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MFDA Bulletin

Member Information

For Distribution to Relevant Parties within your Firm

MFDA Member Outreach Initiative

As part of the MFDA's 2018-2022 Strategic Plan, the MFDA launched its Member Outreach Initiative (see [MFDA Bulletin #0754 - M](#)) to obtain Member feedback on a wide variety of matters, including opportunities for improvement, industry innovation, and issues impacting clients served by MFDA Members.

This bulletin summarizes the background and objectives of the MFDA Member Outreach Initiative, the process used to solicit feedback from Members, the key themes identified during the consultations, and relevant MFDA initiatives.

I. Background and Objectives

There are currently a number of industry and global developments impacting the MFDA and its membership, including changes in regulation, changing consumer expectations, changing demographics, changing industry economics, and new technologies. In this context, it is important for the MFDA to maintain an open and effective dialogue with Member firms. Such ongoing communication assists MFDA staff in understanding issues facing Members, including the impact of regulatory requirements on them, where Members may require additional guidance, and other issues which may be particular to their operations or business models.

The MFDA Member Outreach Initiative was designed to gather feedback about the current industry environment, and to offer opportunities for Members to raise broad issues that might not be raised through other Member engagement activities.

II. Process

The MFDA Member Outreach initiative consisted of two phases. As a first step, in the Fall of 2018, MFDA staff contacted Members directly to (i) determine their interest in providing feedback on a wide variety of issues, and (ii) their preference in terms of how to engage in further substantive communication on such issues (i.e. focus groups, surveys, one on one meetings with MFDA staff

or independent consultants, etc.). MFDA Staff received feedback from 88 Chief Compliance Officers (“CCO”) of MFDA Members. A majority of Members expressed an interest in participating in focus groups.

Following this initial outreach to Members, the MFDA retained independent consultants to gather open, unbiased and anonymous feedback from Member CCOs and Ultimate Designated Persons (“UDP”s). Member CCOs and UDPs were invited to participate in one-on-one discussions or focus group sessions held in Toronto, Montreal, Vancouver and Calgary.

The consultants held discussions with 48 CCOs and 23 UDPs. In total, 52 Members were represented in the discussions, for an overall Member participation rate of 58%.

III. Feedback

General Observations

The consultants advised that the majority of participants were appreciative of the MFDA Member Outreach Initiative and having the opportunity to provide input. Although participants identified challenges and opportunities for improvements, the majority of participants had positive feedback about their working relationships with the MFDA.

Key Themes

In the course of conducting focus groups and interviews, the independent consultants identified a number of key themes and recommendations, which are set out below, followed by MFDA comments and actions. The MFDA was encouraged to see that key themes emerging from participant feedback align with actions the MFDA has either already undertaken or plans to undertake as part of the MFDA’s 2018-2022 Strategic Plan.

Key Theme 1 - Rule Review

New technology, evolving business models, and changing client expectations present opportunities to re-think MFDA Rules and Policies.

Consultant Recommendation:

- Rethink all MFDA Rules and Policies in light of changing business environment. In particular, consider whether two-tier supervision, branch manager roles, and branch location supervision requirements have kept pace with new developments.

MFDA Comments

In furtherance of the goals of “Innovate” and “Update” under the 2018-2022 Strategic Plan, the MFDA has initiated a review of MFDA regulatory requirements to ensure that the current MFDA regulatory framework remains appropriate, relevant, and will facilitate responsible innovation in the industry through the use of emerging technology and business models. The MFDA has already

proposed policy amendments to address such things as changing business models, technological advancement, and regulatory harmonization.

The MFDA is reviewing all aspects of its Rulebook, including Policies, Notices and Forms, to determine if there are requirements that, for example:

- are not meeting their intended regulatory objective in the most efficient way;
- require updating to reflect changes in technology or business models;
- need further clarification or explanation to be effective;
- can be further harmonized with requirements of other regulators; or
- are not currently reflected in the MFDA Rulebook but are necessary for the adequate protection of clients.

