

Re Somerville

IN THE MATTER OF

The Mutual Fund Dealer Rules

and

David Clark Somerville

2025 CIRO 43

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: August 12, 2025 in Toronto, Ontario (via videoconference)

Decision: August 12, 2025

Reasons for Decision: August 28, 2025

Hearing Panel:

Robert P. Armstrong, KC, Chair
Guenther Kleberg, Industry Member
Steve Garmaise, Industry Member

Appearances:

Jennie Brodski, Enforcement Counsel
David Clark Somerville (present)

REASONS FOR DECISION

I. Introduction

[1] On June 16th, 2025, the Enforcement Staff of the Canadian Investment Regulatory Organization (“CIRO”) entered into a Settlement Agreement with David Clark Somerville (“Respondent”). On August 12th, 2025, this Hearing Panel convened a hearing to review the aforesaid Settlement Agreement and consider whether it should be approved and accepted by this panel.

[2] The Respondent appeared in person. He was not represented by counsel. The Respondent is registered as an approved person with Quadrus Investment Ltd. (“Quadrus”) since January 17, 1998.

II. The Settlement Agreement

[3] The Settlement Agreement sets out the allegations that David Somerville “contravened Mutual Fund Dealer Rule 2.1.1 by failing in his obligations regarding the proper execution of client account documents, resulting in the Respondent (i) obtaining, possessing, and using pre-signed account forms; (ii) altering information on account forms without having the clients initial the alterations; and (iii) reusing client signatures on account forms for the purpose of processing new trades.” The following paragraphs provide the relevant details.

Pre-Signed Account Forms

[4] In the period between 2021 and 2024, the Respondent completed some 41 transactions involving pre-signed account forms, contrary to the Policies and Procedures of Quadrus. These pre-signed account forms included the following:

- a) Know Your Client (“KYC”) Forms;
- b) Redemption Forms;

- c) Automatic Withdraw IRRIF Payment Forms;
- d) Subsequent Investment Forms;
- e) Transfer Authorization Forms; and
- f) Pre-Authorized Contribution (“PAC”) Forms.

[5] Information was added to the account forms after the clients had signed the forms and included:

- a) investment instructions;
- b) fund type and selections;
- c) amount to be transferred or redeemed;
- d) account numbers; and
- e) dates.

Altered Account Forms

[6] The Quadrus policies prohibited representatives from altering account forms without the apparent authorization of the client. Between 2021 and 2024, the Respondent improperly altered and used 18 account forms without having the clients initial the alterations to indicate the alterations were authorized.

[7] In this case, the altered forms included redemption forms, subsequent investment forms, PAC forms, account application forms, KYC forms, Master Service Agreement forms, and transfer authorization forms.

[8] The Respondent made the following alterations to the forms after the client had signed the forms:

- (i) amount to be redeemed;
- (ii) fund selections and codes;
- (iii) instructions for delivery of funds;
- (iv) personal information;
- (v) plan number;
- (vi) account number; and
- (vii) dates.

Reuse of Account Forms

[9] Between 2021 and 2024, the Respondent photocopied 36 account forms for the purpose of completing new transactions. These reused forms included conversion forms, switch forms, and redemption forms. The alterations which were made included the fund selection and codes, the timing of conversions, the amount to be redeemed, and the dates.

Quadrus Branch Audits

[10] In 2019 and 2021, there were branch audits at Quadrus. It was discovered in these audits that the Respondent had used liquid correction fluid to change information on account forms and had clients sign incomplete forms. The Respondent then used pre-signed and altered account forms and reused account forms.

[11] In 2023, during a further branch audit, Quadrus identified the above pre-signed and altered account forms. Quadrus sent letters to the particular clients to confirm the correctness of the information and inquired whether the transactions had been authorized. No complaints were received from these clients.

[12] As a result of the above, the Respondent was placed under close supervision for six months. There were no issues raised while the Respondent was under close supervision. Quadrus required the Respondent to pay a total of \$2,400 for the close supervision.

[13] The Respondent has no prior record of disciplinary proceedings. None of the Respondent’s clients made any complaints against him in regard to these matters. There is no evidence that any clients suffered any financial loss in respect of these matters.

III. Submissions of Counsel for CIRO

[14] Enforcement Counsel for CIRO provided this Panel with lengthy written submissions in support of the Settlement Agreement, which included references to previous decisions of prior hearing panels.

[15] Enforcement Counsel proposed the following sanctions:

- (i) a fine of \$20,000; and
- (ii) costs of \$2,500.

[16] Enforcement Counsel submitted that “...the proposed sanctions fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the Respondent’s admitted misconduct.” Enforcement Counsel also submitted that prior decisions of hearing panels have held that using pre-signed forms contravenes the Standard of Conduct set forth in Rule 2.1.1.

Lok (Re), 2020 CanLII 80673 (CA MFDAC).

Bell (Re), 2019 CanLII 12463 (CA MFDAC) at paras 9-11.

