

## Chapter 13

# SRO Notices and Disciplinary Proceedings

---

---

### 13.1.1 Proposed Amendments to MFDA Rule 2.2 (Client Accounts), Policy No. 2 *Minimum Standards for Account Supervision*, Rule 2.8 (Client Communications) and Rule 5.3 (Client Reporting)

#### MUTUAL FUND DEALERS ASSOCIATION OF CANADA

#### PROPOSED AMENDMENTS TO

#### MFDA RULE 2.2 (CLIENT ACCOUNTS), POLICY NO. 2 *MINIMUM STANDARDS FOR ACCOUNT SUPERVISION*, RULE 2.8 (CLIENT COMMUNICATIONS) AND RULE 5.3 (CLIENT REPORTING)

### I. OVERVIEW

On May 22, 2008, the MFDA Board of Directors approved a number of amendments to MFDA Rule 2.2, Policy No. 2, Rule 2.8 and Rule 5.3.

The amendments to Rule 2 and Policy No. 2 were proposed to clarify the nature of the client/advisor relationship and expand the disclosure to be provided to clients on account opening. In addition, these amendments are intended to help ensure that client accounts are reviewed at relevant times and remain consistent with the client's needs and objectives. The Rule 2 and Policy No. 2 amendments also clarify procedures that Members and Approved Persons must follow in order to satisfy their obligations in respect of the collection and maintenance of know-your client ("KYC") information, investment suitability and account supervision.

The amendments to Rule 2.8 and 5.3 were proposed to clarify the supervisory obligations of Members in relation to performance reporting provided directly to clients by Approved Persons and to ensure that all clients are provided with a minimum level of information with respect to the performance of investments in their accounts.

On June 13, 2008, the British Columbia Securities Commission and the Ontario Securities Commission published the proposed amendments to MFDA Rule 2.2, Policy No. 2, Rule 2.8 and Rule 5.3 for a 90-day public comment period that expired on September 11, 2008. Sixteen submissions were received in respect of the proposed amendments to Rule 2.2 and Policy No. 2 and eleven commenters also made submissions in respect of the proposed amendments to Rule 2.8 and Rule 5.3.

The proposed amendments are now being republished for comment as a result of additional changes made in response to comments received and in an effort to ensure that the Client Relationship Model ("CRM") proposals of the MFDA and the Investment Industry Regulatory Organization of Canada ("IIROC") minimize differences to the extent possible and achieve the same regulatory objectives. The amendments, as originally proposed, are being republished with the proposed revisions.

The Canadian Securities Regulators ("CSA") is now finalizing the requirements in National Instrument 31-103 ("NI 31-103") and reminds the self-regulatory organizations ("SROs") and their Members that, once it is in effect, all registrants will be required to comply with the principle for relationship disclosure in that instrument. The principle in the CSA's most current version of NI 31-103 is that all registrants must provide their clients with information a reasonable client would consider important on account opening. The CSA has confirmed to the SROs that their CRM requirements must remain consistent with the finalized principle in NI 31-103.

The CSA is also developing a principle for performance reporting for the first round of amendments to NI 31-103. The CSA expects the SROs to ensure that their requirements for performance reporting are consistent with that principle.

### A. Current Rule

MFDA Rule 2.2 addresses the basic business conduct and client record requirements that Members must satisfy with respect to client accounts maintained by the Member. The current Rule prescribes:

- the requirement to collect KYC information when an account is opened;
- the requirement to ensure that recommendations made for the client's account are suitable;

- the requirement to complete a new account application form for each account;
- the requirement that each account be approved by a designated individual; and
- the requirement to document material updates to KYC information.

MFDA Policy No. 2 establishes minimum industry standards for supervision of client accounts and expands upon the basic requirements contained in Rule 2. Policy No. 2 provides guidance with respect to account opening documentation to be maintained and supervisory procedures to be completed at the branch and head office levels.

MFDA Rule 2.8.3 requires that where a client communication refers to a rate of return, the client must be advised as to the methodology employed in calculating the rate of return noted in the communication.

MFDA Rule 5.3 prescribes the minimum reporting requirements that Members must provide on client accounts and standards with respect to frequency for delivery and content of client statements.

## **B. The Issues**

Since September 2004, staff of the MFDA, the Investment Dealers Association of Canada ("IDA" – now IIROC) and the CSA have been involved in working groups focused on the implementation of various aspects of the CRM. One of the core principles addressed in the CRM focuses on the need for a clear definition of the relationship between the client and the financial services provider and the roles and responsibilities that each party will assume when an investment account is opened. Clients must be provided with adequate information regarding the client/dealer relationship at the time the relationship is established in order to understand the basic obligations of their dealer and what to expect as far as service levels.

The working groups involved in the CRM project also examined the issue of dealer responsibilities in ensuring that a client's investments remain consistent with the client's needs and objectives. In light of the investor protection issues involved, the MFDA supported the position that a regulatory response to this issue was necessary.

