



# Membership Guide

## **Introduction**

It is the responsibility of each Member to ensure that the Mutual Fund Dealers Association of Canada (the “MFDA”) has current and accurate information regarding the Member’s operations and activities. To this end, the MFDA imposes regular and periodic filing and reporting obligations on its Members. This Membership Guide (the “Guide”) contains information regarding the ongoing obligations and requirements of MFDA Membership. All filings, notices and reports set out in the Guide should be directed to MFDA Membership Services.

This Guide is intended to provide assistance to compliance staff at Member firms and should not be viewed as a replacement for the MFDA Rule Book, By-law, Policies or Member Regulation Notices.

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# 1. Financial Filing Requirements

MFDA Members must report on their financial position at regular intervals as outlined in MFDA Rule 3.5.1. Commencing with reporting periods ending January 1, 2005, and later, all financial filings must be submitted to the MFDA via the MFDA's web-based application, the Electronic Filing System ("EFS"). The required reports and frequency of filing are summarized below.

## Annual

### MFDA Financial Questionnaire and Report

The annual audited MFDA Financial Questionnaire and Report ("FQR") (*MFDA Form 1*) must be filed via the EFS within 90 days of the Member's fiscal year end. A complete paper copy of the FQR including Auditors' Report Part I and Part II, the Report on Compliance for Insurance, the Report on Compliance for Segregation of Cash and Securities and a signed Certificate of Partners or Directors must be mailed to the MFDA, or faxed to the MFDA's Financial Compliance Department at 416-362-6382 to complete the financial filing. All portions of the audited FQR must be received by the MFDA by the due date or late filing penalties will be imposed on the Member. Please refer to the MFDA website for a complete list of submission dates and specific details relating to late filing fees.

### Audited Financial Statements

One copy of the audited financial statements of the Member must be filed within 90 days of the Member's fiscal year end. The financial statements can be mailed to the MFDA or faxed to the MFDA's Financial Compliance Department at 416-362-6382.

## Monthly

### Monthly Financial Report

MFDA Rule 3.5.1 requires each Member to file an unaudited FQR with the MFDA within 20 business days of each month-end. If a Member has been put on early warning (Rule 3.4), the unaudited FQR is due within 15 business days of each month-end.

Members should be aware that all statements, schedules, and the Certificate of Partners or Directors, must be completed as noted in the Table of Contents of the Financial Questionnaire and Report.

MFDA Bulletin #0104-C - *Mandatory use of the Electronic Filing System* indicates that coincident with the move to the mandatory use of the EFS, MFDA Members will no longer have to submit the signed Certificate of Partners or Directors to the MFDA as was previously required according to MFDA Bulletin #0054-C. Members will be required to perform the following procedures with respect to each electronically filed FQR:

- Subsequent to submitting the electronic filing, the Member will be required to print a complete PDF version of the FQR. There will be a time stamp denoted on each page of the FQR that coincides with the time the electronic filing was submitted to the MFDA.
- In accordance with the Notes and Instructions to the Certificate of Partners or Directors, two qualified individuals must sign the Certificate.
- The signed FQR package must be retained in paper format by the Member in accordance with MFDA Rule 5.6. MFDA compliance staff will be assessing compliance with these procedures when performing on-site examinations of Members.

If a FQR is not electronically filed by the due dates noted above, late filing penalties will be imposed on the Member. Please refer to MFDA Bulletin #0100-M 2004/2005 *Financial Filing Deadlines*, for a complete list of submission dates and specific details relating to late filing fees.

## **Additional Requirements**

### **Fiscal Year End**

A Member must notify the MFDA within 5 business days of any change in its fiscal year-end. A resolution of the Member's board of directors that approves the change in fiscal year-end must be included with the request.

### **Subordinated Debt and Retractable Preferred Shares**

If subordinated debt forms a part of a Member's total financial statement capital, the Member must submit to the MFDA the standard MFDA Subordinated Loan Agreement (*Schedule I to the Application Guide*) in triplicate. Any changes to the subordinated loan must be approved by the MFDA in writing. Requests to repay any portion of the subordinated loan should be directed to the MFDA Financial Compliance department, fax #416-362-6382, and written MFDA approval must be obtained *prior to* any repayment being made.

