Summary of Public Comments Respecting Proposed Amendments to MFDA Policy No. 3 *Complaint Handling, Supervisory Investigations and Internal Discipline* and Responses of the MFDA

On March 13, 2009, the British Columbia Securities Commission and Ontario Securities Commission published proposed amendments to MFDA Policy No. 3 *Complaint Handling, Supervisory Investigations and Internal Discipline* (the "**Proposed Amendments**") for a second 60-day public comment period.

The public comment period expired on May 12, 2009.

14 submissions were received during the public comment period:

1. Association of Canadian Compliance Professionals ("ACCP")
2. BMO Investments Inc. ("BMO")
3. Federation of Mutual Fund Dealers ("Federation")
4. HUB Capital Inc. ("HUB")
5. IGM Financial Inc. ("IGM")
6. Independent Financial Brokers of Canada ("IFB")
7. Investment Funds Institute of Canada ("IFIC")
8. Kenmar Associates ("Kenmar")
9. Primerica Financial Services (Canada) Ltd. ("PFSL")
10. Quadrus Investment Services Ltd. ("Quadrus")
11. Royal Mutual Funds Inc. ("RMFI") and Phillips, Hager & North Investment Funds Ltd.("PH&N")
12. Scotia Securities Inc. ("SSI")
13. Small Investor Protection Association ("SIPA")
14. Sun Life Financial Investment Services (Canada) Inc. ("Sun Life")

Copies of comment submissions may be viewed at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario by contacting Ken Woodard, Director, Communications and Membership Services, (416) 943-4602.

The following is a summary of the comments received, together with the MFDA's responses.

Complaint Handling Procedures of Other Regulators

Harmonization with NI 31-103 and IIROC

The Federation, HUB, IFIC, RMFI and PH&N recommended that the Proposed Amendments be harmonized with the corresponding proposal of the Investment Industry Regulatory Organization of Canada ("IIROC") and with proposed National Instrument 31-103 *Registration Requirements* ("NI 31-103"). SIPA recommended that the complaint handling regimes of the MFDA and IIROC be harmonized with a view to achieving maximum investor protection and precision. IGM stressed the need for

harmonization between MFDA's and IIROC's complaint handling proposals, noting that this issue is of particular interest to firms that have both MFDA and IIROC dealer subsidiaries.

PFSL commended the MFDA for its attempt to harmonize complaint handling policies and eliminate conflicting, duplicative and potentially confusing obligations and entitlements, noting; however, that there may still be areas in which the degree of harmonization between the proposed Policy and other securities-related regulation can be improved.

IFIC noted certain differences between the Proposed Amendments and proposed NI 31-103, such as the definition of complaint and the requirement to acknowledge receipt of a complaint to the complainant within five versus ten business days. IFIC expressed the view that the differences between the MFDA proposal, IIROC proposal and NI 31-103 are not merited based on unique situations and recommended that the MFDA reconstitute the working group between IIROC, MFDA and the Canadian Securities Administrators ("CSA") in a further effort to bring about more consistency and harmonization.

MFDA Response

In May 2008, a working group comprised of staff of the CSA, MFDA and IIROC was established by the CSA for the purpose of developing a complaint handling framework to be used to ensure that the requirements to be adopted by the two self-regulatory organizations ("SROs") and in NI 31-103 were harmonized. This working group met and had discussions over the summer and fall of 2008, during which the complaint handling proposals of the two SROs were reviewed to ensure that they were consistent with this framework document, met the same regulatory objectives and minimized differences. MFDA staff made additional amendments to Policy No. 3 as a result of these discussions.

While meeting the same regulatory objectives, the complaint handling policies of the two SROs are structured differently. This approach has been adopted to accommodate differences in the existing structure of the respective Rulebooks of the two SROs.

With respect to harmonization with the complaint handling requirements of NI 31-103, we note that, at the time the proposal was published for comment, the CSA had not finalized its position on complaint handling. Our understanding is that the working group approach noted above was adopted to ensure that the requirements under NI 31-103 in respect of complaint handling would be consistent with those proposed by the SROs.

MFDA staff considers Policy No. 3 to be consistent with the complaint handling requirements under NI 31-103. The Policy meets the regulatory objectives of such requirements and also establishes additional, more specific requirements.

Finally, we note that the requirement to acknowledge receipt of a complaint to the complainant within five business days (versus ten business days) is consistent with the IIROC proposal.

Exemption from Complaint Handling Provisions of NI 31-103

SSI recommended that, in order to avoid confusion and overlap, the CSA and MFDA agree to include an exemption in the final version of NI 31-103 for MFDA Members from the complaint handling sections of NI 31-103.

IFIC expressed concern with respect to a lack of consistency across the MFDA, IIROC and CSA regimes, which will require IFIC members to examine all rules in deciding which standards to comply with and encouraged the MFDA, as part of ongoing and future discussions with the CSA, to recommend that the CSA provide an exemption from the complaint handling regime for SRO members when NI 31-103 comes up for review.

MFDA Response

In the CSA "Notice of Rule, Companion Policy and Consequential Amendments" with respect to NI 31-103, issued on July 17, 2009, the CSA indicated that they "anticipate providing an exemption for SRO members from any detailed provisions that are eventually included in the instrument."

Other Regulators

Kenmar recommended that the industry adopt the International Organization for Standardization's ("ISO") Standard ISO 10002:2004 *Guidelines for Complaints Handling in Organizations* as the standard for complaint handling.

SIPA recommended that the MFDA caution investors going through the complaint process that decisions made by firms about their complaints may be unreliable and that they should seek a second opinion. Kenmar recommended that the special needs of seniors, the handicapped and immigrants be a consideration in the Policy.

MFDA Response

When drafting the amendments to Policy No. 3, MFDA staff reviewed ISO Standard ISO 10002:2004, and considers Policy No. 3 to be aligned with its recommendations.

The principle of fairness applies to all MFDA Policies, as evidenced by the requirement in section 5 of Part I, which requires Members to provide assistance to complainants in documenting verbal complaints, where it is apparent that such assistance is required. This is just one example of how the special needs of seniors, the handicapped and immigrants were considered when drafting Policy No. 3. Finally, with respect to SIPA's comment, the information in the Client Complaint Information Form ("CCIF") clearly provides alternative options for clients going through the complaint process.

Principles-based Approach

PFSL expressed support for the principles-based approach to regulating complaint handling adopted in the Proposed Amendments and noted that this approach may reduce the potential for unnecessary regulatory duplication and redundancy and increase the scope and adaptability of regulation without hindering innovation and diversity among market participants.

The Federation and HUB suggested that micro-regulation be avoided and that a principles-based framework continue to be the priority.

MFDA Response

The MFDA employs a combination of prescriptive and principles-based approaches in establishing its regulatory requirements. When amending or developing new requirements, the MFDA considers which approach is the most appropriate and effective to achieve its investor protection mandate. Certain aspects of the complaint handling process are common to all Members and, accordingly, Policy No. 3 provides more prescriptive requirements in these areas.

