

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

PROPOSED CONFORMING AMENDMENTS TO MFDA RULES

RESULTING FROM NATIONAL INSTRUMENT 31-103 *REGISTRATION*

REQUIREMENTS AND EXEMPTIONS

I. OVERVIEW

A. Current Rules

On September 28, 2009, National Instrument 31-103 *Registration Requirements and Exemptions* (“NI 31-103”) came into force. Changes to the following MFDA Rules and Policy are required to ensure that they are consistent with NI 31-103: 1.2 (Individual Qualifications), 2.4.2 (Referral Arrangements), 2.5 (Minimum Standards of Supervision), 5.3 (Client Reporting), 5.6 (Record Retention) and MFDA Policy No. 6 *Information Reporting Requirements*. Rules 1, 2 and 5 and Policy No. 6 are the only sections of the MFDA Rulebook where changes have been made. In these areas, the complete text has been provided so that the proposed amendments be considered along with the rest of the Rule/Policy.

B. The Issues

MFDA Rules currently require amendments to make them consistent with requirements established under NI 31-103.

C. Objectives

The proposed amendments are conforming and consequential in nature and, as noted, are intended to ensure that requirements under MFDA Rules and Policies are consistent with those under NI 31-103.

D. Effect of Proposed Amendments

MFDA Members and Approved Persons must comply with requirements under securities legislation as well as MFDA Rules. The proposed amendments will ensure that Members and Approved Persons are subject to consistent requirements under both MFDA Rules and NI 31-103.

II. DETAILED ANALYSIS

A. Relevant History

NI 31-103 was first published for public comment in 2007 and, since that time, has been subject to additional public comment periods and significant stakeholder input. The proposed

amendments are required, conforming and consequential in nature and have been made in accordance with the MFDA Rule review and approval process.

B. Proposed Amendments

Rule 1.2 (Proficiency Requirements)

The MFDA does not have authority to grant registration. Given that proficiency requirements for registration are contained in securities legislation, it is not necessary for such requirements to be maintained in MFDA Rules. Accordingly, the proposed amendments remove such requirements from the Rules and address proficiency generally under proposed new Rule 1.2.1.

The individual branch manager category of registration has not been retained in NI 31-103. However, the MFDA has determined that it is appropriate and consistent with its investor protection mandate to retain requirements in respect of branch managers under MFDA Rules. Based on its compliance and enforcement experience to date, MFDA staff has determined that the branch manager supervisory structure continues to be necessary to ensure appropriate supervision of Approved Persons as prescribed under MFDA Rules.

As a consequence, the proficiency requirements for Branch Managers would remain in MFDA Rules and be consolidated in proposed Rule 2.5.5, as described below.

Rule 2.4.2 (Referral Arrangements)

Rule 2.4.2 previously limited who a Member could enter into a referral arrangement with and also limited such arrangements to those in respect of securities related business. The proposed consequential amendments to the Rule conform to requirements under NI 31-103, under which no such limits are imposed and all referrals are required to be done through the Member.

Rule 2.5 (Minimum Standards of Supervision)

- **Rule 2.5.2 (Ultimate Designated Person)** – This new Rule adds the requirement for designation of the ultimate designated person (“UDP”), specifying who the UDP must be and UDP responsibilities. As noted above, the proficiency principle, which applies to Approved Persons, branch managers, Chief Compliance Officers (“CCO”) and UDPs, is addressed in Rule 1.2.1.
- **Rule 2.5.3 (Chief Compliance Officer)** (former Rule 2.5.2) – The Rule has been amended to require designation of the CCO and to revise the responsibilities of this individual to conform to those required under NI 31-103.
- **Rule 2.5.4 (Access to Board)** – This new Rule has been added to require the Member to provide its UDP and CCO with direct access to the board of directors or partners.

- **Rule 2.5.5 (Branch Manager)** (former Rule 2.5.3) – Conforming amendments have been made to make the wording consistent with NI 31-103 and to include proficiency requirements for branch managers. The requirements are based on the principle that a branch manager supervising Approved Persons must meet the proficiency requirements of the Approved Persons he or she supervises in addition to passing the applicable branch manager examinations.

Rule 5.3 (Client Reporting)

- **Rule 5.3.1(a) (Delivery of Account Statement)** – Conforming amendments have been made to: (i) eliminate distinctions between delivery requirements for accounts held in client and nominee name; and (ii) adopt the NI 31-103 requirement for registered dealers (including mutual fund dealers) to deliver a statement to all clients at least once every three months.
- **Rule 5.3.2 (Automatic Payment Plans)** – This Rule, which required quarterly statement delivery in respect of automatic payment plan transactions for client assets held in nominee name, has been deleted.
- **Rule 5.3.2 (Content of Account Statement)** (former Rule 5.3.3) – Conforming amendments have been made to: (i) eliminate distinctions between requirements for nominee and client name accounts; and (ii) adopt the wording and structure of NI 31-103 in respect of content requirements for transactions made for the client during the period covered by the statement and as at the end of the period for which the statement is made (these changes clarify existing requirements in Rule 5.3.2). Specifically, the following requirements have been added:
 - “total value of the transaction” in respect of each transaction made for the client during the period covered by the statement – the proposed amendment restates, with improved wording, the existing requirement to show all debits and credits;
 - “market value of each security or investment in the account” as at the end of the period for which the statement is made – this new requirement has been added for accounts held in client name;
 - “total market value of each security or investment position in the account” and “any cash balance in the account” as at the end of the period for which the statement is made – the proposed amendment restates, with improved wording, the existing requirement to show all debits and credits; and
 - “total market value of all cash, securities and investments in the account” as at the end of the period for which the statement is made – the proposed amendment restates the existing requirement to show the closing balance.

5.6 (Record Retention)

Conforming amendments have been made to clarify that records must be kept for seven years from the date they are created.

MFDA Policy No. 6 Information Reporting Requirements

Consequential amendments to MFDA Policy No. 6 *Information Reporting Requirements*, section 14 (Changes in Organizational Structure) conform to NI 31-103 and National Instrument 33-109 *Registration Information* by including references to the UDP and CCO in the reporting requirements under this section.

C. Issues and Alternatives Considered

The CSA established regulatory working groups to develop NI 31-103, which MFDA staff participated on. The working groups met frequently during the development of the Instrument and, during the course of these meetings, MFDA staff communicated issues, concerns and alternatives to staff of the CSA.

D. Comparison with Similar Provisions

As noted, the proposed amendments are conforming and consequential in nature and are required to make MFDA Rules consistent with requirements established under NI 31-103.

E. Systems Impact of Amendments

It is not anticipated that there will be a significant systems impact on Members as a result of the proposed amendments.

F. Best Interests of the Capital Markets

The Board has determined that the proposed amendments are consistent with the best interests of the capital markets.

G. Public Interest Objective

MFDA Members and Approved Persons must comply with securities legislation and MFDA Rules. The proposed amendments are in the public interest as they will eliminate inconsistencies between MFDA Rules and NI 31-103.

III. COMMENTARY

A. Filing in Other Jurisdictions

The proposed amendments will be filed for approval with the Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Ontario Securities Commissions and the Saskatchewan Financial Services Commission.

B. Effectiveness

The proposed amendments are simple and effective.

C. Process

The proposed amendments have been prepared in consultation with relevant departments within the MFDA. The MFDA Board of Directors approved the proposed amendments on December 16, 2009.

D. Effective Date

Requirements adopted under NI 31-103 are subject to certain transition periods. The transition periods with respect to the proposed amendments will be harmonized with those under NI 31-103.

IV. SOURCES

MFDA Rulebook
NI 31-103

V. REQUIREMENT TO PUBLISH FOR COMMENT

The MFDA is required to publish for comment the proposed amendments so that the issues referred to above may be considered by the Recognizing Regulators.

The MFDA has determined that the entry into force of the proposed amendments would be in the public interest and is not detrimental to the capital markets. Comments are sought on the proposed amendments. Comments should be made in writing. One copy of each comment letter should be delivered by **March 23rd, 2010** (within 90 days of the publication of this notice), addressed to the attention of the Corporate Secretary, Mutual Fund Dealers Association of Canada, 121 King St. West, Suite 1000, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of Mark Wang, Manager, Legal Services, British Columbia Securities Commission, 701 West Georgia Street, P.O. Box 10142, Pacific Centre, Vancouver, British Columbia, V7Y 1L2.

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the MFDA website at www.mfda.ca.

