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MFDA Bulletin

Policy

For Distribution to Relevant Parties within your Firm

Procedure for Exemptive Relief Applications

This Bulletin is intended to provide guidance on how to make an application for exemptive relief from MFDA By-laws, Rules and Forms (“Exemptive Relief Applications”).

1. Authority for Dealing with Exemptive Relief Applications

Section 37 of MFDA By-law No.1 provides that the Board of Directors has discretionary authority to exempt any Member, Approved Person, or any other person subject to the jurisdiction of the Corporation, or any group or class of the foregoing persons (“Applicant”), from the requirements of any provision of the By-laws, Rules and Forms (“Regulatory Instruments”) where it is satisfied that to do so would not be prejudicial to the interests of the Members, their clients or the public. In granting such an exemption the Board of Directors may impose such terms and conditions as are considered necessary or desirable.

The Regulatory Issues Committee of the MFDA Board of Directors is responsible for the consideration and disposition of Exemptive Relief Applications.

2. Content and Format of Exemptive Relief Applications

There is no prescribed form for Exemptive Relief Applications. Exemptive Relief Applications should be set out in writing and addressed to the Membership Services Department. At a minimum, the Exemptive Relief Application should include the following information:

- the identity of the Applicant;
- the exact nature of the relief sought;
- the facts on which the Exemptive Relief Application is based; and

- detailed reasons for requesting exemptive relief from the application of the particular MFDA Regulatory Instrument.

3. MFDA Staff Review

Upon receipt, all Exemptive Relief Applications are assigned to appropriate MFDA staff for review and consideration. MFDA staff will consider the submissions made in the Exemptive Relief Application and evaluate the proposed relief sought in light of the regulatory objective of the requirement that the Applicant is requesting relief from and the criteria set out in Section 37 of MFDA By-law No.1. MFDA staff may contact the Applicant if further information or clarification is required.

4. MFDA Staff Recommendation

4.1 Recommendation that Exemptive Relief be Granted

Where staff is of the view that exemptive relief should be granted having regard to the criteria set out in section 37 of By-law No.1, the Applicant will be notified that MFDA staff supports the relief sought and will make a recommendation to the MFDA Regulatory Issues Committee to this effect.

4.2 Recommendation that Exemptive Relief Not be Granted

Where after reviewing the Exemptive Relief Application, MFDA staff is of the view that exemptive relief should not be granted, a letter will be sent to the Member advising that staff is not prepared to recommend to the MFDA Regulatory Issues Committee that the proposed relief be granted. The letter will set out the reasons of MFDA staff for its position on the Exemptive Relief Application and inform the Applicant that if they wish to have their request for exemptive relief referred to the Regulatory Issues Committee without staff support, they may make a formal request to this effect.

5. Consideration by the Regulatory Issues Committee

A meeting of the Regulatory Issues Committee will be scheduled to consider the Exemptive Relief Application where, following a review of an Exemptive Relief Application, MFDA staff is of the view that: (i) the exemptive relief requested should be granted or; (ii) where staff is of the view that the exemptive relief requested should not be granted and the Applicant formally requests that their Application be considered by the Regulatory Issues Committee.

MFDA staff will notify the Applicant once a meeting date has been set for the Regulatory Issues Committee to consider the Exemptive Relief Application.

The Applicant will be provided with a draft copy of the written materials that will be sent to the Regulatory Issues Committee in advance of the meeting and given the opportunity to comment or provide further written submissions.

In the normal course, the Applicant would not be expected or invited to attend and make submissions at the meeting. The Regulatory Issues Committee may however invite the Applicant or the Applicant may request to attend and make submissions at the meeting.

6. Decision of Regulatory Issues Committee

MFDA staff will notify the Applicant by letter of the decision of the Regulatory Issues Committee attaching written reasons prepared by the members of the Regulatory Issues Committee that considered the Application.

7. Review of Decision

Section 26 of MFDA By-law No.1 provides that a person affected by a decision of the Board of Directors, a Regional Council or the Corporation in respect of which no further review or appeal is provided in the By-laws may request any securities commission given jurisdiction in the matter under its enabling legislation to review such decision. The Securities Acts in Ontario, Alberta, British Columbia, Saskatchewan, Nova Scotia and Newfoundland provide a right for a person affected by a direction, decision, order or ruling made under a by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized self-regulatory organization to request a review by the Commission.

8. Notice to Members

Notice of exemptions granted from MFDA Regulatory Instruments by the Regulatory Issues Committee will be given to Members subject to requests from Applicants that details of the Exemptive Relief Application and the exemptive relief granted be treated as confidential.

9. Request for Confidential Treatment of Exemptive Relief Application

Applicants who wish to maintain confidential treatment of their Exemptive Relief Application must make a separate submission to the Regulatory Issues Committee providing reasons as to why the request for confidentiality is reasonable and not prejudicial to the interest of Members, clients or the public.

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