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## **MFDA STAFF NOTICE**

### **COMPLAINT HANDLING – MFDA POLICY NO. 3**

*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.*

Revisions to MFDA Policy No. 3 *Complaint Handling, Supervisory Investigations and Internal Discipline* came into effect on February 1, 2010.<sup>1</sup> This Notice is intended to provide summary information and guidance on Parts I and II of revised Policy No. 3, which relate to Complaint Handling.<sup>2</sup>

Client complaints must be handled fairly and promptly in order to foster continued investor confidence in the mutual fund industry. Fair and prompt complaint handling demonstrates to clients that complaints are taken seriously and that Members are responsive to their clients. It is essential to both the success of the mutual fund industry and the protection of the investing public that Members view complaint handling as an integral part of their regular operations, and prioritize this aspect of their business by handling all client complaints received in a competent and professional manner. As such, all MFDA Members are required to implement policies and procedures for handling client complaints (see MFDA Rule 2.11) that address the minimum complaint handling requirements set out in MFDA Policy No. 3.

Some of the key elements of the complaint-handling requirements of Policy No. 3 are:

- Members must provide the approved Client Complaint Information Form (“CCIF”) to new clients on account opening. The CCIF, as approved by MFDA Staff, has been updated and is included as Appendix I to this Notice and is also available at [http://www.mfda.ca/regulation/forms/ClientComplaint\\_En.pdf](http://www.mfda.ca/regulation/forms/ClientComplaint_En.pdf).

<sup>1</sup> Member Regulation Notice MR-0059 on *Complaint Handling Obligations* and Member Regulation Notice MR-0020 on *Client Complaint Information* are superseded by MR-0073.

<sup>2</sup> A separate Member Regulation Notice will be issued regarding Supervisory Investigations under Part III of Policy No. 3.

- Members must provide to new clients on account opening, and post on any website they maintain, a written summary of their complaint handling procedures. The procedures must include a specific initial contact point at head office for clients to obtain further information about the complaint handling process.
- All complaints, whether verbal or written, must be handled fairly and promptly and within the time period expected of a Member acting diligently in the circumstances. In most cases this will be within three months.
- Where a Member is unable to provide its substantive response to a complaint within three months, the Member must advise the complainant of the reasons for the delay and provide its best estimate of the time by which it will provide its substantive response.
- Where a complaint involves a serious allegation type subject to Part II of the Policy, (“serious complaint”), the Member must include in their initial response and substantive response the specific information required under Part II.
- Members must log and maintain records of complaints, and report them on the Member Events Tracking System (“METS”) under MFDA Policy No. 6 as required.
- Complaints must be handled by qualified supervisors/compliance staff at the Member, and senior management must be made aware of all complaints of serious misconduct and all legal actions.
- Members must cooperate and share information as necessary with Members of the MFDA or a member of another SRO where the events in question took place in part at another Member.
- Members and Approved Persons must not impose confidentiality restrictions with respect to regulators or law enforcement agencies as part of the resolution of a complaint. Approved Persons may not settle a complaint or pay compensation or restitution to a client without Member consent.

Members should review Policy No. 3 for a full description of all requirements.

The information contained in the rest of this Notice is provided for guidance in interpretation of the requirements of the Policy.

## **Account Opening**

At the time of account opening, Members must provide new clients with:

- A copy of the CCIF approved by the MFDA. The approved CCIF provides information about options for making a complaint.
- The Member’s summary of its complaint handling procedures, written in a manner that can be clearly understood by clients. The summary should clearly identify from a client perspective the steps the Member will take to investigate and analyze the case and the communications that the client will receive during the process.

Members may comply with the obligation to provide these documents in one of the following ways:

- by providing them as stand-alone documents to the client; or

- by including the information in another document that is provided by the Member to its clients on account opening. If this method is chosen, the CCIF wording must be included in its entirety and exactly as it appears on the MFDA web site, unless otherwise approved by MFDA Staff.

For more information please reference Member Regulation Notice MR-0064 *Maintaining Evidence of Disclosure*.