Another core principle the CRM seeks to address is the gap in current regulatory requirements with respect to mandatory periodic reporting of account performance to clients. While some Members do provide performance reporting to clients, such reports are not currently required under MFDA Rules and Policies.

While current MFDA Rules and Policies address some aspects of the regulatory objectives of the CRM project, amendments were required to more fully respond to the concerns raised. The amendments, as originally proposed and revised, are aimed at addressing these concerns.

In addition, the MFDA also became aware of a number of other issues with respect to procedures employed by some Members in discharging their supervisory duties in connection with their clients' accounts. As some of the changes to be implemented under CRM relate to issues of supervision and involve the same Rules and Policies, these changes were brought forward with the CRM proposal.

In the course of completing compliance reviews, the MFDA has noted inconsistencies and potentially misleading information in performance reports provided to clients directly by some Approved Persons. Some Members have adopted policies and procedures whereby the Member does not properly supervise performance reports generated by Approved Persons, but simply disclaims responsibility for the content of these reports. The MFDA is of the view that such policies are inconsistent with business conduct requirements under MFDA By-laws, Rules and Policies. The amendments, as originally proposed and revised, are aimed at addressing this concern.

## **C. Objectives**

The amendments to Rule 2 and Policy No. 2 were proposed to clarify the nature of the client/advisor relationship and expand the disclosure to be provided to clients on account opening. In addition, these amendments are intended to help ensure that client accounts are reviewed at relevant times and remain consistent with the client's needs and objectives. The Rule 2 and Policy No. 2 amendments also clarify procedures that Members and Approved Persons must follow in order to satisfy their obligations in respect of the collection and maintenance of KYC information, investment suitability and account supervision.

The amendments to Rule 2.8 and 5.3 were proposed to clarify the supervisory obligations of Members in relation to performance reporting provided directly to clients by Approved Persons and to ensure that all clients are provided with a minimum level of information with respect to the performance of investments in their accounts.

## D. Effect of Proposed Amendments

The amendments to Rule 2.2 were proposed to require that investors be provided with certain fundamental information at the time that an account is opened. This will help to ensure that clients are aware of the role and responsibilities of the Member and what to expect as far as services and costs. While some Members may already provide such information to clients as part of their business processes, the proposed amendments would effectively set a new minimum standard of relationship disclosure for clients of all Members. Amendments to Rule 2.2 were also proposed to clarify the duty of Members and Approved Persons to assess the suitability of investments in each client account when various triggering events occur.

The amendments to Policy No. 2 were proposed to clarify the responsibilities of Members and Approved Persons in discharging their suitability obligations. These changes address issues regarding the KYC information that must be collected for each client, the maintenance of information on file and minimum standards that must be observed with respect to account supervision procedures. Some Members may be required to amend their current procedures to meet the new requirements.

The proposed amendment to Rule 5.3 now includes a requirement to provide the gain or loss in the account as at the end of the period covered by the report. This amendment will allow for the provision of meaningful information and convenience to investors as it totals the amounts already required under the Rule.

Rule 2.8.3 was amended to clarify the Member's supervisory requirements regarding client communications that disclose a rate of return. Members that allow Approved Persons to provide such information to clients may be required to make changes to existing supervisory procedures.

## II. DETAILED ANALYSIS

### A. Relevant History

#### Summary of Public Comments Received on Amendments to Rule 2.2, Policy No. 2, Rule 2.8 and Rule 5.3

As noted above, proposed amendments to Rule 2.2, Policy No. 2, Rule 2.8 and Rule 5.3 were initially published for comment on June 13, 2008. Sixteen submissions were received with respect to the proposed amendments to Rule 2.2 and Policy No. 2. Eleven commenters also made submissions in respect of the proposed amendments to Rules 2.8 and 5.3.

The proposed amendments are being republished for comment as a result of additional changes made in response to comments received and in an effort to ensure that the CRM proposals of the MFDA and IROC achieve the same regulatory objectives and minimize differences as much as possible. The proposed amendments, as revised, are consistent in purpose with those originally published for comment on June 13, 2008.

### B. Proposed Amendments

The following is a summary of key amendments made to Rule 2.2, Policy No. 2, Rule 5.3 and Rule 2.8 in response to comments received. Other minor amendments have also been made in response to comments and for the purpose of clarifying existing requirements.

