



**February 1, 2010**

## **MFDA POLICY NO. 3**

### **COMPLAINT HANDLING, SUPERVISORY INVESTIGATIONS AND INTERNAL DISCIPLINE**

#### **I. Complaints**

##### **1. Introduction**

MFDA Rule 2.11 requires Members to establish and implement written policies and procedures for dealing with client complaints that ensure that such complaints are dealt with promptly and fairly. This Policy establishes minimum standards for the development and implementation of those procedures.

Compliance with the requirements of MFDA Rule 2.11 and this Policy must be supervised and monitored by the Member and its personnel in accordance with MFDA Rule 2.5.

##### **2. Definition**

A "complaint" shall be deemed to include any written or verbal statement of grievance, including electronic communications from a client, former client, or any person who is acting on behalf of a client and has written authorization to so act, or of a prospective client who has dealt with a Member or Approved Person, alleging a grievance involving the Member, Approved Person of the Member or former Approved Person of the Member, if the grievance involves matters that occurred while the Approved Person was an Approved Person of the Member.

##### **3. Duty to Assess All Complaints**

Members have a duty to engage in an adequate and reasonable assessment of all complaints.

All complaints are subject to the complaint handling requirements set out in Part I of this Policy. Certain complaints are subject to additional complaint handling requirements as set out in Part II of this Policy. Complaints must be assessed to determine whether, in the reasonable professional judgment of the Member's supervisory staff handling the complaint, they should be treated in accordance with the Additional Complaint Handling Requirements prescribed by Part II of this Policy.

All complaints, including complaints from non-clients in respect of their own affairs, in any way relating to the following must be dealt with in accordance with the Additional Complaint Handling Requirements prescribed by Part II of this Policy:

- a breach of client confidentiality;
- unsuitable investments or leveraging (except for non-clients);
- theft, fraud, misappropriation, forgery, misrepresentation, unauthorized trading;
- engaging in securities related business outside of the Member;
- engaging in an undeclared occupation outside the Member;
- personal financial dealings with a client, money laundering, market manipulation or insider trading.

In determining whether any other complaints not relating to the matters set out above should be subject to the Additional Complaint Handling Requirements prescribed by Part II of this Policy supervisory staff should consider whether the complaint alleges a matter similar in nature or seriousness to those set out above, the complainant's expectation as to how the complaint should be handled and whether the complainant is alleging any financial harm. Where supervisory staff determines that a complaint does not meet any of these criteria the complaint must be handled fairly and promptly but can be concluded through an informal resolution.

#### 4. Minimum Requirements for Complaints Subject to Informal Resolution

Any complaints that are subject to informal resolution must be handled fairly and responded to promptly (i.e. generally in less time than it would take for complaints subject to the Additional Complaint Handling Requirements prescribed by Part II of this Policy). Such complaints must also be resolved in accordance with internal Member complaint handling policies and procedures that clearly describe the process to be followed in the assessment and resolution of such matters. Certain complaints subject to informal resolution must also be reported under Policy No. 6.

Where a complaint subject to informal resolution is received in writing the Member must provide its substantive response in writing.

#### 5. Member Assistance in Documenting Verbal Complaints

Members should be prepared to assist clients in documenting verbal complaints where it is apparent that such assistance is required.

#### 6. Client Access

At the time of account opening, Members must provide to new clients a written summary of the Member's complaint handling procedures, which is clear and can easily be understood by clients. On account opening, the Member must also provide a Client Complaint Information Form ("CCIF"), as approved by MFDA staff, describing complaint escalation options, including complaining to the

Ombudsman for Banking Services and Investments and complaining to the MFDA.

Members must ensure that information about their complaint handling process is made generally available to clients so that clients are informed as to how to file a complaint and to whom they should address a complaint. For example, Members who maintain a website must post their complaint handling procedures on their website.

Member procedures must provide a specific point of initial contact at head office for complaints or information about the Member's complaint handling process. This contact may be a designated person or may be a general inbox or telephone number that is continuously monitored. Members may also advise clients to address their complaints to the Approved Person servicing their account and to the Branch Manager supervising the Approved Person.