Questions may be referred to:

Jason Bennett
Corporate Secretary & Director, Regional Councils
Mutual Fund Dealers Association of Canada
(416) 943-7431

DOCs# 195775

SCHEDULE A

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

RULES

On December 16, 2009, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to the Rules:

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA/
ASSOCIATION CANADIENNE DES COURTIERS DE FONDS MUTUELS**

RULES

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

1. RULE NO. 1 - BUSINESS STRUCTURES AND QUALIFICATIONS

1.1 BUSINESS STRUCTURES

1.1.1 **Members.** No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:

- (a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than:
 - (i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and
 - (ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the *Bank Act (Canada)* and the regulations thereunder and applicable securities legislation.
- (b) all revenues, fees or consideration in any form relating to any business engaged in by the Member is paid or credited directly to the Member and is recorded on the books of the Member;
- (c) the relationship between the Member and any person conducting securities related business on account of the Member is that of:
 - (i) an employer and employee, in compliance with Rule 1.1.4,
 - (ii) a principal and agent, in compliance with Rule 1.1.5, or
 - (iii) an introducing dealer and carrying dealer, in compliance with Rule 1.1.6;
- (d) the business or trade or style name under which such securities related business is conducted is in accordance with Rule 1.1.7.

1.1.2 **Compliance by Approved Persons.** Each Approved Person who conducts or participates in any securities related business in respect of a Member in accordance with Rule 1.1.1.(c)(i) or (ii) shall comply with the By-laws and Rules as they relate to the Member or such Approved Person.

1.1.3 **Service Arrangements.** A Member or Approved Person may engage the services of any person including another Member or Approved Person, to provide services to the Member or Approved Person, as the case may be, provided that:

- (a) the services do not in themselves constitute securities related business or duties or responsibilities that are required to be performed by the Member or Approved Person engaging the services pursuant to the By-laws, Rules or applicable securities legislation;

- (b) any remuneration or compensation in any form in respect of such services shall only be paid or credited by the Member or Approved Person engaging the services, as the case may be, directly to the person providing the services and the payment or credit of such remuneration or compensation shall be recorded in the books and records required to be maintained in accordance with the By-laws and Rules by the Member or Approved Person engaging such services;
- (c) the Member or Approved Person engaging the services shall remain responsible for compliance with the By-laws and Rules and any applicable legislation;
- (d) any person preparing and maintaining books and records as a service in respect of the business of the Member or Approved Person shall do so in accordance with the requirements of Rule 5, and such books and records shall be available for review by the Member or Approved Person during normal business hours and by the Corporation in accordance with the By-laws and Rules; and
- (e) all material terms of the services to be engaged that relate to requirements of the Member or Approved Person under the By-laws, Rules, Policies or Forms shall be evidenced in writing and a copy of such terms, together with any amendments thereto from time to time or termination, shall be provided by the Member or Approved Person promptly to the Corporation upon request, together with any other information relating thereto as may be requested by the Corporation.

1.1.4 **Employees.** A Member may conduct its business by Approved Persons employed as employees by it provided that:

- (a) any such employee is registered or licensed, in the manner necessary, and is in good standing, under the applicable legislation in the province or territory where the employee proposes to act;
- (b) the Member shall be responsible for, and shall supervise, the conduct of the employee as an Approved Person in respect of the business including compliance with applicable legislation and the By-laws and Rules;
- (c) the Member shall be liable to third parties (including clients) for the acts and omissions of the employee relating to the Member's business;
- (d) the employee is in compliance with the legislation, By-laws and Rules applicable to the employee as an Approved Person; and
- (e) where the Member and the Approved Person employed as an employee have entered into a written agreement, it shall not contain provisions which are inconsistent with an employment relationship or with the requirements set out in paragraphs (a) to (d) inclusive, of Rule 1.1.4.

1.1.5 **Agents.** A Member may conduct its business by Approved Persons retained or contracted by it as agents provided that:

- (a) any such agent is registered or licensed in the manner necessary, and is in good standing, under the applicable legislation in the province or territory where the agent proposes to act;
- (b) the Member shall be responsible for, and shall supervise, the conduct of the agent in respect of the business including compliance with applicable legislation and the By-laws and Rules;
- (c) the Member shall be liable to third parties (including clients) for the acts and omissions of the agent relating to the Member's business;
- (d) the agent is in compliance with the legislation, By-laws and Rules applicable to the agent;
- (e) the financial institution bonds and insurance policies required to be maintained by the Member pursuant to Rule 4 cover and relate to the conduct of the agent;
- (f) all books and records prepared and maintained by the agent in respect of such business of the Member shall be in accordance with Rule 5 and applicable legislation, shall be the property of the Member and shall be available for review by and delivery to the Member during normal business hours;
- (g) all such business conducted by the agent is in the name of the Member subject to the provisions of Rule 1.1.7;
- (h) the agent shall not conduct securities related business with or in respect of any person other than the Member;
- (i) if the agent is engaged in or carrying on any business or activity other than business conducted on behalf of the Member, including any business or activity which is subject to regulation by any regulatory authority other than a securities commission, compliance with the terms of the agreement referred to in paragraph (k) shall be monitored and enforced directly by the Member and not by or through any other person including another employer or principal of the agent;
- (j) the terms or basis on which the agent may be engaged in or carry on any business or activity other than business conducted on behalf of the Member shall not prevent or impair the ability of the Member or the Corporation from monitoring and enforcing compliance by the agent with the terms of the agreement referred to in paragraph (k) or the By-laws or Rules; and
- (k) the Member and the agent shall have entered into an agreement in writing, which shall be provided promptly to the Corporation upon request, containing terms which include the provisions of paragraphs (a) to (j), inclusive, and which do not include provisions which are inconsistent with paragraphs (a) to (j), and shall provide the Corporation with a certificate signed by an officer or director of such Member and, upon request by the Corporation, shall provide an opinion of counsel, confirming the agreement is in compliance with such provisions.

1.1.6 Introducing and Carrying Arrangement

- (a) **Permitted Arrangements.** A Member may enter into an arrangement with another Member pursuant to which the accounts of one Member (the "introducing dealer") are carried by the other Member (the "carrying dealer") provided that:
- (i) the arrangement shall satisfy the requirements of a carrying arrangement described in Rule 1.1.6(b);
 - (ii) an introducing dealer shall not introduce accounts to any person who is not a Member;
 - (iii) an introducing dealer may not introduce accounts to more than one Member, except that a Level 2, 3 or 4 Member may introduce to another Member accounts of clients which are self-directed plans registered for income tax purposes;
 - (iv) the Members shall enter into a written agreement evidencing the arrangement and reflecting the requirements of Rule 1.1.6(b) and such other matters as may be required by the Corporation;
 - (v) the arrangement (including the form of agreement referred to in Rule 1.1.6(b)) and any amendment to or termination of the arrangement or agreement, shall have been approved by the Corporation before it is to become effective; and
 - (vi) the arrangement shall be in compliance with the By-laws and Rules and the securities legislation applicable to either of the Members.
- (b) **Terms of Arrangement.** A Member may enter into an agreement with another Member in accordance with Rule 1.1.6(a) if it satisfies the following requirements:
- (i) Minimum Capital. The carrying dealer shall maintain at all times minimum capital of a Level 4 Dealer, and the introducing dealer shall maintain at all times minimum capital of a Level 1, 2, 3 or 4 Dealer, as the case may be;
 - (ii) Reporting of Client Balances. In calculating the risk adjusted capital required pursuant to Rule 3.1.1 and Form 1, the carrying dealer shall report all accounts of the clients (introduced by the introducing dealer to the carrying dealer and for whom assets are held in nominee name) on the carrying dealer's Form 1 and Monthly Financial Report;
 - (iii) Comfort Deposit. Any deposit (other than deposits on behalf of clients) provided to the carrying dealer by the introducing dealer pursuant to the terms of the agreement between them shall be segregated in accordance with Rule 3.3 by the carrying dealer and shall be held by the carrying dealer in a separate designated trust account for the introducing dealer;
- The deposit provided by the introducing dealer to the carrying dealer shall be reported by the introducing dealer as an allowable asset on its Form 1 and Monthly Financial Report;

- (iv) Segregation of Client Cash and Securities. The carrying dealer shall be responsible for holding and segregating in accordance with the requirements of Rule 3.3 all cash and securities held for clients introduced to it by an introducing dealer, provided that a Level 3 introducing dealer may hold cash, and a Level 4 introducing dealer may hold cash and securities, for the accounts of clients to the extent to which such functions are not part of the services to be provided by the carrying dealer;
- (v) Trust Accounts. The carrying dealer shall be responsible for and shall maintain in its name any trust accounts established in respect of cash received for the account of clients introduced to it by the introducing dealer, provided that a Level 3 or 4 introducing dealer may hold cash in such trust accounts to the extent to which such functions are not part of the services to be provided by the carrying dealer;
- (vi) Insurance. The introducing dealer and carrying dealer shall each maintain minimum insurance in the amounts required and in accordance with Rule 4;
- (vii) Amount of Insurance. The carrying dealer shall include all accounts introduced to it by the introducing dealer that are held in nominee name in its calculation of the "base amount" asset measurement for minimum Financial Institution Bond coverage for Clauses (A) through (E) under Rule 4;
- (viii) Disclosure and Acknowledgement on Account Opening. At the time of opening each client account, the introducing dealer shall advise the client of the introducing dealer's relationship to the carrying dealer and of the relationship between the client and the carrying dealer and, in the case of a Level 1 or 2 introducing dealer, obtain from the client an acknowledgement in writing to the effect that such advice has been given. In the case of a Level 2 introducing dealer, the acknowledgement shall reflect that the introducing dealer has advised the client that the carrying dealer shall be responsible for and shall maintain in its name any trust accounts established in respect of cash received from clients and that all client cheques shall be payable to the carrying dealer;
- (ix) Contracts, Account Statements, Confirmations and Client Communications. The name and role of each of the carrying dealer and the introducing dealer shall be shown on all contracts, account statements, confirmations and, in the case of a Level 1 introducing dealer, all client communications (as defined in Rule 2.8.1) and advertisements and sales communications (as defined in Rule 2.7.1) sent by either the introducing dealer or the carrying dealer in respect of accounts carried by the carrying dealer. In the case of a Level 1 introducing dealer, the name and role of the carrying dealer shall appear in at least equal size to that of the introducing dealer. The use of business or trade or style names shall be in accordance with Rule 1.1.7 as applicable. The carrying dealer shall be responsible for sending account statements and confirmations to clients introduced to it by the introducing dealer as required by the By-laws and Rules to the extent

such statements and confirmations relate to trading or account positions in respect of which the carrying dealer has provided services;

