

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

PROPOSED AMENDMENTS TO MFDA REGULATORY INSTRUMENTS TO CONFORM TO REQUIREMENTS UNDER THE CLIENT FOCUSED REFORMS (CFR) AMENDMENTS TO NATIONAL INSTRUMENT 31-103 – *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS* (NI 31-103)

I. OVERVIEW

A. Current Requirements

MFDA regulatory instruments prescribe prudential and business conduct requirements to govern the conduct of Members and their Approved Persons.

B. Reasons for Amendments

On June 21, 2018, the Canadian Securities Administrators (CSA) published, for a 120-day comment period, proposed amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) to enhance the client-registrant relationship (CFR amendments). The comment period expired on October 19, 2018.

On October 3, 2019, following consideration of comments received, the CSA published the CFR amendments in final form. MFDA staff participated on the CSA Working Group which was responsible for the development of the CFR amendments. (see Bulletin #0795-P).

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.

We are publishing, on the same day, two types of changes to MFDA Rules and Policies. Public Comment Rule proposals (set out in this Notice), and Housekeeping changes (set out in a separate Notice). Housekeeping Rule amendments have been deemed to be approved and will be in effect on a date to be determined by the MFDA, which will align with the implementation dates of the CFR amendments. We are also publishing CFR conforming changes to guidance set out under MFDA Staff Notices (also set out in this Notice).

Summary of Housekeeping Changes

Set out below is a summary of areas where housekeeping changes have been made to requirements under MFDA regulatory instruments (the changes made directly adopt the wording used under the CFR amendments to NI 31-103):

- Training and Supervision (Rule 1.2.4); and corresponding changes to MFDA Policy No. 1 (*New Registrant Training and Supervision*);
- Misleading Communications (Rule 1.2.5);
- Conflicts of Interest (Rule 2.1.4);
- Borrowing from Clients (Rule 2.1.5);

- Relationship Disclosure (Rule 2.2.7);
- Referral Arrangements (Rule 2.4.2);
- Transaction Fees or Charges (Rule 2.4.4);
- Client Lending and Margin (Rule 3.2.1); and
- Books and Records (Rule 5.1).

Public Comment Rule Proposals

We are publishing for comment proposed conforming amendments to Rules 2.2.1 (Know-Your-Client), 2.2.4 (Updating Client Information), 2.2.5 (Know-Your-Product), 2.2.6 (Suitability Determination), and corresponding changes to Policy No. 2 (*Minimum Standards for Account Supervision*).

MFDA Staff Notices (MSN)

We are also publishing proposed changes to MFDA Staff Notices (MSN), which are intended to conform to the CFR amendments being proposed to MFDA Rules and Policies, and to ensure that guidance under the MSN appropriately reflects expanded guidance introduced through the CFR into the Companion Policy to NI 31-103. Conforming changes have been proposed to the following Notices:

- MSN-0025 (Suitability Obligations for Unsolicited Orders);
- MSN-0047 (Personal Financial Dealings with Clients);
- MSN-0048 (Know-Your-Product);
- MSN-0075 (Relationship Disclosure Information);
- MSN-0078 (Transaction Fees and Charges); and
- MSN-0077 (Proficiency Requirements).

At a later date, we will also be publishing for comment, proposed conforming changes to guidance set out under MSN-0069 (Suitability).

Comment is only being sought on the drafting of the proposed conforming amendments in these areas, to ensure that they are clear, applicable, having regard to the business and business models of MFDA Members, and coherent when requirements and guidance under these MFDA regulatory instruments is considered together and in conjunction with other MFDA requirements to which Members and Approved Persons are subject.

We are not soliciting comment on the substance of requirements adopted under the Client Focused Reforms (i.e. this publication for comment is not intended revisit the regulatory policy rationale for such requirements).

C. Objectives

Publication of the proposed amendments is intended to ensure that these changes to MFDA regulatory instruments conform to requirements adopted under the CFR amendments to NI 31-103 in a manner that is clear, applicable, and coherent, having regard to existing Member

business/business models, and MFDA requirements to which Members and Approved Persons are currently subject.

D. Effect of Proposed Amendments

As noted, the effect of this analysis will be to ensure that requirements under MFDA regulatory instruments conform to those under securities legislation, in a manner that is clear, applicable, and coherent, having regard to Member business/business models, and existing requirements to which Members and Approved Persons are currently subject.

II. DETAILED ANALYSIS

A. Key Areas where Conforming Amendments Differ from CFR Amendments

In certain areas, it was necessary to vary the drafting to tailor the regulatory standards applicable to MFDA Members and Approved Persons, having regard to the business and business models of MFDA Members, and to ensure consistency with existing MFDA regulatory requirements. Set out below is a summary of key areas where the drafting of the proposed conforming amendments varies from requirements adopted under the CFR amendments to NI 31-103.

Attached, as Appendix “A” to this Notice, is a blacklined version of conforming amendments to Rules 2.2.1, 2.2.4, 2.2.5, 2.2.6, and corresponding changes to Policy No. 2, which show the proposed changes to these MFDA regulatory instruments. Conforming changes to MFDA Staff Notices are set out under Appendix “B”.

Use of “Investment”

In the KYC, KYP, and suitability determination provisions of the CFRs, reference is made to “security/securities”. To tailor the regulatory standards applicable to MFDA Members and Approved Persons, having regard to the business and business models of MFDA Members, and to ensure consistency with existing MFDA regulatory requirements, we have, in proposed conforming amendments to Rules 2.2.5, 2.2.6, and Policy No. 2, changed such references to “investment/investments”. This change reflects the fact that current requirements under MFDA regulatory instruments, including those with respect to suitability, apply to all Member business (i.e. “*to each order accepted or recommendation made*”), whether such business is in securities, or non-securities related investment products.

Client Confirmation of Collected KYC Information

Under NI 31-103, subsection 13.2(3.1), registrants are subject to general requirements to take reasonable steps to have a client confirm the accuracy of the KYC information collected.

We have not adopted this general provision. As noted, the MFDA’s conforming amendments, as proposed, have been drafted with a view to tailor the CFR amendments to NI 31-103 to Members and Approved Persons, having regard to the business and business models of MFDA Members and to ensure consistency with existing MFDA regulatory requirements. Accordingly, we have preserved the more specific, and clear, requirements under Policy No. 2 which address: (i) specific points in time when KYC must be updated (e.g. on the occurrence of a material change, through a

request to the client on account opening, on an annual basis, in writing); (ii) use of a client signature to verify changes in client name, address, and banking information; (iii) how material changes to client information must be verified; and (iv) approval/related requirements for material changes in client information.

B. Comparison with Similar Provisions

During the development of the proposed conforming amendments, MFDA staff engaged in discussions with IIROC staff to ensure that requirements adopted under the CFR amendments to NI 31-103 would be implemented in as uniform a manner as possible in SRO Rules, having regard to the similarities and differences between MFDA / IIROC member business, business models, and the existing requirements to which MFDA / IIROC members are subject.

C. Issues and Alternatives Considered

No other issues or alternatives were considered. As noted, 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.

D. Systems Impact of Amendment

As noted, the MFDA is required to make the proposed changes to ensure that its requirements conform to those under securities legislation. As a result, 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 which are experienced by Members will have arisen from the CSA's adoption of the Client Focused Reform amendments to NI 31-103.

E. Best Interests of the Capital Markets

The proposed amendments were approved at the February 27, 2020 meeting of the MFDA Board of Directors. The Board has determined that the proposed amendments are consistent with the best interests of the capital markets.

F. Public Interest Objective

Publishing the proposed amendments for public comment to solicit input on drafting is in the public interest and will ensure that requirements under MFDA regulatory instruments conform to similar requirements under securities legislation, while remaining clear, applicable, having regard to the business and business models of MFDA Members, and coherent when considered in conjunction with other MFDA requirements to which Members and Approved Persons are subject.

G. Classification

The proposed Rule and Policy amendments set out under Appendix "A" have been classified as Public Comment Rule proposals.

II. COMMENTARY

A. Filing in Other Jurisdictions

The proposed amendments 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, and the Saskatchewan Financial and Consumer Affairs Authority.

B. Effectiveness

The proposed amendments are simple and effective.

C. Process

The proposed conforming amendments to MFDA Rules and Policies were reviewed at the February 6, 2020 meeting of the MFDA Policy Advisory Committee, the February 18, 2020 meeting of the Regulatory Issues Committee of the MFDA Board of Directors, and approved by the full MFDA Board of Directors at its February 27, 2020 meeting. Proposed conforming amendments to guidance set out under MFDA Staff Notices was also reviewed at the October 8, 2020 meeting of the MFDA Policy Advisory Committee. In approving the proposed amendments, the MFDA has followed its established internal governance practices and has considered the need for consequential amendments.

D. Effective Date

The proposed amendments will become effective in accordance with the phased transition periods established by the CSA for the Client Focused Reforms.

E. Exemption from Requirements under Securities Legislation

The proposed conforming amendments involve Rules that the MFDA, its Members or Approved Persons must comply with in order to be exempted from a securities legislation requirement.

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

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

III. SOURCES

- MFDA Rulebook;
- MFDA Policy No. 1;
- MFDA Policy No. 2; and
- Final Publication of Client Focused Reform Amendments to NI 31-103 (October 3, 2019).

IV. REQUIREMENT TO PUBLISH FOR COMMENT

The MFDA is required to publish for comment the proposed amendments 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 amendments would be in the public interest and is not detrimental to the capital markets. Comments are sought on the proposed amendments. 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

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

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.

Questions may be referred to:

Paige Ward
General Counsel, Corporate Secretary and Vice-President, Policy
Mutual Fund Dealers Association of Canada
(416) 943-5838

DM#777980

April 12, 2018

Appendix “A”

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA/
ASSOCIATION CANADIENNE DES COURTIERS DE FONDS MUTUELS**

RULES

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

~~1.1.1~~ 2.2.1 "Know-Your-Client"

2.2.1(1) Each Member and Approved Person shall take reasonable steps use due diligence: to learn the essential facts relative to each client and to each order or account accepted, and to;

- (a) establish the identity of a client and, if the Member or Approved Person has cause for concern, make reasonable inquiries as to the reputation of the client;
- (b) ensure that they have sufficient information, in accordance with requirements under Policy No. 2, and regarding all of the following, to enable the Member or Approved Person to meet their obligations under Rule 2.2.6
 - (i) the client's personal circumstances;
 - (ii) the client's financial circumstances;
 - (iii) the client's investment needs and objectives;
 - (iv) the client's investment knowledge;
 - (v) the client's risk profile; and
 - (vi) the client's investment time horizon.