If retractable preferred shares form part of the Member's total financial statement capital, the Member must submit to the MFDA the standard *Undertaking Regarding Retractable Preferred Shares (Schedule J to the Application Guide)*. Prior written consent from the MFDA is required to:

- Exercise any right to redeem, retract or require repurchase of any or all of the Shares;
- Accept any redemption, retraction, repurchase or other proceeds or return of capital in any manner in respect of any or all of the Shares; or
- Transfer any or all of the Shares to another person.

## **2. Reporting of Material Changes**

It is a Member's obligation, in accordance with MFDA Rule 1.2.5, to ensure that the MFDA is informed, on an ongoing basis, of any material changes in any information previously filed by or on behalf of the Member with the MFDA. Notification is to be made within five business days of

material changes, and immediately in the case of bankruptcy or insolvency. The MFDA does not obtain information concerning Members from the National Registration Database (NRD).

In addition to the reporting requirements set out below, MFDA Members will also be expected to comply with reporting requirements under applicable provincial securities laws in connection with their mutual fund dealer registration.

The following is a list of material changes that require notification to MFDA Membership Services. This list is not exhaustive, however, and MFDA staff should be consulted if there is any question as to whether a change is material.

### **Bankruptcy or Insolvency- Immediate Notice Required**

A Member must notify the MFDA *immediately* of any of the following:

- The Member being declared bankrupt;
- The Member making a voluntary assignment in bankruptcy;
- The Member making a proposal under any legislation relating to bankruptcy or insolvency,
- The Member being subject to or instituting any proceedings, arrangement or compromise with creditors;
- A receiver and/or manager assuming control of the Member's assets.

### **Risk Adjusted Capital Concerns- Immediate Notice Required**

Pursuant to MFDA Rule 3.4, the Member must immediately notify the MFDA upon determining that:

- Its risk adjusted capital is less than zero;
- Its early warning excess is less than zero;
- Its risk adjusted capital at the time of calculation is less than the net loss (before bonuses, income taxes and extraordinary items) for the most recent quarter

### **Other Material Changes**

The following require notification to the MFDA within 5 days of the date of the change:

#### **Change of Names**

A Member must notify the MFDA of any change with respect to:

- The legal name of the Member;
- The names under which the Member carries on business (trade or style names);
- Trade, business or style names, other than that of the Member, used by Approved Persons. The name of the Approved Person, the trade or business name the Approved Person is using, and the Approved Person's branch location must be provided.

*(Please refer to MFDA Rule 1.1.7 for further information.)*

### **Change of Address**

Members must notify the MFDA of any change in address for service in a province or territory in which the Member carries on business. Updated telephone and fax numbers must also be provided.

### **Change in Registration or Licensing**

Members must notify the MFDA of any changes in the following:

- Type of registration or licensing with the relevant securities commission;
- Jurisdictions in which any dealer business of the Member is conducted;
- Investment products traded or dealt in;

The securities commissions, not the MFDA, continue to have sole responsibility for the registration of dealers and Approved Persons. Instructions for registering additional Approved Persons or for registering a Member in a new jurisdiction may be obtained from the relevant securities commission.

### **Other Business Activities**

A Member must notify the MFDA of any business, other than the sale of investment products, which the Member engages in or proposes to engage in.

### **Changes in Organizational Structure: Directors, Partners, Officers, Compliance Officers, CFO**

The MFDA must be notified of any changes in a Member's directors, partners (in the case of a partnership), officers and compliance officers.

### **Approved Person Reporting**

MFDA Rule 1.2.5 and Policies 3 and 6, identify events that must be reported to the MFDA electronically using the Member Event Tracking System ("METS") provided by the MFDA. Such events include:

#### **Disciplinary Actions**

A Member must notify the MFDA whenever the Member, or any partner, director, officer or shareholder owning a significant equity interest in the Member, is refused registration or licensing, or has its registration or license suspended or cancelled or subject to any securities regulatory authority proceedings whatsoever including a breach or alleged

breach under any legislation governing trading or advising in securities in any province, territory, state or country.

### **Offences under the Law**

A Member must notify the MFDA whenever the Member, or any partner, director, officer or shareholder owning a significant equity interest in the Member, is charged or indicted pursuant to criminal laws or securities legislation.

### **Complaints, Civil Proceedings and Settlements**

A Member must notify the MFDA whenever the Member, or any partner, director, officer or shareholder owning a significant equity interest, becomes the subject of any client complaint involving allegations of theft or misappropriation of funds or securities or of forgery.

A Member must notify the MFDA whenever the Member, or any partner, director, officer or shareholder owning a significant equity interest, is subject to civil proceedings regarding misrepresentation, fraud or similar conduct.

