



August 19, 2021

Delivered By Email: pward@mfd.ca

Paige Ward
General Counsel, Corporate Secretary and Vice-
President Policy
Mutual Fund Dealers Association of Canada
121 King St. W., Suite 1000
Toronto, Ontario M5H 3T9

Dear Ms. Ward:

RE: Proposed Amendments to MFDA Staff Notice MSN-0069 *Suitability* to Conform to Requirements Under the Client Focused Reforms Amendments to National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and 31-103CP – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

The Investment Funds Institute of Canada (IFIC) welcomes the opportunity to provide comments on the Mutual Fund Dealers Association of Canada's (MFDA) proposed changes to MSN-0069 *Suitability* (**Proposed Guidance**) to conform to requirements under the Client Focused Reforms (CFRs).

IFIC is the voice of Canada's investment funds industry. IFIC brings together 150 organizations, including fund managers, distributors and industry service organizations to foster a strong, stable investment sector where investors can realize their financial goals. IFIC works collaboratively with industry representatives, regulators, governments and investor advocates to help cultivate a system that is fair, secure and efficient for all stakeholders.

IFIC operates on a governance framework that gathers IFIC member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committee for direction and approval. This process results in a submission that reflects the input and direction of IFIC members.

IFIC members have reviewed the proposed changes in the Proposed Guidance and agree that the amendments, generally, align with the requirements set out in the CFRs. We would, however, like to provide feedback at a technical level on a number of the proposed changes.

In this document, "Member" means an MFDA member firm.

Specific Technical Comments

1. Know Your Client (KYC)

A. Maintaining Accurate and Sufficient KYC Information to support Suitability Determinations

1. IFIC supports the revisions throughout the Proposed Guidance so that all references to "complete KYC" are changed to "sufficient KYC". That wording is consistent with the CSA CFR requirements.
2. In the first paragraph under this section 1. A. heading (p. 4 in blacklined version), the Proposed Guidance (with blacklining included) says "*The KYC process is an ongoing one which does not end after the initial KYC analysis is complete. Members are required to obtain complete KYC information when opening an account, and before trading on behalf of clients- or taking any other action referred to*

in Rule 2.2.6(1). KYC obligations cannot be delegated. A Member or Approved Person may not rely on a third party, such as a referral agent, for KYC information.” We recommend that the reference to “complete” where highlighted herein should be changed to “sufficient” for consistency with our comment in #1 above. In addition, we recommend that this paragraph should include a guidance statement that KYP is also necessary for suitability determination. We note that KYP is mentioned further below in the Proposed Guidance, but think that it should also be noted in this initial paragraph. Also, since the MFDA pulled out the guidance related to KYP from the existing MSN-0069, we recommend that should you include such guidance statement about KYP in this paragraph, that you provide a cross-reference to refer Members to MSN-0048 KYP.

3. In the second paragraph under this section 1. A. heading (p. 4 in blacklined version), where the Proposed Guidance (with blacklining included) says “Members and Approved Persons are required to take reasonable steps to learn the essential facts relative to each client and to each order or account accepted and ensure they have sufficient information to make a suitability determination.”, we recommend changing “to make”, where highlighted herein, to say “to support” a suitability determination. It is not adequate to use only KYC to “make” a suitability determination, as KYP is also necessary. Therefore, we think it is more appropriate to say the information should be sufficient to “support” a suitability determination. This change would also be consistent with the CSA CFR requirements.
4. In the third paragraph under this section 1. A. heading (p. 4 in blacklined version), the Proposed Guidance (with blacklining included) says “A Member’s New Account Application Form (“NAAF”) or KYC form should be developed considering the Member’s business model, the nature of its relationships with the client, the investment products the Member distributes, investment strategies offered to clients, and trade supervision policies and procedures of the Member, in order to adequately capture sufficient information to assess whether recommendations made or orders accepted are suitable, and put the client’s interest first. Where changes to investment products, investment strategies or internal policies are made, the form should be flexible enough to reflect new information required or a new form should be created. Where a form does not provide enough specific, detailed information to assess whether a recommendation or order is suitable, the Member should take the most conservative approach in assessing suitability.” This proposed wording seems to suggest that the MFDA expects the NAAF or KYC form should contain the entire scope of information considered to support a suitability determination for a recommendation or an order. We think that this is too narrow. This wording should include reference to a Member’s policies, procedures and controls relating to the KYC process as well. We recommend changing the words in the first sentence highlighted above to read “A member’s policies and procedures and controls relating to its KYC process for supporting a suitability determination, including a member’s New Account Application Form (“NAAF”) or KYC form, should be developed...”.

The above recommended change would be consistent with CFR related changes in the 31-103CP which states firms should “establish, maintain, and apply policies, procedures and controls relating to the know your client process, in accordance with their category of registration, their business model, including the nature of its relationships with clients.” (p. 190 of NI/CP combined blacklined 31-103CP, s. 11.5 [General requirements for records]). This recommended change would also be consistent with the CFR changes in the 31-103CP which states “[A] registrant should tailor its KYC process to reflect its business model, including the nature of its relationships with clients and the securities and services it offers to them.” (p. 200 of NI/CP combined blacklined 31-103CP, s.13.2 [Know your client – Tailoring the KYC process]).