Clarification under Policy No. 6

For the purposes of clarity, PFSL requested further guidance with respect to what is intended by the term "update" in the revised section 7 of MFDA Policy No. 6 *Information Reporting Requirements*. Under the Proposed Amendments, Members would now be required to report updates in addition to their existing requirement to report resolutions. However, the list of reportable events contained in the five subsections relates only to the resolution of a complaint and does not provide any further insight or direction on what is to be considered an "update".

MFDA Response

At the time an event is reported by a Member on Member Event Tracking System ("METS"), not all required facts are known. Members must update METS to ensure that all information is complete and accurate at the time of complaint resolution. For example, the outcome of an event is unknown at the time the event is first submitted, therefore the event must be updated to reflect the outcome before the complaint is closed. The MFDA is planning to provide guidance on METS reporting issues after the implementation of Policy No. 3. The issue of updates will be covered in such guidance.

Enforcement

SIPA expressed concern about the effectiveness of the Proposed Amendments in achieving the objective of fair and prompt complaint handling given that they do not contain reference to any sanctions or penalties for failure to comply with the Policy.

MFDA Response

MFDA Policy No. 3 is made under the requirements of MFDA Rule 2.11. A violation of any MFDA Rule may be subject to disciplinary action under section 24 (Discipline Powers) of MFDA By-law No. 1.

Definition of a "Complaint"

Definition is Too Broad

PFSL, IGM, SSI, Quadrus and ACCP expressed concern that the proposed definition of "complaint" is overly broad and may inappropriately capture immaterial or otherwise innocuous communications between Members and their clients. Specifically, commenters expressed the view that the reference to "any written or verbal statement of grievance" is over-inclusive. IGM expressed concern that the inclusion of "expressions of dissatisfaction" in the definition of "complaint" makes it too broad.

MFDA Response

The term "grievance" was used in the previous version of Policy No. 3 and experience has demonstrated this is a workable term in the context of defining complaints.

With respect to the comment that the inclusion of "expressions of dissatisfaction" in the definition of "complaint" makes it too broad, we wish to point out that the MFDA proposal does not use this language.

Exclude Service Complaints/Matters Settled in the Ordinary Course of Business from the Policy

IFIC noted that redrafting the definition of "complaint" to exclude initial expressions of dissatisfaction and service complaints would remove the necessity for the requirements in section 4 of the Proposed Amendments to divide the handling of complaints into two parts. IFIC commented that considerable attention to the oversight of client complaints is already built into existing Rules. If the MFDA agrees to exclude initial expressions of dissatisfaction and service complaints from the definition of "complaint", IFIC recommended removal of section 4 of the Policy and recommended that all complaints be handled in accordance with Part II of the proposed Policy.

SSI recommended that the definition of "complaint" exclude "service complaints" as defined in Policy No. 6. Sun Life recommended that the definition of "service complaint" under MFDA Policy No. 6 be included in Policy No. 3. Sun Life and Quadrus requested clarification regarding complaint handling requirements specific to service complaints, including whether service complaints are subject to only informal resolution by the Member.

PFSL and Quadrus recommended that the definition of "complaint" be amended to exclude client communications and matters "settled in the ordinary course of business".

SSI, IGM, ACCP, IFB and Quadrus recommended that the regulatory requirements only relate to complaints that raise issues of regulatory nature while service and other complaints be dealt with in the ordinary course of business and not be considered complaints for the purposes of the Policy. IFIC, IGM and ACCP recommended that service complaints only be caught under the complaint handling regime if they relate to trading and advising activities. IFIC recommended that service complaints be dealt with under the Member's internal guidelines, because the handling of service complaints is a basis for competition. IFIC recommended adopting Autorité des marchés financiers' and IIROC's approach of excluding initial expressions of dissatisfaction by a client, whether in writing or otherwise, from the definition of "complaint" where the issue is settled in the ordinary course of business.

The IFB expressed the view that the Proposed Amendments do not provide enough recognition to situations where "complaints" may be misunderstandings that can be easily resolved without triggering a formal complaint process. The IFB and PFSL expressed the view that the investigation, record keeping and reporting requirements are not necessary when dealing with routine service matters and would prove to be more of a hindrance than a benefit for all parties involved. The IFB expressed concern that this inclusion could jeopardize the reputation of an Approved Person in cases where there was no wrongdoing and the misunderstanding was successfully resolved.

MFDA Response

In keeping with the regulatory objectives expressed at the meetings of the CSA, MFDA and IIROC staff working group, service complaints must be included in the definition of "complaint." The CSA does not exclude service complaints in NI 31-103. The IIROC proposal does not make reference to eliminating issues settled in the ordinary course of business, therefore, in the interest of harmonization, the MFDA has not included this concept in its proposed Policy No. 3. Policy No. 3 requires Members to engage in an adequate and reasonable assessment of all complaints. If, upon such consideration, the Member determines that it would be appropriate to resolve the complaint informally, the Member may do so in accordance with section 4 (Minimum Requirements for Complaints Subject to Informal Resolution) of Part I of the Policy and the complaint need not be subject to the formal complaint handling procedures specified by Part II of the Policy.

A determination as to whether a complaint involves a potential regulatory issue cannot be made until the matter is appropriately reviewed. In this regard, we note that the Policy also requires that such complaints be logged and tracked in a complaint log so as to allow for a trend analysis of such matters, as even easily resolved issues that occur frequently, or with respect to the same matters, may, on a cumulative basis, indicate a serious problem.

MFDA staff is of the view that the review of a complaint should not cease simply because the specific issue has been settled in the ordinary course of business. While it is important to address client dissatisfaction in as timely a manner as possible, this is not the exclusive purpose of a definition of complaint or a complaint handling process. An

additional and equally important regulatory objective is to discover and address any potential underlying regulatory issues.

The amendments to the definition of "complaint" were made so as to allow the Policy to more clearly recognize that not all complaints (e.g. those exclusively of a service nature) need to be subject to the formally prescribed complaint handling procedures, as certain complaints can be adequately and appropriately addressed informally.

Verbal Complaints

The Federation and HUB recommended removal of verbal complaints from the Policy, noting that accepting complaints by this method would not be in the client's best interests. The Federation noted that removal of verbal complaints would eliminate the logistical problems arising when trying to assess whether a complaint is "significant" and dealing with the incumbent process questions, e.g. which complaints are to be reported, which are to be investigated, etc. The IFB recommended that complaints be required to be in writing to ensure that all parties have a similar understanding of the true nature of the complaint and noted that verbal statements may be misinterpreted and difficult to adjudicate. The Federation requested clarification with respect to how can the Member investigate all verbal complaints against an advisor if the advisor is only obligated to report verbal complaints as spelled out under section 4.1(b) of the proposed amendments to Policy No. 6.

