

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Kevin Duffy

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
AN APPLICATION FOR REGISTRATION BY
KEVIN DUFFY

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. This settlement agreement (the **Settlement Agreement**) relates to an application (the **Application**) for a reinstatement of registration under the *Securities Act* (Ontario) (the **Act**) by Kevin Duffy (**Duffy**) with Sterling Mutuals Inc. (**Sterling**).
2. In reviewing the Application, staff of the Ontario Securities Commission (**Staff**) became aware of information which could impugn Duffy's suitability for registration under the Act, and which could form the basis of a recommendation by Staff to the Director that the Application be refused.
3. In the event that Staff recommended to the Director that the Application be refused, Duffy would be entitled to an opportunity to be heard (an **OTBH**) pursuant to section 31 of the Act in respect of Staff's recommendation.
4. To avoid recourse to the OTBH process, Staff and Duffy have agreed to make a joint recommendation to the Director regarding the Application, as more particularly described in this Settlement Agreement.

II. AGREED STATEMENT OF FACTS

5. The parties agree to the facts as stated below.

A. Duffy's Registration History

6. Duffy has been registered as a mutual fund dealing representative (and prior to September 28, 2009, a mutual fund salesperson) with the following dealers:
 - (a) 1995 – 2001: Investors Group
 - (b) 2001 – 2004: Dundee Private Investors Inc.
 - (c) 2004 – 2013: Fundex Investments Inc. (**Fundex**)
7. There has been no disciplinary action against Duffy by any securities commission, self-regulatory organization, or any firm registered under the Act, except as referred to in this Settlement Agreement.

B. Pre-Signed Forms

i. Pre-Signed Forms Found in 2008

8. In November 2008, Fundex provided Duffy with a report of a compliance review the firm had performed in respect of his practice (the **2008 Report**). The 2008 Report cited Duffy for, among other compliance deficiencies, the possession of blank pre-signed forms. Specifically, the 2008 Report noted that from a sample of 11 client files, Fundex had found 5 pre-signed blank forms for two different clients.

9. Subject to exceptions not applicable to this matter, the possession of pre-signed forms was prohibited by Fundex's policies and procedures.

10. In response to the 2008 Report, on January 9, 2009 Duffy was required to sign a Fundex "Acknowledgment and Undertaking" stating that he would review all client files under his administration and destroy any blank pre-signed forms, that he would not use pre-signed forms of any type, and that he would continue to abide by Fundex's policies and procedures regarding client instructions and unauthorized trading (the **Acknowledgement and Undertaking**). Duffy was also required to sign a statement that he was aware of, and would abide by, Fundex's policies and procedures (the **P&P Statement**).

ii. Pre-Signed Forms Found in 2010

11. In November 2010, Fundex provided Duffy with a report of another compliance review the firm had performed in respect of his practice (the **2010 Report**). The 2010 Report cited Duffy for, among other compliance deficiencies, the possession and use of blank pre-signed forms. The 2010 Report noted that from a sample of 9 client files, Fundex had found an unspecified number of pre-signed blank forms for three different clients.

12. In response to the 2010 Report, Duffy signed another Acknowledgement and Undertaking and another P&P Statement.

13. As a result of all the findings contained in the 2010 Report, Fundex placed Duffy's trading activities under strict supervision by his Regional Branch Manager. Duffy remained subject to this strict supervision for the duration of his employment at Fundex.

iii. Pre-Signed Forms Found in 2013

14. In May 2013, Fundex provided Duffy with a report of another compliance review the firm had performed in respect of his practice (the **2013 Report**). The 2013 Report cited Duffy for, among other compliance deficiencies, the possession of blank pre-signed forms. Specifically, the 2013 Report noted that two blank pre-signed forms were found for two clients.

15. In response to the 2013 Report, Duffy signed another P&P Statement.

C. Warning Letter

16. On February 28, 2014, the Mutual Fund Dealers Association of Canada sent a letter to Duffy warning him about, among other things, his use of pre-signed forms to facilitate client transactions.

D. Termination by Fundex and Application with Sterling

17. On March 19, 2014, Fundex delivered a Form 33-109F1 *Notice of Termination of Registered Individuals and Permitted Individuals* indicating that effective as of that date, Duffy no longer had authority to act for the firm in a registerable capacity (the **Notice of Termination**). The Notice of Termination referred to, among other things, Duffy's repeated use of pre-signed forms.

18. The Application was submitted on April 7, 2014.

E. Additional Pre-Signed Forms Identified by Staff

19. In reviewing the Application, Staff discovered at least 14 pre-signed forms used by Duffy to process the purchase of securities for 3 clients. These cases of pre-signed forms were in addition to the cases identified in the 2008 Report, the 2010 Report, and 2013 Report.

20. Staff is not aware of any client complaints against Duffy.

III. ADMISSIONS AND REPRESENTATIONS BY DUFFY

21. Duffy admits that he obtained and used pre-signed forms as described in this Settlement Agreement.

22. Duffy admits that he did not comply with the policies and procedures of Fundex in relation to pre-signed forms, nor did he comply with any of the Acknowledgments and Undertakings or P&P Statements signed by him.

23. Duffy admits that by obtaining and using pre-signed forms, he failed to deal fairly, honestly, and in good faith with his clients, contrary to OSC Rule 31-505 *Conditions of Registration*.

24. Duffy represents as follows:
- (a) he did not use pre-signed forms to process any transaction which was not authorized by a client;
 - (b) he obtained and used pre-signed forms as a means to deal with what he considered to be an overwhelming workload;
 - (c) he has recently hired an assistant to manage the administrative functions of his practice and only his practice;
 - (d) he takes full responsibility for his actions in this matter;
 - (e) he has suffered financial and reputational harm as a result of his conduct; and
 - (f) he recognizes and acknowledges that the further use of pre-signed forms could result in his permanent removal from the capital markets.

