



THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

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BY ELECTRONIC MAIL: gljubic@mfd.ca & scorrigallbrown@bcsc.bc.ca

September 5, 2008

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Dear Sirs/Mesdames:

Re: MFDA Proposed Amendments

We are writing to provide the comments of the members of The Investment Funds Institute of Canada ("IFIC") and express concerns regarding the MFDA proposed amendments to Rule 2.2 (Client Accounts), and Policy No. 2 (Minimum Standards for Account Supervision), Rule 5.3 (Client Reporting), and Rule 2.8 (Client Communications), collectively ("the Amendments"), as published by the Ontario Securities Commission on June 13, 2008.

General Comments:

The investment funds industry supports regulatory measures designed to more clearly define the relationship between the client and the financial services provider and the roles and responsibilities that each party will assume when an account is opened. In addition, we also support rule amendments that will help to clarify the responsibilities of firms in carrying out their regulatory supervisory functions while allowing their internal risk management to evolve and function as the business dictates. We find that the Amendments fall short of these objectives in a number of areas.

In particular, the Amendments introduce a number of new and more onerous procedures which, if implemented, may overwhelm existing resources and cause unnecessary erosion in the quality of supervision now practiced. These new requirements have not been justified in terms of the benefits they will bring to customers and the regulatory process. The level of prescription contained in these amendments, in our view, goes beyond the aim of clarifying the regulatory responsibilities of Members and Approved Persons and reaches into areas more properly managed through the risk management policies of firms or covered by statutes and regulations that are outside of the MFDA's mandate.

To more clearly outline our concerns in each of these areas, we have provided detailed comments on the Amendments in the attached Annex. We would be pleased to discuss our concerns in further detail should you have any questions.

The following summarizes key areas of concern on specific aspects of the Amendments.

New and Additional Requirements

The Amendments will add numerous compliance requirements to current procedures which have not been justified in terms of improved supervision. In many cases, the additional workload implied and the introduction of new procedures will decrease the quality of supervision that now occurs with no identified benefit for consumers or the regulatory process itself. In particular, the massive and unmanageable blotters for trade reviews by Branch Managers produced by the new requirements will result in time unnecessarily spent on reviewing miscellaneous transactions instead of focusing on the highest risk transactions.

Furthermore, the new requirements do not take into account the growing activity through call center or internet distribution channels. The MFDA's model of a branch with a branch manager is dated. The reality is that clients are serviced through a number of locations. The Amendments in that regard fall short of providing flexibility in the supervision structure and the way supervision is conducted.

Focus on Principles of Regulation

The prescriptive nature of the proposed amendments will erode firms' abilities to respond to risks in ways that are unique and relevant to their own business models. We are disappointed with the added restrictions in MFDA Policy 2 to members seeking to adopt policies and procedures relating to branch and head office supervision or the allocation of supervisory activities that differ from those contained in the Policy. We agree that the principles and objectives of regulatory policy should be clearly articulated. We disagree, however, that specific policies and procedures that are implemented by firms should have to be pre-approved by MFDA staff before implementation. This requirement will unnecessarily limit a firm's ability to assess and respond to risk in ways that are relevant and appropriate for the firm. This approach to regulation is not adaptable to innovations in compliance and new technologies, and is subject to inevitable time-dating in such aspects as specified dollar thresholds.

Account performance

This is a fundamental component in satisfying and retaining clients, and the competitive landscape of our industry is acting to ensure that the quality of disclosure available to clients in this area is steadily improving. Consistent with our submission to IIROC on this topic earlier this year, we recommend that the proposed rule allow for flexibility in the information provided and the methodology used. We believe in giving firms the freedom to meet their clients' needs, and allowing the competitive process to determine what information and methodologies will best meet those needs, rather than prescribing them by rule.

Harmonization

The MFDA should align its policies and rules with those of IIROC and other regulators to avoid duplication and overlap. It is noted, for example, that the level of prescription of the MFDA proposal rules on account supervision goes way beyond what is contained in the corresponding rules of IIROC. Greater harmonization will require closer collaboration among the various regulators and the industry in the development of the Client Relationship Model ("CRM"), and in the development of related rules such as the proposed Point of Sale ("POS") disclosure initiative of the Joint Forum and the CSA's proposed NI 31-103.

The Amendments do not indicate how regulators propose to integrate overlapping requirement of the POS and CRM initiatives so as to avoid duplicate and unnecessary disclosure. There are currently a number of regulatory initiatives which aim to enable investors to access concise and meaningful information. While the disclosure objectives are important, we would suggest that greater consideration be given to how layering of disclosure requirements, at account opening and on a continuing basis, could be better integrated.

Transition Period

You have asked for industry feedback on what would be an appropriate period for transitioning to the new framework. It is the industry's view that the proposed changes would require significant development time for systems changes, new documentation, and the retraining and restructuring at all levels including representatives, branch managers and administration. The movement, for example, from the present rule requiring the assurance of suitability on a transactional basis to one requiring assurance at the account level, though seemingly a minor adjustment to the rules, is a major change for the industry. Since the training and behavioral change aspects of this will be a large undertaking for many firms, and since this would be additive to the development time for the new systems required, which may take a year or longer for some applications, we believe that an 18-month transitional period should be provided for implementation of these Amendments.

