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MFDA Bulletin

Policy

For Distribution to Relevant Parties within your Firm

Amendments to National Instrument 33-109 Registration Information and Changes to the Companion Policy to NI 33-109 Registration Information

Background

On December 16, 2021, the Canadian Securities Administrators (CSA) published in final form, amendments to National Instrument 33-109 *Registration Information* and changes to the Companion Policy to NI 33-109. Consequential amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and changes to the Companion Policy to NI 31-103 were also published, collectively referred to as the “amendments”.

The amendments, which will come into force on June 6, 2022, apply to all registrants, including MFDA Members and Approved Persons. MFDA Members and Approved Persons are encouraged to review the amendments, and to make the necessary revisions to their operations, if required.

Amendments – General Information

The amendments include:

- Establishing a new framework for reporting outside activities to regulators
- Codifying restrictions previously imposed through terms and conditions on registration relating to outside activities that are positions of influence
- Extending some deadlines to report changes in registration information
- Implementing a new rule to reduce multiple filings of the same information
- Amending certain registration information requirements to reduce common errors
- Clarifying the language on certain forms
- Updating and improving the privacy notice to provide greater clarity on how personal information is collected and used by the CSA and SROs, and
- Implementing a new requirement to report the business titles and professional designations used by registered individuals and permitted individuals

Amendments – Outside Activity and Positions of Influence

MFDA Rule 1.3 (Outside Activity) includes requirements with respect to outside activity, including the obligation for Approved Persons of MFDA Members to disclose the outside activity to the Member and obtain the written approval of the Member prior to engaging in the outside activity. Under MFDA Rules, “outside activity” includes any activity conducted by an Approved Person outside of the Member: (1) for which direct or indirect payment, compensation, consideration or other benefit is received or expected; (2) involving any officer or director position and any other equivalent positions; or (3) involving any position of influence. There is a difference between the MFDA Rules with respect to outside activity and the requirements of NI 33-109.

In addition, the amendments to NI 31-103 include a definition of “position of influence” and a new rule that codifies restrictions on registered individuals with regard to the purchase or sale of securities to an individual who has a relationship with the registered individual arising from the position of influence.

The amendments provide that registered firms, including MFDA Members, must not knowingly permit an Approved Person who is in a position of influence to purchase or sell securities, or recommend the purchase, sale or holding of securities to a client who is subject to the specified restrictions.

These restrictions apply if the client is:

- (a) an individual who
 - (i) has a relationship with the Approved Person arising from the position of influence, and
 - (ii) to a reasonable person, would be considered to be susceptible to the Approved Person’s influence, or
- (b) an individual who the Approved Person knows is a spouse, parent, sibling, grandparent or child of the individual referred to in (a).

Additionally, the amendments contain an obligation on individual registrants, which include Approved Persons, to comply with these restriction on their client base if the Approved Person is in a position of influence.

The amendments include a non-exhaustive list of specific positions that would be considered positions of influence. These are as follows: (a) leader in a religious or similar organization; (b) a medical doctor; (c) a nurse; (d) a professor, instructor or teacher at a degree or diploma granting institution; (e) a lawyer; and (f) a notary.

Link to Amendments

The CSA Publication Notice, along with the final form of the amendments and all related materials may be viewed at the following link – www.besc.bc.ca/.

Next Steps

Work is currently underway to implement the new, single enhanced self-regulatory organization (SRO) by consolidating the functions of the Investment Industry Regulatory Organization of Canada (IIROC) and the MFDA. Following implementation, the New SRO will work to develop a harmonized rule book for investment dealers and mutual fund dealers which will include a review of rules related to outside activities to ensure consistency and alignment with the CSA amendments.

MFDA staff will also be revising MFDA Staff Notice #0040 *Outside Activity* to provide Members and Approved Persons with updated guidance that reflect the amendments.

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