### **Head Office Point of Contact**

Member procedures must identify a specific point of initial contact at head office for requesting information regarding the complaint process or directing a complaint. This point of contact should be included in the above-mentioned summary of Member complaint handling procedures. This contact may be a knowledgeable individual or a dedicated complaint phone line or e-mail address, as long as it is continuously monitored by such an individual. This requirement is intended to assist clients who wish to obtain more information about the process or need a contact to whom they can direct their complaint. It is not intended that the point of contact be the only place where the client can complain. The Policy requires Members to deal with complaints received anywhere within the Member.

### **General Complaint-Handling Process**

Members must handle all complaints, verbal and written, in a fair and timely manner in accordance with the Policy.

As a first step, the Member's procedures should provide that compliance/supervisory personnel be notified of complaints in a timely manner, and that Approved Persons forward written complaints to the Member within 2 business days, in accordance with Policy No. 6, Part A, section 4.1(a).

### **Complaints Subject to Part II of Policy No. 3**

Part II of Policy No. 3 **requires** that the Member's initial response and substantive response be provided in letter form and include specific information outlined in Part II.

The procedures should then provide for a determination of whether the allegation in the complaint is of a more serious nature to which Part II of the Policy applies. Part II applies to complaints alleging:

- a breach of client confidentiality;
- unsuitable investments or leveraging recommendations relating to Member business;
- theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading;
- engaging in securities related business outside of the Member;
- engaging in an undeclared occupation outside the Member;
- personal financial dealings with a client, money laundering, market manipulation or insider trading; or

- any other matter that reasonably requires the application of Part II. In this regard, compliance/supervisory staff should consider whether the allegation is similar in nature to those set out above, the complainant's reasonable expectation of how the complaint should be handled and whether the complainant is alleging any financial harm.

If Part II applies, the Member must send an initial written response letter addressing the detailed points in Part II, section 1, within a reasonable time, and generally within 5 business days of receipt of the complaint. If Part II does not apply, the Member must provide an informal initial response that is reasonable in the circumstances, generally within the same period required above under Part II. In either case, if the complaint has been fully resolved within 5 days of receipt, no initial response is required.

Examples of complaints that generally do not fall under Part II include complaints regarding:

- non-disclosure of fees
- non-disclosure of DSC penalties
- delay in transfer of accounts
- failure to follow trading instructions

Members must conduct both a factual investigation and an analysis that are reasonable in the circumstances, using a balanced approach.

#### Substantive Response

The Member must then provide a substantive response to the client, such as a fair offer to resolve the complaint or a denial of the complaint with reasons. Where Part II of Policy No. 3 applies, the substantive response must meet the detailed requirements of Part II, section 2. For complaints that do not fall under Part II of the Policy, i.e. those that may be resolved informally under Part I of the Policy, the substantive response must be reasonable in the circumstances and, where the initial complaint was made in writing, the response must also be in writing. The level of detail will depend on the nature of the complaint. For example, where the Member offers the reimbursement requested by a client, a simple offer may suffice. Where the Member denies the relief requested by a client, the Member's response should provide reasons for such denial. The issue of whether a substantive response is fair is an objective one, to be determined having regard to all circumstances. The fact that a client does not accept the offer does not necessarily mean that the offer is unfair.

#### Prompt Handling of Complaints

The Member must provide a substantive response to all complaints within the time period expected of a Member acting diligently in the circumstances. In most cases, this will be within 3 months. Complaints that fall under Part II may generally take most or all of that period, while complaints that do not fall under Part II can often be resolved more quickly. For example, complaints regarding transfer delays often take considerably less than 3 months to resolve. Complaints, particularly those under Part II, may, in exceptional circumstances, reasonably take longer than 3 months to handle.

Examples of such complaints are situations where the client fails to cooperate or delays in providing information, where the matter raises novel or complex legal issues or where the matter requires unusually extensive fact-finding.

Where the client does not accept the Member's substantive response, the Member must continue to reasonably respond in a fair and timely manner to further communications regarding the complaint. The Member must continue to respond until the client has provided no new and relevant information or settlement proposal in relation to the allegations and has exhausted any escalation levels within the Member. If the client continues to communicate after that point, the Member may write to the client advising that it will not be responding further.