Gregory J. Ljubic and Sarah Corrigan-Brown
MFDA Proposed Amendments
September 5, 2008

Thank you for providing our members with an opportunity to comment on these Amendments. If you have any questions regarding this submission, please contact me directly by phone at 416-309-2300 or by email at jdelautiis@ific.ca or Jon Cockerline, Director, Policy – Dealer Issues by phone at 416-309-2327 or by email at jcockerline@ific.ca.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Joanne De Laurentiis
President & Chief Executive Officer

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<p>2.2.1 "Know-Your-Client". Each Member and Approved Person shall use due diligence:</p> <p>(a) to learn the essential facts, <u>as may be prescribed by the Corporation from time to time</u>, relative to each client and to each order or account accepted;</p> <p>(b) to ensure that the acceptance of any order for any account is within the bounds of good business practice;and</p> <p>(c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and in keeping with the client's investment objectives; and <u>based on the essential facts relative to the client and any investments within the account;</u></p> <p>(d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client <u>based on the essential facts relative to the client and the investments in the account, and in keeping with the client's investment objectives</u>, the Member <u>or Approved Person</u> has so advised the client before execution thereof; and the Member or Approved Person has maintained evidence of such advice;</p> <p><u>(e) to ensure that the suitability of the investments within each client's account is assessed;</u></p>	<p>(a) Recommend removal of “from time to time” from the rule. Arbitrary change to the essential facts may require modification of forms and unnecessary but expensive re-collection of member information.</p> <p>(e) In the case of assets transferred into an account at the Member, and where there has been a change in the Approved Person responsible for the client’s account, there is need to allow for adequate time for the review to occur. The review should be required prior to the first transaction in the account following the change, with allowance for automated transactions to continue. We recommend that the words “prior to the first transaction</p>

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<p><u>(i) whenever the client transfers assets into an account at the Member;</u></p> <p><u>(ii) whenever the Member or Approved Person becomes aware of a material change in client information, as defined in Rule 2.2.4; or</u></p> <p><u>(iii) by the Approved Person where there has been a change in the Approved Person responsible for the client's account at the Member; and</u></p> <p><u>(f) to ensure that, where investments in a client's account are determined to be unsuitable, the Member or Approved Person so advises the client and makes recommendations to address any inconsistencies between investments in the account and the essential facts relative to the client and the Member or Approved Person maintains evidence of such advice and recommendations.</u></p>	<p>after the change, with allowance for automated transactions to continue:" be included after the word "assessed" in 2.2.1 (e).</p> <p>(iii) We believe that a formal, documented suitability review in the event where there has been a change in the Approved Person is unnecessary. To the best of the dealer's knowledge nothing has changed that might render the investments unsuitable. A provision requiring a new representative to familiarize him/herself with the file already exists in the rules and is manageable. We recommend removal of this trigger for a suitability review.</p>
<p>2.2.2 New Accounts Application Form.</p> <p><u>(a) Each new account for a client must be opened by the Member within a reasonable time of the client's instruction to do so. Account numbers must not be assigned unless they are accompanied by the proper name and address for the client.</u></p>	<p>(a) We recommend that the rule should only be applicable if account application received is in good order.</p>

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<p>(b) A New Account Application Form must be completed for each new account of a client. If the New Account Application Form does not include know-your-client information, this must be documented on a separate Know-Your-Client form. Such form or forms shall be duly completed to conform with the requirements of Rule 2.2.1 and shall be signed by the client and dated. Account numbers must not be assigned unless they are accompanied by the proper name and address for the client and such name and address must be supported by the New Account Application Form.</p> <p>2.2.3 New Account Approval. Each Member shall designate a trading partner, director or officer or, in the case of a branch office, a branch manager reporting directly to the designated partner, director or officer, who shall be responsible for approval of the opening of new accounts and the supervision of account activity. The designated person shall prior to or promptly after the completion of any initial transaction specifically approve the opening of such account in writing and a record of such approval shall be maintained in accordance with Rule 5.</p>	<p>2.2.3. As per standard industry practice, approval of forms is completed prior or promptly after completion of any initial transaction. For this reason, we recommend restoring the original wording.</p>
<p>2.2.4 Updating Know-Your-Client Information</p> <p><u>(a) Definition. In this Rule, "material change in client information" means any information that could reasonably result in changes to the stated risk tolerance, time horizon or investment objectives of the client or would have a significant impact on the net worth or income of the client.</u></p> <p>(a)<u>(b)</u> The Form documenting know-your-client information must be updated to include any material change in client information whenever a Member or Approved Person or other employee or agent becomes aware of such change including pursuant to Rule 2.2.4(b).</p> <p><u>(c) Subject to paragraph (d), the Member must maintain evidence of client instructions regarding any material changes in client information and all such changes must be approved by the individual designated in accordance with Rule</u></p>	<p>(c) While having material changes in KYC information such as investment tolerance examined by a registered representative is appropriate, requiring all material</p>

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<p><u>2.2.3 as responsible for the approval of the opening of new accounts.</u></p> <p><u>(d) A client signature must be obtained to evidence any change in client name, client address or client banking information.</u></p> <p>(b)<u>(e)</u> Without reducing the responsibility of Members in Rule 2.2.1, all Members must at least annually, in writing, request each client to notify the Member if there has been any material change in know your client information previously provided to the Member or the client's circumstances have materially changed. The date of such request and the date upon which any such client information is received and recorded or amended must be retained.</p> <p>(c) Written authorization must be obtained from the client for any change in a client name.</p>	<p>changes to be approved by the designated individual is unnecessary. Suggest clarifying by adding “as defined in 2.2.4 (a)” following “material change in client information”.</p> <p>(d) The current system of allowing clients to change personal information through electronic mediums (telephone, email) is subject to dealers’ in-house risk management policies. This requirement is redundant with firm risk management and should be removed.</p>
<p><u>2.2.5 Relationship Disclosure.</u> For each new account opened, the Member shall provide written disclosure to the client:</p> <p><u>(a) describing the nature of the advisory relationship;</u></p> <p><u>(b) describing the products and services offered by the Member;</u></p>	<p>(a) Request clarification and explanation of what constitutes a description of the nature of the advisory relationship.</p> <p>(b) The requirement to disclose all products and services offered by the Member is confusing. Regulations that increase the volume of disclosure to the client without necessarily informing the client should be avoided. Request clarification that (b) refers only to generic</p>