2.2.1(2) For the purpose of establishing the identity of a client that is a corporation, partnership, or trust, the Member or Approved Person must establish the following:

- (a) the nature of the client's business;
 - (b) the identity of any individual who,
 - (i) in the case of a corporation, is a beneficial owner of, or exercises direct or indirect control or direction over more than 25% of the voting rights attached to the outstanding voting securities of the corporation, or
 - (ii) in the case of a partnership or trust, exercises control over the affairs of the partnership or trust.
- ~~(a) to ensure that the acceptance of any order for any account is within the bounds of good business practice;~~
- ~~(b) to ensure that each order accepted or recommendation made, including recommendations to borrow to invest, for any account of a client is suitable for the client based on the essential facts relative to the client and any investments within the account;~~

- ~~(c) — to ensure that, notwithstanding the provisions of paragraph (c), where a transaction, including a transaction involving the use of borrowed funds, proposed by a client is not suitable for the client based on the essential facts relative to the client and the investments in the account, the Member or Approved Person has so advised the client before execution thereof and the Member or Approved Person has maintained evidence of such advice;~~
- ~~(d) — to ensure that the suitability of the investments within each client’s account is assessed:
 - ~~(i) — whenever the client transfers assets into an account at the Member;~~
 - ~~(ii) — whenever the Member or Approved Person becomes aware of a material change in client information, as defined in Rule 2.2.4; or~~
 - ~~(iii) — by the Approved Person where there has been a change in the Approved Person responsible for the client’s account at the Member;~~~~

~~and, where investments in a client’s account are determined to be unsuitable, the Member or Approved Person so advises the client and makes recommendations to address any inconsistencies between investments in the account and the essential facts relative to the client and the Member or Approved Person maintains evidence of such advice and recommendations;~~

- ~~(e) — to ensure that the suitability of the use of borrowing to invest is assessed:
 - ~~(i) — whenever the client transfers assets purchased using borrowed funds into an account at the Member;~~
 - ~~(ii) — whenever the Member or Approved Person becomes aware of a material change in client information, as defined in Rule 2.2.4; or~~
 - ~~(iii) — by the Approved Person where there has been a change in the Approved Person responsible for the client’s account at the Member;~~~~

~~and, where the use of borrowing to invest by the client is determined to be unsuitable, the Member or Approved Person so advises the client and makes recommendations to address the inconsistency between the use of borrowed funds and the essential facts relative to the client and the Member or Approved Person maintains evidence of such advice and recommendations.~~

1.1.2 2.2.4 Updating Client Information

- (a) **Definition.** In this Rule, “**material change in client information**” means any information that results in changes to the stated risk ~~profile~~tolerance, investment time horizon or investment needs and objectives of the client or would have a significant impact on the net worth or income of the client.
- (b) A Member or Approved Person must take reasonable steps to keep the information required under Rule 2.2.1 current including updating the information within a

~~reasonable time after becoming aware of a The form documenting know your client information must be updated to include any material change in client information whenever a Member or Approved Person becomes aware of such change including pursuant to Rule 2.2.4(e).~~

- (c) Subject to paragraph (d), the Member must maintain evidence of client instructions regarding any material changes in client information in accordance with Policy No. 2, Part II (Opening New Accounts) – Changes to KYC Information, paragraph 6. ~~and~~ All such changes must be approved by the individual designated in accordance with Rule 2.2.3 as responsible for the approval of the opening of new accounts.
- (d) A client signature or other internal controls sufficient to authenticate the client's identity and verify the client's authorization must be used to evidence any change in client name, client address or client banking information.
- (e) Without reducing the responsibility of Members in Rule 2.2.1, all Members must at least annually, in writing, request each client to notify the Member if there has been any material change in client information previously provided to the Member or the client's circumstances have materially changed. The date of such request and the date upon which any such client information is received and recorded or amended must be retained.
- (f) A Member or Approved Person must review the information collected under Rule 2.2.1(1)(b):
 - (i) within 12 months when transacting in securities that require registration, under securities legislation, as an exempt market dealer;
 - (ii) in any other case, no less frequently than once every 36 months.

2.2.5 Know Your Product Relationship Disclosure

(1) A Member must not make investments available to clients unless the Member has taken reasonable steps to:

(a) assess the relevant aspects of the investments, including the investments' structure, features, risks, initial and ongoing costs and the impact of those costs;

(b) approve the investments to be made available to clients; and

(c) monitor the investments for significant changes.

(2) An Approved Person must not purchase or sell investments for, or recommend investments to, a client unless the Approved Person takes steps to understand the investment, including the investments' structure, features, risks, initial and ongoing costs and the impact of those costs.

(2.1) For the purposes of subsection (2), the steps required to understand the investment are those that are reasonable to enable the Approved Person to meet their obligations under Rule 2.2.6.

(3) An Approved Person must not purchase investments for, or recommend investments to, a client unless the investments have been approved by the Member to be made available to clients.

2.2.6 Suitability Determination

(1) Before a Member or Approved Person opens an account for a client, makes a recommendation for an account of a client, including a recommendation to borrow to invest, purchases, sells, deposits, exchanges, or transfers investments for a client's account, or takes any other investment action for a client, the Member or Approved Person must determine, on a reasonable basis, that the action satisfies the following criteria:

(a) the action is suitable for the client, based on the following factors:

(i) the client's information collected in accordance with Rule 2.2.1 (Know-Your-Client);

(ii) the Member or Approved Person's assessment or understanding of the investment consistent with Rule 2.2.5 (Know-Your-Product);

(iii) the impact of the action on the client's account, including the concentration of investments within the account and the liquidity of those investments;

(iv) the potential and actual impact of costs on the client's return on investment;

- (v) a reasonable range of alternative actions available to the Approved Person through the Member, at the time the determination is made;
- (b) the action puts the client's interest first.
- (2) A Member or Approved Person must review a client's account and the investments in the client's account to determine whether the criteria in subsection (1) are met, and take reasonable steps, within a reasonable time, after any of the following events:
 - (a) a review must be performed by the Approved Person, when there has been a change in the Approved Person responsible for the client's account at the Member;
 - (b) the Member or Approved Person becomes aware of a change in an investment in the client's account that could result in the investment or account not satisfying subsection (1);
 - (c) the Member or Approved Person becomes aware of a material change in the client's information collected in accordance with Rule 2.2.1 that could result in an investment or the client's account not satisfying subsection (1);
 - (d) the Member or Approved Person performs the periodic review required under Rule 2.2.4(f);
 - (e) whenever the client transfers assets into an account at the Member.;
- (2.1) If, after performing a suitability determination, a Member or Approved Person has determined that an action taken for a client does not meet requirements under Rule 2.2.6(1), the Member or Approved Person must advise the client accordingly, make recommendations to address any inconsistencies, and maintain evidence of such advice and recommendations.
- (2.2) Despite subsection (1), if a Member or Approved Person receives an instruction from a client to take an action that, if taken, does not satisfy subsection (1), the Member or Approved Person may carry out the client's instruction if the Member or Approved Person has
 - (a) informed the client of the basis for the determination that the action will not satisfy subsection (1);
 - (b) recommended to the client an alternative action that satisfies subsection (1); and
 - (c) received recorded confirmation of the client's instruction to proceed with the action despite the determination referred to in paragraph (a).



MFDA POLICY NO. 2

MINIMUM STANDARDS FOR ACCOUNT SUPERVISION

Introduction

This Policy establishes minimum industry standards for account supervision. These standards represent the minimum requirements necessary to ensure that a Member has procedures in place to properly supervise account activity. This Policy does not:

- (a) relieve Members from complying with specific MFDA By-laws, Rules and Policies and securities legislation applicable to particular trades or accounts; or
- (b) preclude Members from establishing a higher standard of supervision, and in certain situations a higher standard may be necessary to ensure proper supervision.

To ensure that a Member has met all applicable standards, Members are required to know and comply with MFDA By-laws, Rules and Policies as well as applicable securities legislation which may apply in any given circumstance. The following principles have been used to develop these minimum standards:

- (a) The term "review" in this Policy has been used to mean a preliminary screening designed to detect items for further investigation or an examination of unusual trading activity or both. It does not mean that every trade must be reviewed. The reviewer must use reasonable judgement in selecting the items for further investigation.
- (b) It has been assumed that Members have or will provide the necessary resources and qualified supervisors to meet these standards.
- (c) ~~The initial compliance with the know-your-client ("KYC") rule and the requirement to make a suitability determination in respect of investments requirements are~~ primarily the responsibility of the registered salesperson. The supervisory standards in this Policy relating to KYC and suitability determinations are intended to provide supervisors with a checklist against which to monitor the handling of these responsibilities by the registered salesperson.

Members that seek to adopt policies and procedures relating to branch and head office supervision or the allocation of supervisory activities that differ from those contained in this Policy must demonstrate that all of the principles and objectives of the minimum standards set out in this Policy have been properly satisfied. Further, any such alternative policies and procedures must adequately address the risk management issues of the Member and must be pre-approved by MFDA staff before implementation.

Supervisory staff has a duty to ensure compliance with Member policies and procedures and MFDA regulatory requirements, which includes the general duty to effectively supervise and to ensure that appropriate action is taken when a concern is identified. Such action would depend on the circumstances of each case and may include following up with the registered salesperson and/or the client. Supervisory staff must also maintain records of the issues identified, action taken and resolution achieved.

I. ESTABLISHING AND MAINTAINING PROCEDURES

Effective self-regulation begins with the Member establishing and maintaining a supervisory environment which both fosters the business objectives of the Member and maintains the self-regulatory process. To that end a Member must establish and maintain procedures which are supervised by qualified individuals. A major aspect of self-regulation is the ongoing education of staff in all areas of sales compliance.

Establishing Procedures

1. Members must appoint designated individuals who have the necessary knowledge of industry regulations and Member policies to properly perform the duties.
2. Written policies must be established to document supervision requirements.
3. Written instructions must be supplied to all supervisors and alternates to advise them on what is expected of them.
4. All policies established or amended should have senior management approval.

Maintaining Procedures

1. Evidence of supervisory reviews must be maintained. Evidence of the review, such as inquiries made, replies received, date of completion etc. must be maintained for seven years and on-site for one year.
2. An on-going review of sales compliance procedures and practices must be undertaken both at head office and at branch offices.

Delegation of Procedures

1. Tasks and procedures may be delegated to a knowledgeable and qualified individual but not responsibility.
2. The Member must advise supervisors of those specific functions which cannot be delegated, such as approval of new accounts.
3. The supervisor delegating the task must ensure that these tasks are being performed adequately and that exceptions are brought to his/her attention.

