



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: Carlo Quattrociochi
Manager, Compliance
Phone: 416-943-4611
E-mail: cquattrociochi@mfda.ca

BULLETIN #0056-C
February 9, 2004

MFDA Bulletin

For Distribution to Relevant Parties within your Firm

Common Deficiencies Noted During On-site Examinations of Members

The Compliance Department at the MFDA conducts on-site examinations of Member firms' head offices and branch locations to ascertain whether they comply with the MFDA By-law and Rules and all other applicable statutory requirements.

This Bulletin is intended to inform Members of deficiencies commonly cited by the Compliance Department during examinations performed to date. Deficiencies are listed together with the applicable Rules, Polices, Notices, or By-Law section in parentheses.

Common Deficiencies

New Accounts

- New Account Application Forms ("NAAFs") are not on file for all clients (*Rule 2.2.2*);
- NAAFs are incomplete and do not include certain pieces of Know-Your-Client ("KYC") information required to ascertain suitability of trades (*Rule 2.2.2*);
- NAAFs are not signed and/or dated by clients (*Rule 2.2.2*);
- There is no evidence that NAAFs are reviewed and approved by a designated partner, director, officer, compliance officer, or branch manager ("designated person") at the Member (*Rule 2.2.3*);
- NAAFs are not approved by the designated person in a timely manner (*Rule 2.2.3*);
- Leverage disclosure documentation is not provided to clients at the time of account opening (*Rule 2.6*); and

- There is no evidence that the Member requests each client to notify the Member of any changes in KYC information or material changes in client circumstances on at least an annual basis (*Rule 2.2.4(b)*).

Members should also refer to MFDA Policy No. 2 for further guidance in this area.

Trading and Supervision

- Trades are unsuitable when compared to the client's KYC information (*Rule 2.2.1(c)*);
- The Member cannot produce evidence of client authorization for trades (*Rule 5.1(b)*);
- Trades are not processed in a timely manner (*National Instrument 81-102*);
- There is no evidence that trades are reviewed for suitability by the designated person (*Rule 2.2.1*);
- Trades are not reviewed by the designated person in a timely manner (*MFDA Policy No. 2*);
- The Member cannot produce evidence of client instructions for trades made pursuant to a limited trading authorization ("LTA") (*Member Regulation Notice MR-0012*);
- Approved Persons send trades directly to mutual fund companies (*Rule 1.1.1(a)*);
- The Member does not maintain a log of client complaints (*MFDA Policy No. 3*); and
- The Member did not respond to one or more client complaints in writing, either to acknowledge receipt of the complaint or convey the results of its investigation (*MFDA Policy No. 3*).

Members should also refer to MFDA Policy No.'s 2 and 3 for further guidance in this area.

Financial and Operational Requirements

- The Member is not performing monthly calculations of risk adjusted capital (*Internal Control Policy Statement 2*);
- Bank account reconciliations are not prepared or are not reviewed and approved by management (*Internal Control Policy Statement 4*);
- The Member is commingling cash held on behalf of clients with its own property (*Rule 3.3.2(a)*);
- The Member is not distributing interest earned in its mutual fund trust account (*Rule 3.3.2(h)*);
- The Member's Policies and Procedures Manual ("PPM") does not comply with all of the requirements set out in Member Regulation Notice MR-0008; and
- The Member has not made its PPM available to all of its Approved Persons.

Members should also refer to MFDA Bulletin #0057-C for common deficiencies cited by the MFDA when reviewing Member Financial Questionnaire and Report filings.

Registration

- The Member has clients resident in jurisdictions where the Member is not registered and is actively trading in the accounts (*By-Law 9.2.2, Rules 1.1.4 or 1.1.5, and Member Regulation Notice MR-0022*);
- The Member failed to notify the MFDA of a change in Director or Officer (*Rule 1.2.5*);
- The Member failed to designate an on-site branch manager responsible for supervision at one or more branch locations; and
- The Member has one or more branch or sub-branch locations that are not registered or are registered as a sub-branch when they should be registered as a branch (*By-Law No. 1*).

Approved Persons

- In cases where Approved Persons are employed in another gainful occupation, the Member does not provide clients with disclosure that any activities related to such other gainful occupation is not the business nor the responsibility of the Member (*Rule 1.2.1(d)(iv)*);
- One or more Approved Persons have commissions paid to a non-registered entity and the Member has not obtained an executed copy of Schedule “A” of MFDA Member Regulation Notice MR-0002 (*Member Regulation Notice MR-0002*);
- One or more Approved Persons who are considered agents by the Member have not signed an agent agreement (*Rule 1.1.5(k)*);
- The Member’s agent agreement does not conform to one or more of the requirements listed in MFDA Rule 1.1.5 (a) to (j);
- The Member or its Approved Persons are using trade names and have not informed the MFDA of their use (*Rule 1.1.7(a)*);
- The Member or its Approved Persons incorrectly use corporate names in place of trade names. Corporate names, which include terms such as “Inc.” or “Ltd.” represent actual legal entities and are not trade names for the purpose of Rule 1.1.7.
- Approved Persons are conducting business under a trade name that has not been approved in writing by the Member (*Rule 1.1.7(b)*);
- One or more Approved Persons have not signed Schedule G of the Membership Application Package (*MFDA Rule 1.2.1(b)*); and
- Where Approved Persons offer commission rebates, required disclosure is not provided to clients (*National Instrument 81-105*).

Client Communications

- Content of client account statements does not conform to MFDA Rule 5.3.3;
- Approved Persons have been delegated the responsibility for preparation and/or distribution of client account statements to clients (*Rule 5.3.1*); and
- The Member does not provide clients with adequate disclosure of referral arrangements (*Rule 2.4.2(b)(iv)*).

Advertising and Sales Communications

- One or more advertisements are considered misleading to clients (*Rule 2.7.2*); and
- There is no evidence of review and approval of advertisements by the designated person (*2.7.3*).

In addition to the common deficiencies listed in this bulletin, the Compliance Department would like to draw to the attention of Members the following deficiencies which, while not commonly identified as deficiencies during field examinations, may be grounds for immediate referral to the Enforcement Branch of the MFDA:

- Refusal or failure to provide financial information or information requested as part of a compliance examination (*By-law No. 1 Section 21 and Rules 3.4 and 3.5*);
- One or more of the Member's Approved Persons are engaging in discretionary trading in client accounts (*Rule 2.3.4*);
- One or more of the Member's Approved Persons show a clear pattern of excessive trading in client accounts in order to generate commissions (*Rule 2.1.1*); and
- Misappropriation of client funds or securities (*Rule 2.1.1*).

(doc #26615)