In addition, we recommend changing the word “assess” where highlighted above to say “determine”, and to change “assess” and “assessing” to say “determine” or “determining” in any other place in the Proposed Guidance where the word “assess” or “assessing” is used in conjunction with the word “suitability”. For example, see where “assess” or “assessing” appears in conjunction with “suitability” in the first paragraph under the heading 1. B. (e) *Investment Time Horizon* (p. 11 in blacklined version), the second paragraph under the heading 1. D. *Account vs. Client KYC* (p. 19 in blacklined version), the second paragraph under the heading 2. E. (b) *Head Office* (p. 32 in the blacklined version), and within the heading 3. C. *Assessing the Suitability of Leveraging Strategies* and in the sixth paragraph under that same heading (p. 38 in blacklined version). The NI 31-103 and 31-103CP

only use the term “suitability determination”. We acknowledge that this CFR conforming change has been made in certain places in the Proposed Guidance (i.e. by removing references to “suitability assessment” and replacing them with “suitability determination”). However, we think that to conform with CFR, the Proposed Guidance should also use consistent verb references throughout (i.e. use ‘determine/determining’ instead of ‘assess/assessing’) when making reference to the suitability process.

B. KYC Information

5. **Minimum KYC Requirements** – Under this sub-heading in section 1. B., as the sentence under “(a) Personal Circumstances” (p. 9 in blacklined version), the Proposed Guidance newly adds (with blacklining included):

“(a) Personal Circumstances

Personal circumstances include the client’s date of birth, employment information (e.g. employment status and occupation), and number of dependants.”

Although we acknowledge that the lead in paragraph above this subparagraph (a) cross-references to Policy No. 2 which establishes the minimum client information that must be obtained by Members to meet the KYC requirements to which they are subject, we think that this general statement in (a) is confusing by referencing some, but not all, of the minimum KYC criteria. We recommend that the MFDA change this to be a specific cross reference to the criteria in Policy No. 2. Some suggested wording is “a) *Personal Circumstances* Personal circumstances are, at a minimum, the requirements listed in Policy No. 2. II. 3. a. to p.”.

6. **Minimum KYC Requirements** – Under this sub-heading in section 1. B., as the last sentence of the first paragraph under “(e) Investment Time Horizon” (p. 12 in blacklined version), the Proposed Guidance newly adds (with blacklining included):

(e) Investment Time Horizon

“.....

When discussing a client’s liquidity needs, a Member or Approved Person should consider whether the client has any other means to cover their expenditures, whether the needs are expected or unexpected, and whether, once the need materializes, the money will be withdrawn on a regular basis, such as once a month or once a year.”

We recommend this guidance needs to be moved under the sub-heading “(c) Financial Circumstances” in the Proposed Guidance under section 1. B. The CSA CP has this wording under the sub-heading “Client’s Financial Circumstances” (p. 201 of NI/CP combined blacklined 31-103CP). If the MFDA were to leave it under the “Investment Time Horizon” sub-heading in the Proposed Guidance, it would create a standard for this KYC category that would be inconsistent with the CSA CFR requirements.

C. Approval of KYC Information

7. In the paragraph immediately under this section 1. C. heading (p. 17 in blacklined version), the Proposed Guidance newly adds (with blacklining included):

“Members must have policies and procedures for both branch and head office staff relating to the opening of new accounts and updating of KYC information. The approval process should not be viewed solely as an administrative function. **Rather, KYC information submitted for approval should be reviewed for adequacy as well as reasonableness, consistency, and uniformity.**”

We recommend revising the last sentence in this paragraph where highlighted above. Including “adequacy, reasonableness, consistency and uniformity” all in one expression may be misread as all being factors that should exist when approving KYC information. This may cause unintended confusion by Members. If uniformity of KYC does exist across a significant number of client accounts it may not be appropriate and, therefore, should flag a potential concern. Some suggested wording is “Rather, KYC information submitted for approval should be reviewed, in the case of each account, for

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adequacy, reasonableness and consistency, and with respect to different accounts, inappropriate uniformity.

D. Changes to KYC Information

8. **Updating KYC and Keeping KYC Current** – In section 1. D., under this newly added sub-heading (p. 18 and 19 in blacklined version), we note the following newly added wording (with blacklining included):

- (within last paragraph) “The periodic update should include a review of all KYC elements with the client. For example, it would not be reasonable to only update a client’s income or employment information and not also ask them questions to revisit their risk tolerance and time horizon.”

We recommend that the words highlighted above should be changed to “risk profile” and “investment time horizon” to be consistent with the change to these terms made elsewhere in the Proposed Guidance.

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IFIC appreciates the opportunity to provide feedback on the Proposed Guidance. We would be pleased to provide further information or answer any questions you may have. Please feel free to contact me by email at pegger@ific.ca or by phone 416-309-2324.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Pamela Egger
Senior Policy Advisor