

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA
PROPOSED AMENDMENTS TO
MFDA RULE 1.2 (INDIVIDUAL QUALIFICATIONS)**

I. OVERVIEW

A. Current Framework

MFDA Rule 1.2 (Individual Qualifications) currently prescribes requirements for salespersons in the areas of: general compliance with MFDA requirements; training and supervision; dual occupations, including financial planning, and business titles.

Requirements under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”) include a general proficiency principle in respect of initial and ongoing registrant education and experience. In addition, with respect to outside activities, changes to securities legislation have been adopted under Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (“Form 33-109F4”) and the Companion Policy to NI 31-103 (“31-103CP”). These changes require disclosure of: all officer or director positions; any other equivalent positions; and any positions of influence.

B. Reasons for Amendments

The proposed amendments are intended to conform MFDA Rules with similar requirements under securities legislation by adopting the NI 31-103 and related Form and Companion Policy changes noted above in respect of requirements pertaining to proficiency and outside activities. The adoption of a general proficiency principle within MFDA Rules is also intended to address situations where additional education, training and proficiency may be appropriate (e.g. where Members and Approved Persons trade in investment products that have unique features such as exchange-traded funds).

In addition, Members have sought clarification in respect of the scope of their obligation to disclose outside activities to clients. Members have noted that the current requirement to disclose any other gainful occupation, as set out under Rule 1.2.1(c)(vi), is unduly broad. The proposed amendments would address this concern. MFDA staff recognizes that there may be situations where disclosure to the client in respect of the outside activity may not be necessary, as the potential for client confusion is minimal.

Where financial planning is not done through the facilities of the Member but is instead conducted by an Approved Person as an outside activity, the proposed amendments would clarify the application of financial planning requirements, as set out under Rule 1.2.1(c)(vii).

C. Objectives

The objectives of the proposed amendments are to: conform requirements under MFDA Rules to similar requirements under securities legislation; and clarify the application and scope of existing obligations under MFDA Rules in respect of outside activities.

D. Effect of Proposed Amendments

The proposed amendments will ensure that Members are subject to consistent requirements under MFDA Rules and securities legislation and will clarify the scope and application of existing MFDA requirements.

II. DETAILED ANALYSIS

A. Proposed Amendments

The following is a summary of the proposed amendments to MFDA Rule 1.2:

- **Registration (Rule 1.2.2):** Under new Rule 1.2.2, Approved Persons must satisfy any applicable proficiency and other registration requirements set out in securities legislation and established by the securities regulatory authority having jurisdiction. Specific details of proficiency requirements that apply under NI 31-103 are outlined in MFDA Staff Notice MSN-0077 *Approved Person Proficiency Requirements*;
- **Education, Training and Experience (Rule 1.2.3):** Under new Rule 1.2.3, Approved Persons must not perform an activity that requires securities registration unless the Approved Person has the education, training and experience that a reasonable person would consider necessary to perform the activity competently. These requirements have been directly adopted from similar requirements under securities legislation;
- **Outside Activity – Definition (Rule 1.3.1):** The proposed amendments conform to similar changes made under securities legislation by adopting a definition of “outside activity” that includes activities involving any officer, director and other equivalent positions and positions of influence. The proposed definition is consistent with similar changes adopted under Form 33-109F4 and 31-103CP;
- **Requirements for Outside Activity – Notification, Approval and Disclosure (Rules 1.3.2(b), (c) and (e)):** Under the amendments, as proposed, an Approved Person would have an obligation to notify the Member of an outside activity. The Member would also be required to approve the outside activity in writing and prior to the Approved Person engaging in such activity. In addition, under proposed Rule 1.3.2(e), client disclosure of the outside activity would be required in situations where such activity could be confused with Member business. Under Rule 1.3.2(e), such disclosure would be required to be given to the client in writing; and

- **Financial Planning (Rule 1.2.1 (c)(vii)):** - Requirements under this Rule have given rise to Member confusion. In addition, as noted above, the proposed amendments introduce enhanced requirements in respect of all outside activity. Having regard to the foregoing, Rule 1.2.1(c)(vii) would be deleted in its entirety under the proposed amendments. Where financial planning is conducted outside of the Member, it would be subject to the same general requirements as any other outside activity.
- MFDA staff understands that there is currently confusion among the investing public with respect to the use of the title “financial planner”. The MFDA is currently considering Rule proposals that would prohibit Approved Persons from using the title “financial planner” unless they have appropriate proficiency.