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<p><u>(c) describing the Member's procedures regarding the receipt and handling of client cash and cheques. In the case of a Level 2 dealer, the disclosure must include an explanation that all client cheques shall be payable to the issuer or carrying dealer, as applicable;</u></p> <p><u>(d) describing the Member's obligation to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and advising when the Member will assess the suitability of the investments in the client's account;</u></p> <p><u>(e) defining the various terms with respect to the know-your-client information collected by the Member and describing how this information will be used in assessing investments in the account;</u></p> <p><u>(f) describing the content and frequency of reporting for the account; and</u></p> <p><u>(g) describing the nature of the compensation that may be paid to the Member and referring the client to other sources for more specific information.</u></p>	<p>descriptions of products and services rather than product-specific descriptions.</p> <p>(e) The rule requiring advisors to define the various terms with respect to KYC through written disclosure simply increases the volume of materials to be provided at account opening. Further written descriptions of this nature will lead to unmanageable volumes of material that are unwanted and will be unread by clients. Paragraph (e) should be removed.</p>
<p><u>Policy No. 2. Introduction - New Paragraph</u></p> <p><u>Members that seek to adopt policies and procedures relating to branch and head office supervision or the allocation of supervisory activities that differ from those contained in this Policy must demonstrate that all of the principles and objectives and minimum standards set out in this Policy have been properly satisfied. Further, any such alternative policies and procedures must adequately address the risk management issues of the Member and must be pre-approved by MFDA staff</u></p>	<p>Dealers should be allowed to manage risks as they face them in an appropriate manner. Supervision has to be flexible enough to allow firms to operate according to their own business model. Requiring pre-approvals for all alternative policies and procedures would be excessively burdensome, would destroy the diversity of</p>

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<p><u>before implementation.</u></p>	<p>the channel, and would limit the ability to respond to new risks according to the circumstances of the firm. The second sentence of this new paragraph should be removed.</p>
<p>I Establishing and Maintaining Procedures – Delegation of Procedures</p> <p>4. Those who are delegated tasks must have the qualifications <u>and required proficiency</u> to perform them tasks and should be advised in writing of their duties. <u>The general expectation is that tasks be delegated only to individuals with the same proficiency as the delegating supervisor. In certain limited circumstances, it may be acceptable to delegate specialized tasks to an individual that has not satisfied the proficiency requirements provided that the individual has equivalent training, education or experience related to the function being performed. The Member must consider the responsibilities and functions to be performed in relation to the delegated tasks and make a determination as to appropriate equivalent qualifications and proficiency. The Member must be able to demonstrate to MFDA staff that the equivalency standard has been met. Tasks related to trade supervision can only be delegated to individuals that possess the proficiency of a branch manager or compliance officer.</u></p>	<p>The principle of delegating tasks and procedures to a knowledgeable and qualified individual, but not the accountability for the task, is covered in section 1 of the rule. The Approved Person retains accountability for all delegated tasks. This section serves no useful purpose and should be removed.</p>
<p>3. <u>Relevant information contained in compliance-related bulletins from the MFDA Member Regulation Notices and Bulletins and compliance-related notices from other applicable regulatory bodies must be communicated to all registered salespersons and relevant employees. Procedures relating to the method and timing of distribution of compliance-related bulletins information must be clearly detailed in the Member's written procedures. Members should ensure that they maintain evidence of compliance with such procedures.</u></p>	<p>Compliance related information need not be circulated to all employees. Suggest restoring the original wording that information “must be communicated to registered salespersons and relevant employees”.</p>
<p>To comply with the "Know-Your-Client" <u>and suitability</u> requirements set out in Section 2 of the MFDA Rules 2, each Member must establish procedures to maintain accurate and complete information on each client. The first step towards compliance with this rule is completing proper documentation when opening new accounts.</p>	

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<p><u>Documentation of Client Account Information</u></p> <p><u>1. A New Account Application Form ("NAAF") must be completed for each new account.</u></p> <p><u>2. A complete set of documentation relating to each client's account must be maintained by the Member. The registered salesperson must also maintain a copy of the NAAF. In the case of a Level 1 Introducing Dealer and corresponding Carrying Dealer, both Members must maintain a copy of each client's NAAF.</u></p> <p><u>3. For each account of a client that is a natural person, the Member must obtain information sufficient to allow for the operation of the account and sufficient to determine the essential facts relative to each client (the "know-your-client" or "KYC" information), which would include, at a minimum, the following information:</u></p> <p><u>(a) name;</u></p> <p><u>(b) type of account;</u></p> <p><u>(c) residential address and contact information;</u></p>	<p>The description of required information is vague and requires clarification. Suggest changing the text to include the following highlight words:</p> <p><u>For each account of a client that is a natural person, or in the case of accounts jointly owned by two or more persons, the Member must obtain information sufficient to allow for the operation of the account and sufficient to determine the essential facts relative to each client (the "know-your-client" or "KYC" information), or on a consolidated basis, where relevant. The essential facts would include, at a minimum, the following information:</u></p> <p>(a) name of owner(s);</p> <p>(b) type of account;</p> <p>(c) residential address and contact information of client(s);</p>

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<p><u>(d) date of birth;</u></p> <p><u>(e) employment information;</u></p> <p><u>(f) number of dependants;</u></p> <p><u>(g) other persons with trading authorization on the account;</u></p> <p><u>(h) other persons with a financial interest in the account;</u></p> <p><u>(i) investment knowledge;</u></p> <p><u>(j) risk tolerance;</u></p> <p><u>(k) investment objectives;</u></p> <p><u>(l) time horizon;</u></p> <p><u>(m) income;</u></p> <p><u>(n) calculation of net worth (including details of liquid assets, fixed assets and liabilities);</u></p>	<p>(d) date of birth of owner(s);</p> <p>(e) owner(s) employment information;</p> <p>(f) We request clarification as to how this information will be beneficial in determining and assessing client suitability. Recommend removal of (f).</p> <p>(g) This is already a requirement under current AML rules, and unnecessary to include in a MFDA rule. Recommend removal of (g).</p> <p>(h) This is already a requirement under current AML rules, and unnecessary to include in a MFDA rule. Recommend removal of (h).</p> <p>(i) investment knowledge;</p> <p>(j) risk tolerance;</p> <p>(k) investment objectives;</p> <p>(l) time horizon;</p> <p>(m) income;</p> <p>(n) We recommend that the rule not specify details of net worth calculations. Clients may not be comfortable providing details of the net worth calculations, as the details of this calculation are not relevant to assessing KYC. Suggest changing (n) to “calculation(s) of liquid</p>

