



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

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MFDA Bulletin

Policy

For Distribution to Relevant Parties within your Firm

Proposed Consequential Amendments to MFDA Rules Resulting from National Instrument 31 – 103 *Registration Requirements and Exemptions*

The securities regulatory authorities in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Nova Scotia (the “Recognizing Regulators”) have approved/not objected to proposed amendments to MFDA Rules 1.2 (Individual Qualifications), 2.5 (Minimum Standards of Supervision) and 5.6 (Record Retention) and Policy No. 6 *Information Reporting Requirements* resulting from requirements established under National Instrument 31-103 *Registration Requirements and Exemptions* (“NI 31-103”).

The proposed amendments are conforming and consequential in nature and are intended to ensure that requirements under MFDA Rules and Policies are consistent with those under NI 31-103.

The proposed amendments will be brought forward for ratification at the December 2010 Annual General and Special Meeting of Members (“AGM”).

The amended Rules and Policy No. 6 are attached as Schedules “A” and “B”, respectively.

The proposed amendments may also be viewed at the BCSC website at:
<http://www.bcsc.bc.ca/sros.asp?id=11128>.

DOCs# 230016

Schedule "A"

1.2 INDIVIDUAL QUALIFICATIONS

- ~~1.2.1 (a) **Course Requirements.** Each Approved Person who is a salesperson and who trades or deals in securities for the purposes of any applicable legislation in respect of a Member shall have successfully completed any one of the following courses:~~
- ~~(i) the Canadian Securities Course offered by the Canadian Securities Institute;~~
 - ~~(ii) the Canadian Investment Funds Course offered by the Investment Funds Institute of Canada;~~
 - ~~(iii) the Investment Funds in Canada Course offered by the Institute of Canadian Bankers;~~
 - ~~(iv) the Principles of Mutual Funds Course formerly offered by the Trust Companies Institute; or~~
 - ~~(v) to the extent the Approved Person trades or deals in securities in the Province of Quebec only, the courses entitled Placements des particuliers (CEGEP) and Cours sur les fonds distincts et fonds communs de placement offered by the Canadian Securities Institute.~~

1.2.1 Salespersons

- ~~(b)(a) **Compliance with MFDA Requirements.** Each Member shall ensure that any Approved Person who conducts any business on behalf of the Member executes and delivers to the Member an agreement in a form as prescribed from time to time by the Corporation agreeing, among other things, to be subject to, comply with and be bound by the By-laws and Rules.~~
- ~~(e)(b) **Training and Supervision.** Upon commencement of trading or dealing in securities for the purposes of any applicable legislation on behalf of a Member, all Approved Persons who are salespersons shall complete a training program within 90 days of such commencement and a concurrent six month supervision period in accordance with such terms and conditions as may be prescribed from time to time by the Corporation, unless he or she has completed a training program and supervision period in accordance with this Rule with another Member or was licensed or registered in the manner necessary, and is in good standing, under applicable securities legislation to trade in mutual fund securities prior to the date of this Rule becoming effective.~~
- ~~(d)(c) **Dual Occupations.** An Approved Person may have, and continue in, another gainful occupation, provided that:~~
- ~~(i) *Permitted by legislation.* The securities commission in the jurisdiction in which the Approved Person carries on or proposes to carry on business specifically permits him or her to devote less than his or her full time to the business of the Member for which he or she acts on behalf of;~~

- (ii) *Not prohibited.* The securities commission in the jurisdiction in which the Approved Person carries on or proposes to carry on business does not prohibit an Approved Person from engaging in such gainful occupation;
- (iii) *Member approval.* The Member for which the Approved Person carries on business either as an employee or agent is aware and approves of the Approved Person engaging in such other gainful occupation;
- (iv) *Member procedures.* Such Member establishes and maintains procedures to ensure continuous service to clients and to address potential conflicts of interest;
- (v) *Conduct unbecoming.* Any such gainful occupation of the Approved Person must not be such as to bring the Corporation, its Members or the mutual fund industry into disrepute;
- (vi) *Disclosure.* Clear disclosure is provided to clients that any activities related to such other gainful occupation are not business of the Member and are not the responsibility of the Member; and
- (vii) *Financial planning.* Any Approved Person that engages in financial planning services otherwise than through or on behalf of a Member must:
 - (A) Regulations - provide such services through another person that is either regulated by a governmental authority or statutory agency or subject to the rules and regulations of a widely-recognized professional association;
 - (B) Legislation - comply with the requirements of any applicable legislation in connection with the services;
 - (C) Access - ensure that, subject to any applicable legislation, the Member and the Corporation have access to financial plans prepared on behalf of the clients of the Member by its Approved Persons; and
 - (D) Proficiency - have satisfied any applicable proficiency requirements by securities regulatory authorities having jurisdiction.

