

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 Proposed Amendments to MFDA By-law No. 1, s. 25.4 (Other Instruments)

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

PROPOSED AMENDMENTS TO MFDA BY-LAW NO. 1, SECTION 25.4 (OTHER INSTRUMENTS)

I. OVERVIEW

A. Current By-law

Section 25.4 of MFDA By-law No. 1 provides that the MFDA may develop and issue to Members various guidelines, policies, bulletins and other regulatory instruments to assist in the interpretation, application and compliance with the MFDA By-laws, Rules and legislation relevant to a Member's business. All such instruments are defined as Policies pursuant to section 1 of By-law No. 1.

B. The Issues

MFDA By-law No. 1 does not specify the regulatory effect of MFDA Policies and whether they are binding on Members and can be enforced against Members. The provisions of By-law No. 1 that address the regulatory effect of Policies must be clarified to be consistent with the current practices of the MFDA regarding the treatment of Policies.

C. Objectives

The objective of the proposed amendments is to clarify the intended application of MFDA Policies.

D. Effect of Proposed Amendments

The proposed amendments will clarify the regulatory effect of MFDA Policy instruments, specifying that Policies may be binding on Members and Approved Persons according to their terms.

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

II. DETAILED ANALYSIS

A. Relevant History

MFDA Members are expected to develop systems and specific policies and procedures that are sufficient to meet the objectives of MFDA Rules. In order to communicate expectations regarding minimum standards for compliance with the Rules, the MFDA develops Policies that set out basic requirements and provide guidance on interpretation of the Rules.

The prescriptive elements contained in the Policies have provided Members with a level of certainty as far the position MFDA staff will take in compliance reviews and enforcement actions and have also served to communicate basic service levels that investors can expect from mutual fund dealers.

B. Proposed Amendments

The amendments to sections 1 and 25.4 of By-law No. 1 will more clearly specify that Policies may be binding on Members and Approved Persons according to their terms. The amendments will also clarify the types of instruments that may be considered Policies. The amendments confirm the expectation and practices of the MFDA and are consistent with the approach taken by the Investment Dealers Association of Canada (the "IDA") and Market Regulation Services Inc. (the "RS") with respect to their corresponding regulatory instruments and as proposed by the Investment Industry Regulatory Organization of Canada ("IIROC").

Any MFDA Policies made under the proposed amended section 25.4 must be approved by the Board of Directors in order to be binding in respect of Members and Approved Persons and, under the Terms and Conditions of the MFDA's Recognition Orders,

any regulatory instrument with binding effect must be approved by the recognizing securities commissions. In addition, Policies which are binding on Members and Approved Persons will have had input in their development from the MFDA Policy Advisory Committee and will have been reviewed by the Regulatory Issues Committee of the MFDA Board of Directors.

C. Issues and Alternatives Considered

No other alternatives were considered.

D. Comparison with Similar Provisions

MFDA Policies are designed to function in much the same way as Policies developed pursuant to the IDA Rules and Market Integrity Notices issued by RS, both as proposed to be continued to the same effect by IIROC. The MFDA and IIROC, and historically the IDA and RS, each rely on such respective regulatory instruments to prescribe minimum standards regarding their principle-based requirements.

Under section 1 of the Universal Market Integrity Rules, RS defines "Rules" as meaning the Universal Market Integrity Rules and defines "Policy" as any policy statement adopted by RS in connection with the administration or application of the Universal Market Integrity Rules as such policy statement is amended, supplemented and in effect from time to time. The Recognition Order of the IDA from the Ontario Securities Commission defines "IDA rules" as including the Constitution, By-laws, Regulations, Policies and Forms of the IDA. As such, both IDA policies and policy statements from RS are treated as having a similar effect as the other forms of regulatory instruments. The amended, section 25.4 will clarify that this approach applies to MFDA Policies as well.

E. Systems Impact of Amendments

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

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 provide clarity to Members and the public as to the intended effect of MFDA Policies. The proposed amendments clarify that the requirements set out in MFDA Policies are mandatory minimum standards and must be observed by all Members.

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 By-law No. 1
Investment Dealers Association of Canada – Terms of Recognition
Market Regulation Services Inc. – Universal Market Integrity Rules

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.

The MFDA will post all comments received during the comment period to the MFDA website at www.mfda.ca.

Questions may be referred to:

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MUTUAL FUND DEALERS ASSOCIATION OF CANADA

MFDA BY-LAW NO. 1

SECTION 25.4 (OTHER INSTRUMENTS)

On May 22, 2008, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to MFDA By-law No. 1:

1. DEFINITIONS

"Policies" means the guidelines, instructions, policies, bulletins, notices, directions and other communications ~~developed and issued, amended and repealed~~ pursuant to Section 25.4;

25.4 ~~Other Instruments~~ Policies

The Corporation may ~~develop and make, issue, amend and repeal to Members such~~ Policies consisting of guidelines, policies, instructions, bulletins, notices, directions or ~~and~~ other communications ~~relevant to~~ not inconsistent with the By-laws and Rules ~~of the business and activities of to assist or direct Members, their Approved Persons or other employees or agents to assist~~ in the interpretation, application ~~of and~~ compliance with the By-laws, Rules and legislation relevant to ~~such~~ the respective business and activities of any such person. Any such Policies as have been approved by the Board of Directors shall be binding upon Members, Approved Persons or other employees or agents according to their terms. The Board of Directors, ~~and~~ a Regional Council, any committee thereof, a Hearing Panel or other body authorized under the By-laws may refer to such ~~instruments~~ Policies in the interpretation and application of the By-laws and Rules.