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<p><u>(o) information required for relevant tax reporting;</u></p> <p><u>(p) information required for compliance with the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, as amended from time to time;</u></p> <p><u>(q) authorization to provide personal information to the MFDA under applicable privacy legislation.</u></p> <p><u>The preceding provides a list of minimum requirements. The Member may require clients to provide any additional information that it considers relevant. In the case of accounts jointly owned by two or more persons, the minimum information noted above should be collected with respect to each owner, with the exception of the information required under subparagraphs (b), (h), (i), (k), (l) and (m).</u></p> <p><u>4. For each account of a client that is a corporation, trust or other type of legal entity, the Member must obtain information sufficient to allow for the operation of the account and sufficient to determine the essential facts relative to the client, which would include, at a minimum, the following information:</u></p> <p><u>(a) legal name;</u></p> <p><u>(b) head office address and contact information;</u></p>	<p>and total net worth.”</p> <p>(o) Information in (o) is already subject to Federal tax laws, and unnecessary to include in a MFDA rule. Recommend removal of (o).</p> <p>(p) Information in (p) is already subject to Federal tax laws, and unnecessary to include in a MFDA rule. Recommend removal of (p).</p> <p>(q) We request clarification of what constitutes “personal information”.</p> <p>In the case of a joint account, risk tolerance should be assessed on an account rather than individual basis. It would otherwise be difficult to open a joint account where individual risk tolerance levels conflicted. Recommend adding “(j)” to “(b), (h), (i), (k), (l) and (m).”</p> <p>4. Suggest changing the text to include the following highlighted words:</p> <p><u>(a) legal name of the entity;</u></p> <p><u>(b) head office address and contact information of the entity;</u></p>

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<p><u>(c) type of legal entity (i.e. corporation, trust, etc.);</u></p> <p><u>(d) form and details regarding the organization of the legal entity (i.e. articles of incorporation, trust deed, or other constating documents)</u></p> <p><u>(e) nature of business;</u></p> <p><u>(f) persons authorized to provide instructions on the account and details of any restrictions on their authority;</u></p> <p><u>(g) investment knowledge of the persons to provide instructions on the account;</u></p> <p><u>(h) risk tolerance;</u></p> <p><u>(i) investment objectives;</u></p> <p><u>(j) time horizon;</u></p> <p><u>(k) income;</u></p> <p><u>(l) calculation of net worth (including details of liquid assets, fixed assets and liabilities);</u></p> <p><u>(m) information required for relevant tax reporting;</u></p>	<p><u>(c) type of legal entity (i.e. corporation, trust, etc.);</u></p> <p><u>(d) form and details regarding the organization of the legal entity (i.e. articles of incorporation, trust deed, or other constating documents);</u></p> <p>(e) This is already a requirement under current AML rules, and unnecessary to include in a MFDA rule. Recommend removal of (e).</p> <p><u>(f) persons authorized to provide instructions on the account and details of any restrictions on their authority;</u></p> <p>(g) Clarification is needed as to whose investment knowledge is to be assessed – eg. decision makers, or owners – and what is to be done in the case of conflicting investment knowledge. Suggest modifying (g) to read: “investment knowledge of the entity;”</p> <p><u>(h) risk tolerance of the entity;</u></p> <p><u>(i) investment objectives of the entity;</u></p> <p><u>(j) time horizon of the entity;</u></p> <p><u>(k) income of the entity;</u></p> <p><u>(l) calculation of total and liquid net worth;</u></p> <p>(m) Information is already a requirement under Federal</p>

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<p><u>(n) information required for compliance with the <i>Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations</i>, as amended from time to time;</u></p> <p><u>(o) authorization to provide personal information to the MFDA under applicable privacy legislation.</u></p> <p><u>The preceding provides a list of minimum requirements. The Member may require clients to provide any additional information that it considers relevant.</u></p> <p><u>5. For supervisory purposes, registered accounts, leveraged accounts and accounts of any registered salesperson's family member operating under a limited trading authorization or operating under a power of attorney in favour of the registered salesperson must be readily identifiable.</u></p> <p><u>6. If the NAAF does not include KYC information, this must be documented on a separate KYC form(s). Such form(s) must be signed by the client and dated. A copy of the completed NAAF and KYC form, if separate from the NAAF, must be provided to the client.</u></p> <p><u>7. The Member must have internal controls and policies and procedures in place with respect to the entry of KYC information on their back office systems. Such controls should provide an effective means to detect and prevent inconsistencies between the KYC information used for account supervision with that provided by the client.</u></p> <p><u>8. Except as noted in the following paragraph, NAAF's must be prepared and completed for all new clients prior to the opening of new client accounts. The new account or KYC information must be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3 no later than one</u></p>	<p>laws. Suggest removal of (m).</p> <p>(n) Information is already a requirement under Federal laws. Suggest removal of (n).</p> <p>(o) request clarification of what constitutes “personal information”.</p> <p>5. This section should be amended to read “For supervisory purposes, accounts that are known to the member as registered accounts...” A power of attorney, for example, could be attached to an account without a Member’s knowledge.</p> <p>8. Request clarification as to when an account is considered open. The account could only be classified as opened when an account number has been assigned to the file. That would assure that all documents are received</p>

