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## **MEMBER REGULATION NOTICE**

### **APPROVED PERSON TRANSFERS**

#### **Background**

MFDA staff has observed a number of issues that have arisen where Approved Persons have resigned or been terminated by a Member and have transferred to another Member firm. In seeking to facilitate the process of transferring client accounts over to the new Member firm, Approved Persons and Members have engaged in certain activities and practices which raise various regulatory concerns.

The purpose of this Notice is to identify concerns with some of the account transfer practices that MFDA staff has observed and to remind Members and Approved Persons of applicable regulatory requirements. MFDA staff may approve different arrangements with respect to account transfers in the context of Member reorganizations or resignations.

#### **Issues Identified with Account Transfer Practices**

To ensure that clients make the transition to the new Member, Approved Persons often solicit clients while they are still employed with their current dealer so that clients can be set up on the new Member's books and records before the transfer is completed. This may involve:

- Distributing New Account Application Forms ("NAAF") or Know-Your-Client ("KYC") forms of the new Member, either blank or pre-populated, to clients for signature before the transfer takes place; and
- Providing client lists and other client information to the new Member without client authorization.

In some cases, Approved Persons will complete the KYC section of the NAAF using the information on file with their current dealer. The Approved Person may also sign the new Member NAAF before transferring over to the new Member.

MFDA staff has also observed procedures in which Approved Persons collect client information in anticipation of the transfer while still at their current dealer. The Approved Person then discloses the client information to the new Member after resigning from the previous Member, but before joining the new Member. The new Member uses the information to complete the

NAAF/KYC forms for clients, which are then mailed to the clients for their signature. In such cases, client authorization is not obtained prior to the Approved Person transmitting the client information to the new Member.

In addition, MFDA staff has identified situations where Approved Persons have provided the new Member with signed, undated dealer change forms well in advance of transferring to the new Member. In some cases, the dealer change forms signed by clients are not on dealer letterhead and do not identify the dealer the forms are associated with.

MFDA staff has also identified situations where Approved Persons who are retiring or leaving the industry have entered into arrangements to facilitate the transfer of the Approved Person's clients to an Approved Person at another Member. In some cases, the retiring Approved Person will complete forms of the new Member with the client's information and provide them to the new Member without obtaining the client's authorization.

## **Regulatory Concerns**

MFDA staff has identified the following regulatory concerns with the foregoing practices and procedures:

- Confidential client information may be disclosed without the prior written authorization of the client; and
- In completing the NAAF/KYC and other forms of the new Member prior to leaving the current Member, the Approved Person is conducting registerable activity on behalf of a Member that he or she is not registered or employed with.

## **Applicable MFDA Rules**

### Timeliness of Transfers

MFDA Rule 2.12 provides that if an account transfer is authorized by a client, a delivering Member and a receiving Member shall act diligently and promptly in order to facilitate the transfer of the account in an orderly and timely manner. In accordance with current industry practice, MFDA staff would generally expect the account transfer to be completed no later than 10 business days after receipt by the delivering Member of the client's request to transfer.

### Client Confidentiality

Efforts made by Approved Persons to facilitate the timely transfer of accounts in accordance with MFDA Rule 2.12 must comply with other MFDA Rules of general application. Members and Approved Persons have an obligation to maintain client confidentiality under MFDA Rule 2.1.3. Client information cannot be disclosed to any other person or used for the advantage of the Member, Approved Person or other employees or agents without the prior written consent of the client, or as required or authorized by law. Therefore, the prior written consent of the client is required before an Approved Person can share client information with the new Member or begin the account transfer process under MFDA Rule 2.12. Further, Members and Approved Persons

are reminded that the disclosure of confidential client information without the express consent of the client may also violate confidentiality provisions of federal and/or provincial privacy legislation.

### Member Records

All client information is considered Member records for the purpose of engaging in Member business. Accordingly, Members must ensure that they retain copies of client information and records for clients who have transferred with an Approved Person to another Member in accordance with record retention requirements under MFDA Rule 5.6, and, in particular, records that have not been kept in head office or branch files. Members are reminded that client records include NAAFs/KYC information, client communications, evidence of client instructions, lending information, client meeting notes and all other client-related records.

### Approved Person Activity

Under MFDA Rule 1.1.1, Approved Persons cannot conduct business on behalf of the new Member until they are registered with the new Member. Approved Persons cannot complete the NAAF/KYC forms of the new Member prior to leaving their current dealer and being registered with the new dealer. This avoids any issue with respect to the performance of registerable activity without appropriate registration.

### **Acceptable Practices**

MFDA Rules do not prohibit Approved Persons from communicating with clients with respect to their upcoming transfer to another Member, and Approved Persons may inform their clients of the date of their transfer and their contact information at the new dealer. However, Approved Persons may be restricted from sending communications on behalf of the new dealer by the terms of the employment or agency agreement with their current dealer.

MFDA Rules also do not prohibit Members or Approved Persons from obtaining written consent to disclose client information or from obtaining a client signature on a dealer change form before the transfer to the new Member. A dealer change form must not be sent to the fund company until an account has been opened with the new Member.

### **Timelines for Completing New Client NAAFs**

In accordance with MFDA Policy No. 2 *Minimum Standards for Account Supervision*, NAAFs 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). In these cases, the account can be opened with the client's name and address on the dealer change form pending completion of the NAAF. The volume of accounts to be reviewed will be a factor in determining reasonable time. Where an Approved Person is transferring a large book of business, industry best practice is to ensure that a NAAF is completed within a year if there are no trades in the accounts.

## **Account Suitability Triggers**

Members and Approved Persons are also reminded of the obligation under MFDA Rule 2.2.1(e) to assess the suitability of investments in the client's account where a client transfers an account to a new Member, which will come into effect on December 3, 2011. For more information, please refer to MFDA [Bulletin #0459-P](#) *Transition Periods for MFDA Rule and Policy Amendments Implementing the Client Relationship Model Proposals*.

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