## 7. Fair Handling of Client Complaints

To achieve the objective of handling complaints fairly, Members' complaint handling procedures must include standards that allow for a factual investigation and an analysis of the matters specific to the complaint. Members must not have policies that allow for complaints to be dismissed without due consideration of the facts of each case. There must be a balanced approach to the gathering of facts that objectively considers the interests of the complainant, the Approved Person and the Member.

The basis of the Member's analysis must be reasonable. For example, a suitability complaint must be considered in light of the same principles that would be applied by a reasonable Member in conducting a suitability review, which would include an acknowledgement of the complainant's stated risk tolerance. It would not be reasonable for a Member to assess suitability based on a risk level presumed by the Member that is higher than that indicated by the complainant. A further example of an unreasonable analysis is where a Member dismisses a complaint due to a simple uncorroborated denial by the Approved Person notwithstanding evidence in support of the complainant.

A Member's obligation to handle complaints in accordance with this Policy is not altered when a complainant engages legal counsel in the complaint process and where no litigation has commenced. Where litigation has been initiated by the complainant, the Member is expected to participate in the litigation process in a timely manner in accordance with the rules of procedure of the applicable jurisdiction and to refrain from acting in a way that is clearly unfair.

The Member's review of the complaint must result in the Member's substantive response to the complainant. Examples of an appropriate substantive response include a fair offer to resolve the complaint or a denial of the complaint with reasons. MFDA staff does not require that the complainant accept the Member's offer in order for the offer to be considered fair.

## 8. Prompt Handling of Client Complaints

The Member must handle the complaint and provide its substantive response within the time period expected of a Member acting diligently in the circumstances. The time period may vary depending on the complexity of the matter. The Member should determine its substantive response and notify the complainant in writing in most cases within three months of receipt of the complaint.

Further, staff recognizes that, if the complainant fails to co-operate during the complaint resolution process, or if the matter requires an extensive amount of fact-finding or complex legal analysis, time frames for the substantive response may need to be extended. In cases where a substantive response will not be provided within three months, the Member must advise the complainant as such, provide an explanation for the delay and also provide the Member's best estimate of the time required for the completion of the substantive response.

It is not required that the complainant accept the Member's substantive response. Where the Member has communicated its substantive response, the Member must continue to proactively address further communications from the complainant in a timely manner until no further action on the part of the Member is required.

## 9. General Complaint Handling Requirements

1. All client complaints and supervisory obligations must be handled by qualified sales supervisors/compliance staff. An individual who is the subject of a complaint must not handle the complaint unless the Member has no other supervisory staff who are qualified to handle such complaints.
2. Each Approved Person must report certain complaints and other information relevant to this Policy to the Member as required under MFDA Policy No. 6.
3. Each Member must put procedures in place so that senior management is made aware of complaints of serious misconduct and of all legal actions.
4. Members may use the electronic reporting system designated under MFDA Policy No. 6 (the "Member Event Tracking System" or "METS") as their complaint log for those complaints reported on METS. For complaints that are not required to be reported through METS Members must have policies and procedures for the detection of frequent and repetitive complaints made with respect to the same matter which may, on a cumulative basis, indicate a serious problem.
5. Follow-up documentation for all complaints must be kept in a central location along with the consolidated log of complaints. Alternatively, where a Member has various regional head offices or branches, the Member may keep follow-up documentation at any one regional head office or branch, so long as information about the handling of the complaint is in the Member head office log and the follow-up documentation can be produced in a timely manner.

6. Where the events relating to a complaint took place in part at another Member or a member of another SRO, Members and Approved Persons must cooperate with other Members or SRO members in the sharing of information necessary to address the complaint.

## 10. Settlement Agreements

No Approved Person shall, without the prior written consent of the Member, enter into any settlement agreement with, pay any compensation to or make any restitution to a client.

No Member or Approved Person of such Member may impose confidentiality restrictions on clients or a requirement to withdraw a complaint with respect to the MFDA or a securities commission, regulatory authority, law enforcement agency, SRO, stock exchange or other trading market as part of a resolution of a dispute or otherwise.