IV. JOINT RECOMMENDATION TO THE DIRECTOR

25. In order to resolve the matter of the Application, and on the basis of the Agreed Statement of Facts and the Admissions and Representations by Duffy set out in this Settlement Agreement, Staff and Duffy make the following joint recommendation to the Director:

- (a) Duffy will withdraw the Application and will not reapply for a minimum period of nine months from March 19, 2014, the date of his termination by Fundex;
- (b) before reapplying for registration, Duffy will successfully complete the *Conduct and Practices Handbook Course*;
- (c) if Duffy complies with paragraphs (a) and (b) above, then upon Duffy reapplying for registration in the future with a registered mutual fund dealer, Staff will not recommend to the Director that his application be refused unless Staff becomes aware after the date of this Settlement Agreement of conduct impugning Duffy's suitability for registration, and provided he meets all other applicable criteria for registration at the time he applies for registration; and
- (d) in the event Duffy's registration is reinstated, his registration shall be subject to the terms and conditions set out in Schedule "A" for a period of one year.

26. The Parties submit that their joint recommendation is reasonable, having regard to the following factors:

- (a) Duffy has recognized and acknowledged his misconduct, and by engaging an administrative assistant dedicated to his practice, has taken steps to minimize the chance that his misconduct will be repeated in the future;
- (b) The joint recommendation requires Duffy to obtain additional education about his professional responsibilities as a registrant;
- (c) The period of time Duffy is to be refused registration under the Settlement Agreement is consistent with other relevant decisions of the Director;
- (d) The terms and conditions proposed by the Settlement Agreement provide a means to detect or prevent the future use of pre-signed forms by Duffy;
- (e) Duffy has suffered financial and reputational harm as a result of his misconduct;
- (f) Duffy has been co-operative with Staff in its review of the Application; and
- (g) By agreeing to this Settlement Agreement, Duffy has saved Staff and the Director the time and resources that would have been required for an OTBH.

27. Staff and Duffy acknowledge that if the Director does not accept this joint recommendation:

- (a) this joint recommendation and all discussions and negotiations between Staff and Duffy in relation to this matter shall be without prejudice to the parties; and

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(b) Duffy will be entitled to an OTBH in accordance with section 31 of the Act in respect of any recommendation that may be made by Staff regarding his registration status.

28. The parties agree that this Settlement Agreement, and any Director's decision approving of it, will be published on the OSC's website and in the OSC Bulletin.

"Marriane Bridge"
Marriane Bridge
Deputy Director
Compliance and Registrant Regulation

"Kevin Duffy"
Kevin Duffy

October 9, 2014
Date

October 3, 2014
Date

Schedule "A"

Terms and Conditions

The registration of Kevin Duffy (the **Registrant**) under the *Securities Act* (Ontario) (the **Act**) is subject to the following terms and conditions, which were imposed by the Director pursuant to section 27 of the Act:

Strict Supervision

1. The registration of the Registrant shall be subject to strict supervision by his sponsoring firm.
2. The Registrant's sponsoring firm is to submit written monthly supervision reports (in the form specified in Appendix A) to the Ontario Securities Commission (the **OSC**), Attention: Deputy Director, Registrant Conduct Team, Compliance and Registrant Regulation Branch, and also to the Mutual Fund Dealers Association (**MFDA**), Attention: Manager, Compliance. These reports will be submitted within 15 calendar days after the end of each month.
3. The Registrant must immediately report to the OSC's Deputy Director, Registrant Conduct Team, Compliance and Registrant Regulation Branch if he is under investigation by the MFDA or is reprimanded in any way by the MFDA.

Delivery of Documents

4. The Registrant may not process any transactions for a client without the client's written authorization, which must be delivered to the Registrant's sponsoring firm at the time the Registrant processes the transaction.
5. If the Registrant processes a transaction for a client using a document that is signed or initialed by a client and that is not the original version of the document (a **Copied Document**), the Registrant must deliver the original document to his sponsoring firm within one week of the transaction to permit the firm to verify the authenticity of the Copied Document, including whether the Copied Document was created using a pre-signed form.

Appendix "A"

Strict Supervision Report

I hereby certify that supervision has been conducted for the month ending _____, 201_ of the trading activities of Kevin Duffy (the **Registrant**) by the undersigned. I further certify the following:

1. All orders, both buy and sell, and sales contracts have been reviewed by a supervising officer of Sterling Mutuals Inc. prior to the trade occurring.
2. All client accounts have been reviewed for leveraging, suitability of investments, overconcentration of investments, excess trading or switching, and any amendments to know your client information.
3. A review of trading activity on a daily basis has been conducted of the dealing representative's client accounts.
4. No transactions have been made in any client account until the full and correct documentation is in place.
5. The Registrant has not been granted any power of attorney over any client accounts.
6. All payments for the purchase of the investments were made payable to the dealer. There were no cash payments accepted.
7. No client complaints have been received during the preceding month. If there have been complaints, an outline of the nature of the complaint and follow-up action initiated by the company is attached.*
8. There has been no handling of clients' funds or securities or issuance of cheques to clients without management approval.
9. Any transfer of funds or securities between clients' accounts has been authorized in writing and reviewed by the supervising officer.
10. Spot audits relative to the Registrant's client accounts have been conducted during the preceding month to ensure compliance with these procedures and no violations of these procedures were discovered.

* In the event of client complaints or violations of securities legislation and/or the dealer's internal policies and procedures, the Ontario Securities Commission must be notified immediately.

Date

Signature of Supervising Officer

Name of Supervising Officer