



2008 Year in Review

This document summarizes significant regulatory information circulated to Members during the year ended December 31, 2008. Readers can access further information located on the MFDA website by clicking on the links that appear throughout the document.

PART 1 **COMPLIANCE DEPARTMENT**

Sales Compliance

MFDA Sales Compliance performs a sales practice examination of Level 4 dealers and a combined sales and financial examination of Level 2 and Level 3 dealers within a 3-year examination cycle. MFDA Sales Compliance completed its second 3-year cycle of examinations of Member firms in December 2008.

The following is a summary of sales compliance examinations conducted in each province during the period January 1, 2008 to December 31, 2008.

	Head Office	Branch	Total
Ontario	40	19	59
British Columbia	5	7	12
Alberta	5	8	13
Manitoba	1	2	3
Saskatchewan	2	2	4
Quebec	5	0	5
Nova Scotia	0	2	2
New Brunswick	1	3	4
Total:	59	43	102

There were 72 referrals made to the Enforcement Department during the second 3-year examination cycle. Reasons for the referrals include inadequate supervision, suitability of investments and suitability of leverage recommendations, churning, pre-signed forms and violations of previous agreements and undertakings.

Significant sales compliance findings identified in the second 3-year examination cycle included:

- Failure to maintain an adequate policies and procedures;
- Account holdings were unsuitable when compared to Know-Your-Client (“KYC”) information;
- Failure to maintain evidence of trade supervision or trade supervision not performed on a timely basis;
- Failure to maintain complete KYC information;

- Discrepancies found between KYC maintained in client files to KYC information on Member back-office system;
- Failure to maintain adequate evidence of client authorization for trades;
- Failure to perform adequate branch reviews;
- Failure to review advertisements;
- Failure to provide adequate dual occupation disclosure;
- Failure to provide the Client Complaint Information form at the time of account opening or after receipt of a complaint;
- Failure to perform adequate product due diligence;
- Leveraging strategy was inconsistent with client KYC information; and
- Failure to review and approve new account application forms in a timely manner.

Significant financial compliance findings identified in the second 3-year examination cycle for Level 2 and Level 3 dealers included:

- Accounting or misclassification errors;
- Incorrect reporting of assets under administration;
- Certificate of Partners or Directors was not signed or completed;
- Inadequate documentation or details with respect to cost sharing arrangements; and
- Failure to perform reconciliations for all bank accounts.

Financial Compliance

MFDA Financial Compliance performs annual on-site financial examinations of Level 4 dealers and reviews monthly and annual financial questionnaire and reports (“FQRs”) of all Members. In 2008, Financial Compliance performed an on-site examination of all 40 active Level 4 Members and reviewed approximately 1,870 monthly FQRs and 155 annual FQRs.

Significant financial compliance findings identified in the annual examination of Level 4 dealers included:

- Accounting or misclassification errors;
- Inadequate policies and procedures;
- Incorrect reporting of client securities held by Member on Schedule 4;
- Incorrect reporting of assets under administration;
- Incorrect netting of accounts receivable and accounts payable;
- Certificate of Partners or Directors was not signed or completed;
- Inadequate documentation or details with respect to cost sharing arrangements;
- Failure to perform reconciliations for all bank accounts; and
- Failure to perform month-end reconciliations for all nominee positions.

MFDA Financial Compliance referred 10 matters to the Enforcement Department in 2008, primarily relating to breaches of early warning conditions.

Further information respecting the activities of the Compliance Department is set out in the MFDA’s 2008 Annual Report. To review those particulars, visit the **Compliance** page of the [Online Annual Report](#).

PART 2

ENFORCEMENT DEPARTMENT

During calendar 2008, the Enforcement Department identified 33 cases involving violations that warranted the commencement of disciplinary hearings. An additional 234 cases were reviewed that involved violations of a less serious nature that did not warrant formal disciplinary proceedings and these resulted in the issuance of 227 warning letters and 7 agreements and undertakings.

2008 Enforcement Statistics

(a) Cases Opened: January 1, 2008 – December 31, 2008

January 1 – December 31	Total New Intake Matters	Escalated to Case Assessment	Escalated to Investigation	Escalated to Litigation
2008	929	452	97	29
2007	765	353	114	34
2006	893	340	124	22

As identified in the above chart, the number of intake matters from all sources has generally returned to 2006 levels, after having decreased over 20% in 2007. This trend may relate to the fact that market performance in the first eight months of 2007 was mostly good, while market levels have decreased in the corresponding period in 2008.

However, the number of intake matters that have been escalated to the Case Assessment group in 2008 is higher than in any previous year, which may reflect the fact that more of the received client complaints relate to potential breaches of MFDA requirements.