~~(e)~~(d) **Business Titles.** No Approved Person shall hold him or herself out to the public in any manner including, without limitation, by the use of any business name or designation of qualifications or professional experience that deceives or misleads, or could reasonably be expected to deceive or mislead, a client or any other person as to the proficiency or qualifications of the Approved Person under the Rules or any applicable legislation.

~~1.2.2~~ **Branch Managers**

~~(a)~~**Proficiency Requirements.** An individual may not be designated by the Member as a branch manager pursuant to Rule 2.5.3(a) or an alternate branch manager pursuant to Rule 2.5.3(c) unless the individual has:

~~(i) been licensed or registered previously under applicable securities legislation as a trading partner, director, officer or compliance officer of a mutual fund dealer; or~~

~~(ii) has successfully completed any one of the following courses:~~

~~(A) the Canadian Securities Course offered by the Canadian Securities Institute,~~

~~(B) the Canadian Investment Funds Course offered by the Investment Funds Institute of Canada, or~~

~~(C) the Investment Funds in Canada Course offered by the Institute of Canadian Bankers~~

~~and, any one of the following courses:~~

~~(D) the Branch Managers' Course offered by the Canadian Securities Institute~~

~~(E) the Mutual Fund Branch Managers' Course offered by the Investment Funds Institute of Canada, or~~

~~(F) the Branch Compliance Officers Course offered by the Institute of Canadian Bankers.~~

~~(b) **Experience Requirements.** In addition to the requirements set out in Rule 1.2.2(a), each branch manager, except alternate branch managers, in respect of a Member shall:~~

~~(i) have acted as a salesperson, trading partner, director, officer or compliance officer registered under the applicable securities legislation for a minimum of two years; or~~

~~(ii) have a minimum of two years of equivalent experience to that of an individual described in Rule 1.2.2(b)(i).~~

~~(c) **Registration.** Each Branch Manager, in addition to the requirements in Rule 1.2.2(a) shall be registered, licensed or approved as a branch manager under the applicable securities legislation and comply with the requirements of such legislation in connection therewith.~~

~~1.2.3 Trading Partners, Directors, Officers and Compliance Officers~~

~~(a) **Definition.** In this Rule, "trading partner, director or officer" means each partner, director or officer who is required to be registered and/or licensed under applicable securities legislation.~~

~~(b) **Course Requirements.** Each trading partner, director, officer and designated compliance officer of a Member shall have successfully completed any one of the following courses:~~

~~(i) the Canadian Securities Course offered by the Canadian Securities Institute;~~

~~(ii) the Canadian Investment Funds Course offered by the Investment Funds Institute of Canada; or~~

~~(iii) the Investment Funds in Canada Course offered by the Institute of Canadian Bankers;~~

~~and, any one of the following:~~

~~(iv) the Partners', Directors' and Senior Officers' Qualifying Examination offered by the Canadian Securities Institute; or~~

~~(v) the Mutual Fund Officers', Partners' and Directors' Course offered by the Investment Funds Institute of Canada.~~

~~(c) **Registration.** Each trading partner, director, officer and compliance officer of a Member shall be registered and/or licensed in the appropriate category under applicable securities legislation and shall comply with the requirements of such legislation in connection therewith.~~

~~1.2.4 Currency of Courses.~~

~~(a) For the purposes of Rules 1.2.1(a), 1.2.2(a) or 1.2.3(b):~~

~~(i) the courses or examinations must have been successfully completed; or~~

~~(ii) the individual must have been registered/licensed under applicable securities legislation in the equivalent category;~~

~~within three years of the relevant time for qualification or such longer period as the Corporation may determine if it is satisfied based on the individual's experience that his or her knowledge and proficiency remains relevant and current.~~