As a result of Member feedback and staff internal review, MFDA staff has already identified areas where changes will be considered including supervisory structures, and books and records requirements. This will require amendments to Rules as well as related Policies, Notices, Bulletins and guidance. Accordingly, amendments will be proposed in phases. MFDA staff will prioritize changes that have the most positive impact on stakeholders and will also take into account conforming amendments required as a result of changes to securities legislation (i.e. Client Focused Reforms).

Current and Future Actions

- Prioritize areas for policy amendment.
- Consult and engage with stakeholders on various alternatives before drafting proposed policy amendments.
- Draft and issue Rule and Policy amendments in accordance with the MFDA's policy development process.

Key Theme 2 - Seniors Issues and Guidance

Members seek enhanced guidance and education on complex challenges in serving aging investors and vulnerable clients.

Consultant Recommendations:

- Ensure that the MFDA's approach to assessing suitability of investments for older clients acknowledges the diversity in this population. The MFDA should make additional efforts to communicate its approach to assessing suitability for Senior investors.
- Continue to provide guidance, education and other support to Members in dealing with issues pertaining to vulnerable clients and potential financial abuse, including the potential 'Safe Harbour' provision.

MFDA Comments

The MFDA, as well as other securities regulators in Canada and internationally, have focused on the protection of Senior investors. The MFDA prioritizes Senior investors in our examination and complaint handling processes. This regulatory focus means that MFDA staff have increasingly been questioning suitability relating to Senior clients. MFDA staff, however, recognize that Seniors are a diverse group and have different investment objectives and tolerances for risk. As a result, MFDA staff test for and will question circumstances where an advisor's clients, including Senior clients, have the same or similar Know-Your-Client information ("KYC") or portfolio holdings and little documentation supporting the KYC determination. Further, in testing the reasonability of KYC, staff will also prioritize Senior investors and question instances where time horizon, risk tolerance or investment objectives might be inconsistent given the client's age.

The MFDA has communicated its examination approach with respect to Seniors through several Member Regulation Forums as well as in the Approved Person Targeted Review issued in April 2019 (see [MFDA Bulletin #0783-C](#)). However, we understand that additional clarity may be helpful and will be providing additional opportunities to offer Members further explanation and guidance relating to our regulatory approach to Seniors.

Current and Future Actions

- Hold a Seniors Summit on October 30, 2019 for Members which will provide guidance and updates on topics related to best servicing and protecting seniors.
- Participate with Members on a panel to discuss regulatory and compliance issues for Senior investors at the MFDA Seniors Summit on October 30, 2019.
- Publish key learnings from sessions presented at the Seniors Summit.
- Participate with other securities regulators on the development of Safe Harbour/Trusted Contact policy initiatives.

Key Theme 3 - Member and Advisor Engagement

Members would welcome new opportunities and new approaches to working with the MFDA through the industry's evolution.

Consultant Recommendations:

- Continue to implement Advisory Groups and working groups to encourage ongoing two-way communication on current issues affecting the Members such as new technology. Use Member working groups to ensure that best practices approaches are considered in developing guidance.
- Promote more opportunities for two-way dialogue and education.
- Offer additional webinars and on-demand education to Members, including Advisor-focused webinars and other communications.
- Implement annual informal discussions with Members to proactively review new developments.

MFDA Comments

Ensuring open dialogue with the industry is a key component of effective and responsible regulation. Such ongoing communication assists MFDA staff in understanding the impact of regulatory requirements, different Member business models, operational practices, and the concerns of the wide range of investors served by MFDA Members and Approved Persons.

The MFDA has and will continue to use pre-consultations, and advisory groups to obtain Member and Approved Person input on various initiatives, including the MFDA's new Continuing Education requirements and guidance relating to servicing Senior investors. As part of its Strategic Plan, the MFDA also intends on developing additional educational resources for Members and Approved Persons, and will implement a process to engage in annual informal discussions with Members.

Current and Future Actions

- Establish industry advisory groups for MFDA initiatives, including the Continuing Education project.
- Develop training and education materials for Members and advisors.
- Implement annual informal Member discussions to obtain feedback on matters of interest or concern.

Key Theme 4 - Technology

New technology is enabling significant business efficiencies and improved client experiences on which Members seek proactive regulatory input.

