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MFDA Bulletin

Policy

For Distribution to Relevant Parties within your Firm

Withdrawal of Proposed Amendments to MFDA Rules 1.1.7 (Business Names, Styles, Etc.) and 2.6 (Borrowing for Securities Purchases) and section 25.4 (Other Instruments) of MFDA By-law No. 1

The MFDA is withdrawing proposed amendments to MFDA Rules 1.1.7(d) (Business Names, Styles, Etc.) and 2.6 (Borrowing for Securities Purchases) and section 25.4 (Other Instruments) of MFDA By-law No. 1.

MFDA Rule 1.1.7(d) (Business Names, Styles, Etc.)

MFDA staff proposed a housekeeping amendment to MFDA Rule 1.1.7(d) in response to Member requests to provide further clarification with respect to which trade names the MFDA requires notification of under the Rule. The proposed amendment was intended to clarify that the existing requirement in Rule 1.1.7(d) to notify the MFDA, prior to the use of any business, style or trade names other than the Member's legal name, applied to the use of any such name by Approved Persons in connection with the business of the Member as well as business carried on by Approved Persons outside of the Member. The proposed amendments were approved by the Recognizing Jurisdictions on September 26, 2008.

Following approval by the Recognizing Jurisdictions, MFDA staff received comments indicating that some Members interpreted the amendment as requiring pre-approval by the MFDA of all trade names used by Members and their Approved Persons and suggested that the amendment would result in the MFDA or Members regulating the outside business activity of Approved Persons. In response, MFDA staff issued Bulletin [#0344-P](#), in which staff explained that the amendment did not result in any change to the current Rule and re-emphasized that the primary purpose of the notification requirement under Rule 1.1.7 was to ensure that the MFDA remained aware of what trade names were being used by Approved Persons and for what purpose. Nevertheless, as there continued to be a misinterpretation of the purpose of the proposed

amendment, it was withdrawn from consideration at the Annual General and Special Meeting of Members (“AGM”) on December 4, 2008.

In order to provide Members with the clarification initially requested, the MFDA has determined that it is more appropriate to bring forward the proposed amendment to Rule 1.1.7 along with related amendments currently under consideration in respect of Rule 1.2.1 (d) regarding dual occupations.

Accordingly, MFDA staff advises that it is withdrawing the proposed housekeeping amendment to Rule 1.1.7.

MFDA Rule 2.6 (Borrowing for Securities Purchases)

Proposed amendments to MFDA Rule 2.6 were published for comment on October 3, 2008 and approved by MFDA Members at the AGM on December 4, 2008. The proposed amendments were drafted to: (i) eliminate the requirement for a risk disclosure document to be provided on the opening of a new account; and (ii) continue to require that such disclosure be provided when an Approved Person makes a recommendation to invest using borrowed funds or otherwise becomes aware of a client borrowing monies to invest with the exception of borrowing to invest in an RRSP. The elimination of the requirement for risk disclosure to be provided at account opening was, at the time, consistent with proposed National Instrument 31-103 published by the provincial securities regulatory authorities. Further, the MFDA’s existing risk disclosure document is complicated and not entirely relevant to the risk of borrowing to invest in an RRSP. However, staff of the Recognizing Jurisdictions has advised that they are not supportive of the elimination of the requirements to provide disclosure at account opening or when borrowing to invest in RRSPs and are not prepared to recommend the proposed amendments for approval to their respective Commissions.

As a consequence, the MFDA is withdrawing the proposed amendments at this time.

Section 25.4 (Other Instruments) of MFDA By-law No. 1

Proposed amendments to section 25.4 of MFDA By-law No. 1 were approved by the MFDA Board of Directors on May 22, 2008 and published for comment on June 13, 2008. The proposed amendments were intended to clarify the regulatory effect of Policy instruments, specifying that “Policies” would be binding on Members and Approved Persons according to their terms, and to clarify the types of instruments that may be considered “Policies”.

The proposed amendments were intended to apply only to “Policies” with prescriptive intent. However, comments received indicated that Members misunderstood the proposed amendments, believing that all instruments falling within the definition of “Policies” (i.e. those with and without prescriptive intent) were to be made binding according to their terms.

In light of the concern and confusion, the MFDA has determined that it will not proceed with the proposed amendments at this time.

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