BMO expressed concern about the vagueness and subjectivity of the definition of "verbal statement of grievance", noting that this term would be ultimately defined by the recipient of the complaint, who may not believe a client's communication to be a "statement of grievance" for the purposes of the Policy, but rather an expression of dissatisfaction with an investment, without any intent that the discussion become part of a formal complaint process. BMO expressed concern that Approved Persons may have difficulty discerning when a verbal communication by a client should be considered a "verbal statement of grievance" and requested clarification as to what would constitute a "statement of grievance" and when it should be escalated. BMO also expressed concern that Approved Persons, out of an abundance of caution and not wishing to violate regulatory standards, will escalate every discussion in which a client expresses dissatisfaction, which would likely significantly increase the volume of complaints that the compliance department must address.

MFDA Response

Verbal complaints were included in the Proposed Amendments as a result of CSA, MFDA and IIROC staff working group discussions. The inclusion of verbal complaints is consistent with the IIROC proposal and the requests of the CSA. The term "verbal statement of grievance", as used in the definition of "complaint", refers to a statement of grievance that is directed towards the conduct of a specific party/parties (i.e. the Member, Approved Person or former Approved Person of the Member) in respect of concerns with their compliance with their regulatory obligations. The Member Regulation Notice on Policy No. 3 will include guidance on this issue.

Under section 3 of Part I of the Policy, the Member or Approved Person must engage in an adequate and reasonable assessment of all complaints. If the Member's supervisory staff handling the complaint finds, based on their reasonable professional judgment, that the matter can be appropriately concluded informally, they may do so in accordance with section 4 of Part I of the Policy. All complaints, regardless of whether they are made verbally or in writing, in respect of the serious matters noted in section 3 of Part I of the Policy, must be addressed in accordance with the Additional Complaint Handling Requirements prescribed by Part II of the Policy.

Section 3 of Part I of the Policy requires Members to engage in an adequate and reasonable assessment of all complaints, regardless of whether they are made verbally or in writing. In addition, under section 7, Members must handle all complaints fairly and their complaint handling procedures must include standards that allow for a factual investigation and analysis of the matters specific to the complaint (i.e. Members may not have policies or procedures that allow complaints to be dismissed without due consideration of the facts of each case). Escalation of a complaint that has been assessed should be subject to internal training for relevant staff at the Member.

Complaints in Respect of Undeclared OBA and Leveraging

IFIC noted that the Proposed Amendments allow for complaints to be filed when an Approved Person is engaging in an undeclared occupation outside the Member or where a complaint relates to leveraging, while the IIROC proposal excludes such complaints.

MFDA Response

MFDA staff considers it appropriate to address the issues of undeclared outside business activity ("OBA") and unsuitable leveraging in Policy No. 3, as they have proven in the past to be an area of high client risk. These types of activities may not be as prevalent on the IIROC side due to the differing nature of the business and structures of IIROC members.

Members must address complaints in accordance with the formal complaint handling procedures prescribed by the Policy where such complaints are in respect of "unsuitable investments or leveraging". "Leveraging", as used in this context, is intended to be understood as unsuitable leveraging (i.e. a type of unsuitable investment). We note that alleged misconduct, as referred to in the definition of complaint in the IIROC proposal, also includes unsuitable investments, which IIROC generally views as including unsuitable leveraging, although that is not explicitly set out in their proposal.

MFDA staff considers it appropriate to include complaints in respect of undeclared occupations outside the Member. As noted in MFDA Member Regulation Notice MR-0040 "Outside Business Activities", MFDA staff has encountered a number of situations where Approved Persons have engaged in inappropriate OBA, which, in some cases, have resulted in significant client harm. Such activities may give rise to client complaints arising from conflicts of interest between an Approved Person's duties as a salesperson

and the OBA, potential client servicing issues and issues arising from the inability of the Member to supervise and manage risk in respect of outside business that it is unaware of.

Alleged Misconduct

ACCP noted that the IIROC proposal is more specific since it refers to an "alleged misconduct" of the Member or employee/agent and further defines "misconduct". ACCP submitted that the necessary context needs to be included in the definition of a complaint as, under the Proposed Amendments, any complaint of any nature, real or fancied, must be treated as complaint.

MFDA Response

The use of the term grievance by the MFDA implies an allegation of wrongdoing on which the grievance is based. Under both the MFDA and IIROC proposals, an initial review of a complaint is required to determine whether there is any basis for the complaint. If, after the initial review (i.e. after a reasonable and adequate assessment, as required under section 3 of Part I of the Policy), the complaint is determined to be unfounded, the Member may respond to the complainant informally, noting that the complaint will be closed.

While the IIROC proposal may be more specific regarding the types of offences that will constitute misconduct, the IIROC proposed guidance note states that Dealer Member Rule 2500, Section VIII will be repealed and replaced as follows:

> *"Each Dealer Member must establish policies and procedures to deal effectively with client complaints. Such policies and procedures must comply with Rule XXXX regarding client complaint handling, and also address complaints that may fall outside the scope of Rule XXXX."*

Definition of "Resolution"

ACCP recommended that the Proposed Amendments define "resolution" and clarify that a complaint that remains inactive for a specific period of time after the Member's last correspondence be considered resolved. ACCP expressed concern that if "resolution" remains undefined and a complainant does not advise that he or she is satisfied, a Member will never be able to confidently state that a complaint has been resolved. In the absence of clear definition, Members will not be able to satisfy their reporting requirements under section 7.1 of Policy No. 6 unless a complainant advises that they are satisfied.

MFDA Response

In most circumstances, a Member may consider that a matter has been resolved if, after the Member has provided a fair and timely response, the complainant does not respond within a reasonable period of time. Additional guidance on this issue will be outlined in

the Member Regulation Notice on Policy No. 3 that will be issued following the implementation of the Policy.

Requirement to Assist Client in Documenting Complaints

The Federation, RMFI, PH&N and HUB recommended that, in order to avoid any perceived or real conflict of interest at a later date, the requirement that the Member assist the client in writing out their complaint be deleted. The commenters stated that the Member should not participate directly in the transcribing because: (i) the Member should not be paraphrasing the client's statements in any way; (ii) the Member would have concerns that its involvement might be seen as an attempt to skew the expression of complaint in the Member's favour by their SRO; (iii) in the event of litigation, the Member should be within its legal rights to defend those rights and to not do anything that might put those rights in jeopardy; and (iv) Members must be aware of the impact their actions have on their Errors & Omissions Insurance ("E&O").

The IFB noted that clients may not be comfortable dealing directly with Member staff while documenting the complaint and recommended that alternative, more impartial, solutions be considered to deal with such situations. RMFI and PH&N recommended that, in order to avoid conflict of interest, clients who require assistance in documenting their complaints be referred to the MFDA or other regulatory body for such assistance. RMFI and PH&N expressed the view that this requirement could only be appropriate if its sole purpose is recording the fact that a complaint has been made for a Member's own records.

Sun Life expressed support for Members' duty to communicate to clients the importance of fully documenting their complaints and submitting them in writing, but reiterated concerns made by other commenters, stating that this requirement may result in Members "coaching" clients towards outcomes that would be more favourable to the Member. Sun Life recommended that this requirement be amended to require that Members only communicate to clients the importance of fully documenting their complaints and suggest that they seek third party assistance if they have difficulty documenting their complaint.

BMO commented that it is unclear under which circumstances assistance in documenting a client's complaint would be required and requested clarification and guidance regarding the intent behind this requirement.