Additional Amendments

The following additional amendments clarify Member and Approved Person obligations in respect of outside activities:

- Removal of current Rule 1.2.1(c)(i) (Permitted by legislation). This Rule would no longer be necessary. Under proposed Rule 1.3.2(a) (Requirements for Outside Activity - Not prohibited), the outside activity must not be prohibited; and
- Removal of current Rule 1.2.1(c)(iv) (Member procedures). This Rule is not necessary. Members are already required to establish and maintain procedures relating to all of their obligations under MFDA Rules and securities legislation.

The proposed amendments will also require updates to Rule references set out in certain MFDA Policies. Appropriate consequential amendments will, accordingly, be made to MFDA Policy No. 1 *New Registrant Training and Supervision*; Policy No. 2 *Minimum Standards for Account Supervision*; Policy No. 5 *Branch Review Requirements*; and Policy No. 6 *Information Reporting Requirements*.

Attached as Schedule “A” to this Notice is a blacklined version of the proposed amendments to MFDA Rule 1.2. Attached as Schedule “B” to this Notice is a list of the proposed consequential amendments to MFDA Policy No.1, 2, 5 and 6.

B. Issues and Alternatives Considered

Requirements under MFDA Rules are required to be consistent with similar requirements under securities legislation. In addition, the proposed amendments respond to Member requests for clarification respecting the application and scope of existing requirements under MFDA Rules.

MFDA staff reviewed the proposed amendments with the MFDA Policy Advisory Committee. Several committee members requested guidance and clarification in respect of what is meant by a “position of influence”. Staff noted that as a general matter, determining whether an outside activity involves an Approved Person in a position of influence depends

upon the facts in the particular circumstances and whether, on the basis of those facts, there is a potential for conflicts of interest. MFDA staff intends to provide more guidance in this area.

No other issues or alternatives were considered as MFDA staff is satisfied that the proposed amendments are necessary and appropriate to address these objectives.

C. Comparison with Similar Provisions

During the development of the proposed amendments, consideration was given to similar changes adopted under NI 31-103, Form 33-109F4 and 31-103CP. As noted, the proposed amendments conform MFDA Rule 1.2 to these changes adopted under securities legislation.

Consideration was also given to similar requirements of the Investment Industry Regulatory Organization of Canada (“IIROC”), respecting registered or investment representatives having, and continuing in, any business activity outside of the IIROC Dealer Member, as set out under IIROC Dealer Member Rule 18.14. The proposed amendments to MFDA Rule 1.2 are consistent with IIROC requirements.

D. Systems Impact of Amendments

It is not anticipated that the proposed amendments will have any additional material impact upon Members’ systems, impose any additional material burden or constraint on competition or innovation or impose any additional material costs or restrictions on the activities of market participants. It is not expected that there will be any material increased costs of compliance as a result of the proposed amendments.

E. Best Interests of the Capital Markets

The proposed amendments to Rule 1.2 were approved by the MFDA Board of Directors at their June 4, 2015 meeting. The Board has determined that the proposed amendments are consistent with the best interests of the capital markets.

F. Public Interest Objective

The proposed amendments will clarify the application and scope of existing requirements under MFDA Rules and will also ensure that Members are subject to consistent requirements under MFDA Rules and securities legislation. The proposed amendments are consistent with the public interest.

G. Classification

The proposed amendments have been classified as Public Comment Rule proposals.

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, the Superintendent of Securities of Prince Edward Island, and the Saskatchewan Financial and Consumer Affairs Authority.

B. Effectiveness

The proposed amendments are simple and effective.

C. Process

The proposed amendments have been developed in consultation with the relevant departments within the MFDA and have been reviewed by the MFDA Policy Advisory Committee, the Regulatory Issues Committee of the MFDA Board of Directors and, subsequently, approved by the full MFDA Board of Directors. The MFDA Board of Directors approved the proposed amendments on June 4, 2015. In approving the proposed amendments, the MFDA has followed its established internal governance practices and has considered the need for consequential amendments.

D. Effective Date

The proposed amendments will be effective on a date to be subsequently determined by the MFDA.

E. Exemption from Requirements under Securities Legislation

The proposed amendments do not involve a Rule that the MFDA, its Members or Approved Persons must comply with in order to be exempted from a securities legislation requirement.

F. Conflict with Applicable Laws or Terms and Conditions of Recognition Order

The proposed amendments do not conflict with applicable laws or the Terms and Conditions of a Recognizing Regulator's Recognition Order.

