

# MUTUAL FUND DEALERS ASSOCIATION OF CANADA

## PROPOSED NEW POLICY NO. 11 – PROFICIENCY STANDARDS FOR THE SALE OF ALTERNATIVE MUTUAL FUNDS

### I. OVERVIEW

#### A. Current Requirements

Under MFDA Rule 1.2.3, an Approved Person must not perform an activity that requires registration under securities legislation unless the Approved Person has the education, training and experience that a reasonable person would consider necessary to perform the activity competently, including understanding the structure, features and risks of each security that the Approved Person recommends.

#### B. Reasons for Amendments

On January 3, 2019, certain amendments to National Instrument 81-102 - *Investment Funds* (NI 81-102), came into force. These amendments implement the final phase of the CSA's Modernization of Investment Fund Product Regulation Project, and introduce a new category of mutual fund, "alternative mutual funds", to Canadian retail investors.

The CSA retained the current proficiency standards for mutual fund dealers distributing prospectus qualified alternative mutual funds, as set out under National Instrument 81-104 - *Alternative Mutual Funds* (NI 81-104), but indicated their intent to repeal NI 81-104 when more appropriate proficiency requirements are put in place for mutual fund dealers distributing alternative mutual funds.

To provide retail investors with access to alternative mutual funds on an expedited basis, each CSA jurisdiction issued an order/blanket order exempting mutual fund dealers and mutual fund dealing representatives from the requirements of NI 81-104, provided that additional proficiency was obtained. The exemption orders were issued in January 2021.

Proposed new MFDA Policy No. 11 is intended to establish proficiency requirements for the distribution of alternative mutual funds by MFDA Members and Approved Persons.

#### C. Objectives

The objective of proposed new Policy No. 11 is to establish proficiency requirements for the distribution of alternative mutual funds by MFDA Members and Approved Persons.

#### D. Effect of Proposed Amendments

The effect of proposed new Policy No. 11 will be to adopt requirements that are consistent with the regulatory policy rationale underlying the exemption orders published by the CSA members, and to ensure that alternative mutual funds, whether sold pursuant to a prospectus, or on a prospectus-exempt basis, will be subject to appropriate proficiency requirements.

## **II. DETAILED ANALYSIS**

### **A. Development of Policy / Areas where Policy Departs from CSA Exemption Orders**

Proposed new MFDA Policy No. 11 departs in the following ways from the CSA Exemption Orders:

#### *Prospectus Exempt Alternative Mutual Funds*

The CSA exemption orders apply to Members and Approved Persons trading or advising in alternative mutual funds sold under a prospectus. Given the similarities in investment strategies, MFDA Policy No. 11 was developed to apply to Members and Approved Persons trading or advising in alternative mutual funds sold under a prospectus, and alternative mutual funds sold under a prospectus exemption (i.e. hedge funds). The bridge courses were also designed to contain content relevant to alternative mutual funds, including those sold under a prospectus exemption.

#### *Updated Courses*

The CSA exemption orders refer to “updated courses” defined as the Canadian Investment Funds Course administered by the IFSE Institute, or the Investment Funds in Canada Course administered by CSI Global Education Inc., that contain substantially the same content as their respective bridge courses. To date, these courses have not been updated to include specific content about alternative mutual funds. The proposed new Policy does not include a reference to “updated courses”. However, should these courses be updated to include specific content on alternative mutual funds, the MFDA Policy will be revised accordingly.

#### *Notification to the Provincial Regulator*

Under the various blanket orders, Members must notify the relevant provincial securities regulator prior to relying on the order. Policy No. 11 does not contain a reporting requirement, as it is anticipated that the CSA will be able to obtain all necessary information directly from the MFDA.

### **B. Comparison with Similar Provisions**

As noted, part of the purpose of proposed new Policy No. 11 is to codify the provisions of the CSA Exemption Orders referenced above. Apart from reviewing the terms of the CSA Orders, no consideration was given to similar provisions.

### **C. Issues and Alternatives Considered**

No other issues or alternatives were considered. Requirements under MFDA regulatory instruments must, at a minimum, be consistent with those under securities legislation, and may exceed securities legislation requirements where to do so would be in the public interest. MFDA staff is satisfied that it is in the public interest to extend the proficiency requirements of the proposed new Policy to advice and trades in respect of prospectus-exempt alternative mutual funds.

### **D. Systems Impact of Amendment**

We do not anticipate that adoption of the proposed new Policy will cause any material impact upon Members’ systems, material burdens or constraints on competition or innovation, material

costs or restrictions on the activities of market participants, or materially increased costs of compliance.

#### **E. Best Interests of the Capital Markets**

The proposed new Policy was approved at the September 29, 2021 meeting of the MFDA Board of Directors. The Board has determined that the proposed new Policy is consistent with the best interests of the capital markets.

#### **F. Public Interest Objective**

Publishing proposed new Policy No. 11 for public comment is in the public interest. The Policy will help to ensure that MFDA requirements are consistent with related exemptive relief granted by the CSA members, and that requirements under Rule 1.2.3 continue to be met, in relation to advice and trades in prospectus-qualified, and prospectus-exempt alternative mutual funds.

#### **G. Classification**

The text of proposed new Policy No. 11 is set out under Appendix “A”. The Policy has been classified as a Public Comment Rule proposal.