- (x) Annual Disclosure. A Level 3 or Level 4 introducing dealer may comply with the disclosure requirements under paragraph (ix) by providing written disclosure at least annually to each of its clients whose accounts are being carried by the carrying dealer, outlining the relationship between the introducing dealer and the carrying dealer and the relationship between the client and the carrying dealer;
- (xi) Clients Introduced to the Carrying Dealer. Each client introduced to the carrying dealer by the introducing dealer shall be considered a client of the carrying dealer for the purposes of complying with the By-laws and Rules to the extent of the services provided by the carrying dealer; and
- (xii) Responsibility for Compliance. Unless otherwise specified in Rule 2 or in this Rule 1.1.6, the introducing dealer which is a Level 1 Dealer and its carrying dealer shall be jointly and severally responsible for compliance with the By-laws and Rules for each account introduced to the carrying dealer by the introducing dealer, and in all other cases the introducing dealer shall be responsible for such compliance, subject to the carrying dealer being also responsible for compliance with respect to those functions it agrees to perform under the arrangement entered into under this Rule 1.1.6.

1.1.7 **Business Names, Styles, Etc.**

- (a) **Use of Member Name**. Except as permitted pursuant to Rule 1.1.6 with respect to introducing dealers and carrying dealers and subject to Rule 1.1.7(b) and (c), all business carried on by a Member or by any person on its behalf shall be in the name of the Member or a business or trade or style name owned by the Member or an affiliated corporation of the Member.
- (b) **Contracts, Account Statements and Confirmations**. Notwithstanding the provisions of paragraph (a), the legal name of the Member shall be included on any contracts, account statements or confirmations of the Member.
- (c) **Use of Approved Person Trade Name**. Notwithstanding the provisions of paragraph (a), an Approved Person may conduct any business of the Member in a business or trade name or style name that is not that of, or owned by, the Member or its affiliated corporation if:
 - (i) the Member has given its prior written consent; and
 - (ii) in all materials communicated to clients or the public (other than contracts, account statements or confirmations in accordance with (iii)):
 - (A) the name is used together with the Member's legal name; and

- (B) the Member's legal name or a business or trade or style name of the Member is at least equal in size and prominence to the business or trade or style name used by the Approved Person;
- (iii) on contracts, account statements or confirmations, the Member's legal name must be at least equal in size and prominence to the business or trade or style name used by the Approved Person.
- (d) **Notification of Trade Names.** Prior to the use of any business or trade or style names other than the Member's legal name, the Member shall notify the Corporation.
- (e) **Compliance with Applicable Legislation.** Any business or trade or style name used by a Member or Approved Person must comply with the requirements of any applicable legislation relating to the registration of business or trade or style names.
- (f) **Single Use of Trade Names.** No Member or Approved Person of such Member shall use any business or trade or style name that is used by any other Member, unless the relationship with such other Member is that of an introducing dealer and carrying dealer, in compliance with Rule 1.1.6.
- (g) **Misleading Trade Name.** No Member or Approved Person shall use any business or trade or style name that is deceptive, misleading or likely to deceive or mislead the public.
- (h) **Prohibition of Use of Trade Name.** The Corporation may prohibit a Member or Approved Person from using any business or trade or style name in a manner that is contrary to any provision of this Rule 1.1.7 or that is objectionable or contrary to the public interest.

1.2 INDIVIDUAL QUALIFICATIONS

1.2.1 **Proficiency Requirements.** An individual must not perform an activity that requires registration under applicable securities legislation or proficiency under the Rules unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently.

- ~~(a) **Course Requirements.** Each Approved Person who is a salesperson and who trades or deals in securities for the purposes of any applicable legislation in respect of a Member shall have successfully completed any one of the following courses:
 - ~~(i) the Canadian Securities Course offered by the Canadian Securities Institute;~~
 - ~~(ii) the Canadian Investment Funds Course offered by the Investment Funds Institute of Canada;~~~~

- ~~(iii) the Investment Funds in Canada Course offered by the Institute of Canadian Bankers;~~
- ~~(iv) the Principles of Mutual Funds Course formerly offered by the Trust Companies Institute; or~~
- ~~(v) to the extent the Approved Person trades or deals in securities in the Province of Quebec only, the courses entitled Placements des particuliers (CEGEP) and Cours sur les fonds distincts et fonds communs de placement offered by the Canadian Securities Institute.~~

1.2.2 Salespersons

- ~~(b)~~(a) **Compliance with MFDA Requirements.** Each Member shall ensure that any Approved Person who conducts any business on behalf of the Member executes and delivers to the Member an agreement in a form as prescribed from time to time by the Corporation agreeing, among other things, to be subject to, comply with and be bound by the By-laws and Rules.
- ~~(e)~~(b) **Training and Supervision.** Upon commencement of trading or dealing in securities for the purposes of any applicable legislation on behalf of a Member, all Approved Persons who are salespersons shall complete a training program within 90 days of such commencement and a concurrent six month supervision period in accordance with such terms and conditions as may be prescribed from time to time by the Corporation, unless he or she has completed a training program and supervision period in accordance with this Rule with another Member or was licensed or registered in the manner necessary, and is in good standing, under applicable securities legislation to trade in mutual fund securities prior to the date of this Rule becoming effective.
- ~~(d)~~(c) **Dual Occupations.** An Approved Person may have, and continue in, another gainful occupation, provided that:
 - (i) *Permitted by legislation.* The securities commission in the jurisdiction in which the Approved Person carries on or proposes to carry on business specifically permits him or her to devote less than his or her full time to the business of the Member for which he or she acts on behalf of;
 - (ii) *Not prohibited.* The securities commission in the jurisdiction in which the Approved Person carries on or proposes to carry on business does not prohibit an Approved Person from engaging in such gainful occupation;
 - (iii) *Member approval.* The Member for which the Approved Person carries on business either as an employee or agent is aware and approves of the Approved Person engaging in such other gainful occupation;
 - (iv) *Member procedures.* Such Member establishes and maintains procedures to ensure continuous service to clients and to address potential conflicts of interest;

- (v) *Conduct unbecoming.* Any such gainful occupation of the Approved Person must not be such as to bring the Corporation, its Members or the mutual fund industry into disrepute;
- (vi) *Disclosure.* Clear disclosure is provided to clients that any activities related to such other gainful occupation are not business of the Member and are not the responsibility of the Member; and
- (vii) *Financial planning.* Any Approved Person that engages in financial planning services otherwise than through or on behalf of a Member must:
 - (A) Regulations - provide such services through another person that is either regulated by a governmental authority or statutory agency or subject to the rules and regulations of a widely-recognized professional association;
 - (B) Legislation - comply with the requirements of any applicable legislation in connection with the services;
 - (C) Access - ensure that, subject to any applicable legislation, the Member and the Corporation have access to financial plans prepared on behalf of the clients of the Member by its Approved Persons; and
 - (D) Proficiency - have satisfied any applicable proficiency requirements by securities regulatory authorities having jurisdiction.

~~(e)(d)~~ **Business Titles.** No Approved Person shall hold him or herself out to the public in any manner including, without limitation, by the use of any business name or designation of qualifications or professional experience that deceives or misleads, or could reasonably be expected to deceive or mislead, a client or any other person as to the proficiency or qualifications of the Approved Person under the Rules or any applicable legislation.

