

#### 13.1.4 MFDA Proposed Amendments to Policy 3 (Handling Client Complaints)

### MUTUAL FUND DEALERS ASSOCIATION PROPOSED AMENDMENTS TO POLICY 3 (HANDLING CLIENT COMPLAINTS)

#### I. OVERVIEW

##### A. Current Rules

MFDA Policy 3 sets out general requirements with respect to the handling of complaints by Members. The current Policy requires Members to establish policies and procedures to deal effectively with client complaints and address issues that include client communications, record keeping and internal escalation of serious complaints.

##### B. The Issues

MFDA staff has become aware of a number of procedural issues identified by clients that have filed complaints against Members and their Approved Persons. In order to improve upon the complaint process, further guidance is required with respect to the fair and prompt handling of complaints by Members. MFDA staff has also noted that further guidance is required regarding supervisory investigations to be conducted by Members following the receipt of a complaint.

##### C. Objectives

The objective of the proposed amendments to Policy 3 are to provide guidance with respect to the standards that Members should have in place regarding complaint handling and supervisory investigations. The proposed amendments will essentially replace much of what is contained in the existing Policy 3.

##### D. Effect of Proposed Amendments

The effect of the proposed amendments will be to clarify the obligations of Members and provide guidance as to the minimum standards Members must meet with respect to the fair and prompt handling of client complaints. The proposed amendments are also intended facilitate clarity and enhance access for clients seeking to file a complaint with a Member.

It is not expected that the proposed amendments will have other significant effects on Members, other market participants, market structure or competition or that the proposed amendments will result in significant additional costs for Members to comply with the proposed amendments.

#### II. DETAILED ANALYSIS

##### A. Relevant History

An Ontario Securities Commission ("OSC") Town Hall meeting was held in May 2005 and included staff of the OSC, the Investment Dealers Association ("IDA") and the Ombudsman for Banking Services and Investments ("OBSI"). One of the issues identified at that meeting was a lack of clarity and openness of complaint processes in the securities industry. Further meetings to discuss these issues were held between the MFDA, OSC, IDA and OBSI. Following these meetings, MFDA staff issued Member Regulation Notice MR-0059 ("MR-0059"), which provided guidance to Members on improving the clarity and consistency of communications with investors who have filed a complaints and provided guidance on the expectations of MFDA staff regarding Members' complaint handling processes. Much of the guidance provided by MFDA staff in MR-0059 has been incorporated into the proposed amended Policy 3.

##### B. Proposed Amendments to Policy 3

The proposed amended Policy defines a complaint generally as any written statement of a client or prospective client alleging a grievance involving a Member or Approved Person of a Member. A complaint also included verbal statements of grievance relating to serious allegations such as theft and fraud.

As part of the proposed amended Policy Members will be required to facilitate access to their complaint handling process so that clients are informed of how and to whom they should file a complaint. Members will be required to provide a specific point of initial contact at head office for complaints or questions regarding the Member's complaint handling process. Members with websites will be required to post their complaint handling procedure on their website.

The proposed amended Policy will require Members to ensure that all client complaints are handled fairly and that there is a factual investigations and analysis of the matters specific to each complaint. The gathering of facts by Members must be based on a balanced approach and the analysis of those facts must be reasonable.

The proposed amended Policy will require that Members generally send an initial response to a complainant within 5 business days of receipt of a complaint. The initial response must include the name and contact information of the individual at the Member handling the complaint, a summary of the complaint handling process, a request to the complainant to send any additional information regarding their complaint to the Member and a copy of the Client Complaint Information Form ("CCIF").

The Member must conduct its investigation and analysis and provide a substantive response to the client within the time period expected of a Member acting diligently. The Member will be required to provide a substantive response generally within no more than six months of receipt of the complaint, and in most cases within less time. The substantive response letter must include an outline of the complaint, the Member's substantive decision and reasons for such, a copy of the CCIF and a reminder that the complainant has the right to consider presenting the complaint to OBSI and making a complaint to the MFDA.

The proposed amendments to Policy 3 will require Members to conduct a reasonable investigation into all client complaints. In addition, when serious misconduct is alleged the Member must conduct a detailed supervisory investigation regardless of how the information comes to the attention of the Member. The proposed amended Policy provides guidance as to the actions to be taken by the Member as part of a detailed investigation, such as interviewing relevant individuals, conducting branch reviews, reviewing files of Approved Persons including files in the custody and control of an Approved Person relating to outside business activities.

The amended Policy will also require that where complaints are received that relate to activities carried on by an Approved Person at another Member firm, the Approved Person and the predecessor Member must cooperate in sharing information with the firm that receives the complaint, in order to facilitate the complaint resolution process.

**C. Issues and Alternatives Considered**

No other alternatives were considered.

