



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels
121 King Street West, Suite 1600, Toronto, Ontario, M5H 3T9
TEL: 416-361-6332 FAX: 416-943-1218 WEBSITE: www.mfda.ca

Contact: Gregory J. Ljubic
Corporate Secretary
Phone: 416-943-5836
E-mail: gljubic@mfda.ca

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MFDA Bulletin

Policy

For Distribution to Relevant Parties within your Firm

Advocis Letter-Writing Campaign Regarding Clients and Account Transfers

Members of the MFDA Board of Directors have recently received a number of identical 2-page, standard-form letters from a number of Approved Persons dealing with clients and account transfers. The MFDA understands that this letter writing campaign has been organized by Advocis, an association formed from the recent merger of the Canadian Association of Insurance and Financial Advisors and the Canadian Association of Financial Planners.

While the MFDA has responded directly to each of the writers of these letters, for the benefit of all Members and Approved Persons, the MFDA is enclosing with this Bulletin a copy of a sample letter received (Appendix A), along with a copy of the MFDA standard-form response (Appendix B).

More recently, some members of the MFDA Board have been receiving standard-form postcards dealing, much more briefly, with matters similar to those contained in the 2-page standard-form letters referenced above. Many of these cards have not been signed by the senders, and in many instances, return addresses have not been identified. In light of this, the MFDA has determined that it would be appropriate to announce through this Bulletin that the senders of any such cards should inform themselves of the MFDA response by referring to the MFDA response attached to this Bulletin. The MFDA will not be providing any further written response to any communication similar to these cards.

Appendix A – Sample Letter Received

(Date)

(Name of Director)

(Title)

(Company)

(Address)

(City), (Province)

(Postal Code)

Dear (Name of MFDA Director):

I am an independent advisor licensed to sell life insurance and mutual funds. I have cultivated and developed many long-term relationships with my clients that are completely exclusive of my Mutual Fund Dealers Association (MFDA) broker/dealer. This relationship is based upon my ability to provide professional advice as well as products such as life insurance and mutual funds.

The current MFDA rules do not recognize this relationship. In fact, they infer that the client's account and the relationship are the property of the dealer. This is not the case. The account belongs to the client and should be treated as such i.e. the client should make the decision as to who should service the account. The client, therefore, should be able to transfer his or her account if the client desires to do so without any interference from the dealer. The client is not protected by such a rule, rather the current rule protects the dealer's business.

In the event that I decide to change my broker/dealer relationship, my clients should not be subject to the duress created by the current system. Now, each client has to indicate that they approve, in writing, the acceptance of the new broker dealer. While this is taking place, under MFDA rules the existing broker/dealer is required to assign a "new" advisor until further notice. This situation creates an adversarial climate that clients find confusing and redundant. The majority of clients want to retain their current advisor (me) and have no relationship with their broker/dealer or the assigned representative. Clients have raised concerns that under the current MFDA rules they could be without their advisor or proper service.

I would recommend that the current MFDA rules be changed as follows:

- Subject to a letter of direction that the client has signed beforehand, the client is allowed to transfer his or her account to the new broker/dealer as soon as the advisor transfers his/her business to the new broker/dealer.

- The MFDA rule requiring that a new advisor be assigned should also be changed to allow for more of a “cooling off period” i.e. a longer period of time should elapse before a new advisor is assigned (30 to 60 days).
- The time requirements should be shortened to three working days for the former dealer to submit documents to the MFDA indicating the terminating representative is no longer working for the dealer. This would reduce the time required to register with the new dealer.

I would encourage you to speak to the Chair of your provincial securities commission, about changing the “Bulk Transfer” MFDA Rule 2.12.2 in the ways suggested above to enable clients to continue their long term relationship with their advisors.

Such changes are in the interests of consumers, since these suggested arrangements would enable the investor to continue to work with an advisor who is familiar with the investor’s goals and risk profile and protect consumer’s privacy.

Yours sincerely,

(Name of Approved Person/ Dealer)

Appendix B – MFDA Standard-Form Response

(Date)

(Name of Addressee)
(Company)
(Address1)
(Address 2)
(City), (Province)
(Postal Code)

Dear Mr./Ms.:

Re: MFDA Rule 2.12.2 and Client Account Transfers

I am pleased to acknowledge receipt of your letter to (Name of Director), a member of the MFDA Board of Directors, dealing with clients and account transfers.

As you likely know, this subject is of considerable interest to Members and the subject of recent regulatory discussion and developments. Accordingly, we wanted to take time to address those issues before responding. In response, I thought it would be helpful to outline the investor protection rationale underlying the MFDA requirements respecting transfers of client accounts.

Individual clients establish their accounts with MFDA Members as mutual fund dealers and the clients and the accounts are serviced by sales representatives or advisers. The account relationship with the Member is usually evidenced by a new client account form and other documentation constituting the contract between the client and the dealer member. The assets that are reflected in the account belong, of course, to the client and can only be dealt with according to the client's instructions, subject to certain regulatory safeguards. In addition, both the dealer and the representative or adviser are in possession of information relating to the client and his or her account and the proprietary nature of that information must be respected.

The foregoing interests of clients in their accounts with MFDA dealer Members are reflected in MFDA Rules 2.1.3 relating to Confidential Information and 2.12 relating to Transfers of Accounts. In addition, MFDA has published MFDA Regulation Notice MR-0017 entitled Transfer of Client Accounts which describes the limited circumstances in which client accounts may be transferred by a Member without first obtaining the express positive consent of the client. These regulatory provisions are intended to protect the interests of both clients and Members in ensuring that the property of clients and information relating to their affairs are protected. It should be noted that the MFDA Rules do not refer to the so-called ownership or goodwill value of a client account and that is considered by the MFDA to be a commercial matter to be settled between Members and approved persons.

With respect to a client account and its assets, the Member is responsible to the client and has no basis for dealing with the assets without the written authorization or consent of the client. However, it is recognized that account transfers will be in order from time to time and the purpose of Rule 2.12.2 and MR-0017 is to ensure that Members and their representatives act diligently and promptly in order to facilitate transfers of an account in an orderly and timely manner.

With respect to information relating to a client and its account, the ability of a Member to transfer accounts has been of recent interest because of privacy legislation of the federal government and the Provinces of British Columbia and Alberta which came into force on January 1, 2004. Apart from those legislative requirements, however, MFDA Rule 2.1.3 is intended to protect such information and as a general matter no such information is permitted to be disclosed to any person or used by a Member or an approved person without the prior written consent of the client or as required or authorized by legal process or statutory authority. This MFDA requirement is consistent with the privacy legislation referred to above and is an important regulatory concern for MFDA. In addition, provincial securities legislation is of similar effect. Section 3.2 of National Instrument 33-102 is explicit that a registrant such as an MFDA Member shall not disclose information about a retail client to any third party except as expressly permitted or required by law or the by-laws and rules of a recognized SRO unless, among other things, the client provides consent to the specified disclosure. Again, the intent is to protect the interest of clients and information that is confidential or proprietary to them and the consent of the client to disclose any such information by way of account transfer is considered to be a reasonable regulatory requirement.

I trust the foregoing is helpful in explaining the purpose of MFDA Rules with respect to account transfers.

Yours truly,

Gregory J. Ljubic
Corporate Secretary