~~1.2.2 Branch Managers~~

- ~~(a) Proficiency Requirements.~~ An individual may not be designated by the Member as a branch manager pursuant to Rule 2.5.3(a) or an alternate branch manager pursuant to Rule 2.5.3(c) unless the individual has:
- ~~(i) been licensed or registered previously under applicable securities legislation as a trading partner, director, officer or compliance officer of a mutual fund dealer; or~~
 - ~~(ii) has successfully completed any one of the following courses:~~
 - ~~(A) the Canadian Securities Course offered by the Canadian Securities Institute;~~
 - ~~(B) the Canadian Investment Funds Course offered by the Investment Funds Institute of Canada, or~~

~~(C) the Investment Funds in Canada Course offered by the Institute of Canadian Bankers~~

~~and, any one of the following courses:~~

~~(D) the Branch Managers' Course offered by the Canadian Securities Institute~~

~~(E) the Mutual Fund Branch Managers' Course offered by the Investment Funds Institute of Canada, or~~

~~(F) the Branch Compliance Officers Course offered by the Institute of Canadian Bankers.~~

~~(b) **Experience Requirements.** In addition to the requirements set out in Rule 1.2.2(a), each branch manager, except alternate branch managers, in respect of a Member shall:~~

~~(i) have acted as a salesperson, trading partner, director, officer or compliance officer registered under the applicable securities legislation for a minimum of two years; or~~

~~(ii) have a minimum of two years of equivalent experience to that of an individual described in Rule 1.2.2(b)(i).~~

~~(c) **Registration.** Each Branch Manager, in addition to the requirements in Rule 1.2.2(a) shall be registered, licensed or approved as a branch manager under the applicable securities legislation and comply with the requirements of such legislation in connection therewith.~~

~~1.2.3 Trading Partners, Directors, Officers and Compliance Officers~~

~~(a) **Definition.** In this Rule, "trading partner, director or officer" means each partner, director or officer who is required to be registered and/or licensed under applicable securities legislation.~~

~~(b) **Course Requirements.** Each trading partner, director, officer and designated compliance officer of a Member shall have successfully completed any one of the following courses:~~

~~(i) the Canadian Securities Course offered by the Canadian Securities Institute;~~

~~(ii) the Canadian Investment Funds Course offered by the Investment Funds Institute of Canada; or~~

~~(iii) the Investment Funds in Canada Course offered by the Institute of Canadian Bankers;~~

~~and, any one of the following:~~

~~(iv) the Partners', Directors' and Senior Officers' Qualifying Examination offered by the Canadian Securities Institute; or~~

~~(v) the Mutual Fund Officers', Partners' and Directors' Course offered by the Investment Funds Institute of Canada.~~

- ~~(c) **Registration.** Each trading partner, director, officer and compliance officer of a Member shall be registered and/or licensed in the appropriate category under applicable securities legislation and shall comply with the requirements of such legislation in connection therewith.~~

~~1.2.4 **Currency of Courses.**~~

- ~~(a) For the purposes of Rules 1.2.1(a), 1.2.2(a) or 1.2.3(b):~~
- ~~(i) the courses or examinations must have been successfully completed; or~~
 - ~~(ii) the individual must have been registered/licensed under applicable securities legislation in the equivalent category;~~
- ~~within three years of the relevant time for qualification or such longer period as the Corporation may determine if it is satisfied based on the individual's experience that his or her knowledge and proficiency remains relevant and current.~~
- ~~(b) Notwithstanding subsection (a), if an individual completes a course for which another course is a prerequisite, the course which is a prerequisite need not have been completed within the three year period.~~

1.2.53 **Reporting Requirements.**

- (a) **Member Reporting.** Every Member must report to the Corporation such information, in a manner and within such period of time, as may be prescribed by the Corporation from time to time relating to:
- (i) complaints, criminal, civil and other legal proceedings, regulatory proceedings, arbitrations, contraventions and potential contraventions of legal and regulatory requirements, disciplinary action by regulatory bodies or by Members against Approved Persons, settlements with and compensation paid to clients, registration or licensing by any regulatory body, bankruptcies, insolvencies, garnishments and related events;
 - (ii) investigations by the Member relating to any of the matters in sub-section (i); and
 - (iii) information relating to the business and operation of the Member and its Approved Persons.
- (b) **Approved Person Reporting.** Every Approved Person must report to the Member such information, in a manner and within such period of time, as may be prescribed by the Corporation from time to time relating to complaints, criminal, civil and other legal proceedings, regulatory proceedings, arbitrations, contraventions and potential contraventions of legal and regulatory requirements, disciplinary action by regulatory bodies, settlements with and compensation paid

to clients, registration or licensing by any regulatory body, bankruptcies, insolvencies, garnishments and related events.

- (c) **Failure to Report.** A Member shall be liable for and pay to the Corporation levies or assessments in the amounts prescribed from time to time by the Corporation for the failure of the Member or Approved Person to report any information required to be reported in the manner and within the period of time prescribed by the Corporation.

2. RULE NO. 2 - BUSINESS CONDUCT

2.1 GENERAL

2.1.1 **Standard of Conduct.** Each Member and each Approved Person of a Member shall:

- (a) deal fairly, honestly and in good faith with its clients;
- (b) observe high standards of ethics and conduct in the transaction of business;
- (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
- (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

2.1.2 **Member Responsible.** Each Member shall be responsible for the acts and omissions of each of its Approved Persons and other employees and agents relating to its business for all purposes under the By-laws and Rules.

2.1.3 Confidential Information

- (a) All information received by a Member relating to a client or the business and affairs of a client shall be maintained in confidence by the Member and its Approved Persons and other employees and agents. No such information shall be disclosed to any other person or used for the advantage of the Member or its Approved Persons or other employees or agents without the prior written consent of the client or as required or authorized by legal process or statutory authority or where such information is reasonably necessary to provide a product or service that the client has requested.
- (b) Each Member shall develop and maintain written policies and procedures relating to confidentiality and the protection of information held by it in respect of clients.

2.1.4 Conflicts of Interest

- (a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and

the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.

- (b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).
- (c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.
- (d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

2.2 CLIENT ACCOUNTS

2.2.1 "Know-Your-Client". Each Member and Approved Person shall use due diligence:

- (a) to learn the essential facts relative to each client and to each order or account accepted;
- (b) to ensure that the acceptance of any order for any account is within the bounds of good business practice; and
- (c) 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; and
- (d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client and in keeping with the client's investment objectives, the Member has so advised the client before execution thereof.

2.2.2 New Account Application Form. A New Account Application Form must be completed for each new account of a client. If the New Account Application Form does not include know-your-client information, this must be documented on a separate Know-Your-Client form. Such form or forms shall be duly completed to conform with the requirements of Rule 2.2.1 and shall be signed by the client and dated. Account numbers must not be assigned unless they are accompanied by the proper name and address for the client and such name and address must be supported by the New Account Application Form.

2.2.3 New Account Approval. Each Member shall designate a trading partner, director or officer or, in the case of a branch office, a branch manager reporting directly to the designated partner, director or officer, who shall be responsible for approval of the opening of new accounts and the supervision of account activity. The designated person

shall prior to or promptly after the completion of any initial transaction specifically approve the opening of such account in writing and a record of such approval shall be maintained in accordance with Rule 5.

2.2.4 **Updating Know-Your-Client Information**

- (a) The Form documenting know-your-client information must be updated to include any material change in client information whenever a Member or Approved Person or other employee or agent becomes aware of such change including pursuant to Rule 2.2.4(b).
- (b) Without reducing the responsibility of Members in Rule 2.2.1, all Members must at least annually, in writing, request each client to notify the Member if the know-your-client information previously provided to the Member or the client's circumstances have materially changed. The date of such request and the date upon which any such client information is received and recorded or amended must be retained.
- (c) Written authorization must be obtained from the client for any change in a client name.

2.3 **POWER OF ATTORNEY/LIMITED TRADING AUTHORIZATION**

- 2.3.1 (a) **Prohibition.** No Member or Approved Person shall accept or act upon a general power of attorney or other similar authorization from a client in favour of the Member or Approved Person.
- (b) **Exception.** Notwithstanding the provisions of paragraph (a), an Approved Person may accept or act upon a general power of attorney or similar authorization from a client in favour of the Approved Person where such client is a spouse, parent or child of the Approved Person and provided that:
 - (i) an Approved Person other than the Approved Person holding the general power of attorney must be the Approved Person of record on the account; and
 - (ii) such other conditions as prescribed by the Corporation are met.
- 2.3.2 **Limited Trading Authorization.** A Member or Approved Person may accept a limited trading authorization from a client for the express purpose of facilitating trade execution. In such circumstances a form of limited trading authorization as prescribed by the Corporation must be completed and approved by the compliance officer or branch manager, and retained in the client's file.
- 2.3.3 **Designation.** Each trade made pursuant to a limited trading authorization and its corresponding account must be identified as such in the books and records of the Member and on any order documentation.

2.3.4 **No Discretionary Trading.** A limited trading authorization shall not in any way confer general discretionary trading authority upon a Member, an Approved Person or any person acting on behalf of the Member.

2.4 REMUNERATION, COMMISSIONS AND FEES

2.4.1 **Payable by Member Only.** Any remuneration in respect of business conducted by an Approved Person on behalf of a Member must be paid by the Member (or its affiliates or its related Members which have received it from the Member) directly to and in the name of the Approved Person.

