

**Proposed MFDA Rules 1.2 (Definitions), 1.2.6 (Continuing Education),
and Proposed MFDA Policy No. 9 – Continuing Education (CE)
Requirements**

Summary of Comments

Commenters expressed general support for the development of MFDA CE requirements. There were differing views on certain aspects of the proposed new Rules and Policy which are outlined below.

Proposed New Rule 1.2

Definitions (Rule 1.2(1))

A commenter suggested that the two-year cycle start on January 1st of odd numbered years, so as to avoid overlapping with the end/start of IIROC CE cycles.

MFDA Response

During the development of the proposed amendments, consideration was given to various CE cycles adopted by other regulatory and industry bodies. Given that a greater number of Approved Persons must comply with the CE regime of the Chambre de la sécurité financière (“CSF”), the proposed amendments adopt a CE cycle that matches the CSF CE regime.

Proposed New Policy No. 9

Leaves of Absence (Part B)

Two commenters referred to the requirement for a CCO or delegate to “maintain sufficient evidence and documentation” in respect of certain matters, including “the nature of the absence”. The commenters, noting potential privacy concerns, sought guidance as to the nature and extent of information which would be required.

MFDA Response

Members are not expected to engage in the collection or recording of any information where doing so would be inconsistent with existing obligations under privacy legislation. Requirements under proposed section 4.2 are intended to ensure general knowledge on the part of the Member regarding the leave of absence, and that due consideration has been given to the particulars of the Participant’s leave, and how the reduction in credits was determined.

Component Content (Part C)

Business Conduct

An industry course provider noted that accredited content should be application-based (i.e. demonstrate and test the Participant on how regulatory requirements are applied in various scenarios).

Professional Development

A commenter sought clarification as to whether the Professional Development topic areas set out under section 6.2 are open-ended, or exhaustive. If exhaustive, the commenter recommended adding the following topic areas: professional skills, technology changes, human behavior and client decision making, practice management and business development. The commenter also recommended that consideration be given to IIROC Notice 18-0023, for examples of additional topics which could be included under the category of Professional Development.

Another commenter noted that education in the areas of “products” and “client management techniques” can stray from objective technical competence to sales strategies (e.g. how to “close a sale” or encourage additional investment from clients). The commenter recommended that a limit be placed on the number of CE credits which can be claimed in these areas and that specific criteria be required for such content to qualify as continuing education activity.

MFDA Compliance

A commenter sought clarification as to the number of hours of training which would equal 1 MFDA Compliance credit.

MFDA Response

We are of the view that Members and Approved Persons are capable of determining the type/format of continuing education activities that are most suitable for them, having regard to their business/business models, requirements established under the proposed amendments, and related guidance which is under development and which will subsequently be published by MFDA staff. In addition, we note that the CE framework will be reexamined as the MFDA accumulates regulatory experience in respect of implementation and compliance with its requirements. Any necessary refinements will be made on the basis of such experience.

The list of Professional Development topic areas set out under section 6.2 is intended to be exhaustive. Topics suggested by the commenter can already be accommodated under the proposed topics areas.

The MFDA will develop content for the two required MFDA Compliance Credits based on emerging/topical issues identified by MFDA staff. The length of training related to MFDA Compliance credits may vary, depending upon the number and complexity of matters being brought forward for discussion. MFDA staff intends for each MFDA Compliance Credit to be approximately 1 hour in length, and in any event, no longer than 2 hours.

90-Day Training Program

A commenter recommended that a prescribed number of CE credits be allocated to the Member's 90-day training program, which new Approved Persons are required complete. Alternatively, the commenter suggested the start date for acquiring CE credits begin after an Approved Person's 90 day training period has ended.

MFDA Response

Courses administered as part of a Member's 90-day training program will be eligible for accreditation under the MFDA CE regime. Such courses can vary in both length and content. As a result, the number of eligible credits will be determined in accordance with the accreditation process prescribed under Policy No. 9.