4. Those who are delegated tasks must have the qualifications and required proficiency to perform the tasks and should be advised in writing of their duties. The general expectation is that tasks be delegated only to individuals with the same proficiency as the delegating supervisor. In certain limited circumstances, it may be acceptable to delegate specialized tasks to an individual that has not satisfied the proficiency requirements provided that the individual has equivalent training, education or experience related to the function being performed. The Member must consider the responsibilities and functions to be performed in relation to the delegated tasks and make a determination as to appropriate equivalent qualifications and proficiency. The Member must be able to demonstrate to MFDA staff that the equivalency standard has been met. Tasks related to trade supervision can only be delegated to individuals that possess the proficiency of a branch manager or compliance officer.

Education

1. The Member's current policies and procedures manual must be made available to all sales and supervisory staff.
2. Introductory training and continuing education should be provided for all registered salespersons. For training and enhanced supervisory requirements for newly registered salespersons, please refer to the MFDA Policy No.1 entitled "New Registrant Training and Supervision Policy."
3. Relevant information contained in compliance-related MFDA Member Regulation Notices and Bulletins and compliance-related notices from other applicable regulatory bodies must be communicated to registered salespersons and employees. Procedures relating to the method and timing of distribution of compliance-related information must be clearly detailed in the Member's written procedures. Members should ensure that they maintain evidence of compliance with such procedures.

II. OPENING NEW ACCOUNTS

To comply with the KYC and suitability determination requirements set out in MFDA Rule 2.2, each Member must establish procedures to maintain accurate and complete information on each client. The first step towards compliance with this rule is completing proper documentation when opening new accounts. Accurate completion of the documentation when opening a new account allows both the registered salesperson and the supervisory staff to conduct the necessary reviews to ensure that recommendations made for any account are suitable ~~appropriate~~ for the client and put the client's interests first ~~in keeping with investment objectives~~. Maintaining accurate and current documentation will allow the registered salesperson and the supervisory staff to ensure that requirements under Rule 2.2 are met. ~~all recommendations made for any account are and continue to be appropriate for a client's investment objectives.~~

Documentation of Client Account Information

The information set out under paragraphs 3 and 4, below, represents a list of minimum requirements. The Member may require clients to provide any additional information that it considers relevant in order to comply with Rule 2.2.1.

1. A New Account Application Form (“NAAF”) must be completed for each new account.
2. A complete set of documentation relating to each client’s account must be maintained by the Member. Registered salespersons must have access to information and documentation relating to the client’s account as required to service the account. In the case of a Level 1 Introducing Dealer and corresponding Carrying Dealer, both Members must maintain a copy of each client's NAAF.
3. For each account of a client that is a natural person, the Member must ~~obtain information sufficient to allow for the operation of the account and sufficient to determine the essential facts relative to each client, which would include,~~ at a minimum, the following information:
 - (a) name;
 - (b) type of account;
 - (c) residential address and contact information;
 - (d) date of birth;
 - (e) employment information;
 - (f) number of dependants;
 - (g) other persons with trading authorization on the account;
 - (h) other persons with a financial interest in the account;
 - (i) investment knowledge;
 - (j) ~~risk profile~~tolerance;
 - (k) investment needs and objectives;
 - (l) investment time horizon;
 - (m) financial circumstances, including income and net worth;
 - (n) ~~net worth~~;
 - ~~(n)~~ for non-registered leveraged accounts, details of the net worth calculation, specifying liquid assets plus any other additional assets less total liabilities;
 - ~~(o)~~ information required by other laws and regulations applicable to the Member’s business as amended from time to time including information required for relevant tax reporting; information required for compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* and any authorization necessary to provide information to the MFDA under applicable privacy legislation.

In the case of accounts jointly owned by two or more persons, information required under paragraph 3, subsections (a), (c), (d), (e), (f), and (i) must be collected with respect to each

owner. Income and net worth may be collected for each owner or on a combined basis as long as it is clear which method has been used.

~~The preceding provides a list of minimum requirements. The Member may require clients to provide any additional information that it considers relevant.~~

4. For each account of a client that is a corporation, trust or other type of legal entity, the Member must obtain information sufficient to allow for the operation of the account and sufficient to determine the essential facts relative to the client, which would include, at a minimum, the following information:
 - (a) legal name;
 - (b) head office address and contact information;
 - (c) type of legal entity (i.e. corporation, trust, etc.);
 - (d) form and details regarding the organization of the legal entity (i.e. articles of incorporation, trust deed, or other constating documents);
 - (e) nature of business;
 - (f) persons authorized to provide instructions on the account and details of any restrictions on their authority;
 - (g) investment knowledge of the persons to provide instructions on the account;
 - (h) risk ~~profile~~tolerance;
 - (i) investment needs and objectives;
 - (j) investment time horizon;
 - ~~(j)(k) financial circumstances, including income and net worth~~time horizon;
 - ~~(k) — income;~~
 - (l) ~~net worth~~;
 - (m) information required by other laws and regulations applicable to the Member's business as amended from time to time including information required for relevant tax reporting; information required for compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* and any authorization necessary to provide information to the MFDA under applicable privacy legislation.

~~The preceding provides a list of minimum requirements. The Member may require clients to provide any additional information that it considers relevant.~~

5. For supervisory purposes, the following account types must be readily identifiable: registered accounts; leveraged accounts; and accounts where the client is a Related Person, as defined by the Income Tax Act (Canada), of the registered salesperson and the registered salesperson has full or partial control or authority over the financial affairs of the client.
6. If the NAAF does not include KYC information, this must be documented on a separate KYC form(s). Such form(s) must be signed by the client and dated. A copy of the

completed NAAF and KYC form, if separate from the NAAF, must be provided to the client.

7. The Member must have internal controls and policies and procedures in place with respect to the entry of KYC information on their back office systems. Such controls should provide an effective means to detect and prevent inconsistencies between the KYC information used for account supervision with that provided by the client.
8. Except as noted in the following paragraph, NAAFs must be prepared and completed for all new clients prior to the opening of new client accounts. The new account or KYC information must be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3 no later than one business day after the initial transaction date. Records of all such approvals must be maintained in accordance with Rule 5.
9. Notwithstanding the preceding paragraph, NAAFs for clients of a registered salesperson transferring to the Member must be prepared and completed within a reasonable time (but in any event no later than the time of the first trade). The new accounts or KYC information for clients of the transferring salesperson must be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3 no later than one business day after the date that the NAAF is completed. Records of all such approvals must be maintained in accordance with Rule 5.
10. In the event that a NAAF is not completed prior to or within a reasonable time after opening an account, as required by this Policy, the Member must have policies and procedures to restrict transactions on such accounts to liquidating trades until a fully completed NAAF is received.

Changes to KYC Information

1. The registered salesperson or Member must update the KYC information whenever they become aware of a material change in client information as defined in Rule 2.2.4(a), and must review KYC information with the client at a frequency of no less than once every 36 months.
2. On account opening, the Member should advise the client to promptly notify the Member of any material changes in the client information, as defined in Rule 2.2.4(a), previously provided to the Member and provide examples of the types of information that should be regularly updated.
3. In accordance with Rule 2.2.4(e), Members must also, on an annual basis, request in writing that clients notify them if there has been any material change in client information, as defined in Rule 2.2.4(a), previously provided, or if the client's circumstances have materially changed.
- ~~3.4.~~ Access to amend KYC information must be controlled and instructions to make any such amendments must be properly documented.

- 4.5. A client signature, which may include an electronic signature, or other internal controls sufficient to authenticate the client's identity and verify the client's authorization must be used to evidence any change in client name, client address or client banking information.
- 5.6. Material changes to client information, as defined in Rule 2.2.4(a), may be evidenced by a client signature, which may include an electronic signature or, alternatively, such changes may be evidenced by maintaining notes in the client file detailing the client's instructions to change the information and verified by providing written confirmation to the client with details of the instructions and providing an opportunity for the client to make corrections to any changes that have been made.
- 6.7. All material changes in client information, as defined in Rule 2.2.4(a), must be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3 no later than one business day after the date on which notice of the change in information is received from the client. When approving material changes, branch managers should be reviewing the previous KYC information to assess whether the change appears reasonable. Branch managers should be aware of situations where material changes may have been made to justify ~~unsuitable~~ trades or leveraging that would not be suitable, or put the client's interests first, as required under Rule 2.2.6(1) (hereafter referred to as "unsuitable"). For example, branch managers should investigate further material changes that accompany trades in higher risk investments or leveraging or changes made within a short period of time (for example 6 months). Records of all such approvals must be maintained in accordance with Rule 5.
- 7.8. Where any material changes have been made to the information contained in the NAAF or KYC form(s), the client must promptly be provided with a document or documents specifying the current risk ~~profile~~ tolerance, investment needs and objectives, investment time horizon, income and net worth that applies to the client's account.
- 8.9. The last date upon which the KYC information has been updated or confirmed by the client must be indicated in the client's file and on the Member's back office system.

Pending/Supporting Documents

1. Members must have procedures in place to ensure supporting documents are received within a reasonable period of time of opening the account.
2. Supporting documentation that is not received or is incomplete must be noted, filed in a pending documentation file and reviewed on a periodic basis.
3. Failure to obtain required documentation within 25 days of the opening of the account must result in positive actions being taken.

Client Communications

1. All hold mail must be authorized by the client in writing and be controlled, reviewed on a regular basis and maintained by the responsible supervisor. Hold mail should never be permitted to occur over a prolonged period of time (i.e. in excess of 6 months).
2. Returned mail is to be promptly investigated and controlled.

III. ASSESSING SUITABILITY OF INVESTMENTS AND BORROWING TO INVEST (“LEVERAGING”) STRATEGIES

General

1. Members must establish and maintain policies and procedures with respect to their ~~suitability obligations, including the obligation to make a suitability determination which satisfies the criteria set out under Rule 2.2.6(1)(a), and, in accordance with requirements under Rule 2.2.6(1)(b), puts the client’s interest first.~~ The policies and procedures must include guidance and criteria for registered salespersons to ensure that recommendations made and orders accepted (with the exception of unsolicited orders accepted pursuant to Rule ~~2.2.6(2.1)2.2.1(d)~~) are suitable for the client and puts the client’s interest first. The policies and procedures must also include criteria for supervisory staff at the branch and head office to ~~review the suitability~~ make a suitability determination considering ~~of all~~ the investments in each client’s account and the client’s use of borrowing to invest (“leverage”).
2. The criteria for selecting trades and leverage strategies for review, the inquiry and resolution process, supervisory documentation requirements and the escalation and disciplinary process must be documented and clearly communicated to all registered salespersons and all relevant employees. Registered salespersons must be advised of the criteria used in ~~assessing suitability~~ making a suitability determination, actions the Member will take when a trade or leverage strategy has been flagged for review and appropriate options for resolution.

