



Client Focused Reform amendments to MFDA Staff Notice MSN-0078 come into effect on December 31, 2021.

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MFDA STAFF NOTICE

MFDA RULES 2.4.4 (TRANSACTION FEES OR CHARGES) and 5.1(b)(iv) (REQUIREMENT FOR RECORDS)

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.

MFDA Rule 2.4.4 (Transaction Fees or Charges) requires that, prior to the acceptance of any order in respect of a transaction in a client account, the Member shall disclose to the client:

- any “transaction charges”, defined under Rule 5.3(1) to mean any amount charged to a client by a Member (e.g. switch fees, transaction fees and commissions) and any federal, provincial or territorial sales taxes paid on that amount; and
- any charges in respect of the purchase or sale of a security (e.g. short-term trading fees, redemption fees, or deferred sales charges where they are permitted under securities legislation);
- whether there are any investment fund management expense fees or other ongoing fees that the client may incur in connection with the security;
- a reasonable estimate if the actual amount of the charges is not known to the Member at the time of the disclosure; and
- whether the Member will receive trailing commissions in respect of the security.

Disclosure under the Rule must also include a description of the restrictions on the client's ability to liquidate or resell a security.

Rule 5.1(b)(iv) requires the Member to maintain evidence that the client was informed of all fees and charges in accordance with Rule 2.4.4.

The purpose of this Notice is to provide further guidance and clarification in respect of the disclosure and record-keeping requirements under Rules 2.4.4 and 5.1(b)(iv).

Background

The MFDA has received a significant number of complaints where clients have advised staff that they were not informed of the fees and charges resulting from a particular transaction prior to the acceptance of their order and only became aware of such information when they received their trade confirmation or account statement. In particular, many of these complaints relate to situations in which clients were not informed of a deferred sales charge at the time of the redemption. The objective of Rule 2.4.4 is to assist investors in making decisions with respect to transactions in their account by requiring Members to inform investors of transaction fees and charges prior to acceptance of their order.

Where Members engage in transactions in respect of investments that are not securities, they are encouraged to disclose any charges in respect of the purchase or sale of the investment, where reliable data is available.

Types of Fees and Charges

Deferred Sales Charges

Under Rule 2.4.4(b), disclosure must be provided to the client that a deferred sales charge might be triggered upon the redemption of the security. This disclosure must address: the amount of the charge (i.e. expressed as a percentage or dollar value or a reasonable estimate if the amount of the charge is not known to the Member at the time of the disclosure); and the timeframe within which the deferred sales charge would be applicable.

Trailing Commissions

Under Rule 2.4.4(c), disclosure must advise the client as to whether the Member will receive trailing commissions in respect of the security. For the purpose of disclosing trailing commissions, the Member may draw attention to the information in the prospectus or the Fund Facts document, if the Fund Facts document is provided at the point of sale.

Level of Detail Required

Rule 2.4.4(a) requires disclosure of a reasonable estimate of fees or charges if the actual amount of the charges is not known to the Member at the time of the disclosure.

This disclosure requirement is intended to give clients a *reasonable* idea of fees and charges that will apply at the time of the transaction and is not intended to impair the timely execution of client orders. In meeting the requirements of Rule 2.4.4, Members and Approved Persons are expected to act reasonably and in the best interests of clients, and provide the most current and accurate information in respect of fees and charges that can be reasonably provided in the circumstances. There may be circumstances where specific information (such as an exact dollar figure) may not be available at the time of the transaction. For example, redemption fees are determined on the basis of the net asset value of the fund. This value is set at the end of the day on which the transaction is executed. In providing disclosure in respect of redemption fees,

Members and Approved Persons could provide an estimate, expressed as a percentage or in dollars, of the fees and charges that would apply on the transaction. To the extent that the client requests more specific information, the Member or Approved Person may obtain the client's instruction to delay the execution of the transaction until more detailed information regarding applicable fees and charges can be provided.

