



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

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MFDA Bulletin

Policy

For Distribution to Relevant Parties within your Firm

CFR Conforming Amendments to MSN-0069 - (Suitability): Summary of Comments

On June 21, 2021, the MFDA published, for a 60-day comment period, proposed CFR conforming amendments to guidance set out under MFDA Staff Notice (MSN) 0069 – Suitability. The comment period expired on August 20, 2021 (see [Bulletin #0863-P](#)).

Three submissions were received in response to the request for comments: two from industry associations, and one from an investor advocate. Attached as Appendix “A” to this Bulletin is the summary of comments, along with the responses of MFDA staff.

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APPENDIX “A”

PROPOSED CFR CONFORMING AMENDMENTS TO MSN-0069 (SUITABILITY) - SUMMARY OF COMMENTS

General

Comments

An investor advocate expressed the view that conforming amendments to MSN-0069 reasonably reflect the CFR amendments adopted in the area of suitability. This commenter urged the MFDA to adopt requirements that go further than the CFR amendments, and to also adopt other measures (e.g. an overarching best interest/fiduciary standard). The investor advocate commenter and another commenter also encouraged the MFDA to adopt other enhancements (e.g. that KYC requirements with respect to Investment Needs and Objectives be expanded to include reference to investing in accordance with environmental, social and governance criteria, or other personal preferences/values).

The investor advocate commenter noted that it is useful to have related content in one place. As a result, the MFDA was encouraged to add back into MSN-0069 deleted content that is available in other MFDA Bulletins (e.g. commentary on Use of Weighted Average of Fund Risk Ratings, Additional Concerns Regarding Trade Supervision and Suitability Assessments, Additional Concerns Regarding Supervision of Leveraging, Common Misconceptions, etc.).

MFDA Response

The matters raised by the commenters go beyond the scope of this publication. Regulatory initiatives, such as the adoption of an overarching best interest standard, will have to be led by the CSA, so as to ensure that any additional requirements are adopted and implemented in as uniform a manner as possible across different registrant categories, and distribution channels.

The content referred to was deleted in an effort to more closely harmonize MSN-0069, with CSA guidance. Such deleted content is more appropriately addressed through Member Education initiatives in the future, if necessary.

Comment

An investor advocate referenced the MFDA’s definition of investment action, noting that this definition appears to limit the suitability determination in a manner that is not consistent with service offerings marketed by many firms.

MFDA Response

References to “investment action” that have been included in conforming amendments to MFDA regulatory instruments, including MSN-0069, have been adopted verbatim from the CFR amendments to NI 31-103 / 31-103CP.

Comment

An investor advocate referenced the CSA ban on the use of the DSC sales charge option (effective May 31, 2022), and encouraged the MFDA to address, within MSN-0069, the suitability of DSC sales made after December 31, 2021 (i.e. the effective date of all CFR requirements, other than those related to conflicts of interests).

MFDA Response

Under existing MFDA KYC/suitability requirements, Members and Approved Persons must ensure that each order accepted or recommendation made for any account of a client is suitable for the client based on the essential facts relative to the client and any investments within the account. The MFDA will be reviewing Member DSC activity prior to the ban to assess compliance with existing MFDA Rules. In this regard, we note that the MFDA has previously published guidance for Members on how to assess the suitability of DSC trading.

During the intervening period (i.e. from December 31, 2021 – May 31, 2022), to the extent possible, Members and Approved Persons should act in a manner that is consistent with the upcoming ban. In particular, Members should use the period before the effective date of the ban to structure their business operations so that they are aligned with its provisions.

Comment

An investor advocate recommended that MFDA regulatory instruments, including those with respect to KYC, be amended to reflect requirements in respect of a Trusted Contact Person (TCP), as the CSA is expected to publish TCP and related requirements by the end of 2021.

MFDA Response

We have made amendments to conform to TCP, and temporary hold requirements adopted under NI 31-103. Such changes to MFDA regulatory instruments will become effective at the same time as similar requirements under the National Instrument (i.e. on December 31, 2021).

Drafting Comments

We received a number of drafting suggestions, some of which were outside the scope of this publication. During the development of CFR conforming changes to MFDA regulatory instruments, MFDA staff worked closely with staff of the CSA members, and IIROC staff to ensure that CFR requirements and guidance would be adopted and implemented in as uniform a manner as possible, having regard to the business and business models of MFDA Members, and the requirements to which they are currently subject under MFDA Rules. MFDA staff will work with CSA staff to consider any changes that might be appropriate, having regard to the regulatory policy objectives established by the CSA for the CFR amendments to NI 31-103 / 31-103CP.

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