~~(b) Notwithstanding subsection (a), if an individual completes a course for which another course is a prerequisite, the course which is a prerequisite need not have been completed within the three year period.~~

1.2.52 **Reporting Requirements.**

(a) **Member Reporting.** Every Member must report to the Corporation such information, in a manner and within such period of time, as may be prescribed by the Corporation from time to time relating to:

(i) complaints, criminal, civil and other legal proceedings, regulatory proceedings, arbitrations, contraventions and potential contraventions of legal and regulatory requirements, disciplinary action by regulatory bodies or by Members against Approved Persons, settlements with and compensation paid to clients, registration or licensing by any regulatory body, bankruptcies, insolvencies, garnishments and related events;

(ii) investigations by the Member relating to any of the matters in sub-section (i); and

(iii) information relating to the business and operation of the Member and its Approved Persons.

- (b) **Approved Person Reporting.** Every Approved Person must report to the Member such information, in a manner and within such period of time, as may be prescribed by the Corporation from time to time relating to complaints, criminal, civil and other legal proceedings, regulatory proceedings, arbitrations, contraventions and potential contraventions of legal and regulatory requirements, disciplinary action by regulatory bodies, settlements with and compensation paid to clients, registration or licensing by any regulatory body, bankruptcies, insolvencies, garnishments and related events.
- (c) **Failure to Report.** A Member shall be liable for and pay to the Corporation levies or assessments in the amounts prescribed from time to time by the Corporation for the failure of the Member or Approved Person to report any information required to be reported in the manner and within the period of time prescribed by the Corporation.

2.5 MINIMUM STANDARDS OF SUPERVISION

2.5.1 **Member Responsibilities.** Each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.

2.5.2 Ultimate Designated Person

- (a) Designation. Each Member must designate an individual registered under applicable securities legislation as an “ultimate designated person” who must be:
 - (i) the chief executive officer or sole proprietor of the Member;
 - (ii) an officer in charge of a division of the Member, if dealing in mutual funds occurs only within that division; or
 - (iii) an individual acting in a capacity similar to that of an officer described in (i) or (ii).
- (b) Responsibilities. The ultimate designated person must:
 - (i) supervise the activities of the Member that are directed towards ensuring compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons; and
 - (ii) promote compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons.

2.5.23 Chief Compliance Officer

- (a) **Designation.** Each Member must designate ~~an individual registered under applicable securities legislation trading officer~~ as a “chief compliance officer” who must be:

- (i) an officer or partner of the Member; or
- (ii) the sole proprietor of the Member.

~~" who shall be or report to a member of senior management such as the Member's chief executive officer, chief operating officer or chief financial officer.~~

(b) **Responsibilities.** The chief compliance officer must:

- (i) establish and maintain policies and procedures for assessing compliance by the Member and its Approved Persons with the By-laws, Rules and Policies and with applicable securities legislation;
- (ii) monitor and assess compliance by the Member and its Approved Persons with the By-laws, Rules and Policies and with applicable securities legislation;
- (iii) report to the ultimate designated person of the Member as soon as possible if the chief compliance officer becomes aware of any circumstances indicating that the Member, or any of its Approved Persons may be in non-compliance with the By-laws, Rules and Policies and with applicable securities legislation and any of the following apply:
 - (A) the non-compliance reasonably creates a risk of harm to a client;
 - (B) the non-compliance reasonably creates a risk of harm to the capital markets;
 - (C) the non-compliance is part of a pattern of non-compliance; and
- (iv) submit a report to the board of directors or partners, as frequently as necessary and not less than annually, for the purpose of assessing compliance by the Member and its Approved Persons with the By-laws, Rules and Policies and with applicable securities legislation.

~~The compliance officer shall be responsible for monitoring adherence by the Member and any person conducting business on account of the Member to the By-laws, Rules and Policies, including, without limitation, standards of business conduct under Rule 2 and applicable securities legislation requirements. The compliance officer or the individual to whom the compliance officer reports is required to report on the status of compliance at the Member to the board of directors or partners of the Member as necessary, and at least on an annual basis. It shall be the responsibility of the board of directors or partners of the Member to act on the annual report and to rectify any compliance deficiencies noted in the report.~~

(c) **Alternates.** In the event that a chief compliance officer is temporarily absent or unable to perform his or her responsibilities, a Member shall designate one or more alternates who must be qualified as chief compliance officers pursuant to the applicable securities legislation~~Rule 1.2.3~~ and who shall carry out the responsibilities of the chief compliance officer.

