



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: Alex Eng

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing (the “Settlement 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 (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Alex Eng (the “Respondent”).

2. Staff and the Respondent, consent and agree to the terms of this Settlement Agreement.

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

II. CONTRAVENTIONS

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

Between November 2018 and February 2019, the Respondent processed 10 transactions in 7 client accounts as redemptions and purchases, rather than as switches, in order to ensure

the transactions counted towards the Member's sales targets for the Respondent, thereby engaging in conduct giving rise to conflicts or potential conflicts of interest which the Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgement influenced only by the best interests of the clients, contrary to the Member's policies and procedures and MFDA Rules 2.1.4¹, 2.1.1, 2.5.1 and 1.1.2.

III. TERMS OF SETTLEMENT

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 \$12,500, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, which shall be payable in certified funds as follows;
 - i) \$4,166.67 on or before the last business day of the first month following the acceptance of the Settlement Agreement by a Hearing Panel;
 - ii) \$4,166.67 on or before the last business day of the second month following the acceptance of the Settlement Agreement by a Hearing Panel; and
 - iii) \$4,166.66 on or before the last business day of the third month following the acceptance of the Settlement Agreement by a Hearing Panel;
 - b) the Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
 - c) the Respondent shall in the future comply with MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2; and
 - d) the Respondent will attend by videoconference 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 this Settlement Agreement herein and consent to the making of an Order in the form attached as Schedule "A".

¹ On June 30, 2021, MFDA Rule 2.1.4 was amended to conform with client focused reform amendments to National Instrument 31-103 that came into effect on the same day. As the conduct addressed in this Settlement Agreement pre-dated the amendment to this Rule, all contraventions set out in this Settlement Agreement that make reference to that Rule concern the version of the Rule that was in effect between February 27, 2006 and June 30, 2021.

IV. AGREED FACTS

Registration History

7. Since December 1, 2017, the Respondent has been registered in all provinces and territories in Canada as a dealing representative with BMO Investments Inc. (the “Member”), a Member of the MFDA.

8. At all material times, the Respondent carried on business in Montreal, Quebec.

Conflicts of Interest

9. At all material times, the Member’s policies and procedures required its Approved Persons to refrain from engaging in conflicts of interest with clients and required Approved Persons to disclose to the Member matters that could pose a potential or actual conflict of interest.

10. At all material times, the Respondent was eligible to receive a quarterly sales bonus from the Member if he achieved sales targets set by the Member. Unlike purchases of mutual funds, transactions processed as switches did not count toward the Respondent’s sales targets.

11. Between November 2018 and February 2019, the Respondent processed 10 transactions in 7 client accounts as redemptions and subsequent purchases, rather than as switches.

12. Specifically, the Respondent:

- a) processed redemptions of the clients’ existing mutual funds;
- b) transferred the redemption proceeds into a money market fund or into savings; and
- c) one or two days later, transferred the initial redemptions proceeds out of the money market fund or savings and into a new mutual fund.

13. By processing the transactions in the manner described above, the Respondent obtained credit toward the sales targets that, if achieved, could enable the Respondent to qualify for a quarterly bonus. Had the transactions been processed as switches, rather than as redemptions and subsequent purchases, the transactions would not have counted toward the Respondent’s sales targets.

14. If the transactions had been processed as switches instead of redemptions and purchases, the assets would have been continuously invested and the clients would not have been exposed to

the risk of a change in the value of the mutual funds after the processing of the redemptions but before the purchases settled.

15. The Respondent did not disclose to or obtain approval from the Member to process the transactions described above as redemptions and subsequent purchases, rather than as switches.

16. The processing by the Respondent of the transactions described above as redemptions and subsequent purchases, rather than as switches, resulted in losses to two clients in the total amount of \$217.99.

17. The Respondent processed the transactions in the manner described above in order to achieve his sales targets.

18. After discovering that the Respondent had processed transactions as redemptions and subsequent purchases, rather than as switches, the Member did not pay him a sales bonus during 2019 which he would have otherwise received in the total amount of \$9,720. Of this amount, \$417.83 was attributable to transactions processed as redemptions and purchases rather than as switches. Consequently, although the Respondent engaged in the conduct to ensure that the transactions counted towards the Member's sales targets for the Respondent, the Respondent did not ultimately receive a financial benefit from engaging in the misconduct described herein.

19. The processing by the Respondent of the transactions described above as redemptions and subsequent purchases, rather than as switches, gave rise to conflicts or potential conflicts of interest that the Respondent failed to disclose to the Member or address by the exercise of responsible business judgement influenced only by the best interests of the clients.

Member's Investigation

20. In 2019, the Member conducted a review of the Respondent's trading activity, which resulted in the Member identifying the misconduct described in this Settlement Agreement.

21. In March 2019, the Member issued a Corrective Action Letter to the Respondent.

22. The Member subsequently reimbursed the clients who suffered a loss as a result of the Respondent processing transactions as redemptions and purchases, rather than as switches.

Additional Factors

23. No clients have complained with regard to the Respondent's conduct described herein.
24. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
25. By entering into the Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

V. ADDITIONAL TERMS OF SETTLEMENT

26. 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.
27. The Settlement Agreement is subject to acceptance by the Hearing Panel. 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.
28. 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.
29. 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 at the settlement hearing, subject to rule 15.3 of the MFDA Rules of Procedure;
 - 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) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, 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, 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;
- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to section 24.1.1 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of MFDA 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.

30. 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 this 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.

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

32. 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. The terms of the Settlement Agreement,

including the attached Schedule “A”, will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

33. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile or electronic copy of any signature shall be as effective as an original signature.

DATED this 1st day of February, 2022.

“Alex Eng”

Alex Eng

“VL”

Witness – Signature

VL

Witness – Print Name

“Charles Toth”

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



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**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Alex Eng

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") provided notice to the public of a Settlement Hearing in respect of Alex Eng (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 based upon the admissions of the Respondent, the Hearing Panel is of the opinion that between November 2018 and February 2019, the Respondent processed 10 transactions in 7 client accounts as redemptions and purchases, rather than as switches, in order to ensure the transactions counted towards the Member's sales targets for the Respondent, thereby engaging in conduct giving rise to conflicts or potential conflicts of interest which the Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgement influenced only by the best interests of the clients, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2.

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 \$12,500, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, which shall be payable in certified funds as follows:

- a) \$4,166.67 on or before [date];
- b) \$4,166.67 on or before [date]; and
- c) \$4,166.66 on or before [date];

2. The Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by the Hearing Panel;

3. The Respondent shall in the future comply with MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2; 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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