A Member must report to the MFDA whenever:

- The Member has entered into a private settlement or has disposed of any claim in securities-related litigation or arbitration by judgment, award or settlement where the amount of the judgment, award or settlement exceeds \$25,000; or
- A partner, director, officer, salesperson, employee or agent of the Member has entered into a private settlement or has disposed of any claim in securities-related litigation or arbitration by judgment, award or settlement where the amount of the judgment, award or settlement exceeds \$15,000

*(Please refer to MFDA Policy No. 3, Handling Client Complaints, for further information)*

### **Judgment or Garnishment**

A Member must notify the MFDA of any judgment or garnishment that is outstanding or rendered against the Member in any civil court in any province, state, territory or country.

### **Change of Auditor**

The MFDA must be notified of any change in a Member's auditor and/or audit engagement partner. A new Letter of Acknowledgement (*Schedule H.1 of the MFDA Membership Application Package*) must be submitted to the MFDA.

## **Insurance Coverage**

A Member must notify the MFDA of any change in its financial institution bond coverage.

Members should be aware that the hiring of additional Approved Persons or changes in a Member's business activities (i.e. change in dealer level) may affect insurance coverage.

Should there be insufficient coverage, Members should note the following:

- If the deficiency does not exceed 10 per cent of the insurance requirement, evidence shall be furnished within two months of the dates of completion of the monthly operations questionnaires and the annual audit that the deficiency has been corrected;
- If the deficiency is 10 per cent or more of the insurance requirement, action must be taken by the Member to correct the deficiency ***within 10 days*** of its determination and the Member shall immediately notify the MFDA.

*(Please refer to MFDA Rule 4 and Policy 4 - Internal Control Policy Statement 3, Insurance, for more information.)*

## **3. Approval Requirements**

The following material changes require prior notification to, and approval by, the MFDA.

### **Reorganizations, Mergers and Amalgamations**

A Member must notify the MFDA in writing not less than 30 days prior to the proposed effective date of any reorganization, merger or amalgamation.

Upon receipt of such notice, the MFDA will review the proposed transaction and as it deems necessary, may request certain additional information. The MFDA will either:

- Approve the proposed transaction, (which may be subject to terms and conditions); or
- Direct that the transaction not be completed. This may happen if The MFDA determines, in its sole discretion, that:
  - The obligations of the Member to its clients cannot be satisfied, or
  - The Member, or any continuing, new or reorganized entity as the case may be, will not be compliant with MFDA By-laws and Rules.

*(Please refer to MFDA By-law No. 1, Section 13.7 and Member Regulation Notice MR-0019 - Member Resignations and Reorganizations, for more information.)*

## Changes in Ownership and Control

A Member must notify and receive the approval of the MFDA prior to any transfer or acquisition of a *significant equity interest* in the Member. A “significant equity interest” means the holding of:

- Voting securities carrying 20 per cent or more of the votes carried by all voting securities of the Member or of a holding company of a Member
- 20 per cent or more of the outstanding participating securities of the Member or of a holding company of a Member; or
- An interest of 20 per cent or more of the total equity in the Member.

*(Please refer to MFDA By-law No.1, section 13.9 for more information.)*

## Changes in Dealer Level

MFDA Rule 3.1.1 categorizes dealers into four different levels for capital purposes:

- Level 1 – A dealer that does not hold client cash, securities or other property and introduces all of its accounts to a carrying dealer, which has joint compliance responsibilities.
- Level 2 – A dealer that does not hold client cash, securities or other property.
- Level 3 – A dealer that holds client cash in a trust account but does not hold client securities or other property.
- Level 4 – A dealer that acts as a carrying dealer, or any other dealer not covered by Level 1, 2, or 3 (i.e. a dealer that holds client securities or other property in nominee name accounts or in physical storage).

The operation of a trust account, the holding of client securities or other investment products in nominee name accounts or in physical storage, and becoming a carrying dealer may affect a Member’s dealer level. Members must notify and receive the approval of the MFDA prior to engaging in such activities. In considering whether to approve a change in dealer level, the MFDA will consider the following:

- **Capital** – In calculating risk-adjusted capital, Members must have and maintain minimum capital in accordance with the dealer level in which the Member is designated.
- **Insurance coverage** – Members must maintain insurance in accordance with the minimum amount prescribed for their dealer level. For example, the minimum amount of insurance for Level 4 dealers is higher (\$500,000) than the minimum amount for Level 1, 2 or 3 dealers.
- **Internal Systems and Controls** – The MFDA will consider the internal systems and controls used by a Member to ensure that they are appropriate for the Member’s activities. For example, Members that hold client securities or other property in nominee name must comply with the regulatory and legal requirements for segregation. Members that hold client cash must comply with MFDA requirements regarding the maintenance and operation of dealer trust accounts.