IV. SOURCES

MFDA Rule 1.2

MFDA Policy No. 1, 2, 5 and 6

NI 31-103

31-103CP

Form 33-109F4

IIROC Dealer Member Rule 18.14

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 within **90** days of the publication of this notice, addressed to the attention of:

Paige Ward
General Counsel, Corporate Secretary & Vice-President, Policy
Mutual Fund Dealers Association of Canada
121 King St. West, Suite 1000
Toronto, Ontario
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pward@mfd.ca

and one copy addressed to the attention of:

Vida Mehin
Senior Legal Counsel, Capital Markets Regulation Division
British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, British Columbia
V7Y 1L2
vmehin@bcsc.bc.ca

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:

Paige Ward
General Counsel, Corporate Secretary & Vice-President, Policy
Mutual Fund Dealers Association of Canada
(416) 943-5838

DM#427979v2

Schedule "A"

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

On June 4, 2015, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to MFDA Rule 1.2:

1.2 INDIVIDUAL QUALIFICATIONS

1.2.1 Salespersons

~~(a) 1.2.1 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.

1.2.2 Registration. An Approved Person must have satisfied any applicable proficiency and other registration requirements set out in securities legislation and established by the securities regulatory authority having jurisdiction.

1.2.3 Education, Training and Experience. An Approved Person must not perform an activity that requires securities registration unless the Approved Person has the education, training and experience that a reasonable person would consider necessary to perform the activity competently, including understanding the structure, features and risks of each security that the Approved Person recommends.

~~(b) 1.2.4 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.

~~(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.~~~~

~~(d) — 1.2.5 **Misleading Business Titles Prohibited**.~~ 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 **Reporting Requirements**~~

~~1.3 **OUTSIDE ACTIVITY**~~

~~1.3.1 **Definition.** For the purpose of the By-laws, Rules and Policies, “outside activity” means any activity conducted by an Approved Person outside of the Member:~~

- ~~(a) for which direct or indirect payment, compensation, consideration or other benefit is received or expected;~~
- ~~(b) involving any officer or director position and any other equivalent positions; or~~
- ~~(c) involving any position of influence.~~

~~1.3.2 **Requirements for Outside Activity.** An Approved Person may have, and continue in, an outside activity provided that:~~

(a) *Not prohibited.* The Corporation and the securities regulatory authority in the jurisdiction in which the Approved Person carries on or proposes to carry on the outside activity does not prohibit the Approved Person from engaging in such outside activity;

(b) *Notification.* The Approved Person discloses the outside activity to the Member;

(c) *Approval.* The Approved Person obtains written Member approval of the outside activity prior to engaging in such activity;

(d) *Conduct unbecoming.* The outside activity of the Approved Person must not be such as to bring the Corporation, its Members or the mutual fund industry into disrepute; and

(e) *Disclosure.* To the extent that the outside activity could be confused with Member business, clear written disclosure is provided to clients that any activities related to the outside activity are not the business of the Member and are not the responsibility of the Member.

1.2.21.4 **REPORTING REQUIREMENTS**

(Amendments not proposed to text of Rule)

Schedule “B”

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

On June 4, 2015, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to MFDA Policies:

MFDA Policy No. 1 *New Registrant Training and Supervision*

Current references to MFDA Rule 1.2.1(c) are amended to reference MFDA Rule 1.2.4 in the following sections of the Policy:

- Introduction;
- Training Program;
- Supervision Policy; and
- Conformation of Completion of New Registrant Training and Supervision Program.

MFDA Policy No. 2 *Minimum Standards for Account Supervision*

Current references to “outside business activity” and “dual occupations” are amended to reference “outside activity” in the following sections of the Policy:

- Section IV. Branch Office Supervision, paragraph 1;
- Section IV. Branch Office Supervision, paragraph 3, subsection on Daily Reviews; and
- Section VI. Identification of Trends in Trading Activity, paragraph 2.

MFDA Policy No. 5 *Branch Review Requirements*

Current references to “outside business activity” and “dual occupations” are amended to reference “outside activity” in the following sections of the Policy:

- Section on Branch Review Procedures, paragraph b) Branch Interviews;
- Section on Branch Review Procedures, paragraph e) Review of Sales Communications, Advertising and Client Communications; and
- Section on Scope of Review.

MFDA Policy No. 6 *Information Reporting Requirements*

Current references to MFDA Rule 1.2.2 are amended to reference MFDA Rule 1.4 in Section 1. Introduction to the Policy.

Current references to “occupation” are amended to reference “outside activity” in the following sections of the Policy:

- Part A- Approved Person Reporting Requirements, Section 4.1, paragraph (iv); and
- Part B- Electronic Reporting Requirements for Members, Section 6.1, paragraph (iv).