Leverage Suitability

1. The minimum criteria listed below are intended to prompt a supervisory review and investigation by the Member of a leverage strategy. While Members must consider all the criteria ~~noted below in assessing the suitability of the leverage strategy,~~ the triggering of one or more of the criteria may not necessarily mean that the leverage strategy is unsuitable. The Member’s supervisory review and investigation -must be able to demonstrate that use of the leverage strategy was suitable for the client, and put the client’s interests first.

~~The review and investigation of leverage suitability must be conducted in a fair and objective manner having regard only to the best interests of the client in accordance with Rule 2.1.4 and the general standard of conduct required by Rule 2.1.1. Where the leverage strategy is approved, the analysis and rationale must be documented.~~

Minimum criteria that require supervisory review and investigation include the following:

- (a) investment knowledge of low or poor (or similar categories);
 - (b) risk profile ~~risk tolerance~~ of less than medium (or similar categories);
 - (c) age of 60 and above;
 - (d) investment time horizon of less than 5 years;
 - (e) total leverage amount that exceeds 30% of the client's total net worth; and
 - (f) total debt and lease payments that exceed 35% of the client's gross income, not including income generated from leveraged investments. Total debt payments would include all loans of any kind whether or not obtained for purpose of investment. Total lease payments would include all significant ongoing lease and rental payments such as automobile leases and rental payments on residential property.
2. With respect to a recommendation for a client to use a leveraging strategy, Members and registered salespersons may not obtain a waiver from the client to exempt the Member and the registered salesperson from their obligations to ensure that such a recommendation is suitable for the client, and puts the client's interest first ~~the suitability of such a recommendation.~~
3. The Member must review and maintain documents to facilitate proper supervision. This would include:
- (a) Lending documents and details of lending arrangements – The Member or registered salesperson must either maintain copies of the lending documents or make sufficient inquiries to obtain details of the loan, including interest rate, terms for repayment, and the outstanding loan value. Where the Member or registered salesperson assists the client in completing the loan application, the Member must maintain copies of lending documents in the file, including copies of the loan application.

Where the client arranges their own financing, it may be difficult in some cases for the Member or registered salesperson to obtain details of the lending arrangement from the client. Where a client is unwilling to provide details of the lending arrangement, the Member and registered salesperson must advise the client that they cannot ~~assess the suitability~~ make a suitability determination ~~of the leverage strategy~~ without additional information and maintain evidence of such advice.

- (b) NAAF and updates to KYC information – Supervisory staff must compare the client's KYC information with all other information received in respect of the loan and follow up on any material inconsistencies, which may require obtaining additional supporting documentation from the client.
- (c) Numerical details in support of income and net worth calculations required by sections 1(e) and 1(f).

- (d) Trade documents, notes supporting client instructions or authorizations and notes supporting the rationale for recommending a leverage strategy to the client.

Registered Salespersons

1. All recommendations made and orders accepted by registered salespersons (with the exception of unsolicited orders accepted pursuant to Rule ~~2.2.6(2.1)2.2.1(d)~~) must be suitable and put the client's interest first in accordance with Rule 2.2.6(1) ~~+(e)~~. Where the registered salesperson recommends a leverage strategy to a client or where the registered salesperson is aware that a transaction involves the use of borrowed funds, the registered salesperson must ensure that the client's account is identified as "leveraged" on the Member's system in accordance with the Member's policies and procedures.
2. Registered salespersons must ~~assess the suitability~~ make a suitability determination considering all of investments in ~~each~~ client account whenever:

- the Member or registered salesperson becomes aware of a change in an investment in the client's account that may result in the investment or account not being suitable or putting the client's interest first;
- the client transfers to the Member or transfers assets into an account at the Member;
- the Member or registered salesperson becomes aware of a material change in the client's KYC information; or
- the Member or registered salesperson has reviewed the client's KYC information in accordance with the review requirements set out under Part II (Opening New Accounts), Changes to KYC Information, paragraph 1; or
- the client account has been re-assigned to the registered salesperson from another registrant at the Member.

Where there is a transfer of assets into an account at the Member or where the client account is re-assigned to the registered salesperson from another registrant at the Member, the suitability ~~assessment~~ determination must be performed within a reasonable time, but in any event no later than the time of the next trade. ~~The determination of "Reasonable time"~~ in a particular instance will depend on the circumstances surrounding the event that gives rise to the requirement to perform the suitability ~~assessment~~ determination. For example, with respect to client transfers, the volume of accounts to be reviewed may be a relevant factor in determining reasonable time.

Where the Member or registered salesperson becomes aware of a material change in the client's KYC information, the suitability ~~assessment~~ determination must be performed no later than one business day after the date on which the notice of change in information is received from the client.

3. Registered salespersons must also ~~assess the suitability~~ make a suitability determination with respect to of a leverage strategy having regard to the client's investment knowledge,

risk ~~profile~~^{tolerance}, age, investment time horizon, income, net worth and investment needs and objectives whenever:

- ~~—~~
- ~~—~~ the Member or registered salesperson becomes aware of a change in an investment in the client's account, which was purchased using borrowed funds, that may result in the investment or account not being suitable or putting the client's interest first;
- the client transfers assets purchased using borrowed funds into an account at the Member;
- ~~—~~ the Member or registered salesperson becomes aware of a material change in the client's KYC information; ~~or~~
- ~~—~~ the Member or registered salesperson has reviewed the client's KYC information in accordance with the review requirements set out under Part II (Opening New Accounts), Changes to KYC Information, paragraph 1; or
- the client account has been re-assigned to the registered salesperson from another registrant at the Member.

Where there is a transfer of assets purchased using borrowed funds into an account at the Member or where the client account is re-assigned to the registered salesperson from another registrant at the Member, the suitability ~~assessment~~^{determination} must be performed in a timely manner as soon as possible after the transfer in accordance with the circumstances, but in any event no later than the time of the next trade.

Where the Member or registered salesperson becomes aware of a material change in the client's KYC information, the suitability determination must be performed no later than one business day after the date on which the notice of change in information is received from the client.

4. Should a registered salesperson identify unsuitable investments in a client's account or an unsuitable leverage strategy~~_,~~ the registered salesperson must advise the client and take appropriate steps to determine if there has been any change to client circumstances that would warrant altering the KYC information. Where there has not been a change in client circumstances, it is inappropriate to alter the KYC information in order to match the investments in the client's account or the leverage strategy. If there is no change to the KYC information, or if investments in the account or the leverage strategy continue to be unsuitable after the KYC information has been amended, the registered salesperson should discuss any inconsistencies with the client and provide recommendations that would satisfy requirements under Rule 2.2.6(1)(a) and (b)~~as to rebalancing investments in the account.~~ Transactions in the account must only be made in accordance with client instructions and any recommendations made ~~with respect to the rebalancing of the account~~ must be properly recorded.

~~Where an existing leverage strategy is determined to be unsuitable, the client must be advised of his/her options.~~

5. Registered salespersons must maintain evidence of completion of all suitability ~~assessments~~ determinations performed and any follow up action taken, ~~with respect to such assessments.~~

IV. BRANCH OFFICE SUPERVISION

1. An on-site branch manager is in the best position to know the registered salespersons in the office, know or meet many of the clients, understand local conditions and needs, facilitate business through the timely approval of new accounts and respond immediately to questions or problems. In accordance with Rule 2.5.5(c), a Member may designate a branch manager for a branch office who is not normally on-site. In determining whether an on-site branch manager is necessary at a branch, a number of factors, including the following, should be considered:
 - the specific activities at the branch;
 - complaint history;
 - number of Approved Persons at the branch;
 - experience of Approved Persons at the branch;
 - trade volume/commissions earned;
 - results of previous Policy No. 5 branch reviews;
 - MFDA compliance examination findings;
 - daily trade supervision issues;
 - supervisory tools used at the branch (manual or automated);
 - the nature of outside activities carried on at the branch; and
 - the availability of a branch manager or branch managers in nearby locations.
2. Where a branch or sub-branch does not have an on-site branch manager, the Member must assign an off-site branch manager to the location. The Member's policies and procedures must include provision for periodic visits to the branch and sub-branch by the branch manager, or other Approved Persons at the Member who are delegated supervisory responsibility, as necessary to ensure that business is being conducted properly at the location. Members must maintain records of the visits as well as issues identified and follow-up action taken.
3. Members must maintain an internal record of branch managers and the branches and sub-branches they are responsible for supervising.

Daily Reviews

1. All new account applications and updates to client information must be reviewed and approved in accordance with this Policy.

2. The branch manager (or alternate) must review the previous day's trading for unsuitable trades, leveraging and any other unusual trading activity using any convenient means. This review must include, at a minimum, all:
 - initial trades;
 - trades in exempt securities (excluding guaranteed investment certificates);
 - leveraging for accounts other than registered retirement savings plans or registered education savings plans;
 - trades in accounts where the client is a Related Person, as defined by the Income Tax Act (Canada), of the registered salesperson and the registered salesperson has full or partial control or authority over the financial affairs of the client;
 - redemptions over \$10,000;
 - trades over \$2,500 in moderate-high or high risk investments;
 - trades over \$5,000 in moderate or medium risk investments; and
 - trades over \$10,000 in all other investments.

For the purposes of this section, “trades” does not include redemptions except where specifically referenced.

3. When reviewing redemptions, branch managers should ~~seek to identify and assess:~~
 - make a the suitability determination in respect of the redemption, having - with regard to the composition of the remaining portfolio;
 - assess the impact and appropriateness of any redemption charges;
 - consider possible outside activity where money may be leaving the Member for reinvestment into other potentially inappropriate or unauthorized investments; and
 - consider potential churning, including situations where redemption proceeds are being held on a temporary basis pending reinvestment.
4. The branch manager (or alternate) is responsible for following up on unusual trades identified by head office.

Other Reviews

1. The branch manager must ~~review the suitability~~ make a suitability determination considering of investments in each client account and the ~~suitability of the client's~~ use of leverage, if any, Where the Member becomes aware of a material change in the client's KYC information that results in a significant decrease in the client's risk profile tolerance, investment time horizon, income or net worth or more conservative investment needs and objectives. The suitability determination assessment must be performed no later than one business day after the date on which notice of the change in information is received from the client.
2. In addition to transactional activity, branch managers must also keep themselves informed as to other client-related compliance matters such as complaints.