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<p><u>business day after the date that the account is opened. Records of all such approvals must be maintained in accordance with Rule 5.</u></p> <p>9. <u>Notwithstanding the preceding paragraph, NAAF's for clients of a registered salesperson transferring to the Member must be prepared and completed within a reasonable time (but in any event no later than the time of the first trade). The new accounts or KYC information for clients of the transferring salesperson must be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3 no later than one business day after the date that the NAAF is completed. Records of all such approvals must be maintained in accordance with Rule 5.</u></p> <p>10. <u>In the event that a NAAF is not completed prior to or within a reasonable time after opening an account, as required by this Policy, the Member must have policies and procedures to restrict transactions on such accounts to liquidating trades until a fully completed NAAF is received.</u></p> <p>11. <u>When there is a change of registered salesperson responsible for a client's account at a Member, the new registered salesperson must review the information on the NAAF and any separate KYC form to ensure it is current and record the date of such review on the form or forms.</u></p>	<p>and the information is in good order. We recommend replacing “no later than one business day after the date that the account is opened” with “<u>within a reasonable time (but in any event no later than the time of the first trade)</u>”.</p> <p>9. Section 9 appears to apply only in the case of bulk transfers. Current procedures already require permission on bulk transfers. Recommend removal of section 9.</p> <p>11. This section is redundant to 2.2.1. An update in KYC is instigated through a material change or a triggering point on the account. KYC information is not collected on a periodic basis. The rules triggering a suitability review establish that the KYC is current as long as an annual notice is sent to the client and no material change known to the Member has occurred. Recommend removal from rule.</p>

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<p><u>Changes to Know-Your-Client Information</u></p> <p><u>1. The registered salesperson or Member must update the KYC information whenever they become aware of a material change in client information as defined in Rule 2.2.4.</u></p> <p><u>2. On account opening, the Member should advise the client to promptly notify the Member of any material changes in the client information previously provided to the Member and provide examples of the types of information that should be regularly updated.</u></p> <p><u>3. In accordance with Rule 2.2.4(e), Members must also, on an annual basis, request in writing that clients notify them if there has been any material change in client information previously provided, or if the client's circumstances have materially changed.</u></p> <p><u>4. Access to amend KYC information must be controlled and instructions to make any such amendments must be properly documented.</u></p> <p><u>5. A client signature, which may include an electronic signature, must be obtained to evidence any change in client name, client address or client banking information.</u></p> <p><u>6. Other material changes to client information may be evidenced by a client signature, which may include an electronic signature or, alternatively, such changes may be evidenced by maintaining notes in the client file detailing the client's instructions to change the information and verified by providing written confirmation to the client with details of the instructions and providing an opportunity for the client to make corrections to any changes that have been made.</u></p>	<p>2. Recommend clarifying that “client information” refers to KYC information. Suggest the addition of “as defined in 2.2.4 (a)” following “client information” in 2.</p> <p>3. Recommend clarifying that “client information” refers to KYC information. Suggest the addition of “as defined in 2.2.4 (a)” following “client information” in 3.</p> <p>5. This section repeats Rule 2.2.4. (d) and should be removed for the reasons outlined above.</p> <p>6. Material changes other than those referred to in the definition of 2.2.4 (a) do not necessitate written client confirmation. These should be addressed by the Member’s internal risk management policies and are not the subject of MFDA regulation. Recommend removal of rule 6.</p>

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<p><u>7. All material changes in client information must be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3 no later than one business day after the date on which notice of the change in information is received from the client. Records of all such approvals must be maintained in accordance with Rule 5.</u></p> <p><u>8. Where any material changes have been made to the information contained in the NAAF or KYC form(s), the client must promptly be provided with a document or documents specifying all KYC information that applies to the client's account.</u></p> <p><u>9. The last date upon which the KYC information has been updated or confirmed must be indicated in the client's file and on the Member's back office system.</u></p>	<p>7. The referencing of material changes, “as described in 2.2.4 (a)” would clarify the objective of 7. The recommended timeframe for approval is unrealistic. Suggest modifying the timeframe to be “within a reasonable time, but in any event no later than the time of the next trade.”</p> <p>8. These changes should be subject to Member’s internal risk management controls and should not be the subject of MFDA regulation. Recommend removal from rule.</p>
<p><u>Client Communications Master Files</u></p> <p>1. Entering and amending client master files must be controlled and accompanied by proper documentation.</p> <p><u>2.1.</u> All hold mail must be authorized by the client in writing and be controlled, reviewed on a regular basis and maintained by the responsible supervisor. Hold mail should never be permitted to occur over a prolonged period of time (i.e. in excess of 6 months).</p> <p><u>3.2.</u> Returned mail is to be promptly investigated and controlled.</p> <p>4. For supervisory purposes, registered accounts, leveraged accounts and accounts operating under a limited trading authorization must be readily identifiable.</p>	<p>1. Hold mail requirements should be subject to Member’s internal risk management controls and should not be the subject of MFDA regulation. Recommend removal from rule.</p>

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<p>III. ASSESSING SUITABILITY OF INVESTMENTS AND LEVERAGING STRATEGIES</p>	
<p><u>1. In accordance with Rule 2.2.1, Members and registered salespersons are responsible for the suitability of each recommendation made for an account of a client and must assess the suitability of the investments in each client's account under the circumstances described in Rule 2.2.1(e).</u></p>	
<p><u>2. Members must have policies and procedures with respect to their suitability obligations, including criteria for the purpose of assessing the suitability of a client's use of leveraging and describing appropriate client circumstances for recommending the use of leverage.</u></p>	
<p><u>3. The Member's policies and procedures must describe the information required to be maintained in the client file to facilitate proper Member supervision. Whenever the Member or registered salesperson recommends or becomes aware that a client is using a leverage strategy, the Member or registered salesperson must either maintain copies of the lending documents or make sufficient inquiries to obtain details of the loan, including interest rate, terms for repayment and the outstanding loan value. Where the Member or registered salesperson assists the client in completing the loan application, the Member must maintain copies of lending documents in the file, including copies of the loan application.</u></p>	<p>3. Assessing the leverage strategy based on limited information is improper. In instances where an Approved Person recommends a leveraging strategy, but does not assist the client in obtaining or completing the lending documentation, we recommend that the Approved Person and the Member ensure that the leveraging strategy is in accordance with the KYC information. In other cases, clients will develop a leveraging strategy through another financial institution, without the Member's knowledge. As such, it is inappropriate for a Member to determine if the loan is suitable for a client without the client's credit score, interest rate and repayment schedule. The rule should be clarified to state that whenever the client is using a leverage strategy and the client is unwilling to provide the required documentation, the Member's responsibility ends with the request for the loan amount only, in both cases.</p>
<p><u>4. The Member's criteria for selecting trades for review, the inquiry and resolution</u></p>	