No Approved Person in respect of a Member shall accept or permit any associate to accept directly or indirectly, any remuneration, gratuity, benefit or any other consideration from any person other than the Member or its affiliates or its related Members, in respect of the business carried out by such Approved Person on behalf of the Member or its affiliates or its related Members.

2.4.2 Referral Arrangements

(a) **Definitions.** For the purpose of this Rule 2.4.2:

(i) “client” includes a prospective client;

(ii) “referral arrangement” means any arrangement in which a Member or Approved Person agrees to pay or receive a referral fee; and

(iii) “referral fee” means any form of compensation, direct or indirect, paid for the referral of a client to or from a Member or Approved Person.

~~(i) a "referral arrangement" is an arrangement whereby a Member is paid or pays a fee, including fees based on commissions or sharing a commission, for the referral of a client to or from another person; and~~

~~(ii) a referral arrangement does not include any payment to a third party service provider where the service provider has no direct contact with clients and where the services do not constitute securities related business.~~

(b) **Permitted Referral Arrangements.** A Member or Approved Person must not participate in a referral arrangement unless~~Referral arrangements may only be entered into on the following basis:~~

(i) the Member is a party to referral arrangements entered into by its Approved Persons; the referral arrangement is only between a Member and another Member or between a Member and an entity that is (A) licensed or registered in another category pursuant to applicable securities legislation, (B) a Canadian financial institution for the purposes of National Instrument 14-101, (C) insurance agents or brokers, or (D) subject to such other regulatory system as may be prescribed by the Corporation;

- (ii) before a client is referred by or to the Member or Approved Person, the terms of the referral arrangement are set out in a written agreement between the Member and the person or company making or receiving the referral; there is a written agreement governing the referral arrangement prior to implementation;
 - (iii) all referral fees or other form of compensation paid as part of the referral arrangement, to or by the Member or Approved Person, must be recorded on the books and records of the Member; and
 - (iv) written disclosure of the referral arrangements must be made to clients before the earlier of the opening the client's account or any services being provided to the client under the referral arrangement. prior to any transactions taking place.—The disclosure document must include an explanation or an example of how the referral fee is calculated, the name of the parties receiving and paying the fee, and a statement that it is illegal for the party receiving the fee to trade or advise in respect of securities if it is not duly licensed or registered under applicable securities legislation to so trade or advise the following:
 - (A) the name of each party to the referral arrangement;
 - (B) the purpose and material terms of the referral arrangement, including the nature of the services to be provided by each party;
 - (C) any conflicts of interest resulting from the relationship between the parties to the referral arrangement and from any other element of the referral arrangement;
 - (D) the method of calculating the referral fee and, to the extent possible, the amount of the fee;
 - (E) the category of registration of each party to the referral agreement that is registered under applicable securities legislation, with a description of the activities that the registered party is authorized to engage in under that category and, giving consideration to the nature of the referral, the activities that the registered party is not permitted to engage in;
 - (F) a statement that all activity requiring registration resulting from the referral arrangement will be provided by the appropriately registered party that is receiving the referral; and
 - (G) any other information that a reasonable client would consider important in evaluating the referral arrangement.
 - (v) If there is a change to the information set out in paragraph (iv), the Member must ensure that written disclosure of that change is provided to each client affected by the change as soon as possible and no later than the 30th day before the date on which a referral fee is next paid or received.
- (c) **Reasonable Diligence.** A Member that is a party to a referral arrangement must take reasonable steps to satisfy itself that the other party to the referral

arrangement has the appropriate qualifications to provide the services, and if applicable, is registered to provide those services.

- 2.4.3 **Service Fees or Charges.** No Member shall impose on any client or deduct from the account of any client any service fee or service charge relating to services provided by the Member in connection with the client's account unless written notice shall have been given to the client on the opening of the account or not less than 60 days prior to the imposition or revision of the fee or charge. For the purposes of this Rule, service fees or charges shall not include any commissions charged for executing trades.

2.5 MINIMUM STANDARDS OF SUPERVISION

- 2.5.1 **Member Responsibilities.** Each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.

2.5.2 Ultimate Designated Person

(a) **Designation.** Each Member must designate an individual registered under applicable securities legislation as an "ultimate designated person" who must be:

- (i) the chief executive officer or sole proprietor of the Member;
- (ii) an officer in charge of a division of the Member, if dealing in mutual funds occurs only within that division; or
- (iii) an individual acting in a capacity similar to that of an officer described in (i) or (ii).

(b) **Responsibilities.** The ultimate designated person must:

- (i) supervise the activities of the Member that are directed towards ensuring compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons; and
- (ii) promote compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons.

2.5.23 Chief Compliance Officer

(a) **Designation.** Each Member must designate ~~an individual registered under applicable securities legislation trading officer~~ as a "chief compliance officer" who must be:

- (i) an officer or partner of the Member; or
- (ii) the sole proprietor of the Member.

~~" who shall be or report to a member of senior management such as the Member's chief executive officer, chief operating officer or chief financial officer.~~

- (b) **Responsibilities.** The chief compliance officer must:
- (i) establish and maintain policies and procedures for assessing compliance by the Member and its Approved Persons with the By-laws, Rules and Policies and with applicable securities legislation;
 - (ii) monitor and assess compliance by the Member and its Approved Persons with the By-laws, Rules and Policies and with applicable securities legislation;
 - (iii) report to the ultimate designated person of the Member as soon as possible if the chief compliance officer becomes aware of any circumstances indicating that the Member, or any of its Approved Persons may be in non-compliance with the By-laws, Rules and Policies and with applicable securities legislation and any of the following apply:
 - (A) the non-compliance reasonably creates a risk of harm to a client;
 - (B) the non-compliance reasonably creates a risk of harm to the capital markets;
 - (C) the non-compliance is part of a pattern of non-compliance; and
 - (iv) submit a report to the board of directors or partners, as frequently as necessary and not less than annually, for the purpose of assessing compliance by the Member and its Approved Persons with the By-laws, Rules and Policies and with applicable securities legislation.

~~The compliance officer shall be responsible for monitoring adherence by the Member and any person conducting business on account of the Member to the By-laws, Rules and Policies, including, without limitation, standards of business conduct under Rule 2 and applicable securities legislation requirements. The compliance officer or the individual to whom the compliance officer reports is required to report on the status of compliance at the Member to the board of directors or partners of the Member as necessary, and at least on an annual basis. It shall be the responsibility of the board of directors or partners of the Member to act on the annual report and to rectify any compliance deficiencies noted in the report.~~

- (c) **Alternates.** In the event that a chief compliance officer is temporarily absent or unable to perform his or her responsibilities, a Member shall designate one or more alternates who must be qualified as chief compliance officers pursuant to the applicable securities legislation~~Rule 1.2.3~~ and who shall carry out the responsibilities of the chief compliance officer.

2.5.4 Access to Board. The Member must permit its ultimate designated person and its chief compliance officer to directly access the board of directors or partners of the Member at

such times as the ultimate designated person or the chief compliance officer may consider necessary or advisable in view of his or her responsibilities.

2.5.35 **Branch Manager**

- (a) **Designation.** Each Member ~~shall~~ must designate ~~an person~~ an individual qualified as a branch manager pursuant to paragraph (b) Rule 1.2.2 for each branch office (as defined in By-law 1.1) of the Member. The Member is not required to designate a branch manager for a sub-branch office who is normally present at the office, provided that a branch manager who is not normally present at such sub-branch office, or a trading partner, director or officer or a compliance officer designated as the branch manager for such sub-branch office, supervises its business at the sub-branch office in accordance with the By-laws and Rules.
- (b) **Proficiency Requirements.** An individual may not be designated by the Member as a branch manager pursuant to paragraph (a) or an alternate branch manager pursuant to paragraph (e) unless the individual has:
- (i) met the requirements for a salesperson as prescribed under applicable securities legislation and has passed any one of the following examinations:
 - (A) the Branch Managers Course Exam offered by the CSI Global Education Inc.;
 - (B) the Mutual Fund Branch Managers' Examination Course Exam offered by the IFSE Institute; or
 - (C) the Branch Compliance Officers Course Exam offered by the CSI Global Education Inc.
- (c) **Experience Requirements.** In addition to the requirements set out in Rule 2.5.5(b), each branch manager, except alternate branch managers, in respect of a Member shall:
- (i) have acted as a salesperson, trading partner, director, officer or compliance officer registered under the applicable securities legislation for a minimum of two years; or
 - (ii) have a minimum of two years of equivalent experience to that of an individual described in paragraph (i).
- (d) **Currency of Courses.** For the purposes of the Rules, an individual is deemed to have not passed an examination or successfully completed a program unless the individual has done so within 36 months before the date the individual applied for registration or such longer period as may be specified by and subject to relevant requirements as the Corporation may determine if it is satisfied based on the individual's experience that his or her knowledge and proficiency remains relevant and current.
- (e) **Responsibilities.** It is the responsibility of a ~~The~~ branch manager to ~~must~~ must:

- (i) supervise the activities of the Member at a branch or sub-branch that are directed towards ensuring compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons ensure that the business conducted on behalf of the Member by an Approved Person and other employees and agents at the branch is in compliance with applicable securities legislation and the By-laws and Rules; and
- (ii) supervise the opening of new accounts and trading activity at the branch office.

