



Mutual Fund Dealers Association of Canada
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MEMBER REGULATION NOTICE

UNDIVIDED INTERESTS IN LAND

This Notice is intended to clarify the obligations of Members and Approved Persons with respect to the marketing of investments in undivided interests in land to clients.

Background

MFDA staff have become aware of investments in undivided interests in land being marketed to clients by way of referral arrangements between Members and the entities managing and offering the investment opportunities. There are a variety of structures that have been employed in the creation and marketing of these investments and many Members have raised questions regarding the nature of the products and their treatment under securities legislation and MFDA Rules.

Securities legislation in the various provinces generally includes investment contracts within the definition of “securities”. In deciding whether a particular arrangement involves an investment contract, Canadian courts consider whether the scheme involves i) an investment of money; ii) in a common enterprise; iii) with profits solely to come from the efforts of others. MFDA Staff caution Members that, regardless of the way in which such products are presented, investments involving undivided interests in land may be found by securities regulators to be investment contracts, and would therefore be considered securities for the purposes of securities legislation and MFDA Rules.

Applicable MFDA Requirements

MFDA requirements regarding referrals for specific securities are set out in MFDA Member Regulation Notice MR-0043. In particular, we remind Members and Approved Persons that where the Member is appropriately registered or licensed to sell undivided interests in land that are considered to be securities, the Member should not be entering into a referral arrangement with respect to the distribution of such investments. By providing advice on specific securities, Approved Persons may be acting outside of the limits of their registration, or acting on behalf of a registrant other than their sponsoring dealer contrary to securities legislation and MFDA Rules. MFDA Rule 1.1.1 requires that all securities related business be carried out for the account of the Member and through the facilities of the Member.

Members that are considering entering into arrangements for the distribution of such products have a responsibility to perform an adequate level of due diligence to determine whether the products would be deemed to be securities under applicable legislation. In addition, Members must be comfortable that they have a good understanding of the risks and other characteristics of these investments and should also consider the fees and expenses associated with such investments as compared to other alternatives.

Members must also establish procedures to address conflicts of interest related to the promotion or recommendation of these investments, including any conflict issues that may arise with respect to compensation.