



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22nd Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue queen ouest  
Toronto ON M5H 3S8

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

**- AND -**

**IN THE MATTER OF  
CHRISTOPHER REANEY**

**REASONS AND DECISION**

**Hearing:** March 31, 2015

**Decision:** July 13, 2015

**Panel:** Mary G. Condon Commissioner and Chair of the Panel  
William J. Furlong Commissioners  
Timothy Moseley

**Appearances:** Yvonne Chisholm For Staff of the Commission  
Mark Skuce

Johanna Braden For Christopher Reaney

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## REASONS AND DECISION

### I. OVERVIEW

- [1] The applicant Christopher Reaney (**Mr. Reaney**) is registered under the *Securities Act*<sup>1</sup> (the **Act**) as a mutual fund dealing representative. On January 5, 2015, a Director of the Ontario Securities Commission (the **Commission**) suspended Mr. Reaney's registration for six months, with the suspension to commence ten days following the date of that decision (the **Director's Decision**).
- [2] As Mr. Reaney admitted, he had, over a period of ten years:
- a. created forms purporting to bear a client's signature, when in fact the signature was affixed either by Mr. Reaney or by the client's spouse in Mr. Reaney's presence;
  - b. obtained blank pre-signed forms from some of his clients; and
  - c. on two occasions, given incorrect answers to his firm on compliance questionnaires.
- [3] Mr. Reaney sought and was granted a stay of the Director's Decision, and has applied for a review of that decision. For the reasons that follow, we order that Mr. Reaney's registration be suspended for six months.

### II. BACKGROUND

#### A. The Applicant

- [4] Mr. Reaney is a resident of Metcalfe, Ontario. He contributes to his community as a volunteer and describes himself as a leader in that community.
- [5] Mr. Reaney was first licensed as a life insurance agent in 1990 and continues to be so licensed. He has been registered under the Act in various capacities since 1996. He is currently registered as a mutual fund dealing representative with IPC Investment Corporation (**IPC**).<sup>2</sup>
- [6] Mr. Reaney has not previously been the subject of any regulatory proceeding affecting his registration. He asserts that he has never had a client complaint.

#### B. History of the Matter

##### 1. Review by Mr. Reaney's Firm

- [7] In December 2012, IPC conducted a routine audit of Mr. Reaney's files. IPC found "client signature variations" and pre-signed forms in a number of files, and asked Mr. Reaney for his comments. In a written response dated January 25, 2013 (the **Audit Response**), Mr. Reaney acknowledged the breaches and accepted responsibility for them.
- [8] As required by the Mutual Fund Dealers Association of Canada (**MFDA**), of which IPC is a member, IPC notified the MFDA of its findings.

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<sup>1</sup> RSO 1990, c S.5, as amended.

<sup>2</sup> IPC was previously known as Independent Planning Group Inc. or "IPG". The firm is referred to as "IPC" throughout this decision.

## 2. Consideration by the MFDA

[9] MFDA Staff conducted an investigation but elected not to commence a proceeding before an MFDA panel. Instead, on October 21, 2013, MFDA Staff sent a warning letter to Mr. Reaney, advising him that:

Enforcement Staff is of the view that there is sufficient evidence to support a finding of breach [sic] of MFDA Rule 2.1.1(b), which states that each Member and each Approved Person of a Member shall observe high standards of ethics and conduct in the transaction of business.

[...]

While your conduct set out above is a serious matter, in light of all the circumstances, including other cases under review, the MFDA has decided that it will not initiate formal disciplinary proceedings against you in this case.

[10] In accordance with normal practice, MFDA Staff sent a copy of the warning letter to the Commission.

## 3. Review by Staff of the Commission

[11] On December 17, 2013, Staff of the Commission (**Staff**) wrote to Mr. Reaney, confirming receipt of the MFDA letter and advising him that Staff would conduct its own review in order to determine whether, in its opinion, any regulatory action would be appropriate.

[12] On June 27, 2014, as part of Staff's review, Mr. Reaney attended voluntarily at the Commission's offices for an interview. Mr. Reaney answered Staff's questions, acknowledged his misconduct, apologized for his errors, and promised that there would be no recurrence of the misconduct.

[13] On August 14, 2014, Staff wrote to Mr. Reaney and advised him that it had recommended to the Director that:

- a. Mr. Reaney's registration be suspended for an unspecified period of time; and
- b. if Mr. Reaney were to be suspended and were to seek re-registration in the future:
  - i. he would first have to complete the Canadian Securities Institute's Conduct and Practices Handbook Course (the **CPH Course**); and
  - ii. his registration would be subject to certain terms and conditions for one year, including that he would be subject to strict supervision by his sponsoring firm.

## 4. Hearing before the Director

[14] Mr. Reaney exercised his right to an opportunity to be heard (**OTBH**), pursuant to section 31 of the Act. The OTBH was held before the Director on December 16, 2014. The record of proceedings from the OTBH was before us, and included, among other things:

- a. a transcript of Mr. Reaney's voluntary interview;
- b. a transcript of the OTBH;
- c. a copy of the brief of documents marked as an exhibit at the OTBH;

- d. an affidavit of Rita Lo, a Registration Research Officer at the Commission, sworn November 17, 2014 (the **Lo Affidavit**); and
- e. an affidavit of Mr. Reaney, sworn December 15, 2014 (the **Reaney Affidavit**).

[15] At the OTBH, there was no significant dispute between Mr. Reaney and Staff as to the underlying facts. Submissions to the Director focused on how Mr. Reaney's conduct ought to be characterized in light of the circumstances and what consequences, if any, ought to flow from that conduct.

[16] On January 5, 2015, the Director issued the Director's Decision, in which she ordered that:

- a. Mr. Reaney's registration be suspended for six months, with the suspension to commence ten business days following the date of the Director's Decision;
- b. in the ten-day period, Mr. Reaney was not permitted to accept new clients, to open any new client accounts, or to accept any new funds into an existing client's account;
- c. if Mr. Reaney complied with the above and sought re-registration following the completion of his suspension, then Staff would not oppose his application,
  - i. so long as Mr. Reaney met all other applicable criteria for registration; and
  - ii. unless Staff became aware after the OTBH of conduct impugning Mr. Reaney's suitability for registration; and
- d. if Mr. Reaney were to succeed in his application for re-registration, his registration would be subject to the following terms and conditions for one year:
  - i. Mr. Reaney would be under strict supervision by his sponsoring firm;
  - ii. if Mr. Reaney were to process a client transaction using a document signed or initialled by a client, and the document was not the original version of that document, then Mr. Reaney would have to deliver the original document to his sponsoring firm within one week of the transaction so that the firm could ensure that there were no improprieties associated with the document; and
  - iii. Mr. Reaney would not be entitled to use a limited trading authorization for any of his clients.

## **5. Application for Hearing and Review and for Stay**

[17] Subsection 8(2) of the Act provides that as a person directly affected by a decision of the Director, Mr. Reaney may request that the Commission hold a hearing and that it review the Director's Decision. By letter of January 7, 2015, to the Secretary of the Commission, Mr. Reaney made that request.

[18] Mr. Reaney also sought a stay of the Director's Decision pending the disposition of the hearing and review, pursuant to subsection 8(4) of the Act. With the consent of Staff, the Commission ordered on January 14, 2015, that the Director's Decision be stayed until further order of the Commission and in any event not later than March 31, 2015, the date fixed for the hearing and review.

[19] That order imposed terms and conditions upon Mr. Reaney's registration for the period during which the stay was in effect. Among other terms and conditions, Mr.

Reaney was to be subject to strict supervision by his sponsoring firm, and his sponsoring firm was to provide monthly supervision reports to MFDA Staff and to Commission Staff.

