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MFDA STAFF NOTICE

RECORDING AND MAINTAINING EVIDENCE OF CLIENT TRADE INSTRUCTIONS

MFDA Staff Notices are intended to assist Members and their Approved Persons in the interpretation, application of and compliance with requirements under MFDA By-laws and Rules. Notices make reference to these requirements and set out MFDA staff's interpretation of how to comply with these requirements. Notices may also include best practices or guidance.

This Notice is being issued to remind Members and their Approved Persons of the requirement to record and maintain evidence of client instructions for all trades in accordance with MFDA Rule 5.1(b) (Requirement for Records). The requirement to record and maintain evidence of client instructions includes trades made pursuant to a limited trading authorization ("LTA") and trades made for accounts in nominee name.

Background

During compliance examinations performed to date, MFDA staff has noted that many Members and their Approved Persons are not recording and maintaining adequate records of client trade instructions. In many cases, Members cannot produce evidence of client authorization or client instructions for trades. In reviewing client files during compliance examinations, MFDA staff has also found pre-signed trade order forms, forged client signatures and photocopied client signatures. MFDA Rules and securities legislation prohibit mutual fund dealers and their salespersons from having discretionary trading authority over a client account.

Recording Client Trade Instructions

Rule 5.1(b) requires Members to keep an adequate record of each order, and any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. This record must include:

- The account to which the order or instruction relates;
- The time and date the instructions were given;
- The time of entry of the order;
- The price at which the order or instruction was executed;
- To the extent feasible, the time of execution or cancellation;

- Where the order or instruction is placed by an individual other than the person in whose name the account is operated, or an individual duly authorized to place orders or instructions on behalf of a client that is a company, the name, sales number or designation of the individual placing the order;
- Where the trade was unsolicited and was determined to be unsuitable, evidence that: the transaction was unsolicited, a suitability review was performed and the client was advised that the proposed transaction was unsuitable;
- The terms and conditions of the order or instruction and of any modification or cancellation of the order or instructions;
- In the case of redemptions, instructions as to where the proceeds of the redemption are to be sent or whether they are to be reinvested; and
- Evidence that the client was informed of all fees and changes in accordance with Rule 2.4.4.

Maintaining a detailed and accurate record of client instructions is an important internal control, which provides an audit trail for Members to confirm transactions and assists in verifying trade details in the event of a dispute. Members and their Approved Persons should maintain detailed, specific and complete records of client instructions for all trades. Accordingly, in addition to the requirements set out in Rule 5.1, it is recommended that these records also include a summary of the discussions between the client and the Approved Person including any recommendations made by the Approved Person (regardless of whether or not the client acted on the recommendation) and a summary of the various alternatives discussed with the client.

Trades Made Without Written Client Authorization (Pursuant to a Limited Trading Authorization (LTA) or for a Nominee Name Account)

An LTA does not relieve Members and Approved Persons from the requirement to record and maintain evidence of client trade instructions. It is particularly important for Members and their Approved Persons to record trade instructions received from clients where trades are placed pursuant to an LTA or for a nominee name account as there is no written authorization from the client in such cases to verify the trade. Where trades are placed pursuant to an LTA or for a nominee name account, records of client trade instructions should also include a note as to how the instructions were given (e.g. by telephone, in person or by facsimile).

Maintaining Client Trade Instructions

Members should have policies and procedures in place to document trade instructions.

Records of client instructions may be maintained in paper form or by means of mechanical, electrical, electronic or other devices provided the requirements of MFDA Rule 5.2 (Storage Medium) are met:

- Such method of record keeping is not prohibited under any applicable legislation;
- There are appropriate internal controls in place to guard against the risk of falsification of the information recorded;
- Such method provides a means to furnish promptly to the MFDA upon request legible, true and complete copies of those records of the Member which are required to be preserved; and

- The Member has suitable back-up and disaster recovery programs.

Records of client instructions must be retained for a period of seven years in accordance with MFDA Rule 5.6 (Record Retention).

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