~~(e)~~(f) **Alternates.** In the event that a branch manager is temporarily absent or unable to perform his or her responsibilities, a Member shall designate one or more alternate branch managers who must be qualified as branch managers pursuant to paragraph (b) Rule 1.2.2(a) and who shall carry out the responsibilities of the branch manager, but are not required to be normally present at the branch office.

2.5.46 Maintenance of Supervisory Review Documentation. The Member must maintain records of all compliance and supervisory activities undertaken by it and its partners, directors, officers, compliance officers and branch managers pursuant to the By-laws and Rules.

2.5.57 No Delegation. No Member or director, officer, partner, compliance officer, branch manager or alternate branch manager shall be permitted to delegate any supervision or compliance responsibility under the By-laws or Rules in respect of any business of the Member, except as expressly permitted pursuant to the By-laws and Rules.

2.6 BORROWING FOR SECURITIES PURCHASES

Each Member shall provide to each client a risk disclosure document containing the information prescribed by the Corporation when

- (a) a new account is opened for the client; and
- (b) when an Approved Person makes a recommendation for purchasing securities by borrowing, or otherwise becomes aware of a client borrowing monies for the purpose of investment,

provided that a Member is not required to comply with paragraph (b) if such a risk disclosure document has been provided to the client by the Member within the six month period prior to such recommendation or becoming so aware.

2.7 ADVERTISING AND SALES COMMUNICATIONS

2.7.1 Definitions. For the purposes of the By-laws and Rules:

- (a) "advertisement" includes television or radio commercials or commentaries, billboards, internet websites, newspapers and magazine advertisements or commentaries and any published material promoting the business of a Member

and any other sales literature disseminated through the communications media;
and

- (b) "sales communication" includes records, video tapes and similar material, market letters, research reports, and all other published material, except preliminary prospectuses and prospectuses, designed for or use in presentation to a client or a prospective client whether such material is given or shown to them and which includes a recommendation in respect of a security.

2.7.2 **General Restrictions.** No Member shall issue to the public, participate in or knowingly allow its name to be used in respect of any advertisement or sales communication in connection with its business which:

- (a) contains any untrue statement or omission of a material fact or is otherwise false or misleading, including the use of a visual image such as a photograph, sketch, drawing, logo or graph which conveys a misleading impression;
- (b) contains an unjustified promise of specific results;
- (c) uses unrepresentative statistics to suggest unwarranted or exaggerated conclusions, or fails to identify the material assumptions made in arriving at these conclusions;
- (d) contains any opinion or forecast of future events which is not clearly labelled as such;
- (e) fails to fairly present the potential risks to the client;
- (f) is detrimental to the interests of the public, the Corporation or its Members; or
- (g) does not comply with any applicable legislation or the guidelines, policies or directives of any regulatory authority having jurisdiction over the Member.

2.7.3 **Review Requirements.** No advertisement or sales communication shall be issued unless first approved by a partner, director, officer, compliance officer or branch manager who has been designated by the Member as being responsible for advertisements and sales communications.

2.8 CLIENT COMMUNICATIONS

2.8.1 **Definition.** For the purposes of the By-laws and Rules "client communication" means any written communication by a Member or an Approved Person to a client of the Member, including trade confirmations and account statements, other than an advertisement or sales communication.

2.8.2 **General Restrictions.** No client communication shall:

- (a) be untrue or misleading or use an image such as a photograph, sketch, logo or graph which conveys a misleading impression;

- (b) make unwarranted or exaggerated claims or conclusions or fail to identify the material assumptions made in arriving at these conclusions;
- (c) be detrimental to the interests of clients, the public, the Corporation or its Members;
- (d) contravene any applicable legislation or any guideline, policy, rule or directive of any regulatory authority having jurisdiction over the Member; or
- (e) be inconsistent or confusing with any information provided by the Member or Approved Person in any notice, statement, confirmation, report, disclosure or other information either required or permitted to be given to the client by a Member or Approved Person under the By-laws, Rules, Policies or Forms.

2.8.3 Rates of Return

- (a) In addition to complying with the requirements in Rule 2.8.2, any client communication containing or referring to a rate of return regarding a specific account or group of accounts must be based on an annualized rate of return and explain the methodology used to calculate such rate of return in sufficient detail and clarity to reasonably permit the client to understand the basis for the rate of return.
- (b) Notwithstanding the provisions of paragraph (a), where an account has been open for less than 12 months, the rate of return shown must be the total rate of return since account opening.

2.9 INTERNAL CONTROLS

Every Member shall establish and maintain adequate internal controls as prescribed by the Corporation from time to time.

2.10 POLICIES AND PROCEDURES MANUAL

Every Member shall establish and maintain written policies and procedures (that have been approved by senior management of the Member) for dealing with clients and ensuring compliance with the Rules, By-laws and Policies of the Corporation and applicable securities legislation.

2.11 COMPLAINTS

Every Member shall maintain a log of client complaints and shall establish written policies and procedures for dealing with client complaints which ensure that such complaints are dealt with promptly and fairly.

2.12 TRANSFERS OF ACCOUNT

2.12.1 **Definitions.** For the purposes of the By-laws and Rules:

- (a) "account transfer" means the transfer in whole or in part of an account of a client of a Member at the request or with the authority of the client;
- (b) "delivering Member" means in respect of an account transfer the Member from which the account of the client is to be transferred; and
- (c) "receiving Member" means in respect of an account transfer the Member to which the account of the client is to be transferred.

2.12.2 **Transfers.** No account transfer shall be effected by a Member without the written authorization of the client holding the account. 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.

5. RULE NO. 5 - BOOKS, RECORDS & REPORTING

5.1 REQUIREMENT FOR RECORDS

Every Member shall keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others and shall keep such other books, records and documents as may be otherwise required by the Corporation. Such books and records shall contain as a minimum the following:

- (a) blotters, or other records, containing an itemized daily record of:
 - (i) all purchases and sales of securities;
 - (ii) all receipts and deliveries of securities, including certificate numbers;
 - (iii) all receipts and disbursements of cash;
 - (iv) all other debits and credits, the account for which each transaction was effected;
 - (v) the name of the securities;
 - (vi) the class or designation of the securities;
 - (vii) the number or value of the securities;
 - (viii) the unit and aggregate purchase or sale price; and
 - (ix) the trade date and the name or other designation of the person from whom the securities were purchased or received or to whom they were sold or delivered;
- (b) 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. Such record shall show:
 - (i) the terms and conditions of the order or instructions and of any modification or cancellation thereof;

- (ii) the account for which entered or received; and
 - (iii) the time of entry or receipt, the price at which executed and, to the extent feasible, the time of execution or cancellation;
- (c) where the order or instruction is placed by an individual other than the person in whose name the account is operated, or an individual duly authorized to place orders or instructions on behalf of a client that is a company, the name, sales number or designation or the individual placing the order or instruction shall be recorded;
 - (d) copies of confirmations of all purchases and sales of securities and copies of all other debits and credits for securities, cash and other items for the account of clients;
 - (e) a record of the proof of cash balances of all ledger accounts in the form of trial balances and a record of calculation of minimum capital, adjusted liabilities and risk adjusted capital required;
 - (f) all cheque books, bank statements, cancelled cheques and cash reconciliations;
 - (g) all bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the Member;
 - (h) all limited trading authorizations in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation;
 - (i) all written agreements (or copies thereof) entered into by such Member relating to their business as such, including leveraging documentation, disclosure materials and agreements relating to any account; and
 - (j) all documentation relating to an advance of funds or extension of credit to or on behalf of a client, directly or indirectly, in connection with the receipt of funds on the redemption of mutual fund securities, including the prior written confirmation referred to in Rule 3.2.3.

5.2 STORAGE MEDIUM

All records and documents required to be maintained by a Member in writing or otherwise may be kept by means of mechanical, electrical, electronic or other devices provided:

- (a) such method of record keeping is not prohibited under any applicable legislation;
- (b) there are appropriate internal controls in place, to guard against the risk of falsification of the information recorded;
- (c) such method provides a means to furnish promptly to the Corporation upon request legible, true and complete copies of those records of the Member which are required to be preserved; and
- (d) the Member has suitable back-up and disaster recovery programs.