[20] At the hearing before us, on consent of Staff, the stay order was extended until the delivery of this decision.

## **C. Legal Framework**

### **1. Hearing and Review Pursuant to Section 8 of the Act**

[21] Pursuant to subsection 8(3) of the Act, upon a hearing and review of a Director's decision the Commission may "confirm the decision [...] or make such other decision as [it] considers proper."

[22] The hearing and review of a Director's decision is a hearing *de novo* and therefore a fresh consideration of the matter.<sup>3</sup> The Commission may substitute its own decision for that of the Director.<sup>4</sup>

[23] Staff bears the onus of establishing that Mr. Reaney's registration ought to be suspended and/or made subject to terms and conditions.<sup>5</sup>

[24] The standard of proof to be applied in this proceeding is the civil standard of the "balance of probabilities".<sup>6</sup>

### **2. Registration**

[25] One who seeks to engage in the business of trading in securities must be registered as a dealing representative of a registered dealer (*i.e.*, his/her firm) and must act on behalf of that registered dealer.<sup>7</sup>

[26] Registration is a privilege granted to individuals who are suitable for registration. It is not a right.<sup>8</sup>

[27] Section 28 of the Act grants the Director discretion, under certain circumstances, to:

- a. revoke a registration;
- b. suspend a registration; and/or
- c. impose terms and conditions upon a registration.

[28] In order for the Director to do one or more of those three things, it must appear to the Director that:

- a. the registered person or company "is not suitable for registration";
- b. the registered person or company "has failed to comply with Ontario securities law"; or
- c. the registration "is otherwise objectionable".<sup>9</sup>

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<sup>3</sup> *Re Sterling Grace & Co* (2014), 37 OSCB 8298 at para 24 (***Sterling Grace***).

<sup>4</sup> *Ibid* at para 23; *Re Sawh* (2012), 35 OSCB 7431 at paras 16-17 (***Sawh***).

<sup>5</sup> *Sterling Grace*, *supra* note 3 at para 25; *Sawh*, *supra* note 4 at paras 147-48.

<sup>6</sup> *F.H. v. McDougall*, 2008 SCC 53 at para 40.

<sup>7</sup> *Act*, *supra* note 1, s 25(1)(b).

<sup>8</sup> *Sterling Grace*, *supra* note 3 at para 145; *Sawh*, *supra* note 4 at para 142.

<sup>9</sup> *Act*, *supra* note 1, s 28; *Sterling Grace*, *supra* note 3 at paras 146-47.

[29] In this proceeding, we have the discretion to take any of the actions mentioned in paragraph [27], for any of the three reasons set out in paragraph [28]. In exercising this discretion, we must be guided by the objectives set out in section 1.1 of the Act:

**1.1 Purposes** – The purposes of this Act are,

(a) to provide protection to investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.<sup>10</sup>

### III. ISSUES

[30] This proceeding presents four principal issues. The first three issues reflect the three tests set out in paragraph II.[28] above.

- (1) Is Mr. Reaney “not suitable for registration”?
- (2) Has Mr. Reaney “failed to comply with Ontario securities law”?
- (3) Is Mr. Reaney’s registration “otherwise objectionable”?
- (4) If the answer to any of the above three questions is yes, what is the appropriate outcome?

### IV. ISSUE 1 – IS MR. REANEY “NOT SUITABLE FOR REGISTRATION”?

#### A. Introduction

[31] In considering whether Mr. Reaney is currently suitable for registration, we have taken into account both the misconduct at issue and the intervening circumstances between the time of the misconduct and the hearing before us. For the reasons set out in the following paragraphs, we find that Mr. Reaney lacks the integrity necessary for us to conclude that he is currently suitable for registration.

#### B. Legal Framework

[32] The Act does not explicitly prescribe a test for determining whether a person or company is “not suitable” for registration. However, it is appropriate to refer to section 27 of the Act, which describes the considerations applicable to an application for registration:<sup>11</sup>

**27. (1) Registration, etc.** – On receipt of an application by a person or company and all information, material and fees required [...] the Director shall register the person or company [...] unless it appears to the Director,

- (a) that [...] the person is not suitable for registration under this Act; or

[...]

**(2) Matters to be considered** – In considering for the purposes of subsection (1) whether a person or company is not suitable for registration, the Director shall consider,

<sup>10</sup> *Ibid* at para 140; *Sawh, supra* note 4 at paras 150-51.

<sup>11</sup> *Sterling Grace, supra* note 3 at para 149.



- (a) whether the person or company has satisfied,
  - (i) the requirements prescribed in the regulations relating to proficiency, solvency and integrity, and
  - (ii) such other requirements for registration [...] as may be prescribed by the regulations; and
- (b) such other factors as the Director considers relevant.

[33] Subclause 27(2)(a)(i) enumerates three criteria: proficiency, solvency and integrity. Solvency is not an issue in this case. With respect to proficiency, while it is arguable that the misconduct in question may give some indication as to Mr. Reaney's proficiency, Staff did not press this argument. Instead, Staff submitted that Mr. Reaney does not meet the necessary standard of integrity. We therefore limit our review to that criterion.

[34] Subclause 27(2)(a)(i) requires that consideration be given to requirements "prescribed in the regulations". Subsection 1(1) of the Act defines "regulations" as "regulations made under this Act and, unless the context otherwise indicates, includes the rules". That same subsection defines "rules" as "the rules made under section 143, and [...] orders, rulings and policies listed in the Schedule [...] ." Rule 31-505, which requires that a registered individual deal with his/her clients "fairly, honestly and in good faith", is one such rule, and is therefore a requirement prescribed by the regulations relating to integrity.

[35] In our view, a registrant who fails to act honestly cannot be said to have acted with integrity. Therefore, if any of Mr. Reaney's admitted misconduct can properly be described as dishonest, it follows that he did not attain the required standard of integrity.

[36] Even if we conclude that at some time in the past Mr. Reaney did not act with sufficient integrity, that does not end our inquiry. Section 27 of the Act requires us to assess Mr. Reaney's integrity, and therefore his suitability for registration, as of the date of the hearing before us. We therefore consider below, following our review of Mr. Reaney's misconduct, the circumstances that have intervened between the time of the discovery of that misconduct and the time of the hearing before us.

### **C. Mr. Reaney's Misconduct**

[37] Mr. Reaney's misconduct falls into two categories: (a) impropriety with respect to various forms; and (b) his incorrect answers to IPC's compliance questionnaires. We deal with each of these in turn.

#### **1. Improper Forms**

##### **(a) Overview**

[38] Mr. Reaney admits to having acted improperly with respect to a number of different forms (collectively, the **Improper Forms**). The improprieties were not limited to just one type of misconduct. They fell into three different categories:

- a. Mr. Reaney signed his client's name on 25 forms (see paragraphs [51] to [62] below);
- b. in Mr. Reaney's presence, a client signed the name of the client's spouse, who was also a client (four forms; see paragraphs [63] to [66] below); and

- c. Mr. Reaney had his client sign a form before the required information (e.g., trading instructions) had been inserted onto the form (thirteen forms; see paragraphs [67] to [81] below).

[39] Appendix 'A' to these reasons is a chart listing all of the Improper Forms, and reflecting our factual findings with respect to those forms, made after a review of the record before us.

**(b) Forgery and False Endorsement**

[40] The misconduct referred to in subparagraphs [38](a) and (b) above (i.e., one person affixing another's signature) was variously described as "forgery" or "false endorsement" in the cases we reviewed, as well as in the submissions of counsel for Staff and counsel for Mr. Reaney. Both counsel also referred to "false signatures" in oral submissions.