### **Verbal Complaints**

Under Policy No. 3, complaints in electronic form, including e-mail, and audio recording, are considered to be written complaints.

Where a Member receives a verbal complaint, the Member should make an internal note of the allegations and information to the extent that circumstances allow.

Where a verbal complaint raises allegations to which Part II of the Policy applies, the Member must provide its initial response in writing. Part II requires that response, in part, to include a request for any additional reasonable information required to resolve the complaint. Members may also ask that the complaint and any additional information be documented in writing to assist the Member. However, where a client declines to do so, the Member continues to have an obligation to thoroughly investigate the complaint.

For complaints that do not fall under Part II, Members may make a similar request that the complaint be put in writing, although this may not be necessary where the verbal complaint is clear or of a minor nature. Where the Member has an obligation to deal with the complaint based on the allegations and information referenced in the verbal complaint, the extent of the Member's obligation to inquire beyond the allegations in the verbal complaint will depend on the circumstances.

Members should be prepared to assist clients in documenting their verbal complaints where the client wishes to document the complaint and it is evident that the client requires assistance. Examples of when such assistance may be required are situations where the complainant has a physical or learning disability, the complainant is not proficient in English or French, or the complainant is of advanced age. It is important to note that the Member is not required to draft a full complaint letter for the complainant. In assisting the client in documenting the complaint, the Member does not become an advocate for the complainant, and that should be made clear to the complainant. The purpose of documenting the complaint is so that the Member is aware of the main issues it needs to respond to. One method of documenting the complaint is to make an audio recording of the conversation with the client, where facilities exist and the client consents.

### **Complaints from Non-Clients**

Complaints from non-clients alleging violations to which Part II of the Policy would apply (except for allegations of unsuitable investments or unsuitable leveraging) must be handled by

the Member pursuant to the formal complaint handling procedures under Part II of the Policy due to their serious nature. In such cases, the Member is entitled to consider the absence of an account relationship in making its substantive response. Additionally, in certain situations, the non-client may be under the impression that they are a client of the Member. Although this belief is mistaken, there may be factual situations where it would be reasonable for the non-client to believe they are a client of the Member.

Serious complaints (as defined earlier in this Notice) from non-clients are therefore subject to the requirements of Part II of the Policy, which includes an initial response and substantive response from the Member who must provide certain information to the complainant about options for pursuing a complaint, of which they might not be aware.

It is important to note that, in addition to the above, such complaints from non-clients trigger a separate obligation of the Member to conduct a detailed supervisory investigation under a separate part (Part III) of Policy No. 3. Members should be mindful of the fact that a complaint from a non-client could be an indication of serious misconduct, such as unapproved outside business activity, or securities related business being conducted outside the Member. This aspect of non-client complaints will be addressed further in the forthcoming Member Regulation Notice on Supervisory Investigations.

### **Persons Acting on Behalf of Clients**

Where another person acts on behalf of a client regarding a complaint, Members are expected to obtain appropriate documentation of the client's authorization before dealing with that person. This is to ensure adequate privacy protection of client account information and to ensure the wishes of the client are being followed. In addition to Powers of Attorney, it is also appropriate to accept other forms of written authorization from a client, provided the Member is satisfied as to their authenticity. The Member may need to speak with the client in order to verify their wishes. The most common type of agent situation, an adult child acting for an elderly parent, should in most cases be easily authenticated.

### **Content of Substantive Responses**

The substantive response in serious matters such as those that now fall under Part II should:

- address every aspect of the client's complaint. Members should ensure they read complaints thoroughly as complaints often contain more than one allegation;
- objectively consider the complaint, e.g., it is inappropriate for the Member to simply pass on the Approved Person's explanation to the client and conduct no independent review or assessment;
- provide a thorough analysis;
- provide the rationale for the decision;
- address client requests for reimbursement; and
- provide guidance to the client as to their options on how to fix their problem, e.g., how to unwind an unsuitable leverage loan, or how to address an unsuitable mutual fund holding in an account.