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<p><u>process, supervisory documentation requirements, and the escalation and disciplinary process must be documented and clearly communicated to all registered salespersons and all relevant employees. Registered salespersons must be advised of the criteria the Member uses in assessing suitability, actions the Member will take when a trade has been flagged for review and appropriate options for resolution.</u></p>	
<p><u>5. Registered salespersons must assess the suitability of investments in each client account within a reasonable time, but in any event no later than the time of the next trade, whenever:</u></p> <p>-- <u>the client transfers to the Member or transfers assets into an account at the Member;</u></p> <p>-- <u>the Member or registered salesperson becomes aware of a material change in the client's KYC information; and</u></p> <p>-- <u>the client account has been re-assigned to the registered salesperson from another registrant at the Member.</u></p> <p><u>The determination of "reasonable time" in a particular instance will depend on the circumstances surrounding the event that gives rise to the requirement to perform the suitability assessment. For example, with respect to client transfers, the volume of accounts to be reviewed may be a relevant factor in determining reasonable time.</u></p>	<p>5. We recommend replacing with the following: Registered salespersons must assess the suitability of investments in each client account within a reasonable time, but in any event no later than the time of the next trade, with allowance for automated transactions to continue, whenever:</p> <p>-- the client transfers to the Member or transfers assets into an account at the Member;</p> <p>-- the Member or registered salesperson becomes aware of a material change in the client's KYC information.</p> <p>We believe that a formal, documented suitability review in the event of re-assignment of the account to another registrant at the Member is unnecessary. To the best of the dealer's knowledge nothing has changed that might render the investments unsuitable. A provision requiring a new representative to familiarize him/herself with the file already exists in the rules and is manageable. In addition, there is a suitability review and two tiers of supervision over accounts at the time of initial set up, at any subsequent trading or transfers into the account, and following any material changes in KYC. In addition we ask the client annually to inform us of any KYC changes</p>

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	(which may necessitate another suitability review). We recommend removal of this trigger for a suitability review.
<p><u>6. Should a registered salesperson identify unsuitable investments in a client's account, the registered salesperson must advise the client and take appropriate steps to determine if there has been any change to client circumstances that would warrant altering the KYC information. It is inappropriate to alter the KYC information in order to match the investments in the client's account. If there is no change to the KYC information, or if investments in the account continue to be unsuitable after the KYC information has been amended, the registered salesperson should discuss any inconsistencies with the client and provide recommendations as to rebalancing investments in the account. Transactions in the account must only be made in accordance with client instructions and any recommendations made with respect to the rebalancing of the account must be properly recorded.</u></p>	<p>6. The requirement to proactively provide a recommendation in a client account should an unsuitable investment be identified is excessive, particularly in a customer-directed channel. We recommend that the Member's responsibility should end after advising the client that the account is unsuitable.</p>
<p><u>7. Registered salespersons must maintain evidence of completion of all suitability assessments performed and any follow up action taken with respect to such assessments.</u></p>	
<p><u>HIIV. BRANCH OFFICE ACCOUNT SUPERVISION</u></p> <p>Each branch manager must undertake certain activities within the branch for purposes of assessing compliance with the Member's policies and procedures and regulatory requirements. These activities should be designed to identify failures to adhere to required policies and procedures and provide a means of revealing and addressing undesirable account activity.</p> <p>Daily Activity</p> <p>1. All new account applications <u>and updates to client information</u> must be reviewed and approved <u>in accordance with this Policy.</u> no later than the next business day</p>	

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<p>after the account is opened.</p> <p>2. The branch manager (or alternate) must review the previous day's trading for <u>unsuitable trades and any other unusual trading activity</u> using any convenient means. This review must <u>should</u> include, at a minimum, all: trades in exempt securities (excluding guaranteed investment certificates) where permitted by securities law, and a sample of:</p> <p>-- initial trades;</p> <p>-- trades in exempt securities;</p>	<p>2. The changes described in this rule cover a lot of products, and most of the trades in a day's trading blotter. The review of all activity instead of a sample is too onerous of a request. The volume of workload for the Branch Manager will be unmanageable and will cause a decline in the quality of the review. Stripping away the ability to sample from the population produces excessive reporting materials and detracts from the objective of the rule.</p> <p>Concerns with the proposed changes include:</p> <ul style="list-style-type: none"> - the removal of sampling increases the number of transactions for review without any justification why this better achieves the regulatory purpose of the rule. The necessity for making such a change requires a cost-benefit study. - there is limited ability for branch managers to track leverage recommendations, and trades in accounts of family members of registered salespersons - the inclusion of GICs as exempt securities requiring review seems unnecessary and has not been explained. <p>Recommend directional, but less prescriptive rules based on sampling.</p> <p>Recommend restoring the exemption for GICs.</p>

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<p>-- leveraged trades/<u>leverage recommendations for open accounts;</u></p> <p>-- trades <u>over \$1,000 in moderate-high or high risk investments; in volatile or speculative funds; and</u></p> <p>-- trades in accounts <u>of family members of registered salespersons operating under a power of attorney in favour of the registered salesperson; and limited trading authorizations.</u></p> <p>-- trades and redemptions over \$5,000 for all other investments.</p> <p><u>For the purposes of this section, "trades" does not include redemptions except where specifically referenced.</u></p> <p><u>3. When reviewing redemptions, branch managers should seek to identify and assess:</u></p> <p><u>-- the suitability of the redemption with regard to the composition of the remaining portfolio;</u></p>	<p>Leverage recommendations may not be known through trading activity. These are checked at the trade level and do not need to be duplicated here. Restore original wording.</p> <p>Reviewing trading in high risk investments may be acceptable practice. However, the number of moderate-high risk investments is vast, and may lessen the impact intended by the rule. The prescription of the \$1000 threshold of moderate-high or high risk investments is arbitrary and unexplained. Thresholds levels, in time, will become obsolete and out-of-date, and should not be prescribed by rule.</p> <p>Recommend adding "If provided," to begin this category of trades.</p> <p>Recommend changing the requirement to read "the suitability of the portfolio at the time of the next trade, if after a redemption the composition of the portfolio does not match the KYC."</p>