[41] Before reviewing the evidence or considering the issues in this matter, we think it important to be clear about our use of terminology in these reasons.

[42] While there is no definition of "forgery" in Ontario securities law, the question of whether there is a distinction between "forgery" and "false endorsement" was addressed previously in *Re Bell*, a 2005 decision resulting from an enforcement proceeding before a panel at what was then the Investment Dealers Association of Canada (**IDA**).<sup>12</sup> In considering previous cases, the panel referred to the IDA's *Disciplinary Sanction Guidelines*, which proposed minimum sanctions for various kinds of misconduct, including "forgery". The panel noted that in some cases it was argued that there was a distinction between "forgery", which term implied an intention to defraud or injure, and "false endorsement", which did not.

[43] The panel rejected the distinction and referred to the description in the IDA's guidelines: "the creation of a false document with the intent that it be acted upon as the original or genuine document." This description carried through unchanged in the Investment Industry Regulatory Organization of Canada's (**IIROC**) *Dealer Member Disciplinary Sanction Guidelines* published in March 2009 and again in September 2014, both of which were provided to us at the hearing.

[44] We were also referred to the definition of forgery contained in the MFDA's *Penalty Guidelines*: "the creation of a false document with the intent that it be acted upon as the original or genuine document, where the victim is deprived of property or rights" [emphasis added].

[45] Definitions found in guidelines developed by self-regulatory organizations are not binding upon us. However, because of the inconsistency between the definition used in the IDA/IIROC guidelines (which makes no reference to an intention to defraud or injure, or to a deprivation of property or rights) and the definition used by the MFDA (which refers to a deprivation), we consider it useful to consult two other sources for guidance.

[46] The *Canadian Oxford Dictionary* defines "forge" as: "write (a document or signature) in order to pass it off as written by another".<sup>13</sup>

[47] *Black's Law Dictionary* defines "forgery" as a "false or altered document made to look genuine by someone with the intent to deceive".<sup>14</sup>

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<sup>12</sup> [2005] IDACD No 15 (**Bell**).

<sup>13</sup> Katherine Barber, ed, 2<sup>nd</sup> ed (Don Mills, Ont: Oxford University Press, 2004).

<sup>14</sup> Bryan A Garner, ed, 10th ed (St Paul, Minn: Thomson Reuters, 2014).

- [48] We note that neither dictionary definition includes an element of deprivation or an intention to defraud or injure.
- [49] Having reviewed these sources, we conclude that there is no one term that properly encompasses all possible permutations. In our view, when we consider a particular instance of a person affixing another's signature, we ought to take into account all of the surrounding circumstances, rather than try to pigeonhole the instance into a particular category. Our approach allows for a more nuanced and fair assessment of the seriousness of an instance of misconduct.
- [50] For the purposes of these reasons only, then, we use the terms "forge" and "forgery" when referring to any instance where one person affixes another's signature, with the intent that the document be acted upon as if it were genuine. Our choice is consistent with the dictionary definitions and is not intended to imply, in any particular instance, either a deprivation or an intention to harm.<sup>15</sup>

**(c) *Forms Incorrectly Purporting to be Signed by Clients***

*i. Forms Forged by Mr. Reaney*

- [51] There is conflicting evidence as to whether forms for two clients (R.A. and J.H.) were in fact signed by the client. We deal with the evidence regarding each of these two clients in turn.
- [52] With respect to Mr. Reaney's client R.A., Ms. Lo, a Registration Research Officer at the Commission, says in paragraph 20 of the Lo Affidavit that on January 15, 2014, she spoke with R.A. by telephone. Ms. Lo states that R.A. told her that:
- [...] he was unaware that Reaney had ever signed any documents on his behalf, Reaney did not request authorization to sign any documents on [R.A.'s] behalf, and that no such authorization was given. [R.A.] also advised that he was "shocked" to learn about this information.
- [53] On January 24, 2014, Ms. Lo sent an email to R.A., attaching the documents in question, and asking R.A. to confirm the content of their telephone conversation. In his reply, R.A. said: "As far as I am concerned these are my signatures [...]."
- [54] In his voluntary interview, Mr. Reaney stated that "[a]s far as I know, [R.A.] would be aware that I'm acting in his best interest and signed on his behalf." Mr. Reaney's assertion that he forged R.A.'s signature is consistent with the Audit Response, in which Mr. Reaney admits that he forged R.A.'s signature on three forms.
- [55] With respect to Mr. Reaney's client J.H., Ms. Lo says in paragraph 21 of her affidavit that on January 28, 2014, she spoke by phone with her. According to Ms. Lo, in that phone call J.H. said that:
- [...] she was unaware that Reaney had ever signed any documents on her behalf, that Reaney did not request authorization to sign any documents on her behalf, and that no such authorization was given.

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<sup>15</sup> We are aware that "forgery" and its necessary elements are addressed in section 366 of the *Criminal Code* (RSC, 1985, c. C-46) and in cases that considered the wording of that section. However, we neither sought nor heard submissions regarding that provision. We find it unnecessary to consider that statute or the relevant cases for the purposes of these reasons.

- [56] Ms. Lo sent an email that same day to J.H., attaching the documents in question, and asking J.H. to confirm the content of their telephone conversation. In her email reply, again on the same day, J.H. claimed that the signatures were hers.
- [57] In the Audit Response, Mr. Reaney says that he signed J.H.'s signature. At the hearing before us, Mr. Reaney's counsel advised that Mr. Reaney maintains his position.
- [58] While we cannot be certain who signed the forms for R.A. and J.H., we believe it more likely than not that Mr. Reaney did. In setting out below the number of instances of forgery, we have included these forms, although our ultimate findings would not be different if the forms were excluded.
- [59] Including the forms for those two clients, then, there were 25 instances of Mr. Reaney forging a client's signature on a form. Of these, eleven were "know your client" (**KYC**) forms, seven were trading forms, five were on an application to be submitted to Human Resources and Social Development Canada for a Basic Canada Education Savings Grant, one was an account change form, and one was a form to be submitted to the Canada Revenue Agency.
- [60] Mr. Reaney offered various explanations for his having forged a client's signature on a form. Mr. Reaney's counsel was appropriately careful to emphasize that the reasons were offered not as an excuse for the misconduct, but rather to explain what led Mr. Reaney to act as he did in these instances.
- [61] In each of the 25 instances, one or more of the following applied:
- a. the client was unavailable to sign the form, often because the client lived far from Mr. Reaney's office, sometimes without ready access to a facsimile machine;
  - b. Mr. Reaney was frustrated by some of his firm's policies and procedures, which he perceived to be unnecessary hindrances;
  - c. a mistake had been made previously and needed to be corrected;
  - d. Mr. Reaney was to undergo major surgery, and would therefore be away from the office; or
  - e. there was an impending deadline for making Registered Retirement Savings Plan contributions.
- [62] The extent to which the client was aware that Mr. Reaney would be forging the signature varied. In at least seven instances, the client was not aware. In at least twelve instances, Mr. Reaney forged the client's signature at the client's direction. In the other six instances, the evidence is unclear as to whether or not the client was aware.

*ii. Forms Forged by a Client's Spouse*

- [63] In four instances, a signature was forged by one spouse on behalf of the other spouse (both of whom were Mr. Reaney's clients) in the presence of Mr. Reaney but in the absence of the spouse whose signature was forged.
- [64] One instance relates to a signature purporting to be that of Mr. Reaney's client D.K. on a trading form dated June 21, 2012. In the Audit Response, Mr. Reaney expresses some uncertainty: "client signature signed by me or husband [J.K.] for trading". However, in his affidavit Mr. Reaney declares that the "forms for [D.K.] were signed by her husband, [J.K.]". Ms. Lo spoke to J.K., who confirmed that he had forged his wife's signature.