[17] Prior to the present case, the predecessor organization, MFDA, warned members and approved persons against the use of pre-signed and altered forms, which would attract enhanced penalties.

[18] Prior decisions have made it clear that the use of pre-signed forms represents a serious contravention of the Standard of Conduct under the Mutual Fund Dealer Rule 2.1.1.

[19] Enforcement Counsel noted that the Respondent admits that he obtained, possessed, and used to process 41 pre-signed account forms and 26 additional account forms, which had been previously signed by clients, and as well, altered them to process transactions without having the client initial the changes, contrary to Mutual Fund Dealer Rule 2.1.1.

[20] Counsel relies on the well-settled principle in respect of settlement hearings that we as a hearing panel must be satisfied that the proposed penalty “falls within a reasonable range of appropriateness, having regard to the Respondent’s conduct.”

[21] Counsel further submits that it is generally accepted that hearing panels will not likely interfere in a settlement agreement reached between Enforcement Staff and a respondent and will not alter a penalty that it considers to be within a reasonable range.

Professional Investments (Kingston) Inc. (Re), 2009 CanLII 88847 (CA MFDAC) at para 13;

Milewski (Re), [1999] IDACD No. 17, Ontario District Council decision dated July 28, 1999, at 10, SBA.

IV. Conclusion

[22] We note that the Respondent has admitted the facts contained in the Settlement Agreement. This Hearing Panel has no difficulty in concluding that the Settlement Agreement in this case provides for a penalty that falls within a reasonable range of appropriateness and is in accord with prior decisions of former hearing panels. We also note that the proposed penalty follows the CIRO Sanction Guidelines, which came into effect on February 1, 2024.

[23] In the result, this Panel accepts the Settlement Agreement as proposed by the parties in this case. The Respondent shall pay a fine of \$20,000 and costs of \$2,500.

DATED at Toronto, Ontario on this 28th day of August 2025.

“Robert P. Armstrong” _____

Robert P. Armstrong, KC, Chair

“Guenther Kleberg” _____

Guenther Kleberg, Industry Member

“Steve Garmaise” _____

Steve Garmaise, Industry Member

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Canadian Investment
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de réglementation
des investissements

**IN THE MATTER OF
THE MUTUAL FUND DEALER RULES**

AND

DAVID CLARK SOMERVILLE

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Canadian Investment Regulatory Organization (CIRI)¹ will issue a Notice of Settlement Hearing to announce a settlement hearing pursuant to Mutual Fund Dealer Rule 7.4.4 and Rules 14 and 15 of the Mutual Fund Dealer Rules of Procedure (“Rules of Procedure”) to consider whether a Hearing Panel should accept this Settlement Agreement between Enforcement Staff and David Clark Somerville (the “Respondent”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Enforcement Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

Registration History

4. The Respondent has been registered as an Approved Person with Quadrus Investment Ltd. (“Quadrus”) since January 17, 1998.
5. At all material times, the Respondent conducted business in the Niagara, Ontario area.

¹ Where the rules, by-laws, and policies of the Mutual Fund Dealers Association of Canada (the “MFDA”) that were in force immediately prior to amalgamation of the Investment Industry Regulatory Organization of Canada and the MFDA have been incorporated into the Mutual Fund Dealer Rules, Enforcement Staff have referenced the relevant section of the Mutual Fund Dealer Rules.

Pre-Signed Account Forms

6. At all material times, Quadrus's policies and procedures prohibited its dealing representatives from obtaining, possessing or using blank or incomplete pre-signed account forms.
7. Between 2021 and 2024, the Respondent obtained, possessed and used to process transactions, 41 pre-signed account forms.
8. The pre-signed account forms included:
 - (a) Know Your Client ("KYC") forms;
 - (b) redemption forms;
 - (c) automatic withdrawal or RIF payment forms;
 - (d) subsequent investment forms;
 - (e) transfer authorization forms; and
 - (f) Pre-Authorized Contribution ("PAC") forms.
9. The information added to the account forms after the clients had signed the forms included:
 - (a) investment instructions
 - (b) fund type and selections;
 - (c) amount to be transferred or redeemed;
 - (d) account numbers; and
 - (e) dates.

Altered Account Forms

10. At all material times, Quadrus's policies and procedures prohibited its dealing representatives from altering or correcting any information on account forms without having the client initial the alteration to show that the alteration was authorized by the client.
11. Between 2021 and 2024, the Respondent altered and used to process transactions 18 account forms, by altering information on the account forms without having the clients initial the alterations to show that the alterations were authorized.

12. The altered account forms included:
- (a) redemption forms;
 - (b) subsequent investment forms;
 - (c) PAC forms;
 - (d) account application forms;
 - (e) KYC forms;
 - (f) Master Service Agreement forms
 - (g) transfer authorization forms;
13. The alterations the Respondent made to the account forms included alterations to:
- (a) amount to be invested or redeemed;
 - (b) fund selections and codes;
 - (c) instructions for delivery of funds;
 - (d) personal information;
 - (e) plan number;
 - (f) account number; and
 - (g) dates.