V. HEAD OFFICE SUPERVISION

A two-tier structure is required to adequately supervise client account activity. While the head office or regional area level of supervision by its nature cannot be in the same depth as branch level supervision, it should cover the same elements. Head office review should be focused on unusual activity or reviews that cannot be carried out at the branch level. Head office reviews must include procedures to effectively detect unsuitable investments and excessive trading in client accounts.

Daily Reviews

1. In addition to the trading review criteria for branch managers, head office must conduct daily reviews of account activity which must include, at a minimum, all:
 - redemptions over \$50,000;
 - trades over \$5,000 in exempt securities (excluding guaranteed investment certificates), moderate-high or high risk investments, or leveraging for accounts other than registered retirement savings plans or registered education savings plans;
 - trades over \$10,000 in moderate or medium risk mutual funds; and
 - trades over \$50,000 in all other investments (excluding money market funds).

For the purposes of this section, “trades” does not include redemptions except where specifically referenced.

2. There must be closer supervision of trading by registered salespersons who have had a history of questionable conduct. Questionable conduct may include trading activity that frequently raises questions in account reviews, frequent or serious complaints, regulatory investigations or failure to take remedial action on account problems identified.
3. Daily reviews should be completed within one business day unless precluded by unusual circumstances.
4. Daily reviews should be conducted of client accounts of producing branch managers.

Other Reviews

1. ~~The Member must, on a sample basis, make a suitability determination~~ ~~review the suitability of investments in accounts,~~ where clients have transferred assets into an account. The Member must have policies and procedures regarding sample size and selection, which should be based on the risk level associated with the account, focusing on accounts that hold higher risk investments, exempt securities or products not sold by the Member, accounts where the client is a Related Person, as defined by the Income Tax Act (Canada), of the registered salesperson and the registered salesperson has full or partial control or authority over the financial affairs of the client and accounts employing a leverage strategy other than registered retirement savings plans and registered education savings plans. The Member’s reviews must be completed within a reasonable time, but in any event no later

than the time of the next trade.

2. Members must also ~~review the suitability~~make a suitability determination~~of the use of leverage~~ in all cases where the client transfers assets purchased using borrowed funds into an account at the Member. Given the high risk nature of leveraging strategies, the Member's reviews must be completed in a timely manner as soon as possible after the transfer in accordance with the circumstances, but in any event no later than the time of the next trade.

VI. IDENTIFICATION OF TRENDS IN TRADING ACTIVITY

1. Members must establish policies and procedures to identify trends or patterns that may be of concern including:
 - excessive trading or switching between funds indicating possible unauthorized trading, unsuitable trades, ~~lack of suitability~~ or possible issues of churning (for example, redemptions made within 3 months of a purchase, DSC purchases made within 3 months of a DSC redemption or accounts where there are more than 5 trades per month);
 - excessive switches between no load funds and deferred sales charge or front load funds;
 - excessive switches between deferred sales charge funds and front load funds; and
 - excessive switches where a switch fee is charged.
2. Head office supervisory review procedures must include, at a minimum, the following criteria:
 - a review of all accounts generating commissions greater than \$1,500 within the month;
 - a quarterly review of reports on assets under administration (“AUA”) comparing current AUA to AUA at the same time the prior year;
 - a quarterly review of commission reports for the previous 12 month period comparing commissions received in the current year to commissions received for the same period in the prior year.

Significant increases in commissions or AUA beyond those caused by market fluctuations may indicate issues with churning or leveraging strategies. Significant decreases may indicate potential inappropriate outside activity.

3. Reviews should be completed within 30 days of the last day of the period being reviewed unless precluded by unusual circumstances.

**CONFIRMATION OF COMPLETION OF NEW REGISTRANT
TRAINING AND SUPERVISION PROGRAM**

I _____ hereby certify that I have supervised _____
(branch manager) (salesperson's name)
from the period ____/____/____ to ____/____/____ in accordance with the requirements in
(dd /mm/yy) (dd /mm/yy)

MFDA Rule 1.2.4 and the MFDA New Registrant Training and Supervision Policy and confirm that the following information is true and correct to the best of my knowledge:

1. The salesperson designated above has completed the firm's training program within 90 days of being registered with the applicable provincial securities commission.
2. I (or an alternate) have approved all new accounts opened by the above salesperson prior to a first trade in such accounts within his/her first 90 days of registration.
3. I (or an alternate) have reviewed and approved all trading activity by the salesperson within his/her first 90 days of registration.
4. I have reviewed all leveraged trades executed through the above salesperson where leveraging was recommended by the above salesperson prior to completion of the transaction.
5. For each month for the 90 day period following the salesperson's first 90 days of registration I have reviewed the greater of (i) 5 of the salesperson's client files and (ii) 10 percent of the salesperson's client files; or if the number of the salesperson's client files is less than 5, I have reviewed the actual number of such client files.
6. On a daily basis for the 90 day period following the salesperson's first 90 days of registration I have reviewed the greater of (i) 5 of the salesperson's trades and (ii) 10 percent of the salesperson's trades; or if the number of the salesperson's trades is less than 5, I have reviewed the actual number of the salesperson's trades.
7. Any client complaints concerning the above salesperson have been reviewed and discussed with the above salesperson and written documentation has been maintained in the file for any compliance issues that required action.
IF ITEM 7 IS APPLICABLE, COMPLETE ITEM 8 BY CROSSING OUT THE PARAGRAPH THAT DOES NOT APPLY:
8. (i) As a result of the complaints received, the above salesperson's supervisory period has been extended by ____months; or
(ii) The complaints were resolved to my satisfaction and it was not necessary to extend the above salesperson's supervisory period.

Date

Signature of Branch Manager

Name of Branch Manager

Name of Member



Appendix “B”

Contact: Paige Ward
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MSN-0025
February 24, 2004

MFDA STAFF NOTICE

SUITABILITY OBLIGATIONS FOR UNSOLICITED ORDERS

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 their Approved Persons in the event that they receive an unsolicited order that they determine is unsuitable for the client.

Obligation to Make Perform a Suitability Determination Review

MFDA Rule 2.2.6(1)~~4~~ requires Members and their Approved Persons to engage in a suitability determination, pursuant to which any investment action taken for a client must: (i) be suitable, based on the factors set out under the Rule; and (ii) put the client's interests first.

~~Members and Approved Persons are reminded that the use due diligence to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and in keeping with the client's investment objectives. The obligation to make a suitability determination applies to all proposed transactions trades, even in circumstances where it is the client, not the Member or Approved Person, who proposes that a transaction be made (an “unsolicited order”) whether or not a recommendation is made.~~

Unsuitable Orders

Under Rule 2.2.6(2.1), where a Member or Approved Person receives an instruction from a client to take an action that, if taken, would not meet the requirements under Rule 2.2.6(1), the Member or Approved Person may carry out the client's instructions, provided that the Member or Approved Person has:

- (i) informed the client of the basis for the determination that the action will not satisfy requirements under Rule 2.2.6(1);
- (ii) recommended to the client an alternative action that satisfies requirements under Rule 2.2.6(1); and

(iii) received recorded confirmation of the client's instruction to proceed with the action despite the determination referred to in (i).

~~Recent amendments to MFDA Rule 2.2.1 clarify the obligations of Members and their Approved Persons in the event that they receive an unsolicited order that they determine is unsuitable for the client. Rule 2.2.1(d) requires that where a transaction proposed by a client is not suitable for a client and in keeping with the client's investment objectives, the Member must so advise the client before execution thereof.~~

Members must set out procedures for dealing with unsolicited orders in their Policy and Procedures Manual.

~~Members and their Approved Persons are required to make clients aware that the proposed transaction is not suitable based on the information provided on the New Account Application Form ("NAAF") or "Know Your Client" ("KYC") form and provide appropriate cautionary advice. If the client's information has changed, the NAAF or KYC form must be updated to reflect this. If the client's KYC information has not changed and the proposed trade is unsuitable in light of the information on the NAAF or KYC forms, the Member should adopt appropriate safeguarding procedures where the client insists on proceeding with the trade.~~

Compliance Procedures for Unsuitable Orders

MFDA Rule 5.1(b) requires Members to keep an adequate record of each order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Where an unsolicited client order is determined to not meet requirements under Rule 2.2.6(1)~~be unsuitable for the client~~, the record of the order pursuant to Rule 5.1(b) must include, at a minimum, evidence that:

- (i) the transaction was unsolicited;
- (ii) a suitability determination review~~was made~~performed; and
- (iii) the client was advised that the proposed transaction does not meet requirements under Rule 2.2.6(1);
- (iv) an alternative action, which would meet requirements under Rule 2.2.6(1), was recommended to the client; and
- (iii)(v) the Member received recorded confirmation of the client's instruction to proceed with the action after being advised in accordance with (iii).~~was unsuitable.~~

Where the Approved Person determines is aware that an the unsolicited order will not meet the requirements under Rule 2.2.6(1) is unsuitable before the trade is placed, it is consistent with the policy objective of the branch manager trade review requirement in Policy No. 2 for the Approved Person to clear the order with the branch manager/compliance officer before proceeding with the trade (rather than waiting for the transaction to be flagged or discovered in the next day's review).

A pattern of unsuitable trades that are reported as having been directed by a client may be an indication that the Member does not comply with the obligation to make a suitability determination. The Member is expected to establish, maintain and apply policies, procedures and controls to identify and respond to any pattern of unsuitable trades.

~~Members must set out procedures for dealing with unsuitable, unsolicited orders in their Policy and Procedures Manual.~~

No Obligation to Accept Unsuitable Orders

A Member or Approved Person has no obligation to accept a client order or instruction that does not, in the Member or Approved Person's view, meet the criteria for a suitability determination. However, marking the order as unsolicited is not sufficient. The Member or Approved Person must take the measures set out in Rule 2.2.6 (2.1) and advise the client in a timely manner against proceeding.

Should the client choose to keep an investment that does not meet or no longer meets the criteria for a suitability determination, it may be appropriate to recommend changes to other investments held by the client at the firm in order to maintain the suitability of the overall account. Any advice given should be documented if the client declines to follow the Member or Approved Person's recommendations.

~~Members are not obligated to accept a purchase order from a client that is determined by the Member to be unsuitable. Whether or not a Member wishes to refuse such a trade is an internal policy decision of the Member.~~

DM#716496v2



Contact: Paige Ward
General Counsel and Vice-President, Policy
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MSN-0047
October 3, 2005

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.