## **Introducing/Carrying Dealer Arrangements**

The MFDA must approve any arrangement in which the accounts of one Member (*the “introducing dealer”*), including self-directed accounts registered for income tax purposes, are carried by another Member (*the “carrying dealer”*).

The introducing dealer and the carrying dealer must enter into a written agreement in accordance with the provisions of MFDA Rule 1.1.6. The arrangement (*including the form of the agreement*), and any amendment to or termination of the arrangement or agreement, must be approved by the MFDA before it is to be effective.

*(Please refer to MFDA Rule 1.1.6 and MFDA Member Regulation Notice MR-0003 - Introducing/Carrying Dealer Arrangements, for more information.)*

## **4. Additional Requirements**

### **Client Complaints**

Each Member must establish procedures to deal effectively with client complaints as set out in MFDA Policy No. 3, *Handling Client Complaints*. A “complaint” is defined as any written statement of a client or any person acting on behalf of a client alleging a grievance involving the conduct, business or affairs of the Member or any registered salesperson, partner, director or officer of the Member. Although this definition refers only to written complaints, there may be instances where a Member receives a verbal complaint from a client that merits the same treatment as a written complaint. Such situations depend on the nature and severity of the client’s allegations and require the professional judgment of the Member’s supervisory staff handling the complaint.

*(Please refer to Section 2 of this Guide, Complaints, Civil Proceedings and Settlements, for reporting obligations and to MFDA Policy No. 3, Handling Client Complaints, for more information.)*

### **Training and Supervision**

Members of the MFDA are required to implement and maintain a training and supervision program for new salespersons. The program must include the following components:

- A training program, to be completed within 90 days of the salesperson being registered with the relevant provincial securities commission. It would cover, at a minimum, the following topics: general knowledge (i.e. overview of the industry and the salesperson’s role), product knowledge, advising the client, administration (i.e. internal systems and technology, processes and controls and record keeping), sales process, ethics and standards of conduct.
- A six-month concurrent period of supervision by the Member commencing on the date of initial registration. MFDA Policy No.1, “New Salesperson Training and Supervision”, sets out minimum standards of supervision for the first 90-day period and subsequent 90-day

period. These supervision standards are in addition to the supervision requirements set out in MFDA Policy No.2, *Minimum Standards for Account Supervision*, that apply to all salespersons.

All supervisory activities with regard to newly registered salespersons should be documented and kept on file at the branch location. The relevant supervisor must complete a *Confirmation of Completion of New Salesperson Training and Supervision Program (part of MFDA Policy No. 1, New Salesperson Training and Supervision)* at the end of the training and supervision program. Further, any compliance issues that required action on the part of the branch manager or other compliance staff must be documented and kept on file.

It is expected that when a salesperson is unsuccessful in meeting a Member's expectations, the supervision and training period will be extended accordingly until such time as the Member is satisfied that the salesperson no longer needs to be subject to internal supervision. Any extensions should be documented accordingly.

For salespersons transferring from one Member to another, it will be incumbent upon the receiving Member to ensure that the training program (*as required by Rule 1.2.1(c)*) was completed with the prior Member.

*(Please refer to MFDA Rule 1.2.1(c) and MFDA Policy No.1, New Salesperson Training and Supervision, for further information on new salesperson training and supervision requirements.)*

### **Suitability Obligations for Unsolicited Orders**

MFDA Rule 2.2.1 requires Members and their Approved Persons to 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 trades, whether or not a recommendation is made.

Rule 2.2.1(d) requires that where a transaction proposed by a client is not suitable for the client and in keeping with the client's investment objectives, the Member must so advise the client before the execution thereof.

*(Please refer to Member Regulation Notice MR-0025 - Suitability Obligations for Unsolicited Orders, for the compliance procedures for unsuitable orders.)*

### **Client Reporting**

MFDA Rule 5.3 sets out each Member's requirement for delivery of account statements.

## Contacts

### **Toronto – Head Office**

121 King Street West  
Suite 1000  
Toronto, Ontario  
M5H 3T9  
Membership Services Department  
Phone: (416) 361-6332, Option 1  
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