[65] In the other three instances, relating to clients A.G., L.T. and R.D., Mr. Reaney clearly admits that one spouse forged the other's signature, as the absent spouse was unavailable at the time.

[66] Mr. Reaney asserts in paragraph 33 of the Reaney Affidavit that with respect to clients A.G. and D.K. he "believed the clients had agreed that their husbands could sign on their behalf." We were not directed to any evidence, nor did we note any, that would give an indication as to whether Mr. Reaney had a similar belief with respect to clients L.T. and R.D.

**(d) Forms Pre-Signed by Clients**

[67] In thirteen instances, Mr. Reaney had his client sign a form before the essential information had been inserted onto the form.

*i. Trading Forms – Triax Fund*

[68] Five of the pre-signed forms related to the Triax/Covington Biotech Balanced Fund, a labour-sponsored investment fund in which some of Mr. Reaney's clients had invested. Mr. Reaney worried that the fund company would attempt to renege on a capital guarantee. He asserts that he worked hard, for many months, to ensure that his clients would benefit from the guarantee. We believe that he did.

[69] In mid-December 2011, the fund company advised the fund's shareholders that they could be repaid their capital by redeeming their shares by the end of that month. Paragraph 41 of the Reaney Affidavit describes Mr. Reaney's state of mind and efforts at that time:

This was during the holiday season. I had from December 17 to December 30 to get this sorted. I was understandably worried I would not be able to get original signatures from all my clients who were invested in the Triax Fund. To maximize my chances of reaching everyone, I sent out blank Trading Forms for client signatures to some of my clients so they could sign them, get them back to me, and I could fill out the details of what needed to go in those forms to ensure the clients received return of their principal.

*ii. Mr. Reaney's Impending Surgery*

[70] In two instances, for clients A.M. and R.G., Mr. Reaney obtained pre-signed forms in anticipation of his surgery, as referred to in paragraph [61] above.

*iii. Client M.C.*

[71] One of the pre-signed forms was a KYC form signed by Mr. Reaney's client M.C., dated June 6, 2012. The record before us was not clear as to the circumstances under which this form was partially completed.

[72] In the Audit Response, Mr. Reaney referred to this form:

Blank form signed

June 6, 2012 – KYC update – blank signed form in file – personal friend – gave it to me at a social meeting and asked me to complete it but it got filed in error

[73] In the Reaney Affidavit, Mr. Reaney says that:

[...] this was a blank KYC form dated June 2012. [M.C.] and I had just started going through the process of filling this out

when I realized that we did not need an updated KYC for him because there was already one on file from February 2012 and there had been no changes. I am not sure why this was in his file, it should have been discarded.

- [74] The description in the Audit Response (“gave it to me [...] and asked me to complete it [...]”) is not necessarily inconsistent with the description in the Reaney Affidavit (“[we] had just started going through the process of filling this out”), but the fact that Mr. Reaney gives these two different descriptions of the circumstances is noteworthy. We address this issue in our analysis of the evidence at paragraph [104] below.

*iv. Canada Revenue Agency Forms*

- [75] In three instances, there was some uncertainty as to whether the form would be required for submission to the Canada Revenue Agency. For example, with respect to Mr. Reaney’s client D.C., Mr. Reaney says at paragraph 45(a) of his affidavit:

I thought that one transfer form to the fund company would be sufficient, and that was filled out in full. The blank T2151 was obtained in case the fund company asked for the DPSP and pension transfers to be made separately.

- [76] It is not clear to us why this uncertainty justified, in Mr. Reaney’s mind, the obtaining of a pre-signed form. Since his client was completing one of the two forms anyway, it would at most have been a minor inconvenience to have the client complete the second form.

*v. Clients B.W. and T.W.*

- [77] The final two instances involved a trading form for Mr. Reaney’s client B.W. and a KYC form for T.W.

- [78] With respect to the trading form for B.W., Mr. Reaney stated in his voluntary interview with Staff that the form was not used, and he cannot speculate as to why not.

- [79] With respect to the KYC form for T.W., Mr. Reaney stated in the Audit Response that he doesn’t “know why there would have been a blank KYC form [for T.W.]”

*vi. Guidance Concerning Pre-Signed Forms*

- [80] In October 2007, the MFDA issued a notice to its members, in which the use of pre-signed forms was prohibited. MFDA Member Regulation Notice MR-0066 noted that it was “contrary to MFDA requirements for Members and Approved Persons to obtain pre-signed forms from their clients.”

- [81] IPC created internal documents that reflected this advice. From at least 2008, IPC’s *Mutual Fund Association & Administrator Compliance Guide* prohibited the use of pre-signed forms. An internal IPC *Compliance Bulletin* issued in June 2011 was clear and absolute in prohibiting the use of pre-signed forms:

Using blank, pre-signed or photocopied forms is strictly prohibited. Approved Persons may only use forms that are duly executed by the client after information has been properly completed.

[...]

Some Approved Persons have taken the position that pre-signed forms can be used appropriately in certain situations strictly for the convenience of a client. Both [IPC] and MFDA staff do not agree with this position. Even in cases where there is no evidence of intent to use a pre-signed form for the purpose of discretionary trading, the use of such forms must be prohibited in part because their existence would raise question [sic] about the Approved Person's other business practices. It may also destroy the integrity of the audit trail for activity in the relevant client's account.

**(e) Analysis of Evidence Regarding the Improper Forms**

*i. Introduction*

[82] In *Bell*, the IDA decision referred to in paragraph [42] above, the panel stated (at para. 35):

Forgery is always serious [...] . [I]t is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole. [emphasis added]

[83] We agree. Forgery is fundamentally dishonest and it is harmful.

*ii. Actual and Potential Harm*

[84] As the *Bell* panel noted, some of the harm that flows from forgery is actual and some is potential. We consider first actual harm.

[85] One type of actual harm is the inevitable impairment of the integrity of the audit trail. Having a reliable audit trail is important to the sponsoring firm and to its regulators. A firm's ability to assess its employees' compliance with regulatory requirements, and a regulator's ability to do the same, would both be undermined if the very documents upon which the assessment relies are not genuine.

[86] Another type of actual harm caused by forging signatures on client documents is that in at least some cases the client's confidence in the registrant, and in the registrant's approach to the recording of key information, is undermined.

[87] In addition, as noted above, a number of different types of potential harm arise. For example, because every investment recommendation and every investment decision is based upon information contained on the forms, any inaccuracy in the information necessarily taints a recommendation or decision made based on that information.

[88] Further, the uncertainty about a client's risk tolerance impairs the registrant's ability to comply with the obligation, contained in section 13.3 of National Instrument 31-103, to ensure that all investments are suitable for the client.

[89] Finally, forgery could facilitate discretionary trading or fraud.

*iii. Assessing the Seriousness of an Instance of Forgery*

[90] Having declared that all cases of forgery are serious and fundamentally dishonest, the *Bell* panel went on to enumerate several factors that would, if present, make the particular case more egregious than others:

- a. whether the forgery facilitated the misappropriation of funds;
- b. whether the forgery concealed unauthorized trades;

- c. whether the forgery produced a benefit to the forger (*e.g.*, additional commissions); and
- d. whether there was a large number or pattern of forgeries.