5.3 CLIENT REPORTING

5.3.1 Delivery of Account Statement

- (a) Each Member shall send an account statement to each client at least once every three months, ~~in accordance with the following minimum standards:~~
- ~~(a) once every 12 months for a client name account;~~
 - ~~(b) once a month for nominee name accounts of clients where there is an entry during the month and a cash balance or security position; and~~
 - ~~(c) quarterly for nominee name accounts where no entry has occurred in the account and there is a cash balance or security position at the end of the quarter.~~
- (b) A Member may not rely on any other person (including an Approved Person) to send account statements as required by this Rule.
- (c) Notwithstanding the provisions of 5.3.1(b), a Member may rely on the trustee administering a self-directed registered plan to send the account statement required by paragraph (a)(~~+~~) where the following conditions are met:
- (i) The Member does not act as agent for the trustee for the registered plans;
 - (ii) The trustee meets the definition of “Acceptable Institution” as defined in Form 1;
 - (iii) There is a services agreement in place between the Member and the trustee which complies with the requirements of MFDA Rule 1.1.3 and provides that the trustee is responsible for sending account statements to clients of the Member that comply with the requirements of MFDA Rule 5;
 - (iv) There is clear disclosure about which trades are placed by the Member;
 - (v) Clear disclosure must be provided on the account statement regarding which securities positions referred to on the statement are eligible for coverage by the MFDA Investor Protection Corporation and which are not (once the Corporation is offering coverage);
 - (vi) The Member’s full legal name must appear on the account statement together with the name of the trustee; and
 - (vii) The Member must receive copies of the statements to ensure that the information contained therein matches its own information regarding the transactions it executes.
- (d) Notwithstanding the provisions of Rule 5.3.1(b), where a Member is affiliated with a fund manager and in connection with a specific client account is selling only the mutual fund securities of an issuer managed by such affiliated fund manager for that client account, the Member may rely on the affiliated fund manager to send the account statement required by paragraph (a)(~~+~~) for that specific account.

~~5.3.2 **Automatic Payment Plans.** Notwithstanding the provisions of Rule 5.3.1 (a)(ii), where a Member holds client assets in nominee name and the only entry in the client's account in a month relates to the client's participation in:~~

~~(i) any automatic payment plan that provides for systematic trading in the securities of a mutual fund on a monthly or more frequent basis, or~~

~~(ii) other automatic entries such as dividends and reinvested distributions;~~

~~the Member shall send an account statement to the client quarterly.~~

5.3.32 Content of Account Statement. Each account statement must contain the following information:

(a) (i) the type of account;

(ii) the account number;

(iii) the date the statement was issued;

(iv) the period covered by the statement;

(v) the name of the Approved Person(s) servicing the account, if applicable;
and

(vi) the name, address and telephone number of the Member.

(b) for each transaction made for the client during the period covered by the statement:

(i) the date of the transaction;

(ii) whether the transaction was a purchase, sale or transfer;

(iii) the name of the security or investment purchased or sold;

(iv) the number of securities or investments purchased or sold;

(v) the price per security or investment paid or received by the client;

(vi) the total value of the transaction.

(c) as at the end of the period for which the statement is made: ~~for nominee name accounts or accounts where the Member acts as an agent for the trustee for the purposes of administering a self-directed registered retirement savings or similar plan:~~

(i) the name and quantity of each security or investment in the account; ~~the opening balance;~~

(ii) the market value of each security or investment in the account; ~~all debits and credits;~~

(iii) the total market value of each security or investment position in the account; ~~the closing balance;~~

- ~~(iv) any cash balance in the account;~~
- ~~(v) the total market value of all cash, securities and investments in the account.~~

~~(iv) the quantity and description of each security purchased, sold or transferred and the dates of each transaction, and;~~

~~(v) the quantity, description and market value of each security position held for the account;~~

~~(b) for client name accounts:~~

~~(i) all debits and credits;~~

~~(ii) the quantity and description of each security purchased, sold or transferred and the dates of each transaction; and~~

~~(iii) for automatic payment plan transactions, the date the plan was initiated, a description of the security and the initial payment amount made under the plan.~~

~~(c) for all accounts:~~

~~(d) the type of account;~~

~~(e) the account number;~~

~~(f) the date the statement was issued;~~

~~(g) the period covered by the statement;~~

~~(h) the name of the Approved Person(s) servicing the account, if applicable; and~~

~~(vi)(a) the name, address and telephone number of the Member.~~

5.3.43 Member Business Only. Only transactions executed by the Member may appear on the statement of account required pursuant to Rule 5.3.32.

5.4 TRADE CONFIRMATIONS

5.4.1 Delivery of Confirmations. Every Member who has acted as principal or agent in connection with any trade in a security shall promptly send by prepaid mail or deliver to the client a written confirmation of the transaction containing the information required under Rule 5.4.3. The Member need not send to its client a written confirmation of a trade in a security of a mutual fund where the manager of the mutual fund sends the client a written confirmation containing the information required to be sent under Rule 5.4.3.

5.4.2 Automatic Payment Plans. Where a transaction relates to a client's participation in an automatic payment plan that provides for systematic trading in the securities of a mutual fund on a monthly or more frequent basis, and the Member registers the mutual funds pursuant to the plan, the Member is required to send a trade confirmation for the initial purchase only.

5.4.3 **Content.** Every confirmation of trade sent to a client must set forth the following information:

- (a) the quantity and description of the security;
- (b) the price per share or unit at which the trade was effected;
- (c) the consideration;
- (d) the name of the Member;
- (e) whether or not the Member is acting as principal or agent;
- (f) if acting as agent, the name of the person or company from or to or through whom the security was bought or sold;
- (g) the type of the account through which the trade was effected;
- (h) the commission, if any, charged in respect of the trade;
- (i) the amount deducted by way of sales, service and other charges;
- (j) the amount, if any, of deferred sales charges;
- (k) the name of the Approved Person, if any, in the transaction;
- (l) the date of the trade; and
- (m) the settlement date.

5.5 ACCESS TO BOOKS AND RECORDS

All books, records, documentation and other information required to be kept and maintained by a Member or Approved Person shall be available for review by the Corporation and the Corporation shall be entitled to make copies thereof and retain them for the purposes of carrying out its objects and responsibilities under the applicable securities legislation, the By-laws or the Rules.

5.6 RECORD RETENTION

Each Member shall retain copies of the records and documentation referred to in this Rule 5 for seven years from the date the record is created or such other time as may be prescribed by the Corporation.

SCHEDULE B

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

MFDA POLICY NO. 6

INFORMATION REPORTING REQUIREMENTS

On December 16, 2009, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to:

MFDA POLICY NO. 6

INFORMATION REPORTING REQUIREMENTS

1. Introduction

This Policy establishes minimum requirements concerning events that Approved Persons are required to report to Members and events that Members are required to report to the MFDA pursuant to Rule 1.2.5.

Part A of this Policy, entitled “*Approved Person Reporting Requirements*”, sets out details regarding the reporting of information under Rule 1.2.5(b) by Approved Persons.

Part B of this Policy, entitled “*Electronic Reporting Requirements for Members*”, sets out details regarding reporting of information under Rule 1.2.5(a)(i) and Rule 1.2.5(a)(ii) by Members. All reporting under Part B must be submitted through the electronic reporting system provided by the MFDA. The reporting of events that are required to be submitted electronically by any other means is a failure to report the event and a failure to comply with this Policy.

Part C of this Policy, entitled “*Other Reporting Requirements for Members*”, sets out details regarding reporting of information under Rule 1.2.5(a)(iii) by Members. All reporting under Part C must be submitted to the MFDA in writing.

In addition to these reporting requirements, MFDA Members are required to comply with other reporting requirements which may change from time to time, and which include but are not limited to:

- (a) MFDA reporting requirements, some of which may also require MFDA approval:
 - (i) By-law No.1 section 13.7 – Reorganizations, mergers and amalgamations;
 - (ii) By-law No. 1 section 13.9 – Changes in ownership and control;
 - (iii) Rule 1.1.6 – Introducing/Carrying dealer arrangements;
 - (iv) Rule 3.1.1 – Change in dealer level;
 - (v) Rule 3.1.2 – Risk adjusted capital less than zero;
 - (vi) Rule 3.2.5 – Accelerated payment of long term debt; and
 - (vii) Rule 3.5 – Financial filing requirements

- (b) reporting requirements under applicable provincial securities laws in connection with a Member's mutual fund dealer registration.

2. Definitions

“any jurisdiction” means any jurisdiction inside or outside of Canada.

“business day” means a day other than Saturday, Sunday or any officially recognized Federal or Provincial Statutory holiday.

“civil claim” includes civil claims pending before a court or tribunal and arbitration.

“client” means a person who is a client of the Member.

“compensation” means the payment of a sum of money, securities, reversal or inclusion of a securities transaction (whether the transaction has a realized or unrealized loss) or any other equivalent type of entry which is intended to compensate a client or offset an act of a Member or Approved Person. A correction of a client account or position as a result of good faith trading errors and omissions is not considered to be “compensation” for the purposes of this Policy.

“event” means a matter that is reportable under this Policy by a Member or Approved Person.

“law” includes, but is not limited to, all legislation of any jurisdiction and includes any rules, policies, regulations, rulings or directives of any securities regulatory authority of any jurisdiction.