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<p><u>-- the impact and appropriateness of any redemption charges;</u></p> <p><u>-- possible outside business activity where money may be leaving the Member for reinvestment into other potentially inappropriate or unauthorized investments; and</u></p> <p><u>-- potential churning, including situations where redemption proceeds are being held on a temporary basis pending reinvestment.</u></p> <p>4. The branch manager (or alternate) is responsible for following up on unusual trades identified by head office.</p> <p><u>5. The branch manager must assess the suitability of investments in each client account where the Member becomes aware of a material change in the client's KYC information. The suitability assessment must be performed no later than one business day after the date on which notice of the change in information is received from the client.</u></p> <p>3.6. In addition to transactional activity, branch managers must also keep themselves informed as to other client-related compliance matters such as complaints.</p>	<p>Recommend clarifying the language with regards to the term “appropriateness” of redemption charges. Recommend adding “excessive” before the words “redemption charges”.</p> <p>Monitoring subsequent purchases at another firm is not appropriate. This requirement is too vague, and may not be enforceable. Recommend removal from rule.</p> <p>Identifying potential churning requires trend analysis (as described in Section VI), and may not be apparent through review of daily trades. Recommend removal from rule.</p> <p>5. Investment suitability is already assessed at the advisor level. Recommend removal from rule.</p>
<p>IV. HEAD OFFICE ACCOUNT SUPERVISION</p> <p>A two-tier structure is required to adequately supervise client account activity. While the head office or regional area level of supervision by its nature cannot be in the same depth as branch level supervision, it should cover the same elements.</p>	

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<p>Head office review should be focused on unusual activity or reviews that cannot be carried out at the branch level. <u>Head office reviews must include procedures to effectively detect unsuitable investments and excessive trading in client accounts.</u></p> <p>Daily Reviews</p> <p>1. In addition to the trading review criteria for branch managers, head office must conduct daily reviews of account activity which must <u>should include, at a minimum, all: criteria to detect the following:</u></p> <ul style="list-style-type: none"> —lack of suitability; —excessive trading or switching between funds indicating possible unauthorized trading or lack of suitability; —excessive switches between no load funds and deferred sales charge or front load funds; —excessive switches between deferred sales charge funds and front load funds; —excessive forced settlements; —quality downgrading of client holdings; a. account number changes where the Member uses nominee name accounts. <p><u>-- trades over \$5,000 in exempt securities, moderate-high or high risk investments, or leveraged trades/recommendations in open accounts;</u></p>	<p>As described above, in section (V) (2) Branch Office Supervision, an MFDA cost-benefit analysis is required to assess the increased operational workload and the additional costs of compliance due to the amendments. The quality of supervision may decline as a result of increased workload. The MFDA has not justified why this is necessary.</p> <p>According to IROC rule 2500 (IV) Head Office Supervision, there is no requirement for daily reviews of mutual fund specific trades. The focus of their rule is on riskier investments classes.</p> <p>Recommend decreasing the level of prescribed rules and applying a principles-based approach to regulation.</p> <p>Leverage recommendations may not be known through trading activity. These are checked at the trade level and do not need to be duplicated here. Recommend removal of “leveraged trades/recommendations.”</p>

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<p>-- <u>trades over \$10,000 for other investments (excluding money market funds); and</u></p> <p>-- <u>redemptions greater than \$10,000.</u></p> <p><u>For the purposes of this section, "trades" does not include redemptions except where specifically referenced.</u></p> <p>2. There must be closer supervision of trading by registered salespersons who have had a history of questionable conduct. <u>Questionable conduct may include trading activity that frequently raises questions in account reviews, frequent or serious complaints, regulatory investigations or failure to take remedial action on account problems identified.</u></p> <p>3. Daily reviews should be completed within one business day unless precluded by unusual circumstances.</p> <p>4. Daily reviews should be conducted of client accounts of producing branch managers.</p> <p>5. <u>On a sample basis, the Member must review the suitability of investments in accounts where clients have transferred assets into an account or where there has been a material change in client information. The Member must have policies and procedures regarding sample size and selection, which should be based on the risk level associated with the account, focusing on accounts that hold higher risk investments, exempt securities or products not normally sold by the Member, accounts that are operated under a power of attorney in favour of a registered salesperson and accounts employing a leverage strategy. The Member's reviews must be completed within a reasonable time.</u></p>	<p>5. The level of prescription is unnecessary and counterproductive. In cases, for example, where dealers have suitability reviews by their own operating systems, assessing this sample is irrelevant and unnecessary.</p>
<p>Client Statement Reviews</p> <p>1. A sample of client account statements must be reviewed as frequently as they are</p>	

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<p>required to be produced according to MFDA Rule 5.3.1 and such review should encompass areas of concern as discussed in the daily activity review.</p> <p>2. Reviews should be completed within 21 days of the period covered by the statement unless precluded by unusual circumstances.</p> <p>3. Evidence of all reviews should be kept including date of completion, actions and responses and must be maintained for at least two years.</p>	
<p><u>VI. IDENTIFICATION OF TRENDS IN TRADING ACTIVITY</u></p> <p><u>1. In addition to performing daily reviews, Members must establish policies and procedures to identify trends or patterns that may be of concern including:</u></p> <p><u>-- excessive trading or switching between funds indicating possible unauthorized trading, lack of suitability or possible issues of churning (for example, redemptions made within 3 months of a purchase, DSC purchases made within 3 months of a DSC redemption or accounts where there are more than 5 trades per month);</u></p> <p><u>-- excessive switches between no load funds and deferred sales charge or front load funds;</u></p> <p><u>-- excessive switches between deferred sales charge funds and front load funds; and</u></p> <p><u>-- excessive switches where a switch fee is charged.</u></p>	
<p><u>2. Head office supervisory review procedures must include, at a minimum, the following criteria:</u></p>	<p>2. These measures increase the level of compliance with checks at the advisor level, branch manager and head-office. This three-tier system puts a burden on the firm supervisory roles and raises industry costs. The MFDA does not provide any evidence that the additional workload required by these extensive criteria is justified.</p>