Re-used Account Forms

14. At all material times, Quadrus' policies and procedures prohibited the falsification of client signatures.
15. Between 2021 and 2024, the Respondent photocopied 36 account forms that had been previously signed by clients and altered information on the account forms to complete new transactions.
16. The re-used account forms included:
- (a) conversion forms;
 - (b) switch forms;
 - (c) redemption forms.
17. The Respondent altered on the account forms information that included:
- (a) the fund selection and codes;
 - (b) the timing of conversions processing;
 - (c) the amount to be redeemed;
 - (d) dates;

Prior Alternations of Account Forms

18. In 2019 and 2021, during two separate branch audits, Quadrus identified, and brought to the Respondent's attention, that the Respondent had used liquid correction fluid on client forms to alter information on the account forms, and had clients sign incomplete forms. The Respondent used the pre-signed and altered account forms, and re-used account forms that are the subject of this Settlement Agreement in the period after the 2019 and 2021 branch reviews.

Quadrus' Investigation

19. In 2023, Quadrus conducted a further audit of the branch where the Respondent operated, during which time, Quadrus discovered the account forms described above.
20. As part of its investigation into the Respondent's conduct, the Dealer Member sent audit letters to the affected clients, along with a portfolio summary, to determine the accuracy of the information on the summary and whether the transactions were authorized. No clients complained.
21. Quadrus placed the Respondent under close supervision for six months. Quadrus did not report any further issues to Staff regarding the Respondent while under close supervision. Quadrus required the Respondent to pay a fee in respect of the close supervision of \$400 per month. The Respondent has paid Quadrus a total of \$2,400.

Additional Factors

22. The Respondent has not previously been the subject of disciplinary proceedings commenced by the MFDA or CIRO.
23. There is no evidence of client financial loss or lack of authorization for alterations or underlying transactions, and no clients have complained to CIRO or the Dealer Member.
24. By entering into this Settlement Agreement, the Respondent has saved CIRO the time, resources and expenses associated with conducting a contested hearing on the allegations.

PART IV – CONTRAVENTIONS

25. By engaging in the conduct described above, the Respondent committed the following contraventions of CIRO requirements:

Between 2021 and 2023, the Respondent failed in his obligations regarding the proper execution of account documents, resulting in the Respondent: (i) obtaining, possessing and using pre-signed account forms; (ii) altering information on account forms without having the clients initial the alterations; and (iii) reusing client signatures on account forms for the purposes of processing new trades, contrary to Mutual Fund Dealer Rule 2.1.1.

PART V – TERMS OF SETTLEMENT

26. The Respondent agrees to the following sanctions and costs:
- (a) the Respondent shall pay a fine in the amount of \$20,000 in certified funds, upon acceptance;
 - (b) the Respondent shall pay costs in the amount of \$2,500 in certified funds;
 - (c) the Respondent shall in the future comply with Mutual Fund Dealer Rule 2.1.1; and
 - (d) the Respondent shall attend on the date set for the Settlement Hearing.
27. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above immediately upon such acceptance, unless otherwise agreed between Enforcement Staff and the Respondent.

PART VI – STAFF COMMITMENT

28. If the Hearing Panel accepts this Settlement Agreement, Enforcement Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.
29. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of this Settlement Agreement, Enforcement Staff may bring proceedings under Mutual Fund Dealer Rule 7 against the Respondent. These proceedings may be based on, but not limited to, the facts set out in Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

30. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
31. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with Mutual Fund Dealer Rule 7.4.4, and Rules of Procedure 14 and 15, in addition to any other procedures that may be agreed upon between the parties.

32. Enforcement Staff and the Respondent agree that this Settlement Agreement will form all the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
33. If the Hearing Panel accepts this Settlement Agreement, the Respondent agrees to waive all rights under the Rules and By-law No. 1 of CIRO, and any applicable legislation to any further hearing, appeal, and review.
34. If the Hearing Panel rejects this Settlement Agreement, Enforcement Staff and the Respondent may enter into another settlement agreement or Enforcement Staff may proceed to a disciplinary hearing based on the same or related allegations.
35. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
36. This Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and CIRO will post a copy of this Settlement Agreement on the CIRO website. CIRO will publish a notice and news release of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement and the Hearing Panel's written reasons for its decision to accept this Settlement Agreement.
37. If this Settlement Agreement is accepted, the Respondent agrees that neither they nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.
38. This Settlement Agreement is effective and binding upon the Respondent and Enforcement Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

39. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
40. An electronic copy of any signature will be treated as an original signature.

DATED this 16th day of June, 2025.

“Witness”

Witness

“Respondent”

Respondent

“Jennie Brodski”

Jennie Brodski
Enforcement Counsel on behalf of
Enforcement Staff of the
Canadian Investment Regulatory
Organization

The Settlement Agreement is hereby accepted this 12th day of August, 2025 by the following Hearing Panel:

Per: “Robert Armstrong”
Chair

Per: “Guenther Kleberg”
Industry Member

Per: “Steve Garmaise”
Industry Member