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MFDA Bulletin

Policy

For Distribution to Relevant Parties within your Firm

Client Focused Reforms (CFR) – CSA Notice of Approval / Non-Objection for Conforming Changes to MFDA Regulatory Instruments

On November 19, 2020, the MFDA published, for a 60 day comment period, Public Comment proposals which address CFR conforming changes to MFDA regulatory instruments (i.e. Rules, Policy No. 2, and various MFDA Staff Notices). The comment period expired on January 18, 2021 (see [Bulletin #0843-P](#)). Attached as Appendix “A” to this Bulletin is a summary of key comments received, and the responses of MFDA staff. Non-substantive changes were made to the related housekeeping amendments (also published on November 19, 2020).

These conforming changes to MFDA regulatory instruments will be brought forward for Member ratification at the 2021 Annual General Meeting, and will come into effect on **December 31, 2021**.

The CSA Notice of Approval / Non-Objection may be viewed at: www.bscsc.bc.ca.

Conflicts of Interest

As noted in [Bulletin #0864-P](#), enhanced conflicts of interest requirements, as reflected in CFR conforming changes to MFDA Rule 2.1.4 (Identifying, Addressing and Disclosing Material Conflicts of Interest), came into effect on **June 30, 2021**.

MSN-0069

The [Publication Notice](#) which accompanied the November, 2020 Public Comment proposals indicated that similar CFR conforming changes were under development for the guidance set out under MSN-0069 (Suitability). Proposed CFR conforming changes to MSN-0069 were published, for a 60-day comment period, on June 21, 2021. The comment period expired on August 20, 2021 (see [Bulletin #0863-P](#)). Comments received are under review. The MFDA will be publishing a summary of key comments, and will advise Members and Approved Persons when CFR amendments to MSN-0069 have been finalized.

APPENDIX “A” **Summary of Comments**

General Comments

Securities vs Investments

In the areas of KYC, KYP, and the suitability determination, CFR conforming amendments to MFDA regulatory instruments make reference to “investments”, instead of “securities”. An industry association, expressed concern that this change could have unintended consequences for dealers who distribute bank issued deposit products, such as guaranteed investment certificates (**GICs**) or high interest savings accounts (**HISAs**). In connection with this concern the commenter mentioned Bill C-86, *Budget Implementation Act, 2018, No. 2 (Bill C-86)*, which was introduced in the House of Commons on October 29, 2018. The commenter noted that, if passed, Bill C-86 will make changes to the consumer protection provisions in the *Bank Act*. It was further noted that the definition of “investments” is broader than “securities” and that this difference may result in duplicative or inconsistent requirements for bank issued deposit products distributed through an MFDA dealer. The MFDA was asked to consider the continued use of security/securities instead of investment/investments in some instances until a thorough review of the requirements set out in Bill C-86 can be conducted.

MFDA Response

MFDA Rule 2.2.1(c) currently requires a suitability assessment to be based on the essential facts relative to the client, and any investments in the account. These concepts are also reflected in the amended suitability determination requirements set out under Rule 2.2.6. In our view, this is the appropriate standard as a suitability determination cannot be completed without consideration of all investments in the client’s account.

Need to adopt Regulatory Changes that go Beyond the CFR

An investor association commenter, while expressing general support for the changes introduced through the CFR amendments to NI 31-103, advocated for the adoption of a best interest standard, encouraged the MFDA to adopt requirements that go beyond the CFR amendments, and suggested the addition of a suitability trigger based on significant changes to market conditions or the sector.

MFDA Response

The purpose of the amendments made to MFDA regulatory instruments is to conform to CFR changes adopted under NI 31-103. The matters raised by the commenter go beyond the scope of such conforming changes, and would be best addressed through regulatory policy initiatives led by the CSA.

MFDA Staff Participation in Development of CFR FAQs

An industry association referenced the CFR Frequently Asked Questions (FAQ) document published by the CSA, and encouraged MFDA staff to remain involved in the development of updates to this document. Where questions specific to MFDA Members are raised, the commenter

further encouraged the MFDA to provide clarity and guidance to Members through the publication of its own FAQ.

MFDA Response

MFDA staff has been on the CFRs Implementation Committee since its inception, and will continue to participate. Where there are CFR implementation issues that are particular to MFDA Members, we will consider the development of specific guidance.

Comments on Conforming Amendments

Know-Your-Product – Rule 2.2.5

An industry association expressed the view that guidance under MSN-0048 might be too general, and suggested that specific obligations be set out for the level of review required for different types of investment products. The commenter further suggested that leaving the level of review up to individual firms could result in undue regulatory burden, and inconsistency in terms of how these obligations are applied and implemented.