~~be aware of the possibility of conflicts of interest arising in connection with business conducted by them for clients. Any conflict or potential conflict of interest that arises must be immediately disclosed in writing to the client prior to the Member proceeding with the proposed transaction giving rise to the conflict or potential conflict. Any such conflicts or potential conflicts of interest must be addressed by the exercise of responsible business judgment influenced only by the best interests of the client. Responsible business judgment requires the use of reasonable care and diligence as necessary in the circumstances to address the conflict or potential conflict in the best interests of the client.~~

The appropriate course of action will depend on the nature of the conflict of interest and the client's circumstances. ~~In situations involving a material potentially significant conflict of interest, or a reasonably foreseeable conflict of interest, the exercise of responsible business judgment 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 significant and direct conflict that, in almost all cases, cannot will be addressed impossible to resolve in the best interest favour 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).~~

~~While such activity is not explicitly prohibited under MFDA Rules, MFDA staff are unaware of any circumstances where Members or Approved Persons proposing to enter into any such arrangements would be able to demonstrate that the conflict has been properly dealt with.~~

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.~~

~~Lending or extending credit to clients or permitting the purchase of securities by clients on margin is generally prohibited under MFDA Rule 3.2.1. Level 2, 3 or 4 Members are permitted to advance mutual fund redemption proceeds to clients if the conditions of Rule 3.2.3 are satisfied. However, Approved Persons are prohibited in any case from directly or indirectly entering into arrangements that involve lending to clients.~~

c) Private Investment Schemes with Clients

~~MFDA staff is have become aware of situations where Approved Persons have become involved with clients in various private investment schemes that raise material significant and direct conflicts of interest. Such arrangements should be prohibited. where the exercise of responsible business judgment would require prohibition of the arrangements. Examples These 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 MR-0040MSN-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 3, no Approved Person may enter into any settlement agreement with a client without the prior written consent of the Member.

~~As an exception to the above requirements, Approved Persons may provide monetary or non-monetary benefits of a nominal nature to the client without notice to the Member, provided this is done in accordance with procedures established by the Member.~~

~~All monetary and non-monetary benefits provided directly or indirectly to or from clients must flow through the Member. The Member must be notified of any such arrangements, 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 3, no Approved Person may enter into any settlement agreement with a client without the prior written consent of the Member.~~

~~In general, monetary and non-monetary benefits provided to or from clients that are of nominal value do not present concerns regarding conflicts of interest. As an exception to the above requirements, Approved Persons may provide monetary or non-monetary benefits of a nominal nature to the client without notice to the Member, provided this is done in accordance with procedures established by 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.

~~These would include situations where it is proposed that:~~

- ~~• an Approved Person be involved with any type of credit arrangement with clients;~~
- ~~• an Approved Person enter into joint account or other arrangement that is equivalent to a joint investment with a client;~~
- ~~• any form of “client appreciation” arrangement be entered into where the monetary or non-monetary benefit is more than nominal value.~~

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.

~~also identify guidelines or criteria for determining which activities of the Member or the Approved Person may or may not be properly carried on under the Rules.~~

~~Written disclosure to clients regarding the arrangements must be tailored to the particular situation, so that the client understands the nature and extent of all relevant conflicts of interest.~~

~~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.~~

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 considered a nominal monetary or non-monetary benefit and provide some form of definition that will allow for a clear understanding as to where the relevant nominal value thresholds lies.

We note that, in the context of cooperative marketing practices, non-monetary benefits of nominal value are permitted under section 5.6 of 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.

Existing Arrangements

Members must, if they have not done so to date, make reasonable inquiry to identify any situations that could be in contravention of the above requirements, and deal with those situations appropriately.

DM#729315v2



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MSN-0075
December 3, 2010

MFDA STAFF NOTICE

RELATIONSHIP DISCLOSURE

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 with respect to the requirement to provide relationship disclosure information pursuant to Rule 2.2.75. The Rule requires that, on account opening, Members provide all clients with core information about the nature of their relationship with the Member and its Approved Persons. The objective of the relationship disclosure requirement is to ensure that clients understand their obligations, the obligations of their dealer and know what to expect with respect to service levels and costs.

Application

~~Members are required to provide relationship disclosure to new as well as existing clients. New clients will be provided with the relationship disclosure on account opening. A transition period until September 28, 2011 has been provided to allow Members to implement the relationship disclosure requirements for new clients and a transition period of three years (expiring on December 3, 2013) has been provided to allow Members to provide the relationship disclosure to existing clients.~~

Form of Relationship Disclosure

Rule 2.2.75 prescribes the core elements of disclosure that must be provided to clients at account opening. The format of the relationship disclosure is not prescribed, but it must be provided to the client in writing and in plain language. The disclosure may be a stand-alone document or incorporated into other documents provided to the client at account opening.

Members are given the flexibility to provide customized relationship disclosure to each client or provide appropriate standardized relationship disclosure to all clients or separate classes of clients.

Members may provide the relationship disclosure to clients through electronic means provided requirements under securities legislation are satisfied. Members may refer to National Instrument 11-201 *Delivery of Documents by Electronic Means* and MFDA Member Regulation Notice MR-0015 *Electronic Delivery of Documents* for more information.

Content of Relationship Disclosure

Rule 2.2.75 requires that, for each new account opened, the Member shall provide written disclosure to the client:

- (a) describing the nature of the advisory relationship;
- (b) describing the products and services offered by the Member;
- ~~(b)~~(c) that provides a general description of the products and services the Member will offer to the client, including: (i) a description of the restrictions on the client's ability to liquidate or resell a security; and (ii) a statement of the investment fund management expense fees or other ongoing fees the client may incur in connection with a security or service the Member provides;
- ~~(b)~~(d) that provides a general description of any limits on the products and services the Member will offer to the client, including whether the Member will primarily or exclusively offer proprietary products to the client, and whether there will be other limits on the availability of products or services;
- ~~(e)~~(e) describing the Member's procedures regarding the receipt and handling of client cash and cheques. In the case of a Level 2 dealer, the disclosure must include an explanation that all client cheques shall be payable to the issuer or carrying dealer, as applicable;
- ~~(e)~~(f) stating that the Member must determine that any investment action it takes, recommends or decides on, for the client is suitable and puts the client's interest first;
- ~~(d)~~describing the Member's obligation to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and advising when the Member will assess the suitability of the investments in the client's account;
- ~~(e)~~(g) defining the various terms with respect to the Know-Your-Client ("KYC") information collected by the Member and describing how this information will be used in assessing investments in the account;
- ~~(f)~~(h) describing the content and frequency of reporting for the account; ~~and~~
- ~~(g)~~(i) that provides a general description of any benefits received, or expected to be received, by the Member or Approved Person from a person or company other than the client in connection with the client's purchase or ownership of an investment through the Member or Approved Person;
- ~~(g)~~(j) disclosure of the operating charges that the client might be required to pay related to the client's account;
- ~~(g)~~(k) describing the type of transaction charges, as defined under Rule 5.3(1), that the client might be required to pay;
- ~~(g)~~
- ~~(g)~~(l) that provides a general explanation of the potential impact on a client's investment returns from investment fund management expense fees, other ongoing fees,

- operating charges, or transaction charges, including their compounding effect over time; and
- ~~(g)(m) including a general explanation of how investment performance benchmarks might be used to assess the performance of a client's investments and any options for benchmark information that might be available to clients by the Member.~~
- ~~(g)describing the nature of the compensation that may be paid to the Member and referring the client to other sources for more specific information.~~

The following sections discuss the expectations of MFDA staff with respect to the content of the relationship disclosure document prescribed by Rule 2.2.5:

- Nature of the Advisory Relationship

The relationship disclosure must include a brief description of the nature of the advisory relationship and how it operates. For example, this may include a statement that the client is responsible for making investment decisions but can rely on the advice given by the Approved Person, and that the Approved Person is responsible for the advice and ensuring that it is suitable based on the client's investment needs and objectives.

Disclosure under this section should include basic information about the type of account (e.g. if commissions will be payable, whether the account is fee-based, and whether there are any limits based on the type of account). Examples of relevant information also include whether there is a minimum account size or whether there are limits on what products or services are made available for accounts of that type.

- Nature of the Products and Services Offered

~~The purpose of this section is to clarify the nature of the activities for which the Member is responsible. A description of the nature of the products and services offered by the Member must be provided. Members may provide a generic description of the type or class of products sold (e.g. mutual funds, guaranteed investment certificates, and principal protected notes, exempt market securities).~~

Members must provide a general description of any limits on the selection of the products and services the Member will offer to the client, including whether the Member will primarily or exclusively provide proprietary products to the client; or whether there are other restrictions on the selection of products or services.

Disclosure should briefly describe each category of registration under securities legislation in which the Member is licensed (e.g. exempt market dealer, mutual fund dealer), and the investment products in which the Member may transact (i.e. is permitted to / not prohibited from transacting in) as a result of such license(s).

A Member may also be restricted by terms and conditions placed on its registration, as well as by business decisions to limit what it offers to clients based on account type or other considerations.

The products or services that the Member offers to a client might also be restricted as a result of regulatory or business restrictions on an Approved Person assigned to their account.

Disclosure must include any restrictions on a client's ability to liquidate or resell an investment product (e.g. as is the case with certain proprietary products, exempt securities, or securities of a hedge fund).

Where the Member sells investment products pursuant to an exclusive distribution arrangement that restricts clients from in-kind transfers of assets to another dealer (i.e. where client investments would have to be liquidated in the event of such a transfer), this must be explained to the client and noted in relationship disclosure information provided by the Member to clients. Where Members ~~only~~ sell proprietary products or mutual funds of a related issuer, this must ~~should~~ also be disclosed.

A Member's duty to deal with the client fairly, honestly and in good faith, and its obligation to make suitability determinations that put the client's interests first, require the Member to tell a client if it does not have products or services that are suitable for them. This determination may depend on the investment goals designated for the client's account. For example, it may make a difference if the account is the primary retirement savings vehicle for a retail investor, or is a secondary account set up by an accredited investor for speculating in exempt market products.

- Procedures Regarding Handling of Cash and Cheques

Disclosure of the Member's procedures regarding the receipt and handling of client cash and cheques must be provided to the client. This disclosure requirement is intended to assist clients in understanding which parties are responsible for handling their cash and to whom they should be making cheques payable. In the case of a Level 2 dealer, the disclosure must include an explanation that all client cheques shall be payable to the issuer or carrying dealer, as applicable.

