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MEMBER REGULATION NOTICE

MAINTAINING EVIDENCE OF DISCLOSURE

This Notice is intended to clarify the obligations of Members and Approved Persons with respect to maintaining evidence that required disclosures have been provided to clients pursuant to MFDA Rules.

Background

Through compliance examinations performed to date, MFDA staff has noted that some Members and Approved Persons are not maintaining evidence that required disclosures have been provided to clients. In these cases, Members and Approved Persons do not have an adequate audit trail evidencing compliance with MFDA Rules.

Applicable MFDA Requirements

A Member's obligations to disclose certain information to clients are a fundamental part of several MFDA requirements including:

- Conflicts of interest - MFDA 2.1.4(c) requires that any conflict or potential conflict of interest that arises between the interests of the Member or Approved Person and the interests of the client shall be disclosed to the client;
- Referral arrangements - MFDA Rule 2.4.2(b)(iv) requires that written disclosure of referral arrangements must be made to clients prior to any transaction taking place;
- Dual occupations - MFDA Rule 1.2.1(d)(vi) requires that clear disclosure be provided to clients that any activities relating to any gainful occupation that are not the business of the Member are not the responsibility of the Member;
- Client complaint information - Section 24.A.5 of MFDA By-law No.1 requires that the MFDA's Client Complaint Information Form (which is attached as Schedule A to MFDA Member Regulation Notice MR-0020) be provided to new clients and to clients who submit a written complaint;
- Leveraging risk disclosure document - MFDA Rule 2.6 requires that Members must provide a risk disclosure document containing the prescribed information when a new account is opened and when the Approved Person makes a recommendation for purchasing securities with borrowed monies; and

- Other disclosure requirements contained in provincial securities legislation, including the obligation to deliver a prospectus.

Member and Approved Person Obligations

Maintaining evidence that required disclosures have been provided to clients, including evidence of delivery by mail, is an important internal control which provides an audit trail for Members to assess compliance on an ongoing basis and in the event of a complaint or dispute. Accordingly, required disclosures should be provided to clients in writing and Members and Approved Persons should maintain sufficient documentation, which may include:

- Signed client acknowledgements evidencing receipt of required disclosures; or
- Copies of disclosure documents in client files along with detailed notes of client meetings and discussions evidencing that the disclosure has been provided.

In order to ensure that all clients receive required disclosures, Members may also elect to incorporate certain required disclosures into their new account application form.

MFDA staff also reminds Members and Approved Persons that they are expected to maintain evidence of these required disclosures for a period of 7 years, as is required for all books and records pursuant to MFDA Rule 5.6.