“member business” means all business activities conducted by and through the Member, whether securities related or otherwise.

“misrepresentation” means:

- (i) an untrue statement of fact, either in whole or in part; or
- (ii) an omission to state a fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

“regulatory body” means, but is not limited to, any regulatory or self-regulatory organization that grants persons or organizations the right to deal with the public in any capacity.

“regulatory requirements” means, but is not limited to, the by-laws, rules, policies, regulations, rulings, orders, terms and conditions of registration, or agreements of any regulatory body in any jurisdiction.

“securities” includes exchange contracts, commodity futures contracts and commodity futures options.

“service complaints” means:

- (i) any complaint by a client which is founded on customer service issues and is not the subject of any securities law or regulatory requirements; or
- (ii) any complaint by a client as a result of a good faith trading error or omission.

3. General Reporting Requirements

- 3.1. Events regarding Members that must be reported shall not be limited solely to securities related business, but shall include all member business.
- 3.2. Events regarding Approved Persons that are reported by Approved Persons to the Member shall not be limited solely to securities related business and member business, but shall include all business conducted by the Approved Person.
- 3.3. The obligation to report an event under this Policy is limited to events of which a Member or Approved Person has become aware regardless of the means by which the Member or Approved Person became aware of the event. If the reporting timeframes have expired before the Member or Approved Person has become aware of the event, the event shall be reported immediately after the Member or Approved Person has become aware of such event.
- 3.4. A Member is expected to be aware of events relating to Approved Persons by the receipt of reports from Approved Persons and by carrying out the Member's supervisory, monitoring and review obligations over the conduct of its business.
- 3.5. All requirements to report events regarding former Approved Persons are limited to events which occurred while the Approved Person was an Approved Person of the Member.
- 3.6. A Member shall designate a compliance officer at its head office (or another person at head office) to whom reports made by Approved Persons, as required by section 4, shall be submitted.
- 3.7. Documentation associated with each event required to be reported under this Policy shall be maintained for a minimum of 7 years from the resolution of the matter and made available to the MFDA upon request.

PART A

APPROVED PERSON REPORTING REQUIREMENTS

4. Approved Person Reporting Requirements

- 4.1. An Approved Person shall report the following events to his or her current Member in such detail as required by the Member, within 2 business days:
 - (a) the Approved Person is the subject of a client complaint in writing;
 - (b) the Approved Person is aware of a complaint from any person, whether in writing or any other form, and with respect to him or herself, or any other Approved Person, involving allegations of:
 - (i) theft, fraud, misappropriation of funds or securities, forgery, money

- laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading; or
- (ii) engaging in securities related business outside of the Member.
- (c) whenever the Approved Person has reason to believe that he or she has or may have contravened, or is named as a defendant or respondent in any proceeding, in any jurisdiction, alleging the contravention of:
 - (i) any securities law; or
 - (ii) any regulatory requirements.
 - (d) the Approved Person is charged with, convicted of, pleads guilty or no contest to, any criminal offence, in any jurisdiction;
 - (e) the Approved Person is named as a defendant in a civil claim, in any jurisdiction, relating to the handling of client accounts or trading or advising in securities;
 - (f) the Approved Person is denied registration or a license that allows the Approved Person to deal with the public in any capacity by any regulatory body, or has such registration or license cancelled, suspended or terminated, or made subject to terms and conditions;
 - (g) the Approved Person becomes bankrupt or suspends payment of debts generally or makes an arrangement with creditors or makes an assignment or is declared insolvent;
 - (h) there are garnishments outstanding or rendered against the Approved Person in any civil court in Canada.

PART B

ELECTRONIC REPORTING REQUIREMENTS FOR MEMBERS

5. General Member Electronic Reporting Requirements

- 5.1. Members shall report the following events to the MFDA, through an electronic reporting system provided by the MFDA, within 5 business days of the occurrence of the event, except for events reported under section 6.1(a) of this Policy, which must be reported to the MFDA within 20 business days.

6. General Events to be Reported

- 6.1. Members shall report to the MFDA:
 - (a) all client complaints in writing, against the Member or a current or former Approved Person, relating to member business, except service complaints;
 - (b) whenever a Member is aware, through a written or verbal complaint or otherwise, that the Member or any current or former Approved Person has or may have contravened any provision of any law or has contravened any regulatory requirement, relating to:

- (i) theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading; or
 - (ii) engaging in securities related business outside of the Member.
- (c) whenever the Member, or a current or former Approved Person, is:
 - (i) charged with, convicted of, pleads guilty or no contest to, any criminal offence, in any jurisdiction;
 - (ii) named as a defendant or respondent in, or is subject of, any proceeding or disciplinary action, in any jurisdiction, alleging contravention of any securities law;
 - (iii) named as a defendant or respondent in, or is the subject of, any proceeding or disciplinary action, in any jurisdiction, alleging contravention of regulatory requirements;
 - (iv) denied registration or a license that allows a person to deal with the public in any capacity by any regulatory body, or has such registration or license cancelled, suspended or terminated, or made subject to terms and conditions;
 - (v) named as a defendant in a civil claim, in any jurisdiction, relating to handling of client accounts or trading or advising in securities.
- (d) whenever an Approved Person becomes bankrupt or suspends payment of debts generally or makes an arrangement with creditors or makes an assignment or is declared insolvent;
- (e) there are garnishments outstanding or rendered against the Member or an Approved Person in any civil court in Canada.

7. Reporting of Resolution of Events

- 7.1. Members shall update event reports previously reported to reflect the resolution of any event that has been reported pursuant to section 6.1 of this Policy and such resolutions shall include but not be limited to:
- (a) any judgments, awards, arbitration awards or orders and settlements in any jurisdiction;
 - (b) compensation paid to clients directly or indirectly, or any benefit received by clients from a Member or Approved Person directly or indirectly;
 - (c) any internal disciplinary action or sanction against an Approved Person by a Member;
 - (d) the termination of an Approved Person;
 - (e) the results of any internal investigation conducted.

8. Other Events to be Reported

- 8.1. For matters that are not the subject of an event report in section 6.1 of this Policy, the Member shall report to the MFDA:

- (a) whenever the Member has initiated disciplinary action that involves suspension, demotion or the imposition of increased supervision on an Approved Person;
- (b) whenever the Member has initiated disciplinary action that involves the withholding of commissions or the imposition of a financial penalty in excess of \$1000;
- (c) whenever an employment or agency relationship with an Approved Person is terminated and the Notice of Termination filed with the applicable securities commission discloses that the Approved Person was terminated for cause, or discloses information regarding internal discipline matters or restrictions for violations of regulatory requirements;
- (d) whenever the Member or Approved Person has paid compensation to a client either directly or indirectly in an amount exceeding \$15,000.

PART C OTHER REPORTING REQUIREMENTS FOR MEMBERS

9. Other Information Reporting Requirements for Member

- 9.1. Members shall report the events under Part C of this Policy to the MFDA, in writing, within 5 business days of the occurrence of the event, except for events reported under section 10 of this Policy, which must be reported to the MFDA immediately.

10. Bankruptcy, Insolvency and Related Events

- 10.1. Members must report to the MFDA whenever:
- (a) the Member is declared bankrupt;
 - (b) the Member makes a voluntary assignment in bankruptcy;
 - (c) the Member makes a proposal under any legislation relating to bankruptcy or insolvency;
 - (d) the Member is subject to, or instituting any proceedings, arrangement or compromise with creditors;
 - (e) a receiver and/or manager assumes control of the Member's assets.

11. Change of Name

- 11.1. Members must report to the MFDA any change with respect to:
- (a) the legal name of the Member;
 - (b) the names under which the Member carries on business (trade or style names);
 - (c) trade, business or style names, other than that of the Member, used by Approved Persons. The name of the Approved Person, the trade or business name the Approved Person is using, and the Approved Person's branch location must be provided.

12. Change of Contact Information

- 12.1. Members must notify the MFDA of any change in address for service or main telephone or fax number.

13. Change in Member Registration or Licensing

- 13.1. Members must report to the MFDA any changes in the following:
- (a) type of registration or licensing with the relevant securities commission;
 - (b) jurisdictions in which any dealer business of the Member is conducted; and
 - (c) investment products traded or dealt in.

14. Changes in Organizational Structure

- 14.1. Members must report to the MFDA any changes in a Member's directors, chief executive officer, ultimate designated person, chief compliance officer, chief financial officer, or chief operating officer or individuals performing the functional equivalent of any of those positions~~directors, partners (in the case of a partnership), officers and compliance officers.~~

15. Other Business Activities

- 15.1. Members must report to the MFDA any business, other than the sale of investment products, which the Member engages in or proposes to engage in.

16. Change of Auditor

- 16.1. Members must report to the MFDA any change in a Member's auditor and/or audit engagement partner. A new Letter of Acknowledgement (Schedule H.1 of the MFDA Membership Application Package) must be submitted to the MFDA.