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MEMBER REGULATION NOTICE

COMPLAINT HANDLING OBLIGATIONS

Background

MFDA staff has received requests to clarify the requirements of MFDA Rule 2.11, under which Members are required to establish and implement written policies and procedures for dealing with client complaints that ensure that such complaints are dealt with promptly and fairly.¹

In addition, staff is considering revisions to MFDA Policy 3 *Handling Client Complaints* to address issues relating to client access to the Member's complaint handling process and communication regarding the complaint. In the interim, staff is issuing this Notice to provide guidance to Members.

Fair Handling of Client Complaints

To achieve the objective of handling complaints fairly, Members' complaint handling procedures must include standards which allow for a factual investigation and an analysis of the matters specific to the complaint. Members must not have policies that dismiss a complaint based on predetermined factors. There must be a balanced approach to the gathering of facts that objectively considers the interests of the client, the adviser and the Member, and the basis of the Member's analysis must be reasonable.

For example, a suitability complaint must be considered in light of the same principles that would be applied by a reasonable Member in conducting a suitability review, which would include an acknowledgement of the client's stated risk tolerance. It would not be reasonable for a Member to assess suitability based on a risk level presumed by the Member that is different from that indicated by the client.

¹ See OSC, IDA, MFDA, OBSI, "A Followup to the Investor Town Hall: Reporting on our Progress" July 25, 2006. One of the issues identified at the Investor Town Hall held in May 2005 was a lack of clarity and openness of complaint processes. As a result, the MFDA is providing guidance to Members on improving the clarity and consistency of communications with investors regarding their complaints, the Members' complaint-handling processes and the process for escalating unresolved disputes.

Complaints that are particularly serious in nature should be escalated to senior management at the Member to ensure that such matters have been properly reviewed and that the possibility of systemic issues has been considered by the appropriate individuals.

Prompt Handling of Client Complaints

MFDA staff expects that Members will complete their investigation and analysis and provide a substantive response letter to clients on a timely basis. It is not required that the client accept the Member's substantive response. However, in such circumstances, the Member would be expected to continue to proactively address the client's issues in a timely manner until no further action on the part of the Member is required.

Examples of an appropriate substantive response may include a denial of the complaint with reasons, a fair offer to resolve the complaint or an agreement to refer the matter to mediation. MFDA staff does not require that the client accept the Member's offer in order for the offer to be considered fair.

Further, staff recognizes that if the client fails to co-operate during the complaint resolution process or if the matter requires an extensive amount of fact-finding or complex legal analysis, time frames for response may need to be extended.

Client Access

Members should facilitate access to their complaint handling procedures so that clients are informed as to how to file a complaint and to whom they should address a complaint. Members may consider posting information on their complaint handling procedures on their firms' websites. In any case, these procedures must be clear and easily understood by clients. As a best practice, Members should provide a specific complaint contact to clients, which may be a designated person or may be a general inbox or telephone number that is continuously monitored. Members may advise clients to address their complaints to their Approved Person or Branch Manager, but should also make a specific head office contact available.

As a reminder, pursuant to Section 24.A.5 of MFDA By-law No.1, Members are also required to provide to new clients, and to clients who submit written complaints to the Member, written disclosure in a form approved by MFDA staff which describes the Ombudsman for Banking Services and Investments (the "Ombudsman"). The prescribed form of disclosure is attached to MR-0020 *Client Complaint Information*.

Initial Response Letter

Pursuant to MFDA Policy 3, Members must acknowledge all client complaints in writing in a timely manner. As a best practice, an initial response letter that includes the following information should be provided to the client:

- A written acknowledgment of the complaint;
- The name, job title and full contact information of the individual at the Member firm handling the complaint;
- A statement indicating that the client should contact the individual at the Member firm

- handling the complaint if he/she would like to inquire about the status of the complaint;
- An explanation of the Member's internal complaint handling process, including general timelines for providing the Member's response to complaints;
 - A request to the client for any additional reasonable information required to resolve the complaint; and
 - A reference to the above-mentioned Client Complaint Information form, a copy of which should be included for the client.

Substantive Response Letter

As a best practice, the substantive response letter, which Members should provide to the client, may be accompanied by the Member's complaint handling procedures. The substantive response letter to clients should also include the following information:

- An outline of the complaint;
- The Member's substantive decision on the complaint, including reasons for the decision; and
- A reminder to the client that he/she has the right to consider (i) presenting the complaint to the Ombudsman which will consider complaints brought to it within 6 months of the substantive response letter; or (ii) making a complaint to the MFDA. The Member may also wish to include a copy of the Client Complaint Information form with the substantive response letter.