Members should consider including disclosure to clients that all cheques must be made payable to the Member only and not to the Approved Person. Where Members do not allow their Approved Persons to accept cash for the purchase of securities, this should also be disclosed to the client.

- Requirement for Investment Actions to be Suitable and put the Client's Interest First
Suitability of Orders Accepted/Recommendations Made

~~MFDA Rule 2.2.7(1)(f) 5(d)~~ requires a statement that the Member must determine that any investment action it takes, recommends or decides on for the client is suitable and puts the client's interest first. requires a description of the Member's suitability obligation to clients. This will include a statement that Members are required under securities legislation and MFDA Rules to ensure each recommendation made is suitable for the client, and puts the client's interest first. in relation to the client's investment objectives, risk tolerance and other personal circumstances. Clients should also be advised that the obligation to make a suitability determination applies to trades proposed by the client, whether or not a recommendation is made.

Members are also required to include in their relationship disclosure a description of the following events, which trigger a suitability determination:

~~In addition, Members are required to advise the client of other circumstances which will trigger an assessment of the suitability of investments in the client's account, as prescribed by Rule 2.2.1(e):~~

- When the client transfers assets into an account at the Member;
- The Member or Approved Person becomes aware of a change in an investment in the client's account that could result in the investment or account not satisfying requirements under Rule 2.2.6(1);
- When the Member or Approved Persons becomes aware of a material change, as defined under Rule 2.2.4, in the client information required to be collected under Rule 2.2.1, that could result in an investment or the client's account not satisfying requirements under Rule 2.2.6(1), as defined in Rule 2.2.4;
- The Member or Approved Person performs the periodic review required under Rule 2.2.4(f); or
- When there is a change in the Approved Person responsible for the client's account at the Member.

- Defining KYC Terms

It is essential that clients understand the basis upon which their investments are assessed. Accordingly, KYC information must be defined in a clear and concise way to assist clients in understanding what the KYC terms mean and how the criteria will relate to the specific investments recommended or accepted by the Member.

The requirements of this section do not contemplate defining all KYC terms, as MFDA staff acknowledges that certain terms, such as age or income, are self-explanatory. However, “risk profile”, “tolerance”, “investment time horizon”, and “investment needs and objectives” are examples of key terms that should be defined, since Members and their clients do not always have the same understanding of these ~~two terms~~. ~~Members and Approved Persons are advised to reference Appendix 1: Example of KYC Information of MFDA Member Regulation Notice MR-0069 Suitability Guidelines for guidance with respect to how to define KYC terms.~~

As a best practice, the definition of KYC terms should be incorporated into the New Account Application Form (“NAAF”) to ensure that clients are aware of and acknowledge the basis on which the Member and Approved Person will assess the suitability of investments for their account.

- Content and Frequency of Reporting

A description of the content and frequency of reporting for each account must be included in the document. Members must inform the client when trade confirmations and account statements will be sent and describe the performance reporting information that will be provided by the Member under Rule 5.3.5.

- Compensation and Reference to Other Sources of Information

Disclosure must include a general description of the nature of compensation paid to the Member with a reference to more specific information available through other sources. For example, this may include a statement that the Member receives a commission at the time of the sale of an investment and may earn an ongoing commission (trailer fees) for as long as the client holds the investment. In order to help their clients to understand what trailing commissions and fund management fees are, we encourage Members and Approved Persons to explain them in the simplest terms possible. This should include explaining that trailing commissions are not additional charges paid by the client to the Member. Clients should also be made aware that there may be other fees or costs charged by the product manufacturer depending on the investment product. This general information with respect to how the Member is compensated and the possibility of other costs associated with making and holding investments is intended to supplement more specific product disclosure with respect to fees and costs available through the prospectus or offering memorandum.

Members may also wish to advise clients that they can speak to their Approved Person ~~advisor~~ for more information about the nature of any fees or compensation paid to the Member.

Approval of Relationship Disclosure Materials

Where standardized relationship disclosure is provided to all clients, it must be approved by compliance staff at the Member's head office. If the relationship disclosure is customized for each client or classes of clients, the Member should have a procedure in place that requires the approval of a supervisor at the head office and/or branch level.

Maintaining Evidence of Relationship Disclosure

Members must maintain evidence that the required relationship disclosure has been provided to clients. If the relationship disclosure is incorporated into the NAAF or account documentation and is signed by the client, maintaining a copy in the client file will be sufficient to evidence delivery.

Members that choose to provide the relationship disclosure as a stand-alone document may evidence delivery by signed client acknowledgements or by maintaining copies of disclosure documents in client files, along with detailed notes of client meetings and discussions evidencing that the disclosure has been provided. Members are advised to reference MFDA Member Regulation Notice MR-0064 *Maintaining Evidence of Disclosure* for more guidance with respect to maintaining evidence of required disclosures.

Significant Changes

As with other disclosure requirements under MFDA Rules, where there is a significant change to information previously provided to the client, it is expected that the Member will take reasonable steps to notify the client of the changes in a timely manner. Members may advise the client of

the change by including updated information with regular client communications such as account statements. A significant change would include, for example, a change in definitions of KYC terms.

DM#717786v3



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MSN-0077
December 7, 2010

MFDA STAFF NOTICE

APPROVED PERSON PROFICIENCY REQUIREMENTS

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.

Under MFDA Rule 1.2.3, an Approved Person must not perform an activity that requires registration unless the Approved Person has the education, training, and experience that a reasonable person would consider necessary to perform the activity competently. In the case of Chief Compliance Officers, this includes the knowledge and ability to design and implement an effective compliance system.

Approved Persons should update their knowledge and training to keep pace with new securities services and developments in the industry that are relevant to their business. Rule 1.2.4 requires Members to provide their Approved Persons with training on compliance with requirements under securities legislation.

The purpose of this Notice is to set out details of proficiency requirements that apply under MFDA Rules and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103").

Salespersons

- (a) **Proficiency Requirements.** Each Approved Person who is a salesperson and who trades or deals in securities in respect of a Member must have:
- (i) passed the Canadian Investment Funds Course Exam, the Canadian Securities Course Exam or the Investment Funds in Canada Course Exam; or
 - (ii) earned a CFA Charter and have 12 months of relevant investment management experience in the 36-month period before applying for registration; or
 - (iii) received the Canadian Investment Manager designation and have 48 months of relevant investment management experience, 12 months of which was in the 36-month period before applying for registration.

(b) **Additional Proficiency for Particular Securities**

- (i) **Commodity Pools.** Each Approved Person who is a salesperson and who trades or deals in commodity pools in respect of a Member must have:
 - (A) satisfied the requirements of paragraph (a)(ii) or (iii); or
 - (B) passed the Canadian Securities Course Exam or the Derivatives Fundamentals Course Exam.
- (ii) **Exempt Market Securities.** Each Approved Person who is a salesperson of a Member registered as an Exempt Market Dealer and who trades or deals in exempt market securities must have:
 - (A) satisfied the requirements of paragraph (a)(ii) or (iii); or
 - (B) passed the Canadian Securities Course Exam or the Exempt Market Products Exam.

Chief Compliance Officers

- (a) **Proficiency Requirements.** An individual may not be designated by the Member as the chief compliance officer pursuant to Rule 2.5.3(a) (Chief Compliance Officer – Designation), or an alternate chief compliance officer pursuant to Rule 2.5.3(c) (Chief Compliance Officer – Alternates), unless the individual:
 - (i) has passed the Canadian Investment Funds Course Exam, the Canadian Securities Course Exam or the Investment Funds in Canada Course Exam and has passed the Officers’, Partners’ and Directors’ Exam, the Partners, Directors and Senior Officers Course Exam or the Mutual Fund Dealers Compliance Exam; or
 - (ii) has met the relevant requirements for the chief compliance officer of a portfolio manager as prescribed under securities legislation.
- (b) **Additional Proficiency for Particular Securities**
 - (i) **Commodity Pools.** An individual designated as a chief compliance officer pursuant to Rule 2.5.3(a), or an alternate chief compliance officer pursuant to Rule 2.5.3(c), by the Member whose Approved Persons trade or deal in commodity pools in respect of a Member must have passed the Derivatives Fundamentals Course Exam or successfully completed the Chartered Financial Analyst Program.
 - (ii) **Exempt Market Securities.** Where a Member is registered as an Exempt Market Dealer, the individual designated as its chief compliance officer pursuant to Rule 2.5.3(a), or an alternate chief compliance officer pursuant to Rule 2.5.3(c), must have:
 - (A) satisfied the requirements of paragraph (a); and
 - (B) passed the Canadian Securities Course Exam or the Exempt Market Products Exam.

Branch Managers

NI 31-103 does not retain the branch manager category of registration and, as a result, all requirements in respect of branch managers are contained in MFDA Rules.

Branch managers must meet the requirements set out under MFDA Rule 2.5.5 (Branch Manager). In addition, branch managers supervising Approved Persons trading or dealing in commodity pools or exempt market securities must also meet the requirements for salespersons as noted in subsection 1(b) above.

Currency of Examinations

MFDA Rule 2.5.6 (Currency of Examination) provides that, for the purposes of the Rules, an individual is deemed to have not passed an examination or successfully completed a program unless the individual has done so within 36 months before the date the individual applied for registration, or such longer period as may be specified by and subject to relevant requirements, as the Corporation may determine if it is satisfied based on the individual's experience that his or her knowledge and proficiency remains relevant and current.

MFDA Rule 2.5.6 adopts the same 36-month currency requirement as NI 31-103 and allows MFDA staff discretion, on a case-by-case basis, to consider a longer currency period provided that staff is satisfied that, based on the individual's experience, their knowledge and proficiency remains relevant and current. In determining whether an individual's knowledge and proficiency is relevant and current, staff will consider the factors set out in NI 31-103, for example, previous registration and relevant securities industry experience. In circumstances where relief from the currency requirement of NI 31-103 is sought from the relevant securities commission, Members may submit a written request to the MFDA Membership Services Department concurrently and provide the same information to the MFDA that is being submitted to the securities commission for its consideration.

| DM#690206v2



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MSN-0078
February 22, 2011
(Updated February 19, 2015)

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 ~~trailing~~ 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. ~~deferred sales charges~~, short-term trading fees, ~~or~~ 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; ~~or~~
- 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.

DM#718040v3



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MSN-0048
October 31, 2005

MFDA STAFF NOTICE

KNOW-YOUR-PRODUCT

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 pursuant to MFDA Rule 2.2.5 (“Know-Your-Product”)–2.2.1 (“Know Your Client”) with respect to the approval and sale of investment products by MFDA Member firms.