Accreditation (Part E)

To maintain the quality and standard of CE being provided, two commenters recommended that the MFDA accredit CE activity and not permit 3rd parties or Members to do so.

Two commenters noted that no mention is made of fees to be paid by recognized third parties who offer CE accreditation services. The commenter encouraged the MFDA to recover direct costs while not creating barriers for prospective CE providers, and to consider variable fee arrangements for providers who are already recognized by other regulators/professional associations.

A commenting firm which provides industry education services expressed the view that the accreditation process appears to be unduly complex and onerous. This commenter recommended that the MFDA set timelines for approving applications by third parties who seek to be recognized under section 9.2 of Part E.

Two commenters asked for additional details in respect of the standard evaluation procedures referenced in section 9.5 of the Policy, and also asked if the MFDA would be publishing a list of eligible 3rd party CE credits. It was suggested that a published list of eligible courses include those which are aligned with other industry CE requirements, such as those of IIROC, FPSC, AMF, and the IQPF.

MFDA Response

We are of the view that Members and recognized 3rd parties are capable of appropriately accrediting CE content, within the parameters established by requirements under the proposed amendments, and with the assistance of related guidance which is currently being developed. We will be issuing guidance, for public comment, which will set out evaluation processes for self-accreditation, accreditation by third parties and the MFDA. The guidance will include proposed fees for each process. MFDA staff will take a number of factors into account when developing a fee model, including the matters raised by commenters.

The accreditation process is a key aspect of requirements under the proposed amendments. The time required to review an MFDA Accreditation Application form submitted by a Provider will depend on a number of factors, including the particulars of the Provider, the complexity of the application, and whether the Provider has submitted all requested information in a level of detail that is sufficient to allow for timely processing. The proposed amendments permit Members and recognized 3rd parties to perform accreditation, in which case, approval by the MFDA would not be required.

CE Tracking System

Four commenters expressed concerns with the adoption of a CE tracking system, as opposed to an attestation model, noting that this approach is overly prescriptive, will be costly and cumbersome to oversee.

An industry association recommended that the MFDA use an online CE tracking service which it offers to its members and non-members.

Two commenters encouraged the MFDA to develop the tracking system in a manner which is mobile friendly, and which will allow Approved Persons to enter their own CE activities. The MFDA was encouraged to use Approved Persons' NRD numbers, and develop robust reporting and data export capabilities. One of these commenters noted potential benefits associated with a system developed and administered by the MFDA: cost minimization, standardization of information, and simplification of tracking for Approved Persons moving from one Member or transitioning from former Approved Person to Approved Person.

MFDA Response

During the development of the proposed amendments, consideration was given to the CE regime of IIROC, including the attestation component of its model, the CSF, and certain industry associations. We are of the view that the MFDA CE tracking system and proposed Rules and Policy will more efficiently and effectively achieve the regulatory objectives identified by the MFDA. As set out in the Publication Notice accompanying the proposed amendments, the MFDA CE tracking system will allow for detailed tracking of each credit obtained by a Participant. Approved Persons, Members, and service providers will be given ongoing access to such information. In addition, the MFDA intends for this system to be compatible with other regulatory systems, including the National Registration Database (NRD). The functionality required to meet the MFDA's regulatory objectives does not exist in CE tracking systems of current education providers.

During the system design and development phase, MFDA staff intends to engage with Member and other user groups to ensure that the system works effectively and efficiently with their operations. Prior to implementation, MFDA staff intends to test the tracking system and hold training sessions for the various user groups.

Reporting – (Part G)

With respect to carryforward provisions under section 11.2, a commenter recommended that 10 excess credits be permitted to be carried forward, similar to the IIROC CE program, instead of 5 credits, as has been proposed. Another commenter recommended that requirements under section 11.3 be made consistent with similar IIROC requirements.

A commenter referenced requirements under section 11.4 and noted that a Member should not be required to file a report of all completed CE credits within 30 days when a Participant ceases to be an Approved Person of that Member. If an individual returns to the industry, it was suggested that reporting new CE credits should be the responsibility of their new Member firm.