IFIC recommended adopting the IIROC approach to this issue, which sets out exceptional cases where such assistance would be required, that is, when the client is handicapped in any way, is a senior with special needs or has a language or literacy issue. IFIC noted that while some clients may require assistance in documenting verbal complaints, such a requirement in normal course could lead to misunderstandings, misinterpretations and conflicts between the Member and the client. IFIC recommended that this requirement not be placed on the Member since a complainant may, under the definition of "complaint", appoint a person acting on his or her behalf and this person could assist the client in documenting their verbal complaints.

MFDA Response

The inclusion of this section in the Proposed Amendments is a result of the CSA, MFDA and IIROC staff working group discussions and is consistent with the requirements in the IIROC complaint handling proposal.

The Proposed Amendments note that "Members should be prepared to assist clients in documenting verbal complaints where it is apparent that such assistance is required". The IIROC proposal notes that "Members should be prepared to assist clients in submitting a complaint, in particular, if the client is handicapped in any way, is a senior with special needs or a language or literacy issue is involved". The IIROC proposal identifies circumstances in which such assistance should be offered in particular, but does not confine the offering of such assistance to these circumstances and shares the regulatory intent and objective of the Proposed Amendments, as evidenced by the phrase "where it is apparent that such assistance is required".

This section is intended to offer assistance to clients in documenting verbal complaints where it is obvious in the reasonable professional judgment of the Member's supervisory staff handling the complaint that such assistance is required. Staff handling the complaint should ask the client, or the individual authorized to act on the client's behalf, if they are in doubt as to whether such assistance is required.

With respect to the concern that this section could result in Members coaching clients towards outcomes that are more favourable to Members, or that clients may not be comfortable in dealing directly with dealer staff on such matters, Members are reminded that, in discharging their obligations under Policy No. 3 and MFDA Rules generally, they have an ongoing duty to act honestly and in good faith.

For greater clarity, we note that, while complying with this section, Members are not expected to write complaint letters for clients.

With respect to comments expressing concerns that the provisions of this section are contrary the terms of Members' E&O insurance policies, we note that this section does not require the Member to act as an advocate for the complainant, but rather to assist in documenting a verbal complaint already made (where it is apparent that such assistance is required). The purpose of this requirement, in addition to offering reasonable assistance to clients, is to ensure that the Member's staff is aware and has an accurate understanding of the complaint to which they must respond. Additional guidance on this issue and on the particulars of how to assist complainants without becoming an advocate will be provided in the Policy No. 3 Member Regulation Notice.

Identifying the Individual Handling the Complaint

PFSL expressed the view that the requirement that Members identify a particular representative charged with handling the complaint and provide his or her name, job title

and contact information in the initial response is unnecessarily prescriptive and potentially disadvantageous to complainants. PFSL expressed the opinion that complaint handling is a Member responsibility and clients would be best served if they are provided with the information giving them access to the complaint handling structure, and not just one employee, to reduce the potential for client confusion and eliminate any difficulties in cases of employee absences, limitation on availability or case reassignment.

SIPA expressed concern that the provision stating that complaints must be handled by supervisory or compliance staff unless such staff is unavailable, in which case the individual who is the subject of the complaint may handle the complaint, may lead to a conflict of interest that would substantively impair the fairness of the complaint process. In addition, SIPA requested clarification of the term "unavailable" in this section. SIPA recommended that the proposed wording be amended as it leaves too much to the discretionary judgment of the firm.

MFDA Response

Section 6 (Client Access) of Part I of the Proposed Amendments provides general access to the Member's complaint handling structure and requires Members to provide a specific point of initial contact at head office for complaints or information about the Member's complaint handling process. Under this section, the contact may be a designated person or a general inbox or telephone number that is continuously monitored.

However, when a client has gone beyond seeking information about the Member's complaint handling process and has made a specific complaint against the Member, it is appropriate to identify a specific and suitably qualified individual at the Member who is charged with handling the client's complaint(s). While complaint handling is, as noted by the commenter, a firm responsibility, we note that there must be specific accountability for dealing with complaints and that, as a practical matter, such responsibilities tend not to get adequately addressed where they are not specifically delegated to someone. In situations of employee absences, limitation on availability or case reassignment, the MFDA would expect the Member to handle these issues in accordance with general office management procedures and ensure that, at all times, there is sufficient staff available to handle complaints in a timely manner.

Item 1 of section 9 (General Complaint Handling Requirements) of Part I of the Policy requires all complaints and supervisory obligations to be handled by qualified sales supervisors/compliance staff. Individuals handling complaints, such as compliance officers who also carry a book of business, are prohibited from handling complaints against themselves. We have amended the wording of the section to remove the term "unavailable" and clarify that the only case when an individual who is the subject of a complaint may handle the complaint against himself or herself is when the Member has no other supervisory staff who are qualified to handle the complaint. This wording is intended to address complaint handling in the small portion of firms in the MFDA membership that are small operations, e.g., where the complaint is made against the only

person operating and employed by the Member or where the complaint is made against one of two employees who are spouses. MFDA staff is aware that a heightened risk of conflict of interest exists in such circumstances and complaints arising in respect of such Members are flagged, monitored and, where appropriate, subject to closer review to ensure that such Members handle complaints honestly, in good faith and in accordance with the requirements of the Policy.

Complaints from Non-Clients and Complaints Unrelated to the Business of the Member

ACCP noted that the Proposed Amendments specifically include non-clients where the IIROC proposal specifically excludes non-clients and recommended that complaints made by non-clients be excluded from the requirements under Policy No. 3.

RMFI and PH&N expressed concern with the proposed scope of responsibility of Members to conduct detailed investigations into complaints from non-clients in respect of their own affairs and into complaints that are unrelated to the business of the Member. RMFI and PH&N recommended that a Member's duty to investigate such complaints be limited to an assessment of the potential impact of such complaints on the Member's clients and its business and not trigger additional requirements under the complaint handling process. RMFI and PH&N also recommended that Member's reporting requirements and supervisory functions be kept separate from the complaint handling process.

MFDA Response

Complaints from non-clients in respect of their own affairs must be addressed in accordance with the Additional Complaint Handling Requirements prescribed by Part II of the Policy where such complaints are in any way related to the following matters: a breach of client confidentiality, theft, fraud, misappropriation of funds or securities, forgery, misrepresentation, unauthorized trading, engaging in securities related business outside of the Member, engaging in an undeclared occupation outside the Member, personal financial dealings with a client, money laundering, market manipulation or insider trading.

Complaints against a Member or Approved Person in respect of any of the above noted matters are serious and, accordingly, it is appropriate to require all such complaints, whether expressed verbally, in writing, by clients or non-clients in respect of their own affairs, be addressed in accordance with the formal complaint handling procedures specified by the Policy. Additional guidance on this issue will be provided in the Policy No. 3 Member Regulation Notice.