2.5.4 Access to Board. The Member must permit its ultimate designated person and its chief compliance officer to directly access the board of directors or partners of the Member at such times as the ultimate designated person or the chief compliance officer may consider necessary or advisable in view of his or her responsibilities.

2.5.35 Branch Manager

- (a) **Designation.** Each Member ~~shall~~ must designate ~~an person~~ an individual qualified as a branch manager pursuant to paragraph (b) Rule 1.2.2 for each branch office (as defined in By-law 1.1) of the Member. The Member is not required to designate a branch manager for a sub-branch office who is normally present at the office, provided that a branch manager who is not normally present at such sub-branch office, or a trading partner, director or officer or a compliance officer designated as the branch manager for such sub-branch office, supervises its business at the sub-branch office in accordance with the By-laws and Rules.
- (b) **Proficiency Requirements.** An individual may not be designated by the Member as a branch manager pursuant to paragraph (a) or an alternate branch manager pursuant to paragraph (e) unless the individual has:
- (i) met the requirements for a salesperson as prescribed under applicable securities legislation and has passed any one of the following examinations:
 - (A) the Branch Managers Course Exam offered by the CSI Global Education Inc.;
 - (B) the Mutual Fund Branch Managers' Examination Course Exam offered by the IFSE Institute; or
 - (C) the Branch Compliance Officers Course Exam offered by the CSI Global Education Inc.
- (c) **Experience Requirements.** In addition to the requirements set out in Rule 2.5.5(b), each branch manager, except alternate branch managers, in respect of a Member shall:
- (i) have acted as a salesperson, trading partner, director, officer or compliance officer registered under the applicable securities legislation for a minimum of two years; or
 - (ii) have a minimum of two years of equivalent experience to that of an individual described in paragraph (i).
- (d) **Responsibilities.** ~~It is the responsibility of a~~ The branch manager to ~~must:~~
- (i) supervise the activities of the Member at a branch or sub-branch that are directed towards ensuring compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons ensure that the business conducted on behalf of the Member by an Approved Person and other employees and agents at the

~~branch is in compliance with applicable securities legislation and the By-laws and Rules; and~~

- (ii) supervise the opening of new accounts and trading activity at the branch office.

~~(e)~~(e) **Alternates.** In the event that a branch manager is temporarily absent or unable to perform his or her responsibilities, a Member shall designate one or more alternate branch managers who must be qualified as branch managers pursuant to paragraph (b)Rule 1.2.2(a) and who shall carry out the responsibilities of the branch manager, but are not required to be normally present at the branch office.

2.5.6 **Currency of Examination.** For the purposes of the Rules, an individual is deemed to have not passed an examination or successfully completed a program unless the individual has done so within 36 months before the date the individual applied for registration or such longer period as may be specified by and subject to relevant requirements as the Corporation may determine if it is satisfied based on the individual's experience that his or her knowledge and proficiency remains relevant and current.

2.5.47 **Maintenance of Supervisory Review Documentation.** The Member must maintain records of all compliance and supervisory activities undertaken by it and its partners, directors, officers, compliance officers and branch managers pursuant to the By-laws and Rules.

2.5.58 **No Delegation.** No Member or director, officer, partner, compliance officer, branch manager or alternate branch manager shall be permitted to delegate any supervision or compliance responsibility under the By-laws or Rules in respect of any business of the Member, except as expressly permitted pursuant to the By-laws and Rules.

5.6 RECORD RETENTION

Each Member shall retain copies of the records and documentation referred to in this Rule 5 for seven years from the date the record is created or such other time as may be prescribed by the Corporation.

Schedule "B"

MFDA POLICY NO. 6

INFORMATION REPORTING REQUIREMENTS

14. Changes in Organizational Structure

- 14.1. Members must report to the MFDA any changes in a Member's directors, chief executive officer, ultimate designated person, chief compliance officer, chief financial officer, or chief operating officer or individuals performing the functional equivalent of any of those positions~~directors, partners (in the case of a partnership), officers and compliance officers.~~