- [91] We endorse and adopt that approach. We would add a factor; that is, whether the person whose signature was being forged was aware of the forgery and if so, the extent to which the person was aware of the contents of the relevant document. The less the person whose signature is forged is aware of the forgery and the contents of the form, the greater the risk to that person.
- [92] Applying these factors to this case, we note that there was no suggestion that Mr. Reaney misappropriated any funds or executed any unauthorized trades as a result of his obtaining or using the Improper Forms that bore forged signatures.
- [93] However, we do conclude that three of the factors enumerated above apply.
- [94] First, as we conclude below in paragraphs [110] to [113], there was a pattern of forgeries.
- [95] Second, as noted above in paragraph [62], in at least seven instances and possibly as many as thirteen instances, the client was unaware that Mr. Reaney was forging the client's signature.
- [96] Third, the forgeries produced a benefit to Mr. Reaney. While that benefit was not a direct financial one, by Mr. Reaney's own admission these forgeries made it easier for him to serve his clients. Indeed, that was the goal. Reducing his own workload (even in impermissible ways) allowed Mr. Reaney to serve more clients than he would otherwise have been able to.
- [97] Each of these three factors moves Mr. Reaney's actions further toward the more egregious end of the spectrum of conduct.

*iv. Mitigating Factors Regarding Instances of Forgery*

- [98] The hearing panel in *Bell* also contemplated the possible existence, in any case involving forgery, of mitigating factors. Some of these were simply the obverse of an aggravating factor (*e.g.*, a small number of forgeries). None of them excuses or justifies forgery, but all may be taken into account in assessing Mr. Reaney's integrity.
- [99] Additional mitigating factors in *Bell* included:
- a. attempts made, prior to the forgery, to have the client sign the document; and
  - b. steps taken immediately after the forgery to have the client sign the proper document.
- [100] As to the first of these, there is no clear evidence that Mr. Reaney made unsuccessful attempts to have the client sign the document. In some instances, as noted above, Mr. Reaney asserts that the client was unavailable or had no access to a fax machine, for example. It is reasonable to infer that in some of these instances no attempt was made because it was clear that any attempt would not have been successful within the applicable time constraints.
- [101] As to the second potential mitigating factor, there is no evidence that Mr. Reaney ever tried to regularize an Improper Form by having the client sign the document after the fact.



*v. Pre-Signed Forms*

- [102] We turn now to evaluate the evidence with respect to forms that clients did sign, but where not all required information was inserted at the time the client signed. Once again, both actual and potential harm flow from this type of misconduct.
- [103] As with forms bearing forged signatures, pre-signed forms compromise the integrity of the audit trail. Indeed, a pre-signed form with no information entered onto the form represents not just an impairment to the integrity of the audit trail, it effectively destroys the integrity of the audit trail relating to that form.
- [104] This is illustrated by the blank KYC form for Mr. Reaney's client M.C., referred to in paragraphs [71] to [74] above. We are unable to determine precisely what parts of the form were completed by whom, and when. Mr. Reaney's firm would be similarly unable to do so.
- [105] In addition to that actual harm, there are at least two types of potential harm associated with pre-signed forms.
- [106] In the case of forms to be submitted to the Canada Revenue Agency or to Human Resources and Social Development Canada, there is the risk that a client will be taken to have certified as to the accuracy of incorrect information that the client did not have an opportunity to review.
- [107] A potentially more significant risk is that a pre-signed form could be used for discretionary trading or fraud. In this case, some clients pre-signed IPC's trading form. The risk of fraud is particularly serious with respect to this form, given that the form directs IPC to do one or more of the following things:
- a. switch the client's funds within the same fund family;
  - b. effect a purchase or sale of securities; or
  - c. pay sale proceeds to a specified bank account or recipient.
- [108] While we accept that Mr. Reaney never intended to use the forms in any way that might injure his clients, these good intentions do not eliminate the risk that the forms might be used in the future in ways that could be devastating to a client.
- [109] Finally, we are troubled by the fact that Mr. Reaney knew at the time that it was wrong to obtain pre-signed forms. As noted above in paragraph [81], from at least June 2011 IPC had been very explicit about the prohibition. Despite this strong message from IPC, Mr. Reaney persisted in this practice by obtaining at least nine pre-signed forms after June 2011. Indeed, Mr. Reaney states in his affidavit, "I was aware of the prohibition against [pre-signed forms]."

*vi. Pattern of Conduct*

- [110] Mr. Reaney's misconduct with respect to the various forms was not limited to one or two isolated instances. Rather, the evidence shows a pattern of conduct that spanned at least ten years.
- [111] It is clear that no later than 2002, Mr. Reaney chose, on occasion, to obtain pre-signed forms from his clients. This practice continued through to 2012, when IPC conducted its audit.
- [112] In the record before us, the first instance of Mr. Reaney forging a signature occurred in 2005. Again, this practice continued until 2012.
- [113] Finally, Mr. Reaney was complicit in one spouse affixing the other spouse's signature beginning no later than 2009. This practice also continued into 2012.

*vii. Availability of Alternatives*

- [114] With respect both to the forged forms and the pre-signed forms, we considered whether there was any evidence that Mr. Reaney contemplated alternative courses of action before he chose to engage in the misconduct. As noted above in paragraph [100], we are unable to conclude that Mr. Reaney made unsuccessful attempts to have a client sign a form before the signature was forged. A range of other options might have been available, including, for example, using a courier service or having a registered colleague obtain signatures from the clients in Mr. Reaney's absence.
- [115] We see no evidence in the record of Mr. Reaney having considered or tried alternatives that would have complied with the applicable rules and that should have been obvious to a registrant with Mr. Reaney's experience. In fact, Mr. Reaney's own admissions demonstrate clearly that in at least some instances, he simply chose what he considered to be the easy route. He explained his having forged two spouses' signatures on one form by saying in his voluntary interview with Staff, "I didn't have the time, I guess, or make the effort. I apologize for that." In paragraph 28 of his affidavit, he reinforced the point: "[...] it seemed to be the simplest way at the time to move the matter forward."

*viii. Family Relationships*

- [116] Some of the instances of Improper Forms involved family relationships.
- [117] Four forms related to Mr. Reaney's brother, who was a client. While no submissions were made to us either by Staff or Mr. Reaney's counsel that this fact should be influential in any way, we think it appropriate to note that every client must be afforded the same protections, and that the expected conduct is no different if the client happens to be a family member of the individual registrant.
- [118] In this case, that principle applies also where a spouse's signature is forged, either by Mr. Reaney or by the other spouse. As noted above in paragraph [66], in at least some instances (but not necessarily all), Mr. Reaney "believed" that the absent spouse had authorized the forging of that spouse's signature.
- [119] That is an easy assumption to make, but it is also a reckless one. Making that assumption is potentially harmful to the spouse. Without proper authority (*e.g.*, a power of attorney), one cannot know for certain whether in fact the absent spouse does agree that someone else can sign. There is always a risk that the spouse who signs the other's name, or who authorizes someone else to do so, is being deceptive.
- [120] We adopt the language of the panel in *Bell*:

We are not aware of any circumstance where one person can be authorized to sign another person's name to a document – a person may act as the authorized agent of another, or under a power of attorney, but in neither instance may the agent or attorney sign the other person's name.<sup>16</sup>

*ix. Clients' Support*

- [121] We were asked to take account of the fact that several of Mr. Reaney's clients have stated that they support and trust him.
- [122] While that may be true, in our view that support is not compelling evidence of Mr. Reaney's integrity. Indeed, it is reasonable to expect that a registrant who makes

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<sup>16</sup> *Supra* note 11 at para 35.

life easier for his/her clients will gain more favourable reviews. The fact that the means chosen by the registrant happens to be prohibited by the rules may well not affect a client's opinion of the registrant, especially where no actual harm befalls the client.