Complaints with respect to Money Laundering and Breach of Confidentiality

IFIC recommended that complaints relating to breach of confidentiality, as prescribed in Part II of the Proposed Amendments, be deleted since Members are already required to deal with the Office of the Privacy Commissioner of Canada for matters relating to privacy. Similarly, IFIC recommended that complaints relating to money laundering be removed from the Proposed Amendments on the basis that suspicious and certain other transactions are reported to the Financial Transactions and Reports Analysis Centre of Canada under federal regulations.

MFDA Response

Conduct involving a breach of confidentiality or money laundering, where established, is a serious breach of a Member or Approved Person's duty to their client and contrary to the general business conduct rules under MFDA Rule 2 and, more specifically, Rule 2.1.3 (Confidential Information). While such matters may be subject to independent regulatory oversight, the MFDA retains general jurisdiction, under Rule 2, to adequately investigate and appropriately discipline Members and Approved Persons who are found to have engaged in such conduct.

Supervisory Investigations

RMFI and PH&N expressed the view that the requirements for supervisory investigations by Members under Part III the Proposed Amendments are misplaced and confusing. RMFI and PH&N noted that although complaints are an important source of information regarding possible breaches, supervisory investigations are part of the supervisory function of the Member rather than part of the complaint handling process. RMFI and PH&N expressed the view that this section warrants separate, stand-alone, principles-based regulatory guidance in the area of supervision and noted that this would be consistent with IIROC's approach of limiting its proposal to client complaint handling. RMFI and PH&N recommended that Members be required to establish supervisory procedures tailored to address the risks associated with the specific business activities of the Member, with clearly established regulatory principles and policy objectives.

The IFB recommended limiting the requirement to conduct a detailed investigation in relation to information from any source, written or verbal, identified or anonymous, to raise the possibility that such conduct occurred under Part III of the Policy. The IFB expressed the view that this requirement may make Approved Persons accountable for hearsay and information lacking substance or merit, while the perpetrator can remain unidentified and unaccountable. The IFB noted that an advisor's relationship with his or her client is based on trust and if that trust is destroyed through allegations that have no merit or are later disproved, it can result in significant personal reputational and economic harm to the Approved Person, with no recourse for them.

The IFB recommended that there be no consideration of information received from an "anonymous" source, nor should a "detailed investigation" be required in all such situations. The IFB suggested that investigations be limited to conduct that occurred at the Member or prior Member, not simply "inside or outside the Member" as, otherwise,

Approved Persons would be open to complaints not related to their mutual fund license and outside MFDA jurisdiction.

MFDA Response

The detailed investigation is required under Part III of the Policy with respect to allegations of: a breach of client confidentiality, theft, fraud, misappropriation of funds or securities, forgery, misrepresentation, unauthorized trading, engaging in securities related business outside the Member, engaging in an undeclared occupation outside the Member, personal financial dealings with a client, money laundering, market manipulation or insider trading.

As these are serious matters, it is necessary and appropriate for any allegations in respect of them to be thoroughly investigated. Policy No. 3 requires Members to thoroughly investigate all such allegations on their merits before coming to any determination as to the Approved Person's involvement. The apparently unsubstantiated nature of an allegation is a factor to be considered and investigated by the Member when evaluating the merits of such allegations. MFDA staff expects Members to handle the investigation of all such matters with appropriate discretion.

With respect to the comment that the words "inside or outside the Member" leave Approved Persons open to complaints not related to their mutual fund license and are outside MFDA jurisdiction, we note that the Member has an obligation to investigate all such complaints. Where such complaints are found to have merit and do not relate to securities-related business (e.g. allegations of fraud in connection with the sale of an insurance product) they may, nonetheless, be subject to the general jurisdiction of the MFDA under its business conduct rules (Rule 2) in addition to the specific jurisdiction of another regulator. In addition, we note that By-law No. 1 empowers a Hearing Panel to impose sanctions against Approved Persons or Members for failing to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto.

Prompt Handling of Client Complaints

SSI and ACCP suggested that, except in cases involving the most serious misconduct, the MFDA wait at least three months after a complaint is reported on METS before requesting information in order to efficiently focus Member resources on handling the complaint, thus improving the complainant experience and allowing to provide complete information to the MFDA after a complaint is handled. ACCP commented that such delay would result in better investigations that would be factual, organized and complete upon receipt by the MFDA and would be more efficient for MFDA staff in their determination whether the Member conducted a fair investigation. ACCP noted that the Ombudsman for Banking Services and Investments ("OBSI") operates under this proposed framework and it has yielded positive results for complainants. ACCP and

IFIC expressed the view that Members will not be able to meet the new three month timeframe for a substantive response if the MFDA's role in the process remains status quo as, currently, in order to meet the regulatory response, Members must divert resources away from the investigation of the complaint. As an alternative, IFIC recommended that all complaints received by the MFDA be first referred back to the Member for resolution before a complaint file is opened at the MFDA.

SIPA expressed the view that the reduction of time period for providing a substantive response from six to three months will be beneficial for investors but noted that the formulation of the timeframe for response in the IIROC proposal is more rigorous, whereas the Proposed Amendments leave too much to the discretionary judgment of the firm. SIPA expressed concern that delay in responding to complaints can be used unfairly as a stalling tactic, which is especially problematic given the reduction in the limitation period to two years. SIPA recommended adopting the IIROC approach, where the client has the right to proceed to OBSI whether or not the firm has provided a substantive response within 90 days.

MFDA Response

The MFDA will request information from Members in respect of complaints received through METS or subject to the Additional Complaint Handling requirements set out in Part II of the Policy. This requirement is intended to permit MFDA staff to engage in an independent and parallel consideration of Member conduct in the handling of the complaint. The MFDA has a duty to engage in an independent consideration of complaints to investigate underlying regulatory issues that may have given rise to the complaint and that may continue to exist after the complaint is resolved.

The purpose of an independent and parallel consideration of complaints is to ensure that any issues identified by the MFDA, which may not have been identified or adequately investigated by the Member, are appropriately addressed in a timely manner (i.e. within the timeframes specified by Policy No. 3). This would not be possible, if, as suggested by the commenters, the MFDA were to delay its involvement in the complaint handling process until after the three month interval has expired and a substantive response is due to the complainant. With respect to the comment that Members will have to divert resources away from the investigation of a complaint to respond to MFDA inquiries, we note that the MFDA requests the same information that the Member needs for its own investigation of the complaint.

The time period for providing a substantive response to the complainant remains generally as the time period expected of a reasonable Member acting diligently in the circumstances. The time period by which Members must do this "in most cases" has been reduced from six months to three months and this amendment reflects the current practice of most Members in the majority of their complaints. In addition, this timeframe was adopted to harmonize with requirements in the IIROC proposal.

With respect to the comment that the formulation of the timeframe for providing a substantive response leaves too much to the judgment of the firm, we disagree and note that the primary obligation is for a Member to provide its substantive response within the time period expected of a Member acting reasonably in the circumstances. Unnecessary delays in responding to complaints (e.g. those that are used as stalling tactics) would not be reasonable in the circumstances.

