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# MFDA Bulletin

## Membership Information

**For Distribution to Relevant Parties within your Firm**

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### Notice of Material Changes to Membership Information

This Bulletin is being issued to clarify the obligations of Members with respect to the reporting of changes to membership information.

Under Rule 1.2.5 of the Mutual Fund Dealers Association of Canada (“MFDA”), Members have an obligation to ensure that the MFDA is informed, on an ongoing basis, of any material changes to information filed with the MFDA. Below is a list of material changes that require notification. This list is not exhaustive, and MFDA staff should be consulted if there is any question as to whether a change should be reported, or whether notification and approval is required prior to making a change.

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

Notice regarding the termination of Approved Persons under Rule 1.2.6 must be provided to MFDA Enforcement. Notice of all other changes should be provided to MFDA Membership Services.

### **Bankruptcy, Insolvency and Related Events - 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; or
- pursuant to Rule 3.4, the Member determining that:
  - its risk adjusted capital is less than zero; or
  - its early warning excess is less than zero; or
  - 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.

## **Changes Requiring Prior Approval**

**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. The MFDA may either:

- approve the proposed transaction (which may be subject to terms and conditions); or
- direct that the transaction not be completed if the MFDA determines that the obligations of the Member to its clients cannot be satisfied or the By-laws and Rules will not be complied with by the Member or any continuing, new or reorganized entity.

### **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.

### **Changes in Dealer Level**

Each Member is categorized under one of four dealer levels, based on the activities that the Member engages in. Factors that can affect a Member's dealer level include the operation of a trust account, the holding of client securities or other investment products in nominee-name accounts or in physical storage, and the offering of carrying dealer services. Members must notify and receive the approval of the MFDA prior to engaging in such activities.

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

In the event that subordinated debt or retractable preferred shares form part of the total financial statement capital of a Member, the Member is required to file an approved Subordinated Loan Agreement and/or Undertaking Regarding Retractable Preferred Shares, as applicable.

Under the terms of the standard form Subordinated Loan Agreement, the Member must obtain the written consent of the MFDA before repaying any of the loans that are subject to the agreement.

Similarly, under the terms of the Undertaking Regarding Retractable Preferred Shares, the prior written consent of the MFDA is required to:

- exercise any right to redeem, retract or require the repurchase of all or any of the Shares;
- accept any redemption, retraction, repurchase or other proceeds or return of capital in any manner in respect of all or any of the Shares; or
- transfer all or any of the Shares to any other person.

### **Introducing/Carrying Dealer Arrangements**

MFDA approval is required prior to entering into any proposed arrangement in which the accounts of one Member (the “introducing dealer”) are to be carried by another Member (the “carrying dealer”).

The introducing dealer and the carrying dealer arrangements must be subject to a written agreement in accordance with the provisions of MFDA Rule 1.1.6. The agreement, and any proposed amendment or termination of the agreement, must be approved by the MFDA before it is to be effective.

### **Other Material Changes**

**Notice with respect to the following material changes must be provided within five business 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); or
- 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.

#### **Change of Address**

A Member must notify the MFDA of any change in address for service of the Member. Updated telephone and fax numbers must also be provided.

### **Change in Member 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, and 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.

### **Termination of Approved Persons**

Members must notify the MFDA within five business days of the termination of an employment or agency relationship with an Approved Person where the Notice of Termination filed with the applicable securities commission discloses that the Approved Person was dismissed for cause or discloses information regarding unresolved client complaints, internal discipline matters, or restrictions for violation of regulatory requirements. Members should refer to Member Regulation Notice MR-0027 (*Notification of Termination of Approved Persons*) for more information on this requirement.

### **Changes in Organizational Structure**

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

### **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.

### **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, 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**

The Member must notify the MFDA whenever the Member or any partner, director, officer, salesperson, employee or agent of the Member, 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.

Each 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.

### **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 (eg. 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 must 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 must immediately notify the MFDA.

### **Changes Regarding Other Materials**

The Member is required to file a number of additional materials with the Membership Application prior to acceptance as a Member. These include:

- account opening forms
- policies and procedures manual
- referral arrangements

- service arrangements

Subsequent changes to any of these items do not have to be filed with the MFDA. Rather, changes to these will be monitored in the regular course of completing compliance examinations of the Member.

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