### **III. COMMENTARY**

#### **A. Filing in Other Jurisdictions**

Proposed new Policy No. 11 will be filed for approval with the Alberta, British Columbia, Manitoba, Nova Scotia and Ontario Securities Commissions, the New Brunswick Financial and Consumer Services Commission, the Superintendent of Securities of Prince Edward Island, the Saskatchewan Financial and Consumer Affairs Authority, the Superintendent of Securities, Yukon Territory, the Superintendent of Securities, Nunavut and the Superintendent of Northwest Territories.

#### **B. Effectiveness**

Proposed new Policy No. 11 is simple and effective.

#### **C. Process**

The proposed new Policy was reviewed at the August 17, 2021 meeting of the MFDA Policy Advisory Committee, the September 14, 2021 meeting of the Regulatory Issues Committee of the MFDA Board of Directors, and approved by the full MFDA Board of Directors at its September 29, 2021 meeting. In approving the proposed new Policy, the MFDA has followed its established internal governance practices and has considered the need for consequential amendments.

#### **D. Effective Date**

The proposed new Policy will become effective on a date to be determined by the MFDA.

#### **E. Exemption from Requirements under Securities Legislation**

The proposed new Policy involves Rules with which the MFDA, its Members or Approved Persons must comply in order to be exempted from requirements under securities legislation.

#### **F. Conflict with Applicable Laws or Terms and Conditions of Recognition Order**

The proposed new Policy does not conflict with applicable laws or the Terms and Conditions of a Recognizing Regulator's Recognition Order.

### **IV. SOURCES**

- Related CSA Exemption Orders;
- MFDA Rulebook; and
- MSN-0077 (Approved Person Proficiency Requirements).

### **V. REQUIREMENT TO PUBLISH FOR COMMENT**

The MFDA is required to publish for comment the proposed new Policy so that the issues referred to above may be considered by the Recognizing Regulators.

**The MFDA has determined that the entry into force of the proposed new Policy would be in the public interest and is not detrimental to the capital markets. Comments are sought on the proposed new Policy.** Comments should be made in writing. One copy of each comment letter should be delivered within **60** days of the publication of this notice, addressed to the attention of:

Paige Ward  
General Counsel, Corporate Secretary and Vice-President, Policy  
Mutual Fund Dealers Association of Canada  
121 King St. West, Suite 1000  
Toronto, Ontario M5H 3T9  
[pward@mfd.ca](mailto:pward@mfd.ca)

and one copy addressed to the attention of:

Anne Hamilton  
Senior Legal Counsel  
British Columbia Securities Commission  
701 West Georgia Street  
P.O. Box 10142, Pacific Centre  
Vancouver, British Columbia, V7Y 1L2  
[ahamilton@bcsc.bc.ca](mailto:ahamilton@bcsc.bc.ca)

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the MFDA website at [www.mfda.ca](http://www.mfda.ca).

Questions may be referred to:

Paige Ward

General Counsel, Corporate Secretary and Vice-President, Policy

Mutual Fund Dealers Association of Canada

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## **Appendix “A”**

### **MFDA POLICY NO. 11**

## **PROFICIENCY STANDARDS FOR THE SALE OF ALTERNATIVE MUTUAL FUNDS**

### **Purpose**

The purpose of this Policy is to set out minimum requirements that Members and Approved Persons must meet to ensure that advice and transactions in respect of alternative mutual funds satisfy the proficiency, experience, and related requirements under Rule 1.2.3, and Member responsibilities under Rule 2.5.1.

Alternative mutual funds are allowed to invest in alternative assets and employ strategies that are not generally permitted by conventional mutual funds. Alternative mutual funds may be sold under a prospectus, or on a prospectus exempt basis.

Alternative mutual funds sold on a prospectus exempt basis (i.e. hedge funds), have no investment restrictions, are less transparent than alternative mutual funds sold under a prospectus, and can only be sold to investors who meet certain criteria.

Alternative mutual funds sold pursuant to a prospectus (i.e. “liquid alts”) have investment restrictions, provide a greater degree of transparency and liquidity than prospectus exempt alternative funds and can be sold to the general public.

The requirements of this Policy apply to both alternative mutual funds sold under a prospectus (i.e. liquid alts), and alternative mutual funds sold pursuant to a prospectus exemption (i.e. hedge funds).

### **Definitions For the purposes of this Policy:**

“**alternative mutual fund**” has the same meaning as the definition in National Instrument 81-102 (NI 81-102). An alternative mutual fund is a mutual fund, other than a precious metals fund, that has adopted fundamental investment objectives that permit it to invest in physical commodities or specified derivatives, to borrow cash or engage in short selling in a manner not permitted for other mutual funds under NI 81-102.

“**bridge course**” means either the Investing in Alternative Mutual Funds and Hedge Funds Course administered by the IFSE Institute, or the Alternative Strategies: Hedge Funds & Liquid Alts for Mutual Fund Representatives Course Exam administered by CSI Global Education Inc.

## **Proficiency Requirements**

An Approved Person trading or advising in alternative mutual funds, and an individual designated by the Member to supervise trading in alternative mutual funds, as required by MFDA Policy No. 2, must have:

- a) passed a bridge course exam;
- b) passed the Derivatives Fundamentals Course Exam administered by CSI Global Education Inc.;
- c) passed the Canadian Securities Course Exam administered by the CSI Global Education Inc.; or
- d) passed the courses required to be registered as a Portfolio Manager – Advising Representative pursuant to section 3.11 of National Instrument 31-103.