## **Consolidated Log and Records**

The following list sets out the type of information regarding a complaint that should be kept in a consolidated log located at Member head-office:

- The complainant's name;
- The date of the complaint;
- The nature of the complaint;
- The name of the individual who is the subject of the complaint;
- The product or services which are the subject of the complaint; and
- The date and conclusions of the decision rendered in connection with the complaint.

Members must also maintain records of documents associated with their complaint-handling activity, either at head office or at a regional or branch office, if accessible in a timely manner. These records should be maintained for 7 years from the creation of the record under Part V of Policy No. 3 and should include the materials reviewed in the investigation and the name, title, and date individuals were interviewed for the investigation (if applicable).

## **Reporting Complaints on METS**

Members are permitted to use METS as their complaints log for complaints reportable on METS, as fully-completed METS event reports by Members contain the required information. However, please note that some complaints such as non-serious verbal complaints are not reportable on METS, so the Member will also have to maintain its own log of those complaints, as per the requirements set out above.

Pursuant to MFDA Policy No. 6, serious verbal complaints are reportable to the MFDA at the allegation stage by the Member when the complaint is regarding the breach, or potential breach, of a law or regulatory requirement relating to the items under Part B, section 6.1 of Policy No. 6. This means that all verbal complaints that are subject to Part II of Policy No. 3, with the exception of suitability complaints, must be reported to the MFDA on METS pursuant to Policy No. 6.

## **Confidentiality Restrictions**

Members and Approved Persons must not impose confidentiality restrictions with respect to the MFDA or any other securities regulatory authority or other regulatory/ law enforcement organizations as part of the resolution of a complaint. This includes restricting a client from making a complaint, continuing with an existing complaint, cooperating with an investigation or testifying at a hearing. It applies to any resolution of a complaint, including a settlement agreement, or to any other resolution or agreement with a client.

## **Errors and Omissions Insurance**

It is understood and expected that Members and Approved Persons will engage errors and omissions insurance policies ("E&O") to protect them from financial liability. However, the terms and conditions of an E&O policy cannot absolve a Member of their regulatory

responsibilities. Members must balance the requirements of their E&O policy with the regulatory requirements imposed by the MFDA.

Members are not permitted to rely on their E&O provider to handle complaints on their behalf where the E&O provider does not conform to MFDA complaint handling timelines and other applicable standards. Members are required to review the analysis of the E&O providers with respect to complaint handling to ensure that it complies with all MFDA complaint handling guidelines as set out in MFDA Policy No. 3.

### **Client Complaint Information Form (“CCIF”)**

Subsection 24.A.5 of MFDA By-law No. 1 requires each MFDA Member to provide to new clients, and to clients who submit a written complaint to the Member, a copy of written material approved by the MFDA which describes the ombudservice approved by the MFDA Board of Directors. The approved ombudservice is the Ombudsman for Banking Services and Investments (“OBSI”).

For the purpose of complying with subsection 24.A.5 of MFDA By-law No. 1, the MFDA has prescribed the form of written material required to be provided to all new clients, and to all clients who submit a written complaint to a Member. These clients must be provided with the disclosure contained in the form entitled "Client Complaint Information Form" attached as Appendix I to this Notice.

Members may comply with this obligation in one of the following ways:

- by printing the form and providing it as a stand-alone document to the client; or
- by incorporating the wording of the form into other documentation provided by the Member to its clients.

The approved CCIF is included as Appendix I to this Notice and is also available at [http://www.mfda.ca/regulation/forms/ClientComplaint\\_En.pdf](http://www.mfda.ca/regulation/forms/ClientComplaint_En.pdf).