Consultant Recommendations:

- Provide opportunities for Members to discuss or interact with technology experts from both within and outside the industry to better understand emerging issues which could impact the MFDA and Members.
- Continue to encourage Members to engage the MFDA constructively in the development process to ensure regulatory considerations are properly addressed.

MFDA Comments

The MFDA has implemented an Innovation Outreach initiative designed to encourage Members to discuss proposed technology or operational changes with the MFDA prior to implementation (see MFDA [Bulletin #0754-M](#)). Through this process, the MFDA has provided Members with guidance regarding compliance and regulatory requirements, as well as suggestions on how to address particular issues.

The MFDA has developed educational materials and webcasts relating to Cybersecurity and intends to provide further guidance on this issue. With respect to sessions with technology experts, we understand various industry organizations routinely hold sessions with providers and experts to discuss their services and how to implement them in Member operations. MFDA will consider the best way for Members to participate in these types of opportunities.

Current and Future Actions

- Issue additional Cybersecurity guidance.
- Engage with Members to better understand topics and areas for further education.
- Contact trade associations to understand their activities in this area and consider ways to communicate these opportunities to Members.

Key Theme 5 - Harmonization with Other Regulators

Greater harmonization between the MFDA and IIROC, the AMF and other regulators has the potential to significantly reduce regulatory burden.

Consultant Recommendations:

- Collaborate with other regulators to harmonize rules and develop common guidance where feasible.
- Consider further opportunities to coordinate with other regulators to reduce duplication.
- Explore opportunities to work together with other regulators on educational initiatives.

MFDA Comments

MFDA staff recognizes the importance of collaborating and coordinating with other regulators as a means to promote greater harmonization and regulatory efficiency. On an ongoing basis, MFDA staff meets regularly with securities regulators and regulators in other financial services sectors to discuss issues of mutual regulatory interest. With respect to the securities industry, MFDA staff has participated in working groups with CSA and IIROC staff on initiatives such as the Client Focused Reforms to NI 31-103 (“CFR”) project, a joint review of compensation, sales incentive and conflicts of interest practices and projects relating to Senior investors. Staff also meets on an informal basis with other regulators to discuss emerging issues, Rule proposals, and to develop common industry guidance. We will continue to explore opportunities for further regulatory collaboration and coordination.

Current and Future Actions

- Continue to participate in joint regulatory initiatives, including CSA policy projects.

- Continue to meet with securities and other regulators on regulatory initiatives and matters of mutual interest.
- Continue to dialogue with relevant regulators in the course of our regulatory activities to harmonize activity.
- Continue to explore Memorandums of Understanding with regulators to share information on matters of joint interest.

Key Theme 6 - *Principle vs Rules-Based Approach*

Members desire greater flexibility to develop risk-based approaches tailored to their business model within the context of a principle-based regulatory environment.

Consultant Recommendations:

- In rewriting Rules and Policies, ensure that reasonable flexibility is contemplated, such that Members are empowered to tailor approaches to suit the risks in their individual business models while effectively achieving desired regulatory outcomes.
- Through consultation with Member working groups and other Member Outreach initiatives, determine whether further education or other actions could improve Member understanding of existing flexibility within the MFDA framework.
- Through ongoing staff training and education, demonstrate a commitment to applying MFDA requirements in a reasonable and practical way.

MFDA Comments

The MFDA's role as a regulator is to establish minimum standards for the protection of investors. In developing and applying its Rules, the MFDA considers how regulatory objectives can be achieved in different ways, depending on Member business models and operations. Members are able to manage the risks in their business models by implementing practices that meet or exceed, but do not fall below, minimum regulatory requirements. As part of the Rule Review Project and future education sessions, MFDA will be mindful of how best to draft regulatory instruments and guidance to explain where there may be alternative methods in achieving the regulatory objectives.

Further, as part of our regular staff training sessions, we will continue to focus on the principles and objectives of regulatory requirements and not just the Rules themselves. We will also continue to provide training and guidance to staff on how the regulatory requirements apply in the context of various business models and discuss the different Member practices we have observed.

Current and Future Actions

- Continue to consider various business models and alternatives that achieve the regulatory objectives when developing policy and guidance.