An investor advocate association strongly urged the MFDA to monitor the KYP processes implemented by dealers to ensure that their product shelves do not become overly restricted to proprietary or higher cost products, as an unintended consequence of Rule 2.2.5.

MFDA Response

The guidance set out under MSN-0048, as revised, is substantially similar to the guidance that was in the prior version of the Notice. MFDA staff has not encountered any difficulties amongst Members or Approved Persons in understanding or applying the Notice provisions. While the introduction to MSN-0048 notes that Members must adopt KYP policies and procedures that are in accordance with their business models, more detailed guidance is set out in the body of the Notice.

We are of the view that principles-based guidance is appropriate, and gives Members a reasonable level of flexibility in determining the risk level of an investment product, and the level of analysis required. Where we identify any concerns with how requirements under Rule 2.2.5 are being met, we will work with Members to address such concerns.

Members must ensure that their product shelf is consistent with their business model, how they hold themselves out to clients, and the reasonable expectations of clients as to the products/services that can be obtained through the Member.

Suitability Determination – Rule 2.2.6

An industry association suggested that revisions to MSN-0069 include guidance on how a consideration of alternative results (i.e. a reasonable range of alternative actions available to the Approved Person) will lead to a recommendation that puts clients' interests first.

MFDA Response

Revisions to MSN-0069 guidance are under development. The CFRs Implementation Committee, on which MFDA staff participates, is the forum where issues of this nature are considered collectively by staff of the CSA, MFDA, and IIROC. We will work in conjunction with the other regulators to consider the development of guidance in this area, and in doing so will take into account the matters raised by the commenter.

Relationship Disclosure – Rule 2.2.7

An investor advocate association expressed the view that written disclosure respecting the impact of fees, as required under Rule 2.2.7(1), should be supplemented by discussions with the client as to the impact of fees at the time of account opening, or when the client is making an investment decision.

MFDA Response

In addition to providing the mandatory written disclosure, we encourage Members, and Approved Persons to discuss fees and costs with their clients at the time of account opening, and when clients are making investment decisions.

Drafting Related Comments

Relationship Disclosure Information – Rule 2.2.7

An industry association referenced the requirement to describe the products and services offered by the Member, as set out under Rule 2.2.7(1)(b), and expressed the view that subsections 2.2.7(1)(c) and (d) are part of the requirement under (b), and are intended to work together. The commenter suggested that subsections 2.2.7(c), and (d), be renumbered, respectively, to 2.2.7(b)(i), and 2.2.7(b)(ii).

MFDA Response

We have deleted subsection 2.2.7(1)(b) to provide additional clarification in respect of the matters raised by the comment.

Client Lending and Margin – Rule 3.2.1

An industry association proposed the following (highlighted) addition to Rule 3.2.1 (b)(ii):

(ii) the Approved Person has obtained the written approval of their Member to lend the money, or extend the credit, permit the purchase of securities on margin, or provide the guarantee.

MFDA Response

Members and Approved Persons may not permit a client to purchase securities on margin. Members and Approved Persons may only advance mutual fund proceeds in connection with the

redemption of mutual fund securities, as set out under revised Rule 3.2.1(c), and subject to the conditions set out under subsections 3.2.1(c)(i)-(v).

The CFR amendments, as we understand, are not intended to change MFDA Member business models. If we were to permit the purchase of securities by a client on margin, this would give rise to significant changes to KYC requirements (i.e. for the purpose of assessing client creditworthiness), capital and segregation requirements, and would also potentially result in changes to existing MFDA requirements in respect of maintaining client cash in trust, and the use of free credits.

An Approved Person would be permitted to provide a guarantee to a client where the conditions of Rule 3.2.1(b)(i) and (ii) are met. We have made minor additional conforming changes to Rule 3.2.1(b)(ii) to clarify this matter.

Policy No. 2 – Branch Supervision Requirements

Policy No. 2. Part IV, sets out requirements in respect of Branch Office Supervision. An industry association expressed the view that the role of the Branch Manager is to review the suitability determination made by an Approved Person, not to make an independent suitability determination. As a result, this commenter suggested certain drafting changes to Parts III, IV, and V of Policy No. 2, as a result of which the words “*make a suitability determination*”, would be changed to “*review/assess a suitability determination*”.

MFDA Response

The Branch Manager will not be expected to make a new suitability determination, but rather to assess the suitability determination required to be made by the Approved Person. To clarify this matter, we have made the Policy No. 2 changes suggested by the commenter.