



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

Contact: Aamir Mirza  
Senior Legal & Policy Counsel  
Phone: 416-945-5128  
E-mail: amirza@mfdca.ca

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# MFDA Bulletin

## Policy

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

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### Request for Comment: Proposed Amendments to MFDA Recognition Orders to Extend the Suspension of Rule 2.4.1 (Payment of Commissions to Corporations)

MFDA Rule 2.4.1 requires that any remuneration in respect of business conducted by an Approved Person on behalf of a Member be paid by the Member (or an affiliate) directly to and in the name of the Approved Person.

The suspension of Rule 2.4.1 is currently set to expire on December 31, 2008. The MFDA has submitted an application to the securities regulatory authorities in British Columbia, Saskatchewan, Ontario and Nova Scotia (the “Applicable Jurisdictions”) to amend the Recognition Orders to extend the suspension of Rule 2.4.1 to December 31, 2010. The MFDA requested that the Applicable Jurisdictions extend the suspension to allow the MFDA time to develop proposed amendments to Rule 2.4.1 that will allow Approved Persons to direct remuneration in respect of business conducted by them on behalf of a Member to a non-registered corporation, subject to conditions.

On August 29, 2008, the Applicable Jurisdictions published the MFDA’s application and related documents for comment. Members are advised that the deadline for comments is **September 29, 2008**.

### **Background**

In 1999, the CSA Distribution Structures Committee published a position paper (the “CSA Position Paper”) that outlined their regulatory concerns with existing structures and practices that had evolved in the industry. One of the topics addressed in the CSA Position Paper was the industry practice of dealers paying commissions to non-registered corporations. The CSA was concerned that these non-registered corporations may be engaging in registerable activity and, therefore, violating securities legislation.

Rule 2.4.1 was developed at the request of CSA members participating in the initial recognition of the MFDA to ensure that MFDA Rules conformed to the positions articulated in the CSA Position Paper.

## **2001-2004**

In 2001, in response to industry concerns with Rule 2.4.1, the Applicable Jurisdictions, as a term and condition of the MFDA's recognition, suspended the operation of the Rule provided certain conditions were met. Among these conditions was that the MFDA would participate on any joint industry and regulatory committee struck by the commissions and their staff in their efforts to develop amendments to applicable securities legislation that would allow an Approved Person to carry on securities related business through a corporation while preserving the Member's and Approved Person's liability to clients for the Approved Person's actions. During the period following the MFDA's recognition and prior to the December 31, 2004 Rule 2.4.1 suspension deadline, MFDA Staff understand that although discussions occurred at the CSA staff level on this issue, no formal industry/regulatory committee was struck and no solution, legislative or otherwise, was developed. As a result, the period of suspension, originally set to expire on December 31, 2004, was subsequently extended to December 31, 2008, for the purpose of providing the CSA time to consider this matter further.

## **2005-2008**

The scope of Proposed National Instrument 31-103 – *Registration Requirements*, (“NI 31-103”) was originally intended to include the issue of payment of commissions to corporations. In the February 23, 2007 publication of the Instrument, the CSA indicated that they had not reached a decision on this matter but intended to address this issue in 2007. During this period of time, we understand that the CSA, in seeking a resolution to this matter, did consider but ultimately did not approve a proposal submitted by the IDA. Accordingly, the most recent version of proposed NI 31-103, published for comment on February 29, 2008, does not include proposals in respect of this issue. In April 2008, CSA staff confirmed that NI 31-103 would not include a proposal on this issue and advised that MFDA staff would need to consider whether it wanted to seek an extension of the December 31, 2008 deadline as well as develop its own proposal on the issue. Accordingly, the MFDA formally applied for an extension until December 31, 2010 and began considering possible rule changes.

In the Joint Notice published with the MFDA's application, staff of the OSC, NSSC and SFSC indicated that they would consider extending the current suspension of Rule 2.4.1 until March 31, 2010, with a requirement for the MFDA to submit its proposed amendments to the Rule by May 31, 2009. OSC, NSSC and SFSC staff are of the view that a March 31, 2010 expiry date would provide sufficient time to consider the regulatory impact of any proposed amendments.

OSC, NSSC and SFSC staff do not support any further extensions and believe that an expiry date of March 31, 2010 would provide sufficient time for MFDA Members and Approved Persons to restructure any commission direction arrangements, to ensure compliance with Rule 2.4.1, should the MFDA not submit a proposal by May 31, 2009.

BCSC staff is of the view that an extension is necessary to allow the MFDA time to develop amendments to Rule 2.4.1. However, they are not taking a position on the appropriate length of the extension or future extensions at this time. In addition to commenting on matters relating to the substance of the application to extend the suspension of Rule 2.4.1, BCSC staff seeks comment on the appropriate date for the submission of the rule amendments and the expiry of the suspension.

The Alberta Securities Commission has not suspended Rule 2.4.1 and, accordingly, commissions must be paid directly to the registered salesperson. Members are also reminded, as noted in MFDA Bulletin #0310-P (issued on June 2, 2008), that the New Brunswick Securities Commission has made a Variation Order to the terms and conditions of MFDA Recognition as a self-regulatory organization in New Brunswick to suspend Rule 2.4.1 until such time as a decision or legislative amendments have been made with respect to the payment of commissions to non-registered entities. The MFDA understands that staff of the Manitoba Securities Commission also intends to recommend to their Commission that a similar extension to the suspension of Rule 2.4.1 be granted.

### **Next Steps**

MFDA staff, as requested by the Applicable Jurisdictions, will consider what Rule amendments, if any, are appropriate which may include codifying the MFDA's current practice of directed commissions.

### **Further Information**

To view the MFDA's application and related documents, go to the BCSC's website at:

<http://www.bsc.bc.ca/policy.aspx?id=6837&cat=BC%20Notices>