

## **Mutual Fund Dealers Association of Canada**

### **Proposed Amendments to MFDA Rule 1.2.1 (D) (Salespersons – Dual Occupations)**

#### **I. OVERVIEW**

##### **A. Current Rule**

Rule 1.2.1(d)(vii)(A) currently requires that an Approved Person engaging in financial planning services otherwise than through or on behalf of a Member provide such services through another person that is either regulated by a governmental authority or statutory agency or subject to the rules and regulations of a widely-recognized professional association. The objective of this requirement is to assist in ensuring that financial planning conducted by Approved Persons as an outside business activity is subject to a similar level of regulatory oversight as offered by the MFDA and to provide clients with a similar level of protection.

##### **B. The Issues**

There is currently confusion among Members and their Approved Persons with respect to the requirements in Rule 1.2.1(d)(vii)(A) where financial planning is conducted outside the Member by an Approved Person as an outside business activity. In particular, Members and Approved Persons have sought clarification as to whether financial planning carried on by Approved Persons as an outside business activity must be conducted through a corporate entity and the meaning of “widely recognized professional association”.

##### **C. Objectives**

The objectives of the proposed amendments are to clarify the Rule by removing provisions that are unnecessary and that have resulted in Member confusion while ensuring that financial planning conducted by Approved Persons as an outside business activity is subject to a similar level of regulatory oversight as offered by the MFDA and to provide clients with a similar level of protection.

##### **D. Effect of Proposed Amendments**

The proposed amendments will clarify the Rule while more directly achieving its regulatory objective. The proposed amendments will also assist in ensuring that Members clearly understand their regulatory obligations in respect of Approved Persons engaged in financial planning as an outside business activity.

It is not expected that the proposed amendments will have other significant effects on Members, other market participants, market structure or competition or generate significant additional compliance costs.

## **II. DETAILED ANALYSIS**

### **A. Proposed Amendments**

The proposed amendments to Rule 1.2.1(d)(vii)(A) will continue to permit Approved Persons to engage in financial planning as an outside business activity provided the Approved Person is regulated by a governmental authority or statutory agency. The proposed amendments will remove the reference to “another person” and “widely recognized professional association”.

Under the current Rule 1.2.1(d)(vii)(A), Approved Persons who wish to carry on financial planning as an outside business activity may only do so through another person that is either regulated by a governmental authority or statutory agency or subject to the rules and regulations of a widely recognized professional association. The reference to another person in Rule 1.2.1(d)(vii)(A) has been interpreted to require that the Approved Person must conduct financial planning activities through a corporate entity. This requirement is not necessary to achieve the regulatory objective of the Rule, provided the financial planning activity is conducted by a natural person that is licensed or registered directly by a governmental authority or statutory agency. Governmental authorities or statutory agencies (such as provincial insurance councils, law societies or institutes of chartered accountants) have similar standards such as licensing or registration requirements, active oversight of regulated activities, the review of complaints, information sharing between the other regulator and the MFDA where necessary and the ability to compel the individual subject to regulatory oversight to provide information.

To date, the MFDA has not designated any organization as a “widely recognized professional association”. In addition, the MFDA’s regulatory experience with this reference has demonstrated that it has caused confusion among Members and has not advanced the regulatory objective of the Rule.

### **B. Issues and Alternatives Considered**

No other issues or alternatives were considered.

### **C. Systems Impact of Amendments**

It is not anticipated that there will be a significant systems impact on Members as a result of the proposed amendments.

### **D. Best Interests of the Capital Markets**

The Board has determined that the proposed amendments are in the best interests of the capital markets.

### **E. Public Interest Objective**

The proposed amendments are in the public interest as they will assist Members and Approved Persons in understanding the requirements of the Rule and will assist in ensuring that clients of Approved Persons engaged in financial planning as an outside business activity receive a similar level of investor protection as offered by the MFDA.

### III. COMMENTARY

#### A. Filing in Other Jurisdictions

The proposed amendments will be filed for approval with the Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Ontario Securities Commissions and the Saskatchewan Financial Services Commission.

#### B. Effectiveness

The proposed amendments are simple and effective.

#### C. Process

The proposed amendments have been prepared in consultation with relevant departments within the MFDA. The MFDA Board of Directors approved the proposed amendments on May 22, 2008.

#### D. Effective Date

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

### IV. SOURCES

MFDA Rule 1.2.1

### V. REQUIREMENT TO PUBLISH FOR COMMENT

The MFDA is required to publish for comment the proposed amendments so that the issues referred to above may be considered by the Recognizing Regulators.

**The MFDA has determined that the entry into force of the proposed amendments would be in the public interest and is not detrimental to the capital markets.**

**Comments are sought on the proposed amendments.** Comments should be made in writing. One copy of each comment letter should be delivered within 30 days of the publication of this notice, addressed to the attention of the Corporate Secretary, Mutual Fund Dealers Association of Canada, 121 King St. West, Suite 1000, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of Sarah Corrigan-Brown, Senior Legal Counsel, British Columbia Securities Commission, 701 West Georgia Street, P.O. Box 10142, Pacific Centre, Vancouver, British Columbia, V7Y 1L2.

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the MFDA website at: [www.mfda.ca](http://www.mfda.ca).

Questions may be referred to:

Paige Ward  
Director of Policy and Regulatory Affairs  
Mutual Fund Dealers Association of Canada  
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## Mutual Fund Dealers Association of Canada

### Salespersons (Rule 1.2.1)

On May 22, 2008, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to MFDA Rule 1.2.1:

#### Rule 1.2.1 – (Salespersons)

##### 1.2.1 Salespersons

- (d) **Dual Occupations.** An Approved Person may have, and continue in, another gainful occupation, provided that:
- (vii) *Financial planning.* Any Approved Person that engages in financial planning services otherwise than through or on behalf of a Member must:
    - (A) Regulations ~~— be regulated by a governmental authority or statutory agency provide such services through another person that is either regulated by a governmental authority or statutory agency or subject to the rules and regulations of a widely recognized professional association;~~
    - (B) Legislation - comply with the requirements of any applicable legislation in connection with the services;
    - (C) Access - ensure that, subject to any applicable legislation, the Member and the Corporation have access to financial plans prepared on behalf of the clients of the Member by its Approved Persons; and
    - (D) Proficiency - have satisfied any applicable proficiency requirements by securities regulatory authorities having jurisdiction.