In monitoring and assessing compliance with the Rule, staff will consider whether the Member has acted reasonably, in the best interests of the client, and in a manner that is consistent with the fundamental objectives of the Rule. The use of standard blanket disclosure for all transactions (for example disclosing that "additional fees and charges may apply") would not comply with the objective of the Rule.

Method of Disclosure

Disclosure requirements under Rule 2.4.4 may be satisfied at the time of the transaction either by having a discussion with the client or through the provision of a document. For the purpose of complying with the recording keeping requirements of Rule 5.1(b)(iv), and as noted in MFDA Staff Notice MSN-0035 – Recording and Maintaining Evidence of Client Trade Instructions, Members may use the current methods that they employ to evidence client orders and instructions, for example, maintaining detailed notes to file, taping telephone conversations, or maintaining copies of client acknowledgements prior to the acceptance of the client order.

Use of Fund Facts document

Members and Approved Persons may use the Fund Facts document to satisfy disclosure requirements under Rule 2.4.4, provided that: the Fund Facts is delivered to the client at the point of sale; and, in the course of a discussion with the client, the Approved Person explains the specific costs of the transaction to the client.

Application in Specific Situations

It may be difficult, in certain circumstances, to provide detailed information with respect to transaction fees or charges. Set out below, is further guidance in respect of specific situations.

Short Term Trading Fees

Disclosure of the exact amount of short-term trading fees may be difficult as complex calculations may be required in addition to the fact that short-term trading fees are applied at the discretion of the fund company. Accordingly, Members and Approved Persons may comply with the requirements of Rule 2.4.4 by advising the client in circumstances where a short-term trading fee may apply.

Withholding Taxes

Withholding taxes are not subject to disclosure requirements under Rule 2.4.4. However, where Members have reliable information in respect of withholding taxes, they are encouraged to provide such information to clients, as the provision of such information will assist investor decision-making.

Account Transfers

A transfer of a client account “in cash” (in whole or in part) to another Member would be considered an order to which the requirements of Rule 2.4.4 would apply. Where the Approved Person at the receiving Member is aware that mutual funds may be redeemed as part of the transfer, the Approved Person would be expected to advise the client that deferred sales charges may apply on the redemption. If the Approved Person is not aware of whether deferred sales charges would apply on the redemption, the Approved Person should direct the client to the delivering Member to obtain further information or, where possible, transfer the client’s account “in kind”.

Automatic Plans

In respect of automatic plans, staff would expect Members and their Approved Persons to provide as much current and accurate information about fees and charges as is available at the time that the plan is established and, as applicable, when changes are made to the plan. Staff would not expect such disclosure to be provided on each subsequent transaction.

Clients Transacting Directly with the Fund Company

Where a client contacts the fund company directly to make a redemption request and the Member and its Approved Persons do not become aware of the redemption until after the order has been accepted/redemption has occurred, they would not be expected to provide the prescribed disclosure.

Online Transactions

In certain circumstances, Approved Persons are not involved in accepting the order for online, unsolicited (i.e. client initiated) transactions. In such circumstances, MFDA staff recognizes that it may be impractical for Approved Persons to provide detailed, specific information with respect to transaction fees and charges. Accordingly, with respect to such transactions, Members may comply with the requirements of Rule 2.4.4 by notifying clients of the types of fees and charges that may apply and advising them to contact the Member should they wish to obtain further details on applicable fees and charges.

Where Client Unavailable/Unreachable for Disclosure of Fee/Charges

In the majority of circumstances, there is a direct interaction between the Member, its Approved Persons, and the client, which will allow for timely disclosure of the required information. In the rare situation where a client places an unsolicited order and is unavailable or unreachable for disclosure regarding fees and charges in respect of the transaction, Members and Approved Persons would be expected to use reasonable efforts to contact the client and advise of the transaction fees and charges.

This may involve sending a communication back to the client (via e-mail, fax or phone) to advise that fees or charges will apply to the transaction and notifying the client that if they do not respond within a specified time period, the transaction will be executed in accordance with the client’s instructions. In setting a specified time period for client response, Members must comply with requirements under securities legislation with respect to the timely execution of trades.

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