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## APPENDIX I

### MUTUAL FUND DEALERS ASSOCIATION OF CANADA

#### Client Complaint Information Form

Clients of a mutual fund dealer who are not satisfied with a financial product or service have a right to make a complaint and to seek resolution of the problem. MFDA Member dealers have a responsibility to their clients to ensure that all complaints are dealt with fairly and promptly. If you have a complaint, these are some of the steps you can take:

- Contact your mutual fund dealer. Member firms are responsible to you, the investor, for monitoring the actions of their representatives to ensure that they are in compliance with by-laws, rules and policies governing their activities. The firm will investigate any complaint that you initiate and respond back to you with the results of their investigation within the time period expected of a Member acting diligently in the circumstances, in most cases within three months of receipt of the complaint. It is helpful if your complaint is in writing.
- Contact the Mutual Fund Dealers Association of Canada (“MFDA”), which is the self-regulatory organization in Canada to which your mutual fund dealer belongs. The MFDA investigates complaints about mutual fund dealers and their representatives, and takes enforcement action where appropriate. You may make a complaint to the MFDA at any time, whether or not you have complained to your mutual fund dealer. The MFDA can be contacted:
  - By completing the on-line complaint form at [www.mfda.ca](http://www.mfda.ca)
  - By telephone in Toronto at (416) 361-6332, or toll free at 1-888-466-6332
  - By e-mail at [complaints@mfda.ca](mailto:complaints@mfda.ca)<sup>1</sup>
  - In writing by mail to 121 King Street West, Suite 1000, Toronto, ON M5H 3T9 or by fax at (416) 361-9073

#### Compensation:

The MFDA does not order compensation or restitution to clients of Members. The MFDA exists to regulate the operations, standards of practice and business conduct of its Members and their representatives with a mandate to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry. If you are seeking compensation, you may consider the following:

- Ombudsman for Banking Services and Investments (“OBSI”): You may make a complaint to OBSI after you have complained to the dealer, at either of the following times:

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<sup>1</sup> You may wish to consider issues of internet security when sending sensitive information by standard e-mail.

- If the dealer's Compliance Department has not responded to your complaint within 90 days of the date you complained, or;
  - After the dealer's Compliance Department has responded to your complaint and you are not satisfied with the response. **Please note that you have 180 calendar days to bring your complaint to OBSI after receiving the dealer's response.**
- OBSI provides an independent and impartial process for the investigation and resolution of complaints about the provision of financial services to clients. OBSI can make a non-binding recommendation that your firm compensate you (up to \$350,000) if it determines that you have been treated unfairly, taking into account the criteria of good financial services and business practice, relevant codes of practice or conduct, industry regulation and the law. The OBSI process is free of charge and is confidential. OBSI can be contacted:
    - By telephone in Toronto at (416) 287-2877, or toll free at 1-888-451-4519
    - By e-mail at [ombudsman@obsi.ca](mailto:ombudsman@obsi.ca)
  - Legal Assistance: You may consider retaining a lawyer to assist with the complaint. You should be aware that there are legal time limits for taking civil action. A lawyer can advise you of your options and recourses. Once the applicable limitation period expires, you may lose rights to pursue some claims.
  - Manitoba, New Brunswick and Saskatchewan: Securities regulatory authorities in these provinces have the power to, in appropriate cases, order that a person or company that has contravened securities laws in their province pay compensation to a claimant. The claimant is then able to enforce such an order as if it were a judgment of the superior court in that province. For more information, please visit:
    - Manitoba: [www.msc.gov.mb.ca](http://www.msc.gov.mb.ca)
    - New Brunswick: [www.nbsc-cvmnb.ca](http://www.nbsc-cvmnb.ca)
    - Saskatchewan: [www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)
  - Québec:
    - If you are not satisfied with the outcome or with the examination of a complaint, the Autorité des marchés financiers ("AMF") can examine your complaint and may provide dispute resolution services.
    - If you think you are a victim of fraud, fraudulent tactics or embezzlement, you can contact the AMF to see if you meet the eligibility to submit a claim to the *Fonds d'indemnisation des services financiers* ("Financial Services Compensation Fund"). An indemnity up to \$200,000 can be payable through monies accumulated in the fund for an eligible claim.
    - For more information:
      1. Contact the AMF by telephone at (418) 525-0337 (in Québec), or toll free at 1-877-525-0337
      2. Visit [www.lautorite.qc.ca](http://www.lautorite.qc.ca).