[123] In this case, given that there was no actual harm to Mr. Reaney's clients, we are not surprised that some (if not all) of them are supportive. Mr. Reaney sought to minimize inconvenience both to him and to his clients. The clients' resulting satisfaction does not diminish the seriousness of the dishonest conduct that produced it.

*x. Forms Not Used*

[124] Mr. Reaney emphasized that in some instances, an Improper Form ended up not being used. While that may be factually accurate, we reject any suggestion that it could be a mitigating factor. What is important is that at the time Mr. Reaney engaged in the misconduct, he fully intended that the form would (or at least might) be used; otherwise, there would have been no reason to create the form.

*xi. Conclusion Regarding Improper Forms*

[125] Mr. Reaney engaged in a pattern of conduct, over many years, that he knew was prohibited. He intended his conduct to be deceptive (*i.e.*, for the forged signatures to resemble the real signatures of the clients), as is evidenced by his inability during his voluntary interview to discern whether signatures on certain forms were his forgeries or were genuine.

[126] The harm to the integrity of the audit trail is real. An uncompromised audit trail is necessary for the firm and its regulators to assess the compliance of its individual registrants and other employees with regulatory requirements and firm policies designed to protect investors.

[127] Mr. Reaney himself was sometimes unsure who had signed which form or which portions had been filled out when. IPC, in conducting its audit and reviewing Mr. Reaney's response, was unable to be certain about these essential facts. Our own review of the evidence was made considerably more challenging by the uncertainties and inconsistencies attached to each instance of misconduct. All of these difficulties are direct consequences of the impairment of the integrity of the audit trail.

[128] As for the potential harm identified above, it is fortunate that not all of it came to pass. However, this outcome was by chance rather than by design, and the fact that the harm might have occurred is what makes the conduct problematic.

[129] As the panel in *Bell* observed, forgery is fundamentally dishonest. Mr. Reaney's prolonged pattern of engaging in this fundamentally dishonest conduct, combined with his obtaining pre-signed forms even when he knew that this practice was prohibited, give us serious concerns about his integrity.

## **2. Compliance Questionnaires**

[130] IPC asked each of its individual registrants to complete an annual compliance questionnaire. On two occasions, Mr. Reaney gave incorrect answers.

[131] In September 2009, Mr. Reaney submitted a completed questionnaire. Question 14 asked: "Do you have any blank pre-signed or pre-dated forms in your possession?" Mr. Reaney answered "No". As was clear from the results of the IPC audit in December 2012, that answer must have been incorrect, since Mr. Reaney had in his files a pre-signed form for client C.J. from 2002, and a pre-signed form for client R.M. from 2003.

- [132] Mr. Reaney states in his affidavit that at the time he completed the questionnaire he believed that he had done so correctly. He “knew that [he] did not have a practice of obtaining pre-signed forms because [he] was aware of the prohibition against them and the reasons behind the prohibition.” He says that this was “an honest mistake [... and] not an attempt to deceive or mislead anyone.”
- [133] On December 5, 2012, Mr. Reaney submitted another completed questionnaire. Question 14 remained the same. Again, Mr. Reaney answered “No”, and again, that answer was incorrect, since Mr. Reaney had the two pre-signed forms referred to above, as well as eleven additional pre-signed forms obtained between September 2009 and December 2012.
- [134] Mr. Reaney gives a similar, although not identical, explanation for that incorrect answer. He states in his affidavit that he believed his answers to be correct and that the incorrect answer was “an honest mistake [... and] not an attempt to deceive or mislead anyone.” However, in the case of the 2012 questionnaire, Mr. Reaney does not assert, as he did with respect to the 2009 questionnaire, that he knew he did not have a practice of obtaining pre-signed forms.
- [135] We find that it is more likely than not that Mr. Reaney’s incorrect answer on the 2009 compliance questionnaire was an honest mistake, as he claims. The evidence discloses the existence of only two blank pre-signed forms at that time, both of which had been obtained some considerable time before the date of the questionnaire.
- [136] We are less convinced with respect to the 2012 questionnaire. Mr. Reaney obtained five pre-signed forms in December 2011, one in January 2012, and an additional three pre-signed forms during the summer of 2012, only six months before he submitted the completed questionnaire. It is difficult to accept that Mr. Reaney forgot that he had obtained the pre-signed forms. As noted above in paragraph [134], it is telling that in his affidavit, Mr. Reaney used very similar language to describe his responses to the 2009 and 2012 questionnaires, except that his assertion that in 2009 he believed he did not have a practice of obtaining pre-signed forms is not repeated for the 2012 questionnaire.
- [137] In our view, it is not plausible that in 2012 he did not know that there had been pre-signed forms in his files at some point. He therefore either believed he no longer had any such forms, or he knew that he did.
- [138] The first alternative, that he knew he had obtained pre-signed forms several months earlier but believed he no longer had the forms, would mean that his answer on the questionnaire was factually accurate. However, in our view this would at best lead to the conclusion that Mr. Reaney was “reckless or lackadaisical” in answering the questionnaire, to use the words of the Alberta Securities Commission in *Re Doe*.<sup>17</sup>
- [139] Mr. Reaney admits that he did not review his files in order to ensure that his answer was correct. In his voluntary interview, when asked what he did to inform himself about any pre-signed forms before he indicated “No” on the questionnaire, Mr. Reaney said: “I obviously did not take the appropriate steps, which again I apologize for.”
- [140] The second alternative, that he knew he had the forms and gave an incorrect answer deliberately, would be significantly more serious. This would have been a deliberate deception to his firm and would make his sworn affidavit untrue.

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<sup>17</sup> (2007), ABASC 296 at para 13, cited in *Sterling Grace*, *supra* note 3 at para 171.

[141] We are prepared to give Mr. Reaney the benefit of the doubt as between these two alternatives. We are unable to reach the conclusion that this was “an honest mistake”, but we conclude on a balance of probabilities that at the time Mr. Reaney completed the 2012 questionnaire, he was unsure as to whether he had pre-signed forms, and he was reckless or lackadaisical by not reviewing his files to check.

#### **D. Assessment of Mr. Reaney’s Current Suitability for Registration**

##### **1. Mr. Reaney’s Current Understanding of the Need for Original Signatures**

[142] Because we must determine whether Mr. Reaney is suitable for registration at this time, it follows that we should assess his current understanding of the need for original client signatures. Our view as to whether Mr. Reaney will act upon his stated good intentions in the future would be positively influenced by the demonstration of a clear understanding of that requirement, and of the potentially devastating harm that the rules seek to avoid.

[143] In paragraph 18 of his affidavit, Mr. Reaney says simply: “I understand how important it is to have original client signatures. This rule is for the benefit of clients, firms and even mutual fund dealers themselves.” The affidavit offers nothing further on this point.

[144] At the hearing before us, Mr. Reaney’s counsel offered to have him give oral evidence to explain his understanding. Accordingly, we invited Mr. Reaney to testify specifically as to what he considered the “benefits” of the rule to be. Mr. Reaney’s testimony with respect to that paragraph of his affidavit was as follows (quoted in full):

With respect to [paragraph 18 of the affidavit] and original signatures, I definitely realize that it’s important from my perspective to explain everything to my clients and get a good understanding of what’s important to them and that they understand all the information within the -- that they’re subjected to and that they don’t have any questions and once they sign their name that there’s a clear understanding that they do recognize everything and don’t have any questions going forward.

And then with respect to the mutual fund company, that they have the confidence in me that I’ve explained all these things to my clients and my clients understand and that there’s no mitigation issues, et cetera, at hand and everybody has a good understanding.