**D. Comparison with Similar Provisions**

The proposed amended Policy was compared to the complaint handling provisions of Proposed National Instrument 31-103 – Registration Requirements and the Proposed Companion Policy 31-103CP. A review of the ISO 10002-2004(E) standard on complaint handling was also conducted. IDA staff was consulted in the course of developing the proposed amended Policy to ensure that the proposed amendments are consistent with the approach to be taken by IDA staff as they consider changes to IDA requirements regarding complaint handling standards.

**E. 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. Under the proposed Policy, Members will be required to track complaint aging in order to ensure that timelines set out in the proposed Policy are met. However, Members will be able to use the MFDA's complaints reporting system, the Member Event Tracking System ("METS"), to track aging of complaints reported through METS.

**F. Best Interests of the Capital Markets**

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

**G. Public Interest Objective**

The proposed amendments will establish complaint handling standards with respect to MFDA Members and Approved Persons that are consistent with standards to be followed by IDA members. The proposed amendments will assist in the protection of the investing public by providing clarity and consistency in the complaint handling processes of Member firms.

**III. COMMENTARY**

**A. Filing in Other Jurisdictions**

The proposed By-law amendments will be filed for approval with the Alberta, British Columbia, Manitoba, 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 Policy has been prepared in consultation with relevant departments within the MFDA and has been reviewed by the Policy Advisory Committee of the MFDA and the Regulatory Issues Committee of the Board. The MFDA Board of Directors approved the proposed amendments on June 15, 2007.

**E. Effective Date**

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

**IV. SOURCES**

MFDA Policy 3  
MFDA Member Regulation Notice MR-0059  
IDA Member Regulation Notice MR-0441  
Proposed National Instrument 31-103 and Proposed Companion Policy 31-103CP  
ISO Standard 10002-2004(E)

**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 Anne Hamilton, Senior Legal Counsel, British Columbia Securities Commission, 701 West Georgia Street, P.O. Box 10142, Pacific Centre, Vancouver, British Columbia, V7Y 1L2.

On request, the MFDA will make available all comments received during the comment period.

Questions may be referred to:

Shaun Devlin  
Vice-President, Enforcement  
Mutual Fund Dealers Association of Canada  
(416) 943-4672

**MFDA POLICY NO. 3**

**HANDLING CLIENT COMPLAINTS  
COMPLAINT HANDLING,  
SUPERVISORY INVESTIGATIONS AND  
INTERNAL DISCIPLINE**

**Introduction**

This Policy establishes minimum industry standards for handling client complaints. A "complaint" shall be deemed to mean any written statement of a client or any person acting on behalf of a client alleging a grievance involving the conduct, business or affairs of the Member or any registered salesperson, partner, director or officer of the Member.

Although the definition of "complaint" refers to only written complaints, there may be instances where a Member receives a verbal complaint from a client which will warrant the same treatment as a written complaint. Such situations depend upon the nature and severity of the client's allegations and require the professional judgement of the Member's supervisory staff handling the complaint.

**Complaint Procedure**

Each Member must establish procedures to deal effectively with client complaints, which should include the following:

1. Each Member must acknowledge all client complaints.
2. Each Member must convey the results of its investigation of a client complaint in writing to the client in due course.
3. Client complaints involving the sales practices of a Member, its partners, directors, officers, salespersons or employees or agents must be handled by qualified sales supervisors/compliance staff.
4. Each Member must ensure that registered salespersons and their supervisors are made aware of all complaints filed by their clients.
5. Each Member must put procedures in place so that senior management is made aware of complaints of serious misconduct and of all legal actions.
6. Each Member must maintain in a central place an orderly, up to date record of complaints together with follow up documentation regarding such complaints, for regular internal/external compliance reviews. For each complaint, the record should include the following information:
  - the date of the complaint;
  - the complainant's name;
  - the name of the person who is the subject of the complaint;
  - the security or services which are the subject of the complaint; and
  - the date and conclusions of the decision rendered in connection with the complaint.

This record must be retained for a period of seven years from the date of receipt of the complaint.

8. Each Member must establish procedures to ensure that breaches of MFDA By laws, Rules and Policies are subjected to appropriate internal disciplinary procedures.
9. When a Member finds complaints to be a significant factor, internal procedures and practices should be reviewed, with recommendations for changes to be submitted to the appropriate management level.

**Settlement Agreements and Dispositions of Securities-Related Claims**

No Approved Person shall, without the prior written consent of the Member, enter into any settlement agreement with a client.

No Member or Approved Person of such Member may impose confidentiality restrictions on clients with respect to the MFDA or a securities commission, regulatory authority, law enforcement agency, self regulatory organization, stock exchange or other trading market as part of a resolution of a dispute or otherwise.