## II. Additional Complaint Handling Requirements

Each Member's procedures for handling complaints that are subject to the requirements of this section must include the following:

1. **Initial Response** – An initial response letter must be sent to the complainant within a reasonable time, and generally within 5 business days of receipt of the complaint. If a complaint can be concluded in less than 5 business days then an initial response letter is not necessary. The initial response letter must include the following information:
  - A written acknowledgment of the complaint;
  - A request to the complainant for any additional reasonable information required to resolve the complaint;
  - The name, job title and full contact information of the individual at the Member handling the complaint;
  - A statement indicating that the complainant should contact the individual at the Member handling the complaint if he/she would like to inquire about the status of the complaint;
  - A summary of the Member's internal complaint handling process, including general timelines for providing the Member's response to complaints and a statement advising clients that each province and territory has a time limit for taking legal action; and
  - A reference to an attached copy of the CCIF, and a reference to the fact that the CCIF contains information about applicable limitation periods.
2. **Substantive Response** – The substantive response letter, which Members must provide to the complainant, may be accompanied by a summary of the Member's complaint handling procedures and must include a copy of the CCIF. The substantive response letter to complainants must also include the following information:
  - An outline of the complaint;

- The Member's substantive decision on the complaint, including reasons for the decision; and
- A reminder to the complainant that he/she has the right to consider: (i) presenting the complaint to the Ombudsman for Banking Services and Investments which will consider complaints brought to it within six months of the substantive response letter; (ii) making a complaint to the MFDA; (iii) litigation/civil action; or (iv) any other applicable options, such as an internal ombudservice provided by an affiliate of the Member.

### III. Supervisory Investigations

A Member must monitor, through its supervisory personnel, all information that it receives regarding potential breaches of applicable requirements on the part of the Member and its current and former Approved Persons that raise the possibility of risk to the Member's clients or other investors. Applicable requirements include MFDA By-laws, Rules and Policies, other applicable legal and regulatory requirements and the Member's related internal policies and procedures. This applies to information received from both internal and external sources. For example, such information may come from client complaints, be identified during the Member's routine supervisory activity, or come from other Approved Persons of the Member or individuals outside the Member who are not clients.

For purposes of clarity, where the information is received by way of a client complaint, the supervisory duty goes beyond addressing the relief requested by the complainant and extends to a consideration of general risk at the Member. The duty to deal with the supervisory aspects of the matter continues when a complainant purports to withdraw the complaint or indicates satisfaction with the result of the Member's complaint handling.

Members must take reasonable supervisory action in relation to such information, the extent of which will in part depend on the severity of the allegation and the complexity of the issues. In all cases, the Member must track such information and note trends in risk, including those related to specific Approved Persons or branches, subject matter, product types, procedures and cases, and take necessary action in response to those trends as appropriate. In some cases, it will be necessary to conduct an active supervisory investigation in relation to the information received in specific situations and the level of the investigation must be reasonable in the circumstances.

For example, where the Member identifies unsuitable investment or leveraging recommendations by one of its Approved Persons, the investigation may extend to include determining relevant matters such as the understanding of the Approved Person and applicable supervisory personnel of the Member's policies and procedures and the possibility that such conduct occurred in relation to other clients.

With regard to the type of conduct outlined in Part I, Section 3 of this Policy, other than suitability, the Member has a duty to conduct a detailed investigation in all situations where there is information from any source, written or verbal, whether from an identified source or anonymous, to raise the possibility that such conduct occurred. This duty applies to all conduct by the current or former Approved Person, whether it occurred inside or outside the Member.

The investigation must be sufficiently detailed and must include all reasonable steps to determine whether the potential activity occurred. Examples of the activities that the Member may need to take include:

- (a) interviewing or otherwise communicating with individuals such as:
  - the individuals of concern;
  - related supervisory personnel;
  - other branch staff;
  - head office personnel;
  - the client or other external individuals who brought the information to the Member's attention; or
  - other clients who may have been affected by the activity.
- (b) conducting a review at the branch or sub-branch.
- (c) reviewing documentation such as:
  - files of the Approved Person relating to Member business; or
  - files and other documents in the Approved Person's custody or control that relate to outside business, where there is a reasonable possibility that such information is relevant to the investigation. Members have the right to require such information to meet their supervisory responsibilities and Approved Persons have an obligation to cooperate with such requests.

#### IV. Internal Discipline

Each Member must establish procedures to ensure that breaches of MFDA By-laws, Rules and Policies are subjected to appropriate internal disciplinary measures.

#### V. Record Retention

Documentation associated with a Member's activity under this Policy shall be maintained for a minimum of 7 years from the creation of the record and made available to the MFDA upon request.