



August 2, 2019

BY EMAIL

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Dear Mesdames,

Re: Proposed Amendments to MFDA Rule 2.3.1(b)
(Discretionary Trading)

Portfolio Strategies Corporation ("PSC") is a Calgary-based dealer that is a member of the Mutual Fund Dealers Association of Canada ("MFDA") and registered as a mutual fund dealer and exempt market dealer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, and Quebec, and as an investment fund manager in Alberta and Ontario.

We appreciate the opportunity to provide comments on the proposed amendments to the MFDA Rule 2.3.1(b) (Discretionary Trading) published on April 4, 2019.

I. Overview

B. Reasons for Amendments

As per the MFDA Bulletin #0782-P, the proposed amendments have been put forth in response to Member requests for regulatory flexibility and would permit limited discretionary trading in respect of mutual fund portfolios offered by Members.

II. Detailed Analysis

A. Proposed Amendments

- **Addition of section 2.3.1(b.1)(i)** The proposed addition of section 2.3.1(b.1)(i) suggests that a Member may engage in discretionary trading provided that the Member (and any Approved Person engaged in discretionary trading on its behalf) is appropriately registered under securities legislation to provide discretionary portfolio management

services, or has received an exemption from the requirement for such registration by the securities regulatory authority/authorities.

We strongly agree that this proposed amendment would enable Members to rebalance model portfolios without having to seek out individual investor authorization, given that they are registered to provide such services or they have received an exemption from this requirement. Should a fund substitution within a model portfolio be required due to poor performance or unforeseen market conditions, it would be more efficient to allow Members to replace funds without having to contact and obtain consent from every investor in the portfolio. Where time can be of the essence, granting Members permission to perform these discretionary trades could benefit investors considerably.

- **Addition of section 2.3.1(b.1)(ii)** The proposed addition of section 2.3.1(b)(ii) suggests that a Member may engage in discretionary trading provided that the discretionary trading engaged in is limited to mutual fund securities that are part of a mutual fund model portfolio offered by the Member.

For this proposed amendment, we would encourage the MFDA to extend the discretionary trading permissions to include other types of investments such as ETFs that meet the definition of mutual funds, and government bonds; the inclusion of these additional products in model portfolios would provide greater diversity to the portfolios and could potentially increase the portfolios' overall performance. Allowing the Member to engage in discretionary trading on these products would be equally as critical as being able to discretionarily trade on mutual fund securities. Members and Approved Persons would reasonably need to complete any additional education requirements prior to being able to sell and discretionarily trade additional products, such as ETFs, within the model portfolios.

As the proposed amendments are currently written, there would be possibility for Members to replace good third-party products with potentially inferior proprietary products within the model portfolios. This scenario could be considered a conflict of interest, as the sale or promotion of proprietary products is often more beneficial to the Member rather than prioritizing the needs of the investor. We suggest inserting additional verbiage to this section to ensure conflicts of interest of this nature are avoided and that investors' best interests are protected, through additional disclosures to investors when proprietary products are involved.

B. Comparison with Similar Provisions

The proposed amendments to MFDA Rule 2.3.1(b) are somewhat comparable to Rule 1300.7(a)(i) of the Investment Industry Regulatory Organization of Canada ("IIROC"), where an IIROC dealer Member may exercise discretionary trading authority over a managed account, so long as the individual managing the account is a portfolio manager. However, the IIROC rule does not require the dealer Member itself to register as a portfolio manager. The proposed amendments to MFDA Rule 2.3.1(b) appear to be more restrictive in nature, indicating that the dealer Member would also be required to register as a portfolio manager as an alternative to obtaining exemptive relief from their respective provincial securities

regulator. Requiring Members to obtain portfolio manager registration seems like an unreasonable stipulation, given the limited nature of the discretionary trading and asset reallocation sought out by the Members; ideally, the proposed amendments to the MFDA Rule 2.3.1(b) should match the IROC Rule 1300.7(a)(i), to ensure a level playing field between Members and Approved Persons of both organizations.

C. Issues and Alternative Considered

As it stands, Members must apply for and rely upon obtaining exemptive relief in order to be able to engage in discretionary trading, even if the Member has already engaged an affiliated or third-party portfolio manager. Pursuing exemptive relief can be a lengthy and administratively cumbersome process, as it requires the Member to file a formal exemption request and wait for the CSA to review and come to a conclusion on their application. We are aligned with the views of the MFDA in that the current process places unnecessary regulatory burden on Members, given their goal of executing very limited discretionary trading within pre-established parameters of said model portfolios. The proposed amendments to MFDA Rule 2.3.1(b) would ideally reduce excessive costs for Members, which invariably are passed on to the end investor.

Thank you for the opportunity to provide our comments. If the BCSC has any questions or requires additional clarification, we would be pleased to discuss our comments further.

Yours truly,

“Mark Kent”

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