(b) Cases Closed: January 1, 2008 – December 31, 2008

January 1 – December 31	Case Assessment	Investigation	Litigation	Total
2008	290	85	22	397
2007	324	79	19	422
2006	240	66	14	320

(c) Cases Opened by Type: January 1, 2008 – December 31, 2008

Type	Number of Cases	Percentage of Total
Suitability – Investments	49	10.8%
Outside Business Activities/Dual Occupation	48	10.6%
Suitability – Leveraging	39	8.6%
Falsification/Misrepresentation	34	7.5%
Transfer of Accounts	27	6.0%
Supervision	23	5.1%
Unauthorized/Discretionary Trading	21	4.6%
Books/Records/Client Reporting	21	4.6%
Business Standards	18	4.0%
Complaint Procedure	17	3.8%
Commissions and Fees	17	3.8%

Policies and Procedures	16	3.5%
Forgery/Fraud/Theft/Misappropriation/Misapplication	15	3.3%
Personal Financial Dealings	15	3.3%
Sales Communication	12	2.7%
Conduct Unbecoming	11	2.4%
Service Issues	9	2.0%
Provincial Securities Legislation	9	2.0%
Acting Outside Registration Status	7	1.5%
Trading Outside Jurisdiction	7	1.5%
Financial Requirements	7	1.5%
Excessive Trading/Churning	6	1.3%
Securities Regulator's Order	5	1.1%
Reporting Violations	5	1.1%
Conflict of Interest	4	0.9%
Disclosure	4	0.9%
Confidentiality/Privacy	2	0.4%
Money Laundering	1	0.2%
Handling of Funds	1	0.2%
KYC Documentation Deficiency	1	0.2%
Referral Arrangements	1	0.2%
Total	452	100.0%

(d) Cases Opened by Source: January 1, 2008 – December 31, 2008

Source	Number of Cases	Percentage of Total
Public	614	66.1%
Member	153	16.5%
CSA and Other Regulators	95	10.2%
MFDA Compliance	37	4.0%
Financial Industry Participant	12	1.3%
Other	11	1.2%
Media	5	0.5%
Police	2	0.2%
Total	929	100.0%

(e) Cases Closed by Reason: January 1, 2008 – December 31, 2008

Case Outcome	Number of Cases	Percentage of Total
Warning/Cautionary Letter(s) Sent	227	57.2%
No Violation Established	106	26.7%
Referred to Other Enforcement Case	30	7.6%
Referred – Issues outside MFDA Jurisdiction	12	3.0%
Hearing – Violation Established	9	2.3%
Agreement and Undertaking	7	1.8%
Hearing – Settlement – Violation Established	2	0.5%
Referred – Other	2	0.5%
Under Review by Outside Agency	2	0.5%
Total	397	100.0%

Member Event Tracking System (“METS”) – Activity Reported by Members in 2008

There were 2,579 Member Events reported during the year ended December 31, 2008 of which 559 were opened as, or related to, Enforcement cases.

MFDA Hearings Completed in 2008

Region	Respondent	Date of Reasons	Fine	Costs
Pacific	<u>Berkshire Investment Group Inc.</u>	January 3, 2008	\$500,000	\$50,000
Central	<u>Paul Edward Lloyd</u>	February 26, 2008	\$45,000	\$2,500
Pacific	<u>Brian Somerset Campbell</u>	June 26, 2008	\$250,000	\$7,500
Prairie	<u>Portfolio Strategies</u>	August 6, 2008	\$5,000	NIL
Pacific	<u>Patrick Sullivan</u>	August 11, 2008	\$30,000	\$5,000
Central	<u>Joplin Leclair</u>	August 22, 2008	\$260,000	\$7,500
Central	<u>Sterling Mutuals Inc.</u>	September 3, 2008	\$50,000	\$5,000
Atlantic	<u>Evangeline Securities Inc.</u>	September 21, 2008	\$10,000	\$2,500
Atlantic	<u>Leo O’Brien/David Snow</u>	November 25, 2008	O’Brien - \$60,000 Snow - \$10,000	O’Brien - \$5,000 Snow - \$5,000
Prairie	<u>Gerard & Mavis Brake</u>	December 3, 2008	Decision re Misconduct only	

Hearings Panels placed a permanent prohibition on four of the above Approved Persons (Lloyd, Campbell, Leclair and O’Brien) from engaging in any securities related business while in the employ of or associated with any Member of the MFDA.

Presently, the MFDA lacks effective powers to collect fines and costs ordered by Hearing Panels from individuals who are no longer Approved Persons. However, individuals with outstanding fines and costs may be denied re-registration by securities regulators. With respect to the matters outlined above, \$595,000 in fines, and \$62,500 in costs, have been collected.

In addition, in 2008 the MFDA conducted two suspension hearings – [Laurier Capital Planning Inc.](#) and [Triglobal Capital Management Inc.](#) The MFDA also terminated the Membership of [Merchant Capital Wealth Management Corporation.](#)

Further information respecting the activities of the MFDA Enforcement Department is set out in the MFDA’s 2008 Annual Report. To review those particulars, visit the **Enforcement** page of the [Online Annual Report.](#)

PART 3

POLICY DEPARTMENT

The following is a summary of significant Policy matters published during the calendar year 2008.