Where there are necessary delays (for example, those arising from the complexity of the issues under consideration or the complainant's failure to cooperate during the complaint resolution process) that will result in a Member being unable to provide a complainant with a substantive response within three months, the Member must advise the complainant accordingly, provide an explanation for the delay and provide the Member's best estimate of the time required for the completion of the substantive response.

Given the: (i) obligation to act reasonably in the circumstances; (ii) three-month deadline for provision of the substantive response in most cases; and (iii) requirement to explain a delay and provide a revised timeline where three months are exceeded, MFDA staff is of the view that Member discretion is sufficiently restrained.

In addition, we note that the IIROC proposal also provides for circumstances where an IIROC member may not be able to provide a substantive response to a client within 90 days:

> *"***Complaint substantive response letter:** *The client must be advised if he/she is not to receive a final response within the ninety (90) days time frame accompanied by reasons for the delay and the new estimated time of completion".*

The MFDA will be including information in our CCIF regarding OBSI and the referral of complaints to them after 90 days, as is set out in the IIROC proposal.

Example of Complaint Not Necessitating Additional Complaint Handling Requirements

The Federation requested an example of a complaint that did not warrant additional complaint handling requirements.

MFDA Response

Guidance on this issue, including examples, will be provided in the Member Regulation Notice to be issued on Policy No. 3.

Ombudservice

RMFI and PH&N expressed concern about the repeal of section 24.A.5 of the MFDA's By-law No. 1 and its replacement with the corresponding requirements in the Proposed

Amendments and, specifically, requiring OBSI to be the ombudservice in which Members must participate.

RMFI and PH&N expressed the view that this specification will serve to entrench a designation by the MFDA of OBSI as its only approved ombudservice. The commenters agreed with the MFDA concerns expressed in its letter to OBSI, dated January 28, 2008, regarding the proposed amendments to the OBSI Terms of Reference having the effect of expanding the scope of its powers beyond that of dispute resolution service. RMFI and PH&N recommended that, until such time as the concerns with respect to OBSI's governance and service levels have been properly addressed, the Proposed Amendments not entrench one specific ombudservice for Members, noting that this is particularly important as market competition and the ability to choose an alternative service provider is the only accountability mechanism with respect to OBSI.

IFIC expressed the view that the requirement that Members notify the complainant in the substantive response that s/he has the right to consider presenting the complaint to the OBSI is inappropriate and unclear as to whether the OBSI option can be pursued before exhausting internal complaint handling mechanisms. IFIC recommended that complainants be required to exhaust the internal process before pursuing OBSI services as Members are best equipped to resolve their complaints and allowing complainants to circumvent the internal process takes away a Member's ability to efficiently and effectively resolve a complaint.

MFDA Response

Section 24.A.5 of MFDA By-law No. 1 (Member to Provide Written Material to Clients) was repealed to avoid duplication with Policy No. 3 that now includes this requirement.

Section 24.A.1 of By-law No. 1 refers generally to the requirement for Members to participate in an ombudservice approved by the MFDA Board of Directors. This reference has been kept general so as to avoid having to make by-law amendments in the event that the approved ombudservice changes from time to time.

For the purpose of compliance with section 24.A.1 of MFDA By-law No. 1, OBSI is the ombudservice that has been approved by the MFDA Board of Directors and that Members are required to participate in as a condition of MFDA membership. The reference to OBSI in Policy No. 3 clarifies this existing requirement and does not create a new one.

As noted on the OBSI website, a complainant must first try to resolve their complaint with the Member and may pursue resolution of their complaint with OBSI if they are not satisfied with how the Member proposes to resolve the complaint (i.e. as set out in the Member's substantive response).

Complaint Acknowledgement Letter

SIPA recommended adopting the more restrictive IIROC formulation of the requirement to acknowledge the complaint within five business days as it is preferable from an investor protection standpoint. SIPA also recommended that the Policy include the requirement that the acknowledgement letter contain reference to the 90-day timeline for providing a substantive response to the complaint, as does the IIROC proposal.

MFDA Response

Policy No. 3, as proposed, provides that an initial response letter must be sent to the complainant within a reasonable time and generally within five business days of receipt of the complaint. If a complaint can be concluded in less than five business days, then an initial response letter is not necessary. MFDA staff notes that the Policy has been amended to allow for certain complaints to be resolved informally (i.e. without having to be addressed in accordance with the formal complaint handling procedures prescribed in Part II of the Policy). However, pursuant to new section 3 of Part I, there is a duty to engage in an adequate and reasonable assessment of all complaints, including those subject to informal resolution. The Policy provides that an initial response letter must be provided within a reasonable time and generally within five business days, so as to allow a Member time to engage in an adequate review and assessment of all complaints for the purposes of determining whether they can be resolved informally. While the initial response letter will not reference the 90-day timeline for providing a substantive response to the client, the CCIF will reference this timeline, and will be included with the initial response letter to the complainant.

Details of Substantive Response

Kenmar and SIPA recommended providing guidance with respect to the contents of the substantive response letter, which, at a minimum, should provide the final decision, a statement of facts, the rationale, the rules and standards used to come to the decision, the documents used in the analysis, the methodology used for calculating restitution, if offered, and clear articulation that if the offer is rejected it can be appealed to OBSI. SIPA noted that the OBSI information is essential for the client to make a properly informed decision whether to accept the offer. SIPA recommended that it also be specified that the use of the firm's internal ombudsman is optional prior to bringing forward a complaint to OBSI.

MFDA Response

We note that the substantive response letter requires the Member to provide an outline of the complaint and this would include the relevant facts. The substantive response also requires the Member to provide its substantive decision and reasons and this would include an explanation of factors relied upon in arriving at the decision and an explanation of how the amount of compensation offered, if any, was arrived at.

Recourse to an internal ombudservice need not be engaged in prior to referring the matter to OBSI and is noted as an option in the Policy.

The substantive response letter requires Members to include a reminder to complainants that they have a right to consider presenting their complaint to OBSI that will consider complaints brought to it within six months of the substantive response letter. This reference informs complainants as to the option of taking their matter to OBSI and provides the time limit within which such an option must be exercised and, in the view of MFDA staff, is sufficiently clear.

Repeated Reminders of Limitation Periods and the Potential for Litigation

RMFI, PH&N and BMO expressed the view that compounding the notion that litigation is a viable option, by requiring the Member to notify clients of the litigation option and limitation periods in both the initial and substantive response, is unnecessary, does not serve a complainant's interest well and may be prejudicial to Members. BMO expressed the view that these requirements strenuously underscore the possibility that an unsatisfied client may launch a civil action. RMFI, PH&N and BMO recommended encouraging more efficient and expedient dispute resolution alternatives rather than litigation. RMFI and PH&N recommended that the substantive response include only a reminder that complaint escalation options are outlined in the CCIF, should the client be dissatisfied with the Member's final response. BMO commented that the indications given in the CCIF regarding civil litigation are sufficient and the inclusion of the same information in the initial and substantive responses is redundant.

