

## THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

### HOUSEKEEPING AMENDMENTS TO MFDA RULES 2.2 (CLIENT ACCOUNTS) AND 5.1 (REQUIREMENT FOR RECORDS)

#### Background

On July 15, 2021, the Canadian Securities Administrators (CSA) published in final form amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103). These amendments enhance the protection of older and vulnerable clients by providing registrants, including MFDA Members and Approved Persons, with tools to address issues of financial exploitation and diminished mental capacity. Conforming changes are necessary to MFDA Rules 2.2 and 5.1 to ensure that requirements under MFDA regulatory instruments remain consistent with those under securities legislation.

#### Classification of the Amendments

The proposed amendments to MFDA Rules 2.2 and 5.1, as summarized below, are classified as housekeeping. In adopting this classification, the MFDA has relied upon section 2(b)(iii) of the Joint Rule Review Protocol for the MFDA, which provides, in relevant part, that housekeeping Rule changes include those that are necessary to conform MFDA Rules to applicable securities legislation, statutory or legal requirements.

Attached as Schedule “A” to this Notice are the proposed amendments to MFDA Rules 2.2 and 5.1. The current versions of the Rules have been blacklined to show changes introduced by the proposed amendments.

#### Nature of the Amendments

1. Definitions in MFDA Rule 2.2 (Client Accounts)

Definitions for “financial exploitation”, “temporary hold”, “trusted contact person” and “vulnerable client” will be added to Rule 2.2.

2. MFDA Rule 2.2.1(c) and (d) re: Trusted Contact Person

MFDA Members and Approved Persons will be required to take reasonable steps to obtain from the client the name and contact information of a trusted contact person, and the client’s written authorization for the Member or Approved Person to contact the trusted contact person to confirm or make inquiries about matters that include the Member’s or Approved Person’s concerns about possible financial exploitation of the client or about the client’s mental capacity as it relates to the ability of the client to make decisions involving financial matters.

3. MFDA Rule 2.2.8 (Conditions for Temporary Hold)

The Rule creates a regulatory framework for Members who place a temporary hold on the purchase or sale of a security on behalf of a client or on the withdrawal or transfer of cash or securities from a client’s account.

Rule 2.2.8 states that a Member or Approved Person must not place a temporary hold on the basis of financial exploitation of a vulnerable client unless the Member reasonably believes that the client is a vulnerable client; and financial exploitation of the client has occurred, is occurring, has been attempted or will be attempted. The Rule also provides that a Member or Approved Person must not place a temporary hold on the basis of a client's lack of mental capacity unless the Member reasonably believes that the client does not have the mental capacity to make decisions involving financial matters.

In addition, the Rule includes processes with which Members and Approved Persons must comply, including: documenting the facts that caused the Member or Approved Person to place the temporary hold; providing notice of the hold to the client; reviewing the facts after placing the temporary hold and on a reasonable frequent basis to determine if continuing the hold is appropriate; and within 30 days of placing the temporary and until the hold is revoked, within every subsequent 30-day period, revoke the temporary hold or provide the client with notice of the Member's decision to continue the hold and the reasons for that decision.

#### 4. Rule 2.2.7(1)(g) and (n) (Relationship Disclosure)

A Member will be required to provide written disclosure to the client that includes: a description of the circumstances under which a Member or Approved Person might disclose information about the client or the client's account to a trusted contact person; and a general explanation of the circumstances under which a Member or Approved Person may place a temporary hold and a description of the notice that will be given to the client if a temporary hold is placed or continued under that Rule.

#### 5. Rule 5.1(s) (Requirements for Records)

Members will be required to keep records that demonstrate compliance with Rule 2.2.8. Note that the requirement to keep records relating to trusted contact person information are captured by Rule 5.1(k).

### **Process**

The MFDA followed its established internal governance practices in approving the proposed amendments and considered the need for consequential amendments. The proposed amendments were reviewed by the Regulatory Issues Committee of the MFDA Board of Directors on September 14, 2021, and approved by the full MFDA Board on September 29, 2021. The Board has determined that the proposed amendments are in the public interest.

