



Mutual Fund Dealers Association of Canada  
Association canadienne des courtiers de fonds mutuels  
121 King Street West, Suite 1600, Toronto, Ontario, M5H 3T9  
TEL: 416-361-6332 FAX: 416-943-1218 WEBSITE: www.mfda.ca

**MR-0025**

February 24, 2004

## **MEMBER REGULATION NOTICE**

### **SUITABILITY OBLIGATIONS FOR UNSOLICITED ORDERS**

This Notice is intended to clarify the obligations of Members and their Approved Persons in the event that they receive an unsolicited order that they determine is unsuitable for the client.

#### **Obligation to Perform a Suitability Review**

MFDA Rule 2.2.1 requires Members and their Approved Persons to use due diligence 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. The obligation to make a suitability determination applies to all proposed trades, whether or not a recommendation is made.

#### **Unsuitable Orders**

Recent amendments to MFDA Rule 2.2.1 clarify the obligations of Members and their Approved Persons in the event that they receive an unsolicited order that they determine is unsuitable for the client. Rule 2.2.1(d) requires that where a transaction proposed by a client is not suitable for a client and in keeping with the client's investment objectives, the Member must so advise the client before execution thereof.

Members and their Approved Persons are required to make clients aware that the proposed transaction is not suitable based on the information provided on the New Account Application Form ("NAAF") or "Know-Your-Client" ("KYC") form and provide appropriate cautionary advice. If the client's information has changed, the NAAF or KYC form must be updated to reflect this. If the client's KYC information has not changed and the proposed trade is unsuitable in light of the information on the NAAF or KYC forms, the Member should adopt appropriate safeguarding procedures where the client insists on proceeding with the trade.

#### **Compliance Procedures for Unsuitable Orders**

MFDA Rule 5.1(b) requires Members to keep an adequate record of each order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Where an unsolicited order is determined to be unsuitable for the client, the record of the order pursuant to Rule 5.1(b) must include, at a minimum, evidence that:

- (i) the transaction was unsolicited;
- (ii) a suitability review was performed; and
- (iii) the client was advised that the proposed transaction was unsuitable.

Approved Persons must clear unsuitable, unsolicited orders with their branch managers or compliance officer before proceeding with the trade.

Members must set out procedures for dealing with unsuitable, unsolicited orders in their Policy and Procedures Manual.

### **No Obligation to Accept Unsuitable Orders**

Members are not obligated to accept a purchase order from a client that is determined by the Member to be unsuitable. Whether or not a Member wishes to refuse such a trade is an internal policy decision of the Member.

(doc #27645)