Introduction

~~Members and Approved Persons are required to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and in keeping with the client's investment objectives. Know your client requirements are a fundamental part of meeting basic suitability obligations. However, these obligations can only be properly discharged if Approved Persons and supervisory staff of the Member also fully understand the products that are being recommended to clients.~~

Members and Approved Persons must have an understanding of the investment products that are purchased and sold for, or recommended to, their clients, obtained through a robust KYP process, in order to make the suitability determination that is required under MFDA Rule 2.2.6 (“Suitability Determination”).

The Member must establish, maintain and apply policies, procedures and controls relating to the know your product process, in accordance with its business model, the types of investment products offered, the proficiency of its Approved Persons, and the nature of the relationships that the Member and its Approved Persons have with clients. These policies, procedures and controls should include appropriate processes for assessing and approving, as well as monitoring for significant changes to, investment products that are made available to clients.

Member Due Diligence / Investment Product Approval

Members must perform a reasonable level of due diligence on investment products prior to their approval for sale by Approved Persons. Members must have written policies and procedures in place that describe in detail the steps to be followed in the due diligence process.

~~A basic level of~~ Due diligence must be completed on all investment products being considered for sale by the Member before the investment products are approved. Member procedures should provide for different levels of analysis for different types of investment products. ~~For example,~~ The extent of the assessment, approval and monitoring processes required may vary depending on the structure, features and risks of investment products being considered or made available by the Member. Members may tailor their processes to the types of investment products being considered and the complexity and risks of those investment products, and their policies and procedures should set out the different levels of assessment, approval and monitoring for different types of investment products, as appropriate. For example, a Member's KYP process for less complex and risky types of investment products may be less extensive formal review may not be required for many conventional mutual funds. However, a more comprehensive review should be performed on than the process for more complex and risky types of investment products, such as those that are novel, not transparent in structure, or that involve leverage, options, or other derivatives more complex in structure. Investment products sold under a prospectus exemption may require a more extensive review and approval process because of the limited disclosure available about them and the less liquid nature of such investment products. In the event that Investment products that are presently being sold that have not been subjected to a reasonable due diligence review, by Members are subject to the requirements of Rule 2.2.5 ("Know-Your-Product"), and such a review must be performed before continuing to sell the investment products.

In determining whether to approve an investment product for sale, Members should not merely rely on the representations of the issuer, or on the fact that the investment product appears to be similar to others, or that other firms are already offering the investment product. Additional due diligence may be necessary where there are reasons to question the validity of an issuer's information or where information provided about the investment products is not sufficient to permit a meaningful assessment of the investment products. An in-depth assessment of an investment product should take place where any issues are identified during the review process. In all cases, the approval process must be independent and objective. Members are advised that simply making inquiries will not be sufficient to discharge their responsibility to conduct due diligence. Members must properly follow up on any questions they have raised until they have been satisfied that they have a complete understanding of the investment products they propose to sell. Members should consider whether any restrictions or controls, such as concentration limits or controls on the use of the investment product in client portfolios, are required for any investment products they are considering making available to clients. Members should also assess whether any modifications need to be made to their compliance or other systems to support particular investment products, and whether additional training or proficiency requirements are necessary in order for their Approved Persons to understand the investment products and make appropriate suitability determinations.

To be effective, the due diligence review process should involve:

- a review of any offering documents;
- a review of any marketing materials related to the investment product;
- consideration of MFDA Rules and securities regulations that may apply in the sale of the investment product;
- consideration of the general structure and features of the investment product, including the overall complexity, transparency and uniqueness of the investment product, the basis of the investment product's return; and the likelihood of achieving its investment objectives and any expected returns, the time horizon and liquidity restrictions, and the use of leverage;
- an assessment of the risks associated with the investment product;
- an assessment of the initial and ongoing costs of acquiring, owning, and disposing of the investment product, as well as the impact of those costs on performance, client returns or otherwise, including:
 - fees paid to registrants or other parties, such as commissions, sales charges, trailer fees, management fees, incentive fees, referral fees and redemption fees;
 - embedded costs, such as expenses.

~~associated with the product;~~

- an assessment of the conflicts of interest, if any, inherent in the investment product, arising, for example, from the compensation structure (for example, the commissions and other compensation to be paid to the Member and Approved Person for selling the investment product), and consideration of potential conflict issues that may arise under the compensation structure related-party issues or other factors, including an assessment of how any conflicts of interest are being addressed by the issuer;
- ~~consideration of competitive investment products that may be less costly or less risky;~~
- ~~an assessment of the investment objectives and any projected returns for the product and the likelihood that the investment will meet these objectives and projections;~~
- a review of the issuer's financial position and history;
- an assessment of management qualifications and track records;
- an assessment of any custodian, investment manager, sponsor, or guarantor, or significant counterparty associated with the investment product; and
- maintaining a thorough written record of the results of the Member's due diligence.

It is critical that the Member develops an understanding of all features of the investment product. Issues such as liquidity of the investment product and the nature of any underlying investments

and their inherent risks must be examined before assigning a risk ranking to the investment product. The Member should develop guidelines or an investor profile for which the investment product would be generally suitable, including risk levels, investment time horizon, income and net worth. The Member should also clearly identify investors for whom the investment product is not suitable. Concentration limits should be assigned to investment products and/or general classes of investment products where appropriate.

As a reminder, the fact that an investment product is included on a Member's approved investment product list does not in any way diminish the obligations of Members and Approved Persons to ensure that each recommendation made for any account of a client is suitable for the client and puts the client's interest first, and is in keeping with the client's investment objectives. Members must provide their Approved Persons with information gathered about investment products that have been assessed and approved to be made available to clients, to assist Approved Persons in complying with their KYP obligations. Members should also provide their Approved Persons with any necessary training and tools to assist their Approved Persons in complying with their KYP obligations.

Members are expected to have the appropriate skills and experience to perform the necessary assessment of all investment products to be made available to clients. As a best practice, a committee involving senior management of the Member should be empowered with ultimate authority in the investment product approval process, to ensure that all business units of the Member have signed off on the investment product prior to sale.

Approved Persons' KYP obligations

Approved Persons must take reasonable steps to understand investment products purchased or sold for, or recommended to, clients, including the structure, features and risks of the investment products as well as the initial and ongoing costs of the investment products and the impact of those costs. Investment products that are more complex or risky may require a more detailed consideration by Approved Persons. An understanding of all investment products that Approved Persons purchase or sell for, or recommend to, clients is necessary in order for Approved Persons to make the suitability determination that is required by MFDA Rule 2.2.6 ("Suitability Determination").

Approved Persons are also expected to have, based on their proficiency, a general understanding of the types of investment products that are available through the Member for the Approved Persons to purchase or sell for, or recommend to, clients. This is required in order for the Approved Persons to meet their suitability determination obligations, including the requirement to consider a reasonable range of alternatives as part of making a suitability determination for a client.

Approved Persons must not purchase investment products for or recommend investment products to clients unless those investment products have been approved by the Member to be made available to clients. However, the fact that an investment product is "approved" by the Member is not enough to discharge an Approved Person's obligation to take reasonable steps to understand the investment product being purchased or sold for, or recommended to, a client by

the Approved Person.

Monitoring of Approved Investment Products

A Member's KYP process should address monitoring for any significant changes to the business environment, or market conditions that would affect the risks or other aspects of investment products which have already been approved by the Member.

~~Where significant changes in market conditions have occurred which would affect the risks associated with certain products~~

In the event of any such change, it is appropriate for the Member to revisit their approval or risk ranking of such products of or restrictions or controls on the investment product(s). Approved Persons and supervisory staff should be aware of any such changes, and consideration should be given as to whether the change(s) requires a new suitability determination to be made for clients holding investment products which have been impacted. -

Additional Considerations Regarding Investment Products of related and connected issuers

Members and Approved Persons are not relieved of their KYP obligations in respect of investment products of related and connected issuers. Where a Member offers investment products of related and connected issuers as well as other investment products, we expect that the investment products of related and connected issuers will be subject to the same KYP process as those of other issuers. We remind Members and Approved Persons of their obligation to address conflicts in the best interest of their clients, including those that arise as a result of making investment products of related and connected issuers available to clients.

Additional Considerations Regarding Exempt Securities

A Member may distribute certain exempt securities, such as hedge funds, limited partnerships, or private notes or debentures, for which there is no prospectus. In these circumstances, these investment products should be considered to be high risk. It should be noted that these investment products are not regulated to the same extent as mutual funds, may have significant liquidity restrictions, and, in the case of hedge funds, may employ riskier strategies than other mutual fund investment products, such as leveraging and short selling. These facts alone often justify a high risk ranking.

Members should also maintain details of the exemption relied upon and documentation to support reliance on the applicable exemption.

~~With respect to securities sold pursuant to exemptions under applicable securities legislation ("exempt securities"), the Members must, after due inquiry, satisfy themselves itself that the conditions of any exemption claimed apply before trading in reliance on anthe exemption and maintain documentation to support their determination. Where there is uncertainty regarding the applicability of an exemption, a the Member must take appropriate measures which may include~~

consultation with the relevant securities regulatory authority or legal counsel. In addition, all local rules and applicable registration requirements of the relevant securities regulatory authorities must be satisfied prior to selling the investment products securities. These conditions may vary significantly between jurisdictions and may include proficiency requirements, notice to or specific approval from regulators or amendment of the Member's registration.

Members should be particularly careful when examining suitability issues in relation to exempt securities. It should be noted that the classification of an investor as a "sophisticated purchaser" or an "accredited investor" does not negate the obligations of the Member with respect to suitability ~~review~~determination. Where securities to be sold pursuant to exemptions from the prospectus requirements under securities legislation are made available to clients, we expect that Members will ~~may~~ consider providing training ~~their for~~ Approved Persons and supervisory staff on the ~~particular~~ characteristics and concerns related ~~ing~~ to exempt securities, to ensure that their Approved Persons understand those investment products and recommend them ~~such products are recommended~~ only in appropriate circumstances.

Members should also have policies and procedures in place with respect to the information to be provided to clients, to help ensure that clients fully understand the investment products being offered before entering into any transaction. The client should be clearly advised where an investment product security is being sold under an exemption. It is important that the client also understands the implications of any restrictions that may apply with respect to liquidity and the potential absence of a secondary market for such investment products ~~the securities~~. Finally, the client should be aware that an offering memorandum that may be provided prior to the sale of some investment products (e.g. certain exempt securities), is not a prospectus, and that certain protections, rights and remedies that may exist under securities legislation in relation to prospectus offerings, including statutory rights of rescission and damages, may not be available to the client.

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