[145] In an attempt to gain a clear understanding of Mr. Reaney’s current thinking with respect to the importance of original signatures on the different kinds of documents at issue in this case, we then asked him to elaborate. Mr. Reaney responded at length. He:

- a. cited potential issues relating to the proper identification of clients;
- b. explained his usual practice about understanding his client’s circumstances and objectives;
- c. explained his usual practice about discussing risk with his clients;
- d. described the function of a trade ticket;
- e. referred to his having hired an assistant;

- f. noted that his firm now accepts forms transmitted electronically, which was not always the case;
- g. highlighted how, in his opinion, the MFDA now communicates with member firms better than it previously did;
- h. expressed his confidence that there would be no recurrence of the misconduct at issue in this case; and
- i. referred to the financial costs he has incurred and the harm to his reputation.

[146] As noted above, our assessment of Mr. Reaney's integrity and our determination of whether Mr. Reaney is currently unsuitable for registration would be influenced by evidence demonstrating his specific understanding of some of the actual and potential harm referred to in paragraph [84] above. We had no such evidence before us. In his oral testimony, Mr. Reaney did not allude to any such harm. While in his affidavit Mr. Reaney does state that he is "now more aware that I need to say no to my clients and to inconvenience my clients in order to ensure that I stay completely on-side the regulatory requirements of my job", this assertion similarly fails to demonstrate any appreciation for the harm that might result from failing to do so. This was particularly troubling given that Mr. Reaney recently completed the CPH Course.

[147] We were also concerned that his optimism about the unlikelihood of recurrence is based in substantial part on improved policies and procedures of his employer, the result of which has been to eliminate some of the frustrating circumstances that caused Mr. Reaney to engage in the misconduct in the first place. This improvement in circumstances does not speak to Mr. Reaney's own willingness to make compliance with the rules a top priority, particularly when confronted with novel situations in respect of which there might not be explicit regulatory or internal policy requirements, but that would require the exercise of his judgment.

## **2. Subsequent Events**

[148] Mr. Reaney's counsel submitted that because this is not an enforcement proceeding, it would be inappropriate to consider events occurring after the misconduct (*e.g.*, steps taken by Mr. Reaney to improve his practice) as "mitigating factors"; rather, these are intervening circumstances relevant to an assessment of Mr. Reaney's current suitability for registration. We agree. Our assessment of Mr. Reaney's integrity, which is relevant to our determination of his suitability for registration, must be made as of the date of the hearing before us. In the following paragraphs, we review each of the intervening circumstances to which we were referred.

[149] Mr. Reaney has hired an assistant. While this step is no doubt a positive development, we cannot give it significant weight. An individual registrant must discharge his/her obligations at all times and must be satisfied that sufficient resources are in place to support the registrant.

[150] Mr. Reaney successfully completed the CPH Course in November 2014, immediately prior to the December OTBH before the Director. While it is true that he chose to take the course, his decision was prompted by the regulatory process that followed the discovery of his misconduct. In the Reaney Affidavit, Mr. Reaney states:

[Staff's] letter of August 14, 2014 proposed that I be suspended and that, during the suspension, I should complete the [CPH Course]. Out of a desire to prove my competence and integrity to the OSC, I took the CPH Course on a voluntary basis.

[151] Mr. Reaney accepted periods of strict supervision, has suffered financial consequences (*e.g.*, legal fees), and has been embarrassed among his clients and others. We consider all of these to be natural and inevitable consequences of his misconduct and we are unable to conclude that any of these consequences contributes to a more favourable finding as to his suitability for registration.

[152] Finally, Mr. Reaney says that there has been no recurrence of his misconduct, and he notes that he has refused clients' requests to pre-sign blank forms. He has apologized repeatedly for his misconduct and he has promised that it will not recur. While we accept Mr. Reaney's good intentions, as well as his statement that there has been no recurrence of the misconduct since the IPC audit, we cannot give these assertions significant weight, given that Mr. Reaney has been under periods of strict supervision and has been subject to the regulatory process arising from his misconduct.

#### **E. Conclusion as to Suitability for Registration**

[153] For the reasons set out above, we find that at least some of Mr. Reaney's conduct (*i.e.*, the instances of forgery) was fundamentally dishonest. As noted in paragraph [35] above, this requires the conclusion that as at the date of the discovery of Mr. Reaney's misconduct, he lacked the integrity necessary to make him suitable for registration.

[154] Neither the subsequent events referred to in paragraphs [149] to [152] nor Mr. Reaney's evidence before us is sufficient to overcome that conclusion. We therefore find that Mr. Reaney is not currently suitable for registration, within the meaning of clause 27(1)(a) of the Act.

#### **V. ISSUE 2 – HAS MR. REANEY “FAILED TO COMPLY WITH ONTARIO SECURITIES LAW”?**

[155] Having found that some of Mr. Reaney's conduct was fundamentally dishonest, it follows that he breached subsection 2.1(2) of Rule 31-505, which required him to deal with his clients “fairly, honestly and in good faith”.

[156] There was some suggestion in the hearing before us that considering a breach of Rule 31-505 might amount to an improper “double barreled” allegation. We do not agree, and in any event nothing turns on it. Our analysis of Mr. Reaney's conduct led us to the conclusion that he lacks the integrity necessary to be suitable for registration. The fact that the conduct in question also amounts to a failure to comply with Ontario securities law is to be expected, and results in no different outcome. The consequences for Mr. Reaney are no more severe just because his misconduct both demonstrates a lack of integrity and constitutes a failure to comply with Ontario securities law.

#### **VI. ISSUE 3 - IS MR. REANEY'S REGISTRATION “OTHERWISE OBJECTIONABLE”?**

[157] In light of our conclusion that Mr. Reaney is currently unsuitable for registration and that he has failed to comply with Ontario securities law, it is unnecessary for us to consider whether his registration is otherwise objectionable, and we decline to do so.

## **VII. ISSUE 4 – WHAT IS THE APPROPRIATE OUTCOME?**

### **A. Introduction**

[158] Having concluded that Mr. Reaney is not currently suitable for registration and that he has failed to comply with Ontario securities law, we must now determine what consequences, if any, ought to flow from that conclusion.

### **B. Review by MFDA Staff**

[159] At the hearing before us, Mr. Reaney's counsel suggested that because this Commission ordinarily defers to the MFDA in respect of decisions of that organization, we ought to be influenced by MFDA Staff's decision to send a warning letter to Mr. Reaney (see paragraph II.[9] above).

[160] This submission confuses two different functions within the MFDA. At the MFDA (as at the Commission), MFDA Staff conduct investigations and determine when to initiate proceedings. If a proceeding is commenced, then an MFDA panel considers the matter and reaches a decision. While the Commission may show some deference to MFDA panel decisions, this deference does not extend to MFDA Staff's exercise of their discretion as to which cases to pursue.

[161] In this case, there was no MFDA proceeding. We reject any suggestion that this tribunal ought to defer to a decision by MFDA Staff.

### **C. The Director's Decision**

[162] As noted above in paragraph II.[22], this is a hearing *de novo*, and we are exercising original (not appellate) jurisdiction in this proceeding. Accordingly, there is no requirement that we show deference to the Director's Decision.

### **D. Anticipated Consequences of a Suspension**

[163] In his affidavit, Mr. Reaney makes the bald assertion that he "fear[s] that a lengthy period of suspension would be professionally and financially devastating." Mr. Reaney's counsel repeated this assertion in her submissions before us.

[164] However, we had no evidence whatsoever to support this claim, whether in the written record or through Mr. Reaney's oral testimony. Mr. Reaney's counsel confirmed at the hearing that he continues to hold a life insurance licence, but we have no information as to what proportion of his income is derived from activities permitted by the life insurance licence as opposed to activities permitted by his registration as a mutual fund dealing representative.