## **I. Complaints**

### **Introduction**

MFDA Rule 2.11 requires Members to establish and implement written policies and procedures for dealing with client complaints that ensure that such complaints are dealt with promptly and fairly. This Policy establishes minimum standards for the development and implementation of those procedures.

Compliance with the requirements of MFDA Rule 2.11 and this Policy must be supervised and monitored by the Member and its personnel in accordance with MFDA Rule 2.5.

### **General**

A "complaint" shall be deemed to include:

- any written statement, including electronic communications, of a client, or any person acting on behalf of a client, or of a prospective client who has dealt with a Member or Approved Person, alleging a grievance involving the Member, Approved Person of the Member or former Approved Person of the Member if the grievance involves matters that occurred while the Approved Person was an Approved Person of the Member;
- any written or verbal statement of grievance from a client or any other person relating to:
  - (i) theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading; or
  - (ii) engaging in securities related business outside of the Member; and
- any other verbal statement of grievance from a client for which the nature and severity of the client's allegations will warrant, in the professional judgement of the Member's supervisory staff handling the complaint, the same treatment as a written complaint.

### **Client Access**

At the time of account opening, Members must provide to new clients a written summary of the Member's complaint handling procedures, which is clear and can easily be understood by clients. On account opening, the Member must also provide a Client Complaint Information Form ("CCIF"), as approved by MFDA staff, describing complaint escalation options, including complaining to the Ombudsman for Banking Services and Investments (the "Ombudsman") and complaining to the MFDA.

Members must facilitate other access to their complaint handling procedures so that clients are informed as to how to file a complaint and to whom they should address a complaint. For example, Members who maintain a website must post their complaint handling procedures on their website.

Member procedures must provide a specific point of initial contact at head office for complaints or information about the Member's complaint handling process. This contact may be a designated person or may be a general inbox or telephone number that is continuously monitored. Members may also advise clients to address their complaints to the Approved Person servicing their account or to the Branch Manager supervising the Approved Person.

### **Fair Handling of Client Complaints**

To achieve the objective of handling complaints fairly, Members' complaint handling procedures must include standards that allow for a factual investigation and an analysis of the matters specific to the complaint. Members must not have policies that allow for complaints to be dismissed without due consideration of the facts of each case. There must be a balanced approach to the gathering of facts that objectively considers the interests of the complainant, the Approved Person and the Member.

The basis of the Member's analysis must be reasonable. For example, a suitability complaint must be considered in light of the same principles that would be applied by a reasonable Member in conducting a suitability review, which would include an acknowledgement of the complainant's stated risk tolerance. It would not be reasonable for a Member to assess suitability based on a risk level presumed by the Member that is higher than that indicated by the complainant. A further example of an unreasonable analysis is where a Member dismisses a complaint due to a simple uncorroborated denial by the Approved Person notwithstanding evidence in support of the complainant.

A Member's obligation to handle complaints in accordance with this Policy is not altered when a complainant engages legal counsel in the complaint process. Where litigation is commenced by the complainant, the Member is expected to participate in

the litigation process in a timely manner in accordance with the rules of procedure of the applicable jurisdiction.

The Member's review of the complaint must result in the Member's substantive response to the complainant. Examples of an appropriate substantive response include a fair offer to resolve the complaint or a denial of the complaint with reasons. MFDA staff does not require that the complainant accept the Member's offer in order for the offer to be considered fair.

### **Prompt Handling of Client Complaints**

Upon receipt of a client complaint, each Member must send an initial response letter to the complainant within a reasonable time, and generally within 5 business days of receipt of the complaint.

The Member must handle the complaint and provide its substantive response within the time period expected of a Member acting diligently in the circumstances. The time period may vary depending on the complexity of the matter. The Member should determine its substantive response and notify the complainant in writing within no more than six months of receipt of the complaint, although in most cases the Member will be expected to do so within less time.

Further, staff recognizes that, if the complainant fails to co-operate during the complaint resolution process, or if the matter requires an extensive amount of fact-finding or complex legal analysis, time frames for the substantive response may need to be extended. In cases where a substantive response will not be provided within six months, the Member must advise the complainant as such and provide an explanation for the delay.

It is not required that the complainant accept the Member's substantive response. Where the Member has communicated its substantive response, the Member must continue to proactively address further communications from the complainant in a timely manner until no further action on the part of the Member is required.