### **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.

### **Exemption from Requirements Under Securities Legislation**

The proposed amendments involve requirements with which MFDA Members and Approved Persons must comply in order to be exempted from requirements under securities legislation.

## **Effective Date**

The proposed amendments to MFDA Rules 2.2 and 5.1 are expected to become effective December 31, 2021, which is harmonized with the implementation date adopted by the CSA.

## SCHEDULE “A”

### **MFDA CONFORMING AMENDMENTS RE: ENHANCING PROTECTION OF OLDER AND VULNERABLE CLIENTS**

#### **2.2 CLIENT ACCOUNTS**

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

“financial exploitation” means the use or control of, or deprivation of the use or control of, a financial asset of an individual by a person through undue influence, unlawful conduct or another wrongful act;

“temporary hold” means a hold that is placed on the purchase or sale of a security on behalf of a client or on the withdrawal or transfer of cash or securities from a client’s account;

“trusted contact person” means an individual identified by a client to a Member or Approved Person whom the Member or Approved Person may contact in accordance with the client’s written authorization; and

“vulnerable client” means a client who might have an illness, impairment, disability or aging-process limitation that places the client at risk of financial exploitation.

#### **2.2.1 “Know Your Client”**

**2.2.1(1)** Each Member and Approved Person shall take reasonable steps to learn the essential facts relative to each client and to each order or account accepted, and to:

...

- (c) take reasonable steps to obtain from the client the name and contact information of a trusted contact person, and the client’s written authorization for the Member or Approved Person to contact the trusted contact person to confirm or make inquiries about any of the following:
  - (i) the Member’s or Approved Person’s concerns about possible financial exploitation of the client;
  - (ii) the Member’s or Approved Person’s concerns about the client’s mental capacity as it relates to the ability of the client to make decisions involving financial matters;
  - (iii) the name and contact information of a legal representative of the client, if any;
  - (iv) the client’s contact information.
- (d) Subsection (c) does not apply to a Member or Approved Person in respect of a client that is not an individual.

## 2.2.7 Relationship Disclosure

2.2.7(1) For each new account opened, the Member shall provide written disclosure to the client:

...

- (g) a description of the circumstances under which a Member or Approved Person might disclose information about the client or the client's account to a trusted contact person referred to in Rule 2.2.1(1)(c);
- (n) a general explanation of the circumstances under which a Member or Approved Person may place a temporary hold under Rule 2.2.8 (Conditions for Temporary Hold), and a description of the notice that will be given to the client if a temporary hold is placed or continued under that Rule.

## 2.2.8 Conditions for Temporary Hold

- (1) A Member or Approved Person must not place a temporary hold on the basis of financial exploitation of a vulnerable client unless the Member reasonably believes all of the following:
  - (a) the client is a vulnerable client;
  - (b) financial exploitation of the client has occurred, is occurring, has been attempted or will be attempted.
- (2) A Member or Approved Person must not place a temporary hold on the basis of a client's lack of mental capacity unless the Member reasonably believes that the client does not have the mental capacity to make decisions involving financial matters.
- (3) If a Member or Approved Person places a temporary hold referred to in subsection (1) or (2), the Member must do all of the following :
  - (a) document the facts and reasons that caused the Member or Approved Person to place and, if applicable, to continue the temporary hold;
  - (b) provide notice of the temporary hold and the reasons for the temporary hold to the client as soon as possible after placing the temporary hold;
  - (c) review the relevant facts as soon as possible after placing the temporary hold, and on a reasonably frequent basis, to determine if continuing the hold is appropriate;
  - (d) within 30 days of placing the temporary hold and, until the hold is revoked, within every subsequent 30-day period, do either of the following:
    - (i) revoke the temporary hold;
    - (ii) provide the client with notice of the Member's decision to continue the hold and the reasons for that decision.

## 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:

...

(s) records which demonstrate compliance with Rule 2.2.8 (Conditions for Temporary Hold).