The Federation and HUB agreed with the inclusion of information in the CCIF that was previously contained in the initial response; however, they disagreed with the requirement that the substantive response include a notice to the complainant that they have the right to consider litigation/civil action. The commenters recommended that the substantive response focus only on the facts, assessment of information and resolution to the complaint and noted that inclusion of an indicator to litigation would only serve to undermine the process. Nevertheless, the commenters agreed that, in the closing of the response letter where the Member outlines next steps in the complaint process, the Member should refer the complainant back to the CCIF.

MFDA Response

Reminders regarding limitation periods and the potential for litigation are required to be provided with the initial response letter as clients should be aware, at the initial stages of the complaint handling process, of what their rights and options are in respect of time limits and options for taking legal action. A significant period of time may have elapsed since the delivery of the CCIF at account opening and the client may not have the copy provided at account opening or recall its contents in sufficient detail to assist them in making timely and informed decisions with respect to their options.

These reminders are also required to be included with the substantive response letter as a significant period of time (three months or longer) may have elapsed since the initial response letter and, as noted, clients may not have the previously provided copy of the

CCIF or recall its contents in sufficient detail to assist them in making timely and informed decisions.

The inclusion of these reminders in the initial response letter and the substantive response letter is a result of CSA/MFDA/IIROC working group discussions and is consistent with requirements in the IIROC's complaint handling proposal.

Limitation Periods

SSI, IGM, Sun Life and IFIC recommended removing the requirement to provide information respecting applicable limitation periods to clients in the CCIF as the simple statement of the duration of limitation periods in various jurisdictions is of no service to a potential litigant and may be misleading. SSI, IFIC and IGM expressed the view that limitation periods are a complex area of law and general information on this issue will not help a complainant understand which limitation period applies and when it starts. Sun Life noted that an MFDA Member cannot provide legal advice to clients if they inquire as to the meaning of the statement regarding the limitation periods, and a referral to a lawyer, necessary in this situation, would delay and impair the complaint resolution process. Sun Life expressed the view that inclusion of limitation period information in the initial response unnecessarily increases the risk of litigation and questioned the relevance of providing this information in an initial response.

SSI, IGM and IFIC recommended that the Policy only require Members to advise complainants in the CCIF of the possibility of legal action, existence of limitation periods and option of consulting a lawyer to know their rights. IFIC recommended notifying a client that retaining OBSI may not postpone or suspend the time remaining in the limitation period. Sun Life recommended including the limitation period information in the amended CCIF rather than in the initial response and noted that, for some clients, the time limit will have already passed.

MFDA Response

With respect to comments noting that determining limitation periods on a jurisdiction by jurisdiction basis may be difficult and misleading to clients, we note that the Policy does not contemplate requiring the provision of such details. Both the initial response letter and the CCIF include a requirement for a statement advising clients as to the fact that each province and territory has a time limit for taking legal action, but does not require details of them on a jurisdiction by jurisdiction basis. The required disclosure is intended to provide the client with basic information so that they can seek additional details from a legal professional regarding the limitation periods that may be applicable in their particular circumstances.

Provision of CCIF

Quadrus expressed the view that the proposed requirement to provide the CCIF at three separate times (account opening, acknowledgement of the complaint and at the end of

investigation in the substantive response) is excessive and recommended that, instead, the CCIF be provided at account opening and at the conclusion of the Member's complaint process, when the client has the right to escalate the matter. Sun Life recommended removing the requirement to include a copy of the CCIF as part of Member's substantive response. Quadrus expressed the view that the client would be best served by following the Member's process, as it could resolve the complaint and recommended that instructions on actions to take if the client is not satisfied with the outcome of the investigation only be provided when that investigation is complete.

Kenmar recommended that the CCIF be clear and written in plain language with clear warnings about limitation periods and the limits of a complaint to the MFDA as regards restitution.

MFDA Response

The provision of the CCIF at the time of account opening, with the initial response letter and with the substantive response letter is consistent with the IIROC proposal.

The CCIF describes complaint escalation options, including complaining to OBSI and the MFDA and also includes information in respect of time limits for taking legal action. This document must be provided to the client at account opening as it is appropriate and important that the client be given such information, and have the opportunity to ask questions in respect of it at the time they establish their relationship with the Member.

The CCIF is required to be provided with the initial response letter as clients should be aware, at the initial stages of the complaint handling process, of their rights and options in respect of complaint escalation and time limits for taking legal action. A significant period of time may have elapsed since the delivery of the CCIF at account opening and the client may not have the copy provided at account opening or recall its contents in sufficient detail to assist them in making timely and informed decisions with respect to their options.

The CCIF is also required to be sent with the substantive response letter as, once again, a significant period of time (three months or longer) may have elapsed since its delivery with the initial response letter and, as noted, clients may not have the previously provided copy of the CCIF or recall its contents in sufficient detail to assist them in making timely and informed decisions.

With respect to Kenmar's recommendation that the CCIF be clear and written in plain language with clear warnings about limitation periods and the limits of a complaint to the MFDA as regards restitution, we will be revising our CCIF to meet the new requirements of Policy No. 3 and will ensure it continues to meet these general standards.

Litigation

SSI, IGM and ACCP recommended removing the requirement that Members participate in the litigation process, once commenced, in a timely manner, in accordance with the applicable rules of procedure and refrain from acting in an unfair way. SSI and IGM commented that the conduct of the parties in litigation should be under the control and jurisdiction of the relevant court and not subject to MFDA regulation as relief from the court is available in case a Member is acting unfairly or not in accordance with the applicable rules of procedure.

ACCP expressed concern that this requirement will lead to complainant's/plaintiff's lawyers complaining to the MFDA about Members acting unfairly rather than seeking a remedy from the court and questioned how the MFDA will determine what is unfair absent access to the court records. ACCP noted that, essentially, the MFDA would be in a position to tell Members not to follow the advice of counsel where it deems that a Member is acting unfairly. RMFI, PH&N and ACCP recommended that the MFDA follow the IIROC approach of excluding matters subject to litigation from the proposed framework.

MFDA Response

Complaints that are the subject of litigation have been referenced in Policy No. 3 for the purpose of reiterating the Member's existing obligation to participate in the litigation process in a timely manner in accordance with the rules of procedure of the applicable jurisdiction and to refrain from acting in a way that is clearly unfair.

The requirement for Members to refrain from acting in a way that is clearly unfair where litigation has been initiated is not intended to prejudice any rights that a Member may have in the event that litigation is commenced in respect of a client complaint. Rather, this requirement is intended to prohibit conduct on the part of the Member that is clearly punitive or that has no reasonable purpose other than to frustrate or delay the litigation process or the resolution of the complaint.

Settlement Agreements

Quadrus expressed the view that the prohibition on imposing confidentiality restrictions on clients or a requirement to withdraw an MFDA or securities commission complaint is inappropriate as many complaints are resolved on a "no liability" basis for practical reasons. Quadrus expressed the opinion that the confidentiality provision allows Members to engage in a practical solution without fear that its action in resolving the dispute will be publicly raised as an implication of its acceptance of liability. Quadrus noted that removing the confidentiality wording from settlement forms will likely have an unintended consequence of lowering Members' willingness to enter into settlements short of litigation.