[165] Accordingly, we are unable to make any finding about Mr. Reaney's current financial situation or the financial impact that a suspension would have.

### **E. Analysis as to Appropriate Outcome**

[166] The range of possible outcomes spans from no order at all to a revocation of Mr. Reaney's registration. That range includes within it a suspension of, and/or the imposition of terms and conditions upon, his registration.

[167] At the OTBH, Staff asked the Director to suspend Mr. Reaney's registration for a period of nine to twelve months. The Director decided instead on a suspension of six months, with the terms and conditions set out in paragraph II.[16] above.

[168] At the hearing before us, Staff submitted that we should essentially confirm the Director's decision. Mr. Reaney's counsel submitted that a suspension of that length would be inappropriate and excessive in the circumstances. She said that any



concerns we may have regarding his suitability for registration could be sufficiently addressed by having terms and conditions imposed upon his registration.

- [169] In determining the appropriate outcome, we are guided by our mandate, contained in section 1.1 of the Act, to provide protection to investors from improper practices and to foster confidence in the capital markets. We take into account our findings of:
- a. a prolonged pattern of fundamentally dishonest conduct that included some instances of forgery that lie towards the more egregious end of the spectrum;
  - b. a prolonged pattern of obtaining pre-signed forms, even when Mr. Reaney knew that such conduct was prohibited; and
  - c. reckless and lackadaisical conduct regarding the compliance questionnaire.
- [170] In our view, the mere imposition of terms and conditions would essentially continue the *status quo* under which Mr. Reaney operated while under strict supervision. Mr. Reaney was unable to persuade us that being under strict supervision has given him the understanding, and the willingness to be fully compliant, that should be expected of a registrant in his situation.
- [171] We conclude that in order to sufficiently protect investors and to foster confidence in the capital markets, a suspension of Mr. Reaney's registration is required. We further conclude that the suspension must be of a sufficient length to allow him to assimilate the findings set out in these reasons, to understand the seriousness of his misconduct, and to position himself to be a compliant registrant, not just with respect to the specific kinds of misconduct in which he has engaged, but with respect to all requirements to which he is subject.
- [172] While we believe that Mr. Reaney is probably now aware that he should not forge signatures or obtain pre-signed forms, we are not as convinced of his understanding as to the principles underlying those prohibitions or the harm that flows from failure to abide by the requirements. We are concerned that when confronted with a different requirement that Mr. Reaney sees as an obstacle to his business activities, he might not apply the necessary discipline and reason to lead him to make the right decision.
- [173] We are also of the opinion that the mere imposition of terms and conditions would send an inappropriate message to the marketplace. On this point, Mr. Reaney's counsel argued that because this is not an enforcement case, the usual analysis regarding general deterrence does not apply. While there is some truth to this proposition, in our view this does not preclude our considering the educational effect of our decision regarding the high standard of conduct necessary to meet the requirements for maintaining registration.
- [174] In our view, and in light of the findings we have made regarding a fundamentally dishonest pattern of conduct, we find that a six-month suspension is the appropriate outcome for Mr. Reaney. Further, this result alerts individual registrants and firms that misconduct of this kind attracts meaningful consequences.

## **F. Conclusion**

- [175] Balancing all of these considerations, and for the reasons set out above, we conclude that a suspension for six months is appropriate. We view this outcome as necessary to impress upon Mr. Reaney the need to comply with regulatory and internal policy requirements even when those requirements may seem inconvenient.

[176] We do not consider it necessary or appropriate to pre-determine whether any terms or conditions ought to be imposed upon Mr. Reaney's registration should he successfully re-apply at the conclusion of his suspension. Such an application, should it be submitted, would be assessed by the Director in accordance with all of the applicable considerations, in light of these reasons as well as whatever circumstances exist at that time.

**VIII. DECISION**

[177] Pursuant to subsection 8(3) and section 28 of the Act, we order that:

- a. Mr. Reaney's registration be suspended for six months, with the suspension to commence ten business days following the date of this decision; and
- b. during the ten-day period, Mr. Reaney may not accept new clients, open any new client accounts, or accept any new funds into an existing client's account.

Dated at Toronto this 13<sup>th</sup> day of July, 2015.

*"Mary G. Condon"*

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Mary G. Condon

*"William J. Furlong"*

\_\_\_\_\_  
William J. Furlong

*"Timothy Moseley"*

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Timothy Moseley

## APPENDIX A

#	Date	Client	Form type	Impropriety	Client aware of CR's forgery?
1	2002	C.J.	CRA	Pre-signed	n/a
2	2003	R.M.	CRA	Pre-signed	n/a
3	2005 09 11	K.M.	Acct change	Forged by CR	Yes
4	2007 08 18	C.R.	Trading	Forged by CR	Yes
5	2007 09 06	R.A.	KYC	Forged by CR	Yes
6	2008 01 22	R.A.	KYC	Forged by CR	Yes
7	2008 06 19	C.R.	Trading	Forged by CR	Yes
8	2009 03 08	L.T.	KYC	Forged by spouse	n/a
9	2009 03 12	R.A.	KYC	Forged by CR	Yes
10	2009 05 25	C.R.	KYC	Forged by CR	Yes
11	2009 06 05	J.H.	KYC	Forged by CR	Unknown
12	2009 06 05	J.H.	Trading	Forged by CR	Unknown
13	2009 06 05	J.H.	Trading	Forged by CR	Unknown
14	2009 11 18	D. & C.S.	Trading	Forged by CR	Yes
15	2010 02 23	A.G.	KYC	Forged by spouse	n/a
16	2011	T.W.	KYC	Pre-signed	n/a
17	2011 02 07	C.R.	Trading	Forged by CR	Yes
18	2011 02 18	R.D.	RSP change	Forged by spouse	n/a
19	2011 03 23	G. & V.M.	KYC	Forged by CR	No
20	2011 03 23	G. & V.M.	HRSDC	Forged by CR	No
21	2011 03 23	G. & V.M.	HRSDC	Forged by CR	No
22	2011 03 23	G. & V.M.	HRSDC	Forged by CR	No
23	2011 03 23	G. & V.M.	HRSDC	Forged by CR	No
24	2011 03 24	G. & V.M.	HRSDC	Forged by CR	No
25	2011 05 18	D.C.	CRA	Pre-signed	n/a
26	2011 11 30	D.G.	CRA	Forged by CR	Yes
27	2011 12 24	D.J.	TF	Pre-signed	n/a
28	2011 12 26	J.K.	Trading	Pre-signed	n/a
29	2011 12 27	R.D.	Trading	Pre-signed	n/a
30	2011 12 27	D.G.	Trading	Pre-signed	n/a
31	2011 12 28	J.G.	Trading	Pre-signed	n/a
32	2012 01 11	B.W.	TF	Pre-signed	n/a
33	2012 01 28	R.S.	KYC	Forged by CR	No
34	2012 02 23	D.J.	KYC	Forged by CR	Unknown
35	2012 02 27	S.V.	KYC	Forged by CR	Unknown
36	2012 02 28	C.V.	KYC	Forged by CR	Unknown
37	2012 06 06	M.C.	KYC	Pre-signed	n/a
38	2012 06 21	D.K.	Trading	Forged by spouse	n/a
39	2012 summer	A.M.	Trading	Pre-signed	n/a
40	2012 07 01	R.G.	Trading	Pre-signed	n/a
41	2012 07 11	D. & C.S.	Trading	Forged by CR	Yes
42	2012 09 03	B.J.	KYC	Forged by CR	Yes