(a) **MEMBER REGULATION NOTICES**

- **MR-0070** – **Misleading Communications Regarding Leveraging** (Issue Date: May 12, 2008) advises Members that MFDA staff continues to note issues with respect to misleading statements made by Members, Approved Persons and loan providers or intermediary entities involved in the marketing of leveraged strategies and cautions Members and Approved Persons against making or including such statements in their own sales communications or other materials provided to clients.
- **MR-0069** – **Suitability Guidelines** (Issue Date: April 14, 2008) provides guidance to Members on how to establish a suitability framework to comply with their obligations to ensure that each order accepted or recommendation made is in keeping with clients' know-your-client ("KYC") information. The Notice provides further guidance on assessing suitability where borrowed funds have been used to invest and advises of MFDA staff's view when assessing suitability as part of a compliance examination or enforcement case.
- **MR-0068** – **Servicing of Client Accounts in Transition** (Issue Date: March 20, 2008) clarifies the responsibilities of Members with respect to servicing client accounts when certain transitions, such as Approved Person transfer or account closing, take place.

(b) **NEW AND AMENDED REGULATORY INSTRUMENTS**

(i) Rule Amendments approved/finalized in 2008

- MFDA Rule 2.3 (Power of Attorney/Limited Trading Authorization) was amended effective December 11, 2008. See [Bulletin #0346-P](#).
- MFDA Rule 3 (Financial and Operations Requirements) was amended effective December 11, 2008. See [Bulletin #0346-P](#).
- MFDA Rule 4 (Insurance) was amended effective December 11, 2008. See [Bulletin #0346-P](#).

(ii) By-law Amendments approved/finalized in 2008

- MFDA By-law No. 1 – Section 24.3 (Suspensions in Certain Circumstances) was amended effective August 1, 2008. See [Bulletin #318-P](#).
- MFDA By-law No. 1 – Section 11 (Member Approval Process) was amended effective October 2, 2008. See [Bulletin #0331-P](#).

(iii) Policy Amendments approved/finalized in 2008

- MFDA Policy No. 1 – New Registrant Training and Supervision was amended effective December 11, 2008. See [Bulletin #0346-P](#).

- MFDA Policy No. 4 – Internal Control Policy Statements was amended effective December 11, 2008. See [Bulletin #0346-P](#).

(iv) Form Amendments approved/finalized in 2008

- MFDA Form 1 – Financial Questionnaire and Report was amended effective December 11, 2008. See [Bulletin #0346-P](#).

(c) **MFDA RULE REVIEW SURVEY**

On February 4, 2008, the MFDA distributed to Members the Summary of Comments and Responses to MFDA Rule Review Survey, which had been circulated to Members in 2007. The purpose of the Survey was to obtain Member input and comment with respect to:

- which rules are working;
- which rules are not working and require amendment or further clarification; and
- what new requirements might be necessary to reflect industry changes.

Through the Survey, MFDA staff received a number of requests for additional guidance and clarification in certain areas and also for amendments to existing MFDA regulatory instruments. Key areas of comment included business names, suitability, minimum standards for supervision, leveraging, frequency of financial filings and account statements. In response, MFDA staff has drafted and is still developing a number of Rule amendments and Member Regulation Notices to address issues raised in the responses to the Survey.

(d) **MFDA POLICY ADVISORY COMMITTEE ACTIVITIES IN 2008**

The MFDA Policy Advisory Committee (“PAC”) provides advice, comments and reports to MFDA staff on a variety of matters including regulatory and policy initiatives and industry trends and practices. Members of the PAC are selected with a view to ensuring that the PAC is reasonably representative of the MFDA membership.

The PAC is comprised of 15 senior representatives of Member firms, reflecting the diversity of the MFDA membership – large and small dealers, central and regional firms, appointed by the MFDA to serve in an advisory capacity providing input on regulatory and policy initiatives and industry trends and practices. PAC membership includes the Chairs of each Regional Council of the MFDA, who are *ex officio* members of the PAC.

In 2008, as a result of elections to the MFDA Regional Councils, David Losier (Acadia Financial Services Inc.) and Larry Neilsen (Phillips, Hager & North Investment Funds Ltd.) have been appointed as Regional Council Chairs in the Atlantic and Pacific Regions and, consequently, as *ex officio* members of the PAC.

In 2008, four meetings of the PAC were held on the following dates: February 22, 2008, March 26, 2008, April 29, 2008 and September 4, 2008.

(e) **MEMBER REGULATION FORUMS**

Seven Member Regulation Forum Sessions were held during 2008 as follows:

April 16, 2008 (Vancouver)	October 8, 2008 (Vancouver)
April 17, 2008 (Calgary)	October 9, 2008 (Calgary)
April 23, 2008 (Toronto)	October 14, 2008 (Toronto)
	October 16, 2008 (Halifax)

Further information respecting the MFDA Policy activities are set out in the MFDA's 2008 Annual Report. To review those particulars, visit the **Policy** page of the [Online Annual Report](#).