MFDA Response

The current IIROC CE regime places a 6 month time restriction on the 10 excess credits eligible for carryforward. The MFDA has, instead, adopted a 5 credit carryforward that is not subject to any time limits. This approach will accommodate the carryforward of excess credits, while also ensuring that it remains relatively easy to track which credits are being used to satisfy the requirements of a given cycle.

Requirements under section 11.4 only apply to a Member where a) the Member has assumed responsibility for filing CE credit reports on behalf of the Approved Person; and b) there is outstanding credit reporting in respect of those credits for which the Member assumed responsibility. Where the Approved Person assumed responsibility for filing his or her own CE credit reports, section 11.4 would not require that the Member update such reporting within 30 days of the Approved Person's departure from the Member.

Assessments (Part H)

A commenter expressed the view that 15 days is insufficient to submit any documents and information requested by the MFDA in connection with an assessment under Part H. The commenter recommended 30 days, or, at a minimum, 15 business days.

MFDA Response

MFDA staff will consider reasonable requests for extensions. The MFDA is satisfied that the proposed requirement under this section is reasonable and appropriate, having regard to CE regimes established by regulatory and other bodies, and the regulatory objectives identified by the MFDA.

Non-Compliance (Part I)

A commenter suggested that the MFDA maintain the \$2500 fee set out under section 13.6, and remove the proposed \$500 fee set out under section 13.5, as this would be more consistent with the IIROC approach. Another commenter sought clarification as to whether a fee incurred under Policy No. 9, section 13.6 would automatically give rise to a fee also being incurred under section 13.5 (i.e. whether a failure to complete also automatically constitutes a failure to report CE activity).

A commenter suggested that the MFDA adopt an approach that would require a Member to suspend an Approved Person, where CE credits are not attained in the required period and the deficiency is not addressed within a specified period of time. This commenter also recommended the adoption of a single fine for failure to report/failure to complete prescribed CE credit activity.

Two commenters did not support the proposed fines on the Member for an Approved Person's failure to comply with requirements under Rule 1.2.6 or Policy No. 9, with one commenter expressing the view that they are excessive, unwarranted, and inconsistent with the MFDA Sanction Guidelines published for comment in May, 2018. It was also noted that a Member may take all steps required by the MFDA and still have an Approved Person who fails to fulfill their CE requirements. The MFDA was encouraged to take mitigating factors into consideration prior to imposing fees, as prescribed under sections 13.5 and 13.6 of Policy No. 9.

MFDA Response

Section 13.5 has been removed from the proposed amendments. After consideration of comments received, the MFDA is satisfied that the provisions of section 13.6 are sufficient to meet identified regulatory objectives.

The sponsoring Member is primarily responsible for the activities of its Approved Persons in connection with securities related business undertaken on behalf of the Member (i.e. activities which directly benefit the business of the Member). This includes ensuring the timely completion of MFDA CE requirements. In addition, we note that this practice (i.e. the levying of fees) has also been adopted in the CE regimes of other regulators (e.g. IIROC). We note, in addition, that the provisions of Part I permit, but do not require the MFDA to levy the specified fees. Under Policy No. 9, as proposed, and prior to the levying of any fees, Members are required to be provided with non-compliance notification, and are given an opportunity to respond to such notification. The Member's response and any action taken to address such non-compliance will be taken into consideration by the MFDA in determining whether it is appropriate to levy the fee under section 13.6.

The MFDA Sanction Guidelines are not intended to apply to the proposed amendments. They represent guidance which has been developed specifically to assist MFDA Staff and Respondents in conducting disciplinary proceedings and in negotiating settlement agreements, and also to assist Hearing Panels in the fair and efficient imposition of sanctions in settled or contested disciplinary proceedings.

Rule Transition Period

A commenter suggested that the MFDA adopt a transition period of no less than 12 months from the date of implementation.

MFDA Response

Comments respecting the transition period will be taken into consideration. The MFDA will communicate with Members in respect of this and other related matters as the CE initiative comes closer to implementation.