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<p><u>-- a review of all accounts generating commissions greater than \$1,500 within the month;</u></p> <p><u>-- a quarterly review of reports on assets under administration ("AUA") comparing current AUA to AUA at the same time the prior year;</u></p> <p><u>-- a quarterly review of commission reports for the previous 12 month period comparing commissions received in the current year to commissions received for the same period in the prior year.</u></p> <p><u>Significant increases in commissions or AUA beyond those caused by market fluctuations may indicate issues with churning or leveraging strategies. Significant decreases may indicate potential inappropriate outside business activity.</u></p>	<p>The main objective of this rule is to monitor accounts where excessive trading has occurred for the sole benefit of the registered representative. However, a \$1,500 commission may be produced by one \$30,000 trade. Also, in instances of high market volatility, it may be prudent for registered representatives to rebalance their client's portfolios and minimize risk levels. In this case, increasing the volume of trading is the best interests of the client. This measure, as written, will generate an excessive number of false positives, each of which will require time to review.</p> <p>Recommend increasing the threshold to \$3,000 to correspond with IROC Rule 2500 IV (B).</p>
<p><u>3. Reviews should be completed within 21 days of the last day of the period being reviewed unless precluded by unusual circumstances.</u></p>	<p>Increased supervision requirements make meeting review checks within 21 days impractical. Recommend change to 30 days.</p>
<p>5.3.1 Delivery of Account Statement</p> <p>(a) Each Member shall, <u>in a timely manner</u> send an account statement to each client</p>	

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<p>in accordance with the following minimum standards:</p> <p>(c)(vii) The Member must receive copies of the statements, <u>or have other systems in place</u>, to ensure that the information contained therein <u>on the statements</u> matches its own information regarding the transactions it executes.</p>	
<p>5.3.3 Content of Account Statement</p> <p>(c) for all accounts:</p> <p>(i) the type of account;</p> <p>(ii) the account number;</p> <p>(iii) the date the statement was issued;</p> <p>(iv)(iii) the period covered by the statement;</p> <p>(v)(iv) the name of the Approved Person(s) servicing the account, if applicable; and</p> <p>(vi)(v) the name, address and telephone number of the Member.</p>	
<p><u>5.3.5 Account Performance Reporting.</u> <u>The Member must provide information to clients on an annual basis with respect to the performance of the client's account at the Member.</u></p>	<p>Given the challenges posed by prescribed reporting requirements, and the existing propensity of dealers to provide relevant performance information to customers, we recommend that flexibility be available to dealers with regard to the specific information that is to be provided and the methodology that is to be used for its delivery. We believe that the regulation should be focused primarily on a requirement that full disclosure be provided to the client (via Relationship Disclosure) on the specifics of the performance information that is</p>

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<p><u>(a) Subject to paragraphs (b) and (c), the account performance reporting must include the following information for the annual period:</u></p> <p><u>i) the total market value of the account as at the start of the period covered by the report;</u></p> <p><u>ii) total assets deposited to the account during the period covered by the report;</u></p> <p><u>iii) total assets withdrawn from the account during the period covered by the report;</u></p> <p><u>iv) the total market value of the account as at the end of the period covered by the report.</u></p>	<p>provided and how it will be delivered.</p> <p>Recommend changing reporting from “annual period” to “statement period.”</p> <p>(ii & iii) Regulators should not impose standards that inadvertently result in unhelpful or misleading information to be sent to clients. The terms total assets deposited or withdrawn are both undefined. More importantly, prescribing these two data items may not achieve the objectives of the CRM, particularly where firms may already provide performance information that more accurately reflects changes in the account’s investments as one combination of these items to fully answer the questions. Reporting total assets deposited and withdrawn from the account during the period produces grossed-up values, especially in instances of switches in a client name account. This illustrates why prescribed content may create more confusion than clarity for the client and why it is preferable to provide firms with the flexibility to report either a combined net invested amount, or separate total assets deposited or withdrawn.</p>
<p><u>(b) Notwithstanding the provisions of paragraph (a), where market values cannot be readily and reliably determined by the Member in respect of security positions held in the account, such values shall not be included in the report and the Member must</u></p>	<p>In cases where cost information cannot be readily and reliably determined, the rule requires the firm to disclose that it is not being included and the reason why. There</p>

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<p><u>disclose to the client in the report the security positions for which values have not been included and why the information has not been included in the report.</u></p>	<p>are no existing processes available to document why information is unavailable and costs to develop such systems would be prohibitive.</p>
<p><u>(c) A Member need not send the information contained in paragraph (a) where the Member sends a client communication that contains an annualized percentage rate of return for the client's account in accordance with the requirements of Rule 2.8.3.</u></p>	
<p>2.8.3 Rates of Return</p> <p>(a) In addition to complying with the requirements in Rule 2.8.2, any client communication containing or referring to a rate of return regarding a specific account or group of accounts must: be based on</p> <p><u>(i) disclose an annualized rate of return calculated in accordance with standard industry practices; and</u></p> <p><u>(ii) explain the methodology used to calculate such rate of return in sufficient detail and clarity to reasonably permit the client to understand the basis for the rate of return.</u></p> <p><u>(b) In addition to complying with the requirements in Rule 2.8.2 and Rule 2.8.3(a), any client communication containing or referring to a rate of return regarding a specific account or group of accounts that is provided by an Approved Person must be approved and supervised by the Member.</u></p> <p>(b)<u>(c) Notwithstanding the provisions of paragraphs (a) and (b), where an account has been open for less than 12 months, the rate of return shown must be the total rate of return since account opening.</u></p>	<p>(i) We are concerned with undefined terminology in this circumstance and require clarification on what are standard acceptable industry practices. Where an annualized rate of return percentage is provided to a client, firms should be able to provide the information with a disclosure of the methodology used.</p>