ACCP noted that the wording of section 10 of the Policy would prohibit the inclusion of confidentiality restrictions in all cases, as the word "or" used in the provision is disjunctive. ACCP recommended that, if the intention is to ensure that a complainant is

not prohibited from advising a securities regulator of their complaint or required to withdraw a complaint, the section be amended to read: "may impose either confidentiality restrictions, a requirement to withdraw a complaint or both, with respect to ...."

Kenmar recommended that confidentiality restrictions, if any, in a settlement agreement not restrict a client from initiating a complaint or continuing any pending complaint or participating in any regulator or law enforcement proceedings.

RMFI and PH&N expressed the view that proposed wording of the requirements regarding settlement agreements is unclear and recommended adopting the proposed IIROC wording as it clarifies the limitations of the confidentiality restriction.

MFDA Response

The wording regarding confidentiality restrictions in settlement agreements is substantially similar to the existing wording of the current version of Policy No. 3. It has always been, and will continue to be, inappropriate to impose confidentiality requirements on complainants with respect to regulatory requirements.

Information Sharing

IFIC, SSI and Quadrus expressed the view that the requirement that Members share information necessary to address a complaint is not appropriate as it may require disclosure of personal client or representative information and thus lead to breach of client confidentiality or representative privacy, resulting in breaching privacy, employment or defamation laws. SSI recommended that the MFDA manage the sharing of information between Members by requesting relevant information from Members directly and managing it internally within the MFDA in order to avoid legal uncertainties and risk for Members. Quadrus requested that this section be amended to work within the provincial and federal privacy legislation.

RMFI and PH&N recommended that the Proposed Amendments reflect the MFDA guidance on Member cooperation and information sharing provided in response to the first publication for comment. More specifically, RMFI and PH&N suggested that the words "subject to specific prior client consent." be added to point #6 at the end of section 9 of Part I of the Policy.

IFIC cited Quebec's *Act Respecting the Protection of Personal Information in the Private Sector*, which limits the disclosure of personal information in the course of commercial activities, as an example of the appropriate approach to this subject and noted that the CSA narrowed a similar requirement in an information sharing rule, most recently in the Instrument, following concerns about the impact of privacy legislation. As an alternative, IFIC recommended that the MFDA manage the sharing of information between Members to avoid legal uncertainties for Members.

MFDA Response

The MFDA would not expect Members to breach provincial or federal privacy legislation in order to meet the information sharing requirement.

Members also have a pre-existing obligation to comply with the requirements of provincial and federal privacy legislation. The information sharing contemplated by this section is not intended to derogate from or be in conflict with any limits on disclosure imposed by privacy law. Where Members are in doubt with respect to their obligations pursuant to privacy legislation, they should seek specific client consent prior to sharing client personal information with another Member. In all likelihood, clients will generally be amenable to providing consent for the disclosure of their personal information to another Member when they understand that such disclosure is for the purpose of facilitating the resolution of a complaint that they have raised. We anticipate information sharing arising most frequently with respect to situations where one client has had accounts at two different Members. These situations will not raise any privacy concerns.

Errors and Omissions Insurance

The Federation and HUB noted that the wording of several E & O insurance policies used in the industry requires that an advisor notify/register a complaint with their insurer at the time it arises and then have no further contact with the client. The Federation expressed the view that any regulation requiring the advisor to act otherwise would jeopardize a complainant's ability to satisfy restitution under the policy and would therefore be contrary to the public interest. The Federation and HUB noted that such insurance protocols are imposed and enforced on policyholders who should not be mandated in any way by regulators as it might render the insurance coverage null and void. In addition, when an advisor names its dealer on their policy, the handling of a verbal complaint may void the dealer's vicarious liability coverage.

MFDA Response

Proposed Policy No. 3 does not require individual Approved Persons to contact the complainant once they have reported the complaint to their Member and insurer. The Member has a duty to resolve the complaint as per the regulatory requirements. While Members can balance all insurance related requirements with the applicable regulatory requirements, ultimately the presence of an insurance policy cannot absolve a Member of their regulatory duties.

Consolidated Log/Record Keeping

PFSL recommended a greater degree of flexibility and a more principles-based approach regarding the method of records retention. PFSL noted that including the term "consolidated log of complaints" unnecessarily prescribes the manner of record keeping and, by using this term, the MFDA is prescribing Member administrative and operational decisions in the absence of any public policy benefit. RMFI and PH&N expressed

concern regarding the maintenance of a central record of complaints that includes follow-up documentation, in either a "national" or "regional" head office and noted that the obligation to keep duplicate files at a central location would present a significant administrative burden for large financial institutions. PFSL, RMFI and PH&N expressed the view that the requirement to create and maintain a consolidated log is unnecessary as long as the principle that all relevant records be kept and remain accessible and reproducible in a timely manner upon the MFDA's request can be satisfied.

MFDA Response

A consolidated log of complaints (i.e. a single record that notes, in summary form, all complaints received) is intended, in addition to record keeping, to allow for tracking and trend analysis of complaints. Complaints or misunderstandings that occur frequently, even in respect of small and easily resolved matters, can, on a cumulative basis, indicate a serious problem. It would be more difficult to engage in such tracking and trend analysis of complaints in the absence of a consolidated log, as prescribed by the Policy. The consolidated log may be maintained electronically, as the log does not need to contain the paper documentation contained in the complaint files.

With respect to the RMFI and PH&N comment regarding the maintenance of a central record of complaints that includes follow-up documentation, in either a "national" or "regional" head office, we will be updating the Policy to allow for all follow-up documentation to be kept at the branch office level, so long as it remains accessible and can be produced in a timely manner upon the MFDA's request.

Point 5 in section 9 of Part I of the Policy will be updated to read:

> *"5. Follow-up documentation for all complaints must be kept in a central location along with the consolidated log of complaints. Alternatively, where a Member has various regional head offices or branches, the Member may keep follow-up documentation at any one regional head office or branch, so long as information about the handling of the complaint is in the Member head office log and the follow-up documentation can be produced in a timely manner."*

Period of Record Retention

PFSL expressed concern that designating the end of the Member-client relationship as the starting point to maintain complaint-related records may create difficulties for Members. The exact moment at which this relationship ends is not necessarily precise as it can continue or be restarted even when a client does not hold any funds or securities with a firm at a given time.

PFSL expressed the view that maintaining complaint records for seven years following receipt of the complaint as proposed by CP 31-103 is more appropriate for complaints, while maintaining documentation following the end of the relationship may be best suited for other types of relationship records.

PFSL recommended that the MFDA follow the IIROC approach and establish the starting point for record keeping at the receipt or resolution of a complaint rather than the end of the relationship.

MFDA Response

When initially drafting this section of the proposed Policy, the MFDA's intention was to meet the same regulatory objectives as NI 31-103 and the IIROC proposal. In the interest of minimizing differences and meeting the same regulatory objectives, we have updated this section, which now reads, "Documentation associated with a Member's activity under this Policy shall be maintained for a minimum of 7 years from the creation of the record and made available to the MFDA upon request." A prudent Member may wish to maintain these documents for a longer time period where facilities exist.

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