- Engage with Members to better understand topics and areas for further clarification and education.
- Continue to train staff on the principles and objectives of regulatory requirements and how they apply to various business models.

Key Theme 7 - MFDA's Compliance Approach

Greater transparency regarding the MFDA's approach could improve MFDA Member engagement and the MFDA's effectiveness.

Consultant Recommendations:

- Work to clarify member understanding of the MFDA's approach by conducting targeted educational sessions to better inform Members about the MFDA's mandate as an SRO, risk-based model, and audit methodology.
- Implement Member Outreach activities targeted at improving the Member relationship with MFDA Compliance such as educational sessions focused on the audit approach, or featuring Member panels sharing best practices for successfully resolving audit findings.

MFDA Comments

The MFDA performs routine and targeted on-site examinations of Members' businesses to assess compliance with MFDA Rules and securities legislative requirements. We understand that having regulatory staff attend at a Member's business to perform on-site testing can create disruption and generally be a stressful experience. In order to be transparent and facilitate a more efficient examination process, MFDA has developed guidance and resources which can be found on the MFDA's Members-Only site. The Members-Only site includes:

- an explanation of the various stages of the examination process including scheduling, notification, examination procedures, exit meeting and examination report and Member response;
- an example of the "documents request list" and "examination questionnaire" outlining information Members are required to submit to the MFDA prior to an examination;
- a list of all "Common Compliance Findings" communications that have been issued to Members over the years. These communications outline common compliance findings and Member best practices for resolution; and
- A "Resources" and "Compliance Practitioners Manual" page providing links to guidance on common compliance issues and topics.

The Members-Only site also provides information relating to a Member's risk score, examination cycle and contact information for the relevant compliance manager assigned to the Member firm.

In the Spring and Fall each year, the MFDA also holds a Member Regulation Forum (“MRF”) to promote two-way dialogue with Members on Policy, Compliance and Enforcement matters. In advance of the MRF, the MFDA contacts Members to receive input on discussion topics. The Compliance update session at the MRF includes any new or ongoing Compliance initiatives, emerging issues and trends, and best practices guidance based on observations during examinations.

At the beginning of each year, the MFDA also issues a Bulletin outlining regulatory priorities to inform Members of areas of focus, including in our compliance examination process (See [MFDA Bulletin #0771-M](#) for 2019 Regulatory Priorities).

Additionally, to support Members in their compliance efforts, the MFDA encourages Members to invite MFDA staff to participate in their meetings or events with supervisory, compliance or advisory staff. Members select the topics they would like MFDA staff to discuss and present. At these events, MFDA staff will not only explain the regulatory requirements but also the MFDA’s examination approach, Member best practices and relevant Enforcement cases. Since offering this service in 2014, we have received significant Member demand and have presented at over 140 Member meetings or events. We will continue to seek new ways to encourage firms to avail themselves of this opportunity.

Current and Future Actions

- Develop MFDA webcast on MFDA role as an SRO and the Compliance examination process.
- Solicit Member interest in participating on a panel with MFDA staff to discuss the MFDA examination process and best practices.

Key Theme 8 - Financial Planning

Holistic financial planning is increasingly the foundation of advice across the industry, yet regulation continues to be fractured and based on a transactional approach.

Consultant Recommendation:

- Consider this trend towards financial planning in the MFDA’s regulatory approach and future initiatives, including the MFDA’s planned review of its regulatory instruments.

MFDA Comments

We support the ability of clients to obtain access to a broader range of financial services. The scope of the MFDA’s requirements, however, are not limited to transactions but rather the provision of advice that is given in relation to client accounts at the Member. Members and Approved Persons may also provide financial advice outside the Member which may be subject to the oversight of

other regulators. Accordingly, we work collaboratively with other regulators and governments to promote consistent standards for the provision of financial advice. As part of our Strategic Plan to “Collaborate and Update”, we will continue to monitor and participate in initiatives related to the regulation of financial planning.

Current and Future Actions

- Continue to perform suitability analysis at the portfolio level.
- Collaborate and participate with other regulators in financial planning initiatives.