### **Complaint Procedures**

Each Member's procedures for complaint handling must include the following:

1. **Initial Response** – The initial response letter must include the following information:
  - A written acknowledgment of the complaint;
  - The name, job title and full contact information of the individual at the Member handling the complaint;
  - A statement indicating that the complainant should contact the individual at the Member handling the complaint if he/she would like to inquire about the status of the complaint;
  - A summary of the Member's internal complaint handling process, including general timelines for providing the Member's response to complaints;
  - A request to the complainant for any additional reasonable information required to resolve the complaint; and
  - A reference to the CCIF, a copy of which must be included for the complainant.
2. **Substantive Response** – The substantive response letter, which Members must provide to the complainant, may be accompanied by a summary of the Member's complaint handling procedures and must include a copy of the CCIF. The substantive response letter to complainants should also include the following information:
  - An outline of the complaint;
  - The Member's substantive decision on the complaint, including reasons for the decision; and
  - A reminder to the complainant that he/she has the right to consider: (i) presenting the complaint to the Ombudsman which will consider complaints brought to it within six months of the substantive response letter; or (ii) making a complaint to the MFDA.
3. All client complaints and supervisory obligations must be handled by qualified sales supervisors/compliance staff. Generally, individuals who are the subject of a complaint should not handle the complaint unless other qualified supervisory staff is not available.
4. Each Approved Person must report all complaints and other information relevant to this Policy to the Member as required under MFDA Policy 6.
5. Each Member must ensure that the relevant Approved Persons and their supervisors and compliance officers are made aware of all complaints.
6. Each Member must put procedures in place so that senior management is made aware of complaints of serious misconduct and of all legal actions.

7. Each Member must maintain in a central place an orderly, up-to-date record of complaints together with follow-up documentation regarding such complaints, for regular internal/external compliance reviews. For each complaint, the record should include the following information:

- the date of the complaint;
- the complainant's name;
- the name of the person who is the subject of the complaint;
- the security or services which are the subject of the complaint; and
- the date and conclusions of the decision rendered in connection with the complaint.

Members may use the electronic reporting system designated under MFDA Policy 6 (the "Member Event Tracking System" or "METS") as their complaint log for those complaints reported on METS. However, Members are reminded that they must also maintain a complaint log of their service complaints.

8. Members must monitor information on complaints and supervisory investigations and should note trends in risk, including those related to specific Approved Persons or branches, subject matter, product types and procedures. When a Member finds this activity to indicate material risk, internal procedures and practices must be reviewed and appropriate supervisory or other action must be taken.

9. Where the events relating to a complaint took place in part at another Member or a member of another SRO, Members and Approved Persons must cooperate with other Members or SRO members in the sharing of information necessary to address the complaint.

### **Settlement Agreements**

No Approved Person shall, without the prior written consent of the Member, enter into any settlement agreement with, pay any compensation or make any restitution to a client.

No Member or Approved Person of such Member may impose confidentiality restrictions on clients or a requirement to withdraw a complaint with respect to the MFDA or a securities commission, regulatory authority, law enforcement agency, SRO, stock exchange or other trading market as part of a resolution of a dispute or otherwise.

## **II. Supervisory Investigations**

As noted above, a Member must conduct a reasonable investigation into all client complaints. The level of an investigation will in part depend on the severity of the allegation and the complexity of the issues.

In the case of certain serious cases outlined below, the Member has a duty to conduct a detailed investigation regardless of how the information came to the attention of the Member. For example, such information may, instead of coming through a complaint, be identified during the Member's routine supervisory activity, or come from other Approved Persons of the Member or individuals outside the Member who are not clients. In addition, this duty arises whether the information comes to the Member in written or verbal form. If the information comes to the attention of the Member through a complaint the duty to conduct the supervisory investigation continues when a complainant purports to withdraw the complaint or indicates satisfaction with the result of the Member's complaint handling.

A Member has a duty to conduct a detailed investigation where it receives information to suggest the possibility that the Member or any current or former Approved Person has or may have contravened any provision of any law or has contravened any regulatory requirement, relating to:

- (i) theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading; or
- (ii) engaging in securities related business outside of the Member;
- (iii) engaging in an undeclared occupation outside the Member; or
- (iv) personal financial dealings with a client.

The detailed investigation in the circumstances may include interviewing:

- the individuals of concern;
- related supervisory personnel;
- other branch staff;

- head office personnel; or
- external individuals who brought the information to the Member's attention.

The detailed investigation may also require:

- conducting a review at the branch or sub-branch;
- reviewing files of the Approved Person relating to Member business; or
- reviewing files and other documents in the Approved Person's custody or control that relate to outside business, where there is a reasonable possibility that such information is relevant to the investigation. Members have the right to require such information to meet their supervisory responsibilities and Approved Persons have an obligation to cooperate with such requests.

### **III. Internal Discipline**

Each Member must establish procedures to ensure that breaches of MFDA By-laws, Rules and Policies are subjected to appropriate internal disciplinary measures.

### **IV. Record Retention**

Documentation associated with Member's activity under this Policy shall be maintained for a minimum of 7 years from termination of the Member's relationship with the client and made available to the MFDA upon request.