MUTUAL FUND DEALERS ASSOCIATION OF CANADA

PROPOSED AMENDMENTS TO MFDA RULES 2.3.2 AND 2.3.3 – LIMITED TRADING AUTHORIZATION

I. OVERVIEW

A. Current Requirements

Currently, under Rule 2.3.2, a Member or Approved Person may accept a Limited Trading Authorization (LTA) from a client to facilitate trade execution. The form of LTA prescribed by the MFDA must be completed and approved by the compliance officer or branch manager, and retained in the client's file. Under Rule 2.3.3 (Designation), each trade made pursuant to an LTA must be identified in the books and records of the Member and on any order documentation.

Guidance in respect of the use of LTAs is set out under the following MFDA Staff Notices (MSN):

- MSN-0038 - Revised Limited Trading Authorization Form and Guidelines for Individual and Joint Accounts;
- MSN-0039 - Implementation Date for Revised Limited Trading Authorization for New Accounts (Individual and Joint); and
- MSN-0042 - Limited Trading Authorizations and Intermediary Accounts.

B. Reasons for Amendments

The purpose of the LTA Form is to protect fund companies by making dealers responsible and liable for obtaining valid client instructions.

The industry has now standardized its LTA practices. As a result, the regulatory concerns that gave rise to the development of the LTA form, and the adoption of Rule 2.3.2, are no longer present. Additionally, we note that no other Canadian securities regulator requires the use of an LTA form. The form of LTA adopted is essentially an operational or business issue that should be addressed by dealers and fund companies. The MFDA had planned to delete Rules 2.3.2 and 2.3.3 as part of its Rule Review Project. Circumstances arising as a result of the COVID-19 global pandemic have highlighted the concern that the requirement for an LTA may, in some cases, cause unnecessary barriers by delaying execution of valid trade orders and receipt of client redemption proceeds.

The proposed amendments would address these issues by deleting Rules 2.3.2, and 2.3.3. Corresponding changes have also been proposed to record-keeping requirements set out under Rule 5.1. These proposed Rule changes are set out under Appendix "A" to this Notice. MSN guidance respecting the use of LTAs, as noted above, would also be deleted.

C. Objectives

Under the amendments, as proposed, use of the LTA form (while still permitted), would no longer be required for the purpose of complying with MFDA Rules. The objectives of the proposed amendments are to reduce unnecessary regulatory burden, revise MFDA Rules to reflect the standardization of industry practices in this area, ensure that MFDA requirements in this area are

consistent with those of other Canadian securities regulators, and to address the potential for trade execution delays related to the requirement to use a prescribed form of LTA, having regard to challenges arising as a result of the COVID-19 global pandemic.

D. Effect of Proposed Amendments

As noted, the effect of the proposed amendments will be to reduce unnecessary regulatory burden, ensure that MFDA requirements reflect current industry practices, achieve greater consistency between MFDA requirements and those of other Canadian securities regulators, and to address the potential for trade execution delays related to the requirement to use a prescribed form of LTA, having regard to challenges arising as a result of the COVID-19 global pandemic.

II. DETAILED ANALYSIS

A. Background

Rules 2.3.2, and 2.3.3 were developed when the MFDA first established its Rulebook, and became recognized as a Self-Regulatory Organization (SRO).

At that time, fund companies required dealers operating in client name to either obtain and submit a client signature for every trade, or use a client agreement acceptable to the fund company. Such an agreement would allow the dealer to act on verbal instructions from the client, and would render the dealer liable for any incorrect or invalid instructions sent to the fund company. As there was no standardized form of industry agreement, dealers and fund companies created their own.

The various agreements in use provided dealers with differing degrees of authority. In some cases, such authority was sufficiently broad to raise regulatory concerns (e.g. certain agreements provided dealers with discretionary authority or authority over all client assets). To address such concerns, the MFDA agreed to develop a Rule provided that the Investment Funds Institute of Canada (IFIC) agreed to draft a standard form acceptable to their fund company Members. IFIC has revised the agreement several times over the years and submitted it to the MFDA for adoption.

As noted above, and in addition to the other reasons referenced, the industry has now standardized its LTA practices, and the regulatory concerns that gave rise to the development of the LTA form, and the adoption of Rule 2.3.2, are no longer present.

B. Comparison with Similar Provisions

During the development of the proposed amendments, consideration was given to the requirements of other Canadian securities regulators. As noted above, no other Canadian securities regulator requires the use of a prescribed form of LTA.

C. Issues and Alternatives Considered

No other issues or alternatives were considered.

D. Systems Impact of Amendment

The proposed amendments would render MFDA Rules more flexible in respect of the use of a prescribed LTA form (i.e., its use would still be permitted, but no longer required, for the purpose of complying with MFDA Rules). As a result, we do not anticipate that the proposed amendments will result in any material impact upon Members' systems, material burdens or constraints on competition or innovation, material costs or restrictions on the activities of market participants, or materially increased costs of compliance.

E. Best Interests of the Capital Markets

The proposed amendments were approved at the December 2, 2020 meeting of the MFDA Board of Directors. 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 are in the public interest and, as noted, will reduce unnecessary regulatory burden, ensure that MFDA requirements reflect current industry practices, achieve greater consistency between MFDA requirements and those of other Canadian securities regulators, and address the potential for trade execution delays related to the requirement to use a prescribed form of LTA, having regard to challenges arising as a result of the COVID-19 global pandemic.

G. Classification

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

II. COMMENTARY

A. Filing in Other Jurisdictions

The proposed amendments will be filed for approval with the Alberta, British Columbia, Manitoba, Nova Scotia and Ontario Securities Commissions, the New Brunswick Financial and Consumer Services Commission, 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 were reviewed at the November 12, 2020 meeting of the MFDA Policy Advisory Committee, the November 19, 2020 meeting of the Regulatory Issues Committee of the MFDA Board of Directors, and approved by the full MFDA Board of Directors at its December 2, 2020 meeting. 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 become effective on a date to be determined by the MFDA.

E. Exemption from Requirements under Securities Legislation

The proposed amendments do not involve Rules 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.

III. SOURCES

- MFDA Rulebook;
- IIROC Rulebook;
- Securities Acts of the various CSA member jurisdictions; and

IV. 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 and Vice-President, Policy
Mutual Fund Dealers Association of Canada
121 King St. West, Suite 1000
Toronto, Ontario M5H 3T9
pward@mfda.ca

and one copy addressed to the attention of:

Anne Hamilton
Senior Legal Counsel
British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, British Columbia, V7Y 1L2
ahamilton@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 and Vice-President, Policy
Mutual Fund Dealers Association of Canada
(416) 943-5838

DM#781485

Appendix "A"

Proposed Amendments to MFDA Rules 2.3.2 (Limited Trading Authorization), and 2.3.3. (Designation) and Rule 5.1 (Requirement for Records)

~~**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.~~

RULE NO. 5 – BOOKS, RECORDS & REPORTING

5.1 REQUIREMENT FOR RECORDS

(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;

(iii) the time of entry or receipt, the price at which executed and, to the extent feasible, the time of execution or cancellation; ~~and~~

(iv) evidence that the client was informed of all fees and charges in accordance with Rule 2.4.4; and

~~(iv)~~(v) evidence of client authorization;

(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.