised the Respondent's assistant that the Respondent would have to meet with the client to update the missing information. After obtaining the account forms from the branch manager, the Respondent's assistant for whom he was responsible, completed the missing information on the two accounts forms without having met with the client.

20. On or about June 21, 2019, the Respondent and his assistant received further training from the Member on pre-signed forms, and the proper completion of client account documentation.

21. As described above, in July 2019, the Member suspended the Respondent from conducting securities related business for 3 months, as a result of the additional pre-signed forms described above.

22. The Member has confirmed that upon the reinstatement of the Respondent's registration, he will be placed on close supervision for a minimum period of 6 months, and during the period of close supervision the Member will impose on the Respondent a monthly financial penalty of \$400.

Additional Factors

23. There is no evidence that the Respondent received any benefit from engaging in the misconduct described above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

24. There is no evidence of client loss or lack of authorization for the underlying transactions.

25. The Respondent is 70 years old.

26. The Respondent has provided Staff with evidence from medical doctors showing that he has multiple medical conditions and is in poor health.

27. The Respondent states that he has limited financial means, and as a result he is unable to pay a monetary penalty that is greater than the total of the fine and costs amounts set out in this Settlement Agreement. MFDA Staff have received evidence which corroborates the Respondent's statement, including tax returns and personal financial statements.

28. The Respondent acknowledges that if it were not for his limited financial means it would have been appropriate for him to be subject to a greater fine than the fine amount set out in this Settlement Agreement.

29. The Respondent has not been the subject of any client complaints with respect to the misconduct described above.

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

31. 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

32. 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*.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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 10th day of December, 2019.

“Kenneth Daniel Foster”
Kenneth Daniel Foster

“DM”
Witness – Signature

DM
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. 201975



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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: Kenneth Daniel Foster

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 Kenneth Daniel Foster (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 September 2013 and June 2019, the Respondent obtained, possessed, and in some instances, used to process transactions, 96 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1; and
- b) on or about September 29, 2017, the Respondent cut and pasted a client signature from a an account form previously signed by the client, and maintained the account form in the client's file, 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 \$2,500 pursuant to section 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:

- a) \$500, in certified funds, on or before [date];
- b) \$500, in certified funds, on or before [date];
- c) \$500, in certified funds, on or before [date];
- d) \$500, in certified funds, on or before [date];
- e) \$500, in certified funds, on or before [date];

2. The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No.1;

3. The Respondent shall in the future comply with MFDA Rule 2.1.1; 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]