



Client Focused Reform amendments to MFDA Staff Notice MSN-0047 come into effect on December 31, 2021.

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MFDA STAFF NOTICE

PERSONAL FINANCIAL DEALINGS WITH CLIENTS

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 intended to clarify the obligations of Members and Approved Persons regarding personal financial dealings with clients.

General Principles Relating to Personal Financial Dealings

MFDA Rule 2.1.1 requires that each Member and each Approved Person deal fairly, honestly and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

Under Rule 2.1.4, Members and Approved Persons must take reasonable steps to identify existing material conflicts of interest, and those that are reasonably foreseeable; address all such conflicts in the best interests of the client, and avoid them where they cannot be addressed in the best interests of the client; and provide written disclosure of all material conflicts of interest to clients whose interests are affected by such conflicts.

The appropriate course of action will depend on the nature of the conflict of interest and the client's circumstances. Situations involving a material conflict of interest or a reasonably foreseeable conflict of interest may require a prohibition on the type of transaction giving rise to the conflict.

Specific Situations

a) Borrowing from Clients

Borrowing from a client by either the Member or an Approved Person raises a material conflict that, in almost all cases, cannot be addressed in the best interest of the client. As a result, Members are not permitted to borrow from clients, and Approved Persons may only do so in the limited

circumstances set out under Rule 2.1.5 (i.e. where the client and Approved Person are related to each other for the purposes of the Income Tax Act (Canada), and the Approved Person has obtained the written approval of their Member).

b) Lending to Clients

No Member or Approved Person may lend money or extend credit to a client, permit the purchase of securities by a client on margin, or provide to a client a guarantee in relation to a loan of money, securities or any other assets, unless the Member or Approved Person complies with the requirements set out under Rule 3.2.1, which also address circumstances where the Member is advancing funds to a client in connection with the redemption of mutual fund securities.

c) Private Investment Schemes with Clients

MFDA staff is aware of situations where Approved Persons have become involved with clients in various private investment schemes that raise material conflicts of interest. Such arrangements should be prohibited. Examples include:

- investment clubs, where the Approved Person and clients invest together, with the Approved Person making decisions on behalf of the investment club;
- arrangements where client funds are put into investments that are to be directly or indirectly managed by the Approved Person;
- co-investment by the Approved Person and his or her clients in pyramid-like schemes or other questionable investments.

In addition to conflict of interest issues, these types of arrangements also raise concerns with respect to compliance with MFDA Rule 1.1.1, which requires that all securities-related business be conducted through the Member. Such arrangements have also involved, in some cases, Approved Persons engaging in activities that exceed the limits of their registration under securities legislation.

d) Personal Involvement in Approved Outside Business Activity

An Approved Person may under certain circumstances properly be involved in a business arrangement as a partner, shareholder, director or officer of a business owned, co-owned or controlled by the client. Members are directed to Member Regulation Notice MSN-0040 for additional information relating to business activities carried on outside of the Member.

e) Monetary or Non-Monetary Benefits to/from Clients

Monetary and non-monetary benefits such as gifts or charitable donations can be used to circumvent the guidelines and rules noted above. For example, they can be used as a way of negotiating private settlements aimed at concealing a breach of MFDA requirements on the part of the Approved Person. They may also be used as off book compensation for activities being carried on in an inappropriate way. Substantial gifts to clients in exchange for referrals may be used to employ clients to engage in registerable activity.

As a general matter, all monetary and non-monetary benefits provided directly or indirectly to or received from clients should flow through the Member, with the exception of situations where the consideration is: of minimal value; infrequent; and of a non-monetary nature such that it would not cause a reasonable person to question whether the interests of the client and those of the Member or the Approved Person are inconsistent or divergent; whether the Member or the

Approved Person may be influenced to put their interests ahead of their client's interests; or whether it may compromise the trust that a reasonable client has in their Member, or Approved Person.

The Approved Person must notify the Member of any such arrangements, in accordance with Rule 2.1.4(2), so that the Member is in a position to determine the significance of the benefit and to monitor the activity. With respect to the resolution of complaints, in accordance with MFDA Policy No. 3, no Approved Person may enter into any settlement agreement with a client without the prior written consent of the Member.

Member Policies and Procedures

Each Member must develop policies and procedures to ensure that it is aware in advance of any personal financial or business dealings between Approved Persons and clients.

The Member's procedures must set out which activities are prohibited under MFDA Rules and any exceptions to such prohibitions.

Member policies and procedures must include:

- a process for Approved Persons to notify the Member of existing material or reasonably foreseeable conflicts;
- the Member's obligation to maintain appropriate records in respect of such matters, including records that document how the conflict will be addressed in the best interest of the client, including whether it will be avoided; and
- written disclosure to clients regarding the arrangements that is tailored to the particular situation, so that the client understands the nature and extent of all existing material or reasonably foreseeable conflicts of interest.

In accordance with section (e) above, Members must create guidelines to identify what types of consideration/benefits will be regarded as being non-monetary, of minimal value and infrequent and must also provide some form of definition that will allow for a clear understanding as to where the relevant thresholds lie.

We note that, in the context of cooperative marketing practices, non-monetary benefits of nominal value are permitted under National Instrument 81-105 if the provision of the benefits is neither so extensive nor so frequent as to cause a reasonable person to question whether the provision of the benefits will improperly influence the advice given by the representative to his or her clients. Members may use this as guidance in defining the threshold to apply to personal dealings with clients.

Member procedures must be effectively communicated to all Approved Persons, supervisory personnel and appropriate officers of the Member and the Member must have controls in place to monitor and supervise compliance with those procedures.

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