#### Rule 2.2

- **Rule 2.2.1(a) ("Know-Your-Client"):** Several commenters expressed concern with the inclusion of the reference "as prescribed by the Corporation from time to time" in relation to essential facts that must be obtained by the Member from the client. It was suggested that arbitrary changes to the essential facts may require modification of forms, back-office systems, salesperson behaviour and unnecessary and expensive recollection of client information. The reference to "as may be prescribed by the Corporation from time to time" has been removed from Rule 2.2.1(a). The minimum information that must be collected on account opening is set out in Policy No. 2. Any amendments to these requirements would be subject to the SRO Rule review and approval process that would involve approval by the Board of Directors, CSA review and approval and the publication of any proposed amendments for public comment;
- **Rule 2.2.3 and Policy No. 2 (Timeline for Approval of New Account/KYC Information):** The proposed amendments to Policy No. 2 required that new account or KYC information be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3 *no later than one business day after the date that the account is opened*. In response to comments, the proposed amendments, as revised, now require such approval *no later than one business day after the initial transaction date*;
- **Rule 2.2.4(a) (Updating Client Information):** Several commenters noted that a "material change in client information", defined in Rule 2.2.4(a) to include information that could "reasonably result" in changes to the

stated risk tolerance, time horizon or investment objectives of the client, cannot itself trigger a suitability review. It was suggested that a material change in client information must result in an actual change to risk tolerance, time horizon and investment objectives before a suitability review can be triggered. In response to such comments, the definition of “material change in client information” has been amended by removal of the words “could reasonably” so that it captures only information that actually results in changes to the stated risk tolerance, time horizon or investment objectives of the client;

- **Rule 2.2.4(d) and Policy No. 2 (Changes to Know-Your-Client Information):** Proposed Rule 2.2.4(d) required that a client signature be obtained to evidence any change to client name, address and banking information. Commenters noted that there were other sufficiently stringent internal controls, mainly employed by related financial institutions, which would satisfy the objective of ensuring the client authorized changes to name, address, or banking information. In response to these comments, the proposed amendments now require either a client signature or other internal controls sufficient to authenticate the client’s identity and verify the client’s authorization;
- **Rule 2.2.5 (Relationship Disclosure):** Proposed Rule 2.2.5 requires that, on account opening, all clients be provided with certain core information about the nature of their relationship with the Member and its Approved Persons. In response to comments requesting clarification regarding certain content requirements for the relationship disclosure, MFDA staff will be issuing a Member Regulation Notice to provide additional guidance as to the level of detail to be set out in the relationship disclosure document.

### Policy No. 2

#### **II. Opening New Accounts – Documentation of Client Account Information**

- **Requirement for Registered Salesperson to Maintain a Copy of the NAAF (section 2):** This section has been amended to require all Approved Persons that service the client’s account to have access to information and documentation relating to the client’s account as required;
- **Information Required for Joint Accounts (section 3):** Clarification with respect to which information must be collected for each owner and which information can be collected on a combined basis for the joint account has been added;
- **Change of Registered Salesperson/Requirement to Review KYC (section 11):** In response to comments noting that a review of KYC information is already addressed by the Rule 2.2.1 requirement to review suitability, the requirement for a suitability review under this section has been deleted.

#### **II. Opening New Accounts – Changes to Know-Your-Client Information**

- **Requirement to Provide Client with All the Updated KYC Information (section 8):** This section has been amended to more specifically require that the client be provided with a document or documents specifying current risk tolerance, investment objectives, time horizon and net worth that applies to the client’s account.

#### **IV. Branch Office Supervision – Daily Activity**

- **\$1000 Threshold for Investment in Moderate-High or High-Risk Investments (section 2):** Commenters expressed the view that the prescribed trade thresholds for branch reviews were too low, in particular the \$1000 threshold for branch manager review of moderate-high to high risk investments and \$5000 threshold for trades and redemptions in low risk investments. In response to such comments, the trade review threshold for moderate-high or high risk investments has been increased from \$1000 to \$2500. In addition, the \$5000 trade review threshold for trades and redemptions in all other investments has been increased to \$10,000. These limits will be reviewed from time to time to ensure that they remain relevant.
- **Branch Manager Suitability Review where Material Change in Client Information (section 5):** Commenters indicated that the requirement for the branch manager to review the suitability of investments in each client account upon a material change to client’s KYC information is onerous and suggested that, in light of the fact that the Approved Person is responsible for assessing the suitability of investments upon a material change, such review should only be performed on a sample basis at the branch level. In response to comments, Policy No. 2 has been amended to require the branch manager to perform a suitability review on a sample basis where a material change results in a significant decrease in the client’s risk tolerance, time horizon, income or net worth or more conservative investment objectives.

**V. Head Office Supervision – Daily Reviews**

- **Trade Review Thresholds (section 1):** In response to comments that the proposed trade review threshold for low risk investments is too low, it has been increased to \$50,000 from \$10,000. In addition, the Policy has been clarified to note that the reference to exempt securities was not intended to include GICs;
- **Suitability Review where Material Change in Client Information (section 5):** In response to comments, the requirement for head office to review, on a sample basis, the suitability of investments in accounts where there has been a material change in client information has been removed.

**VI. Identification of Trends in Trading Activity**

- **Timeline for Completion of Head Office Supervisory Reviews (section 3):** In response to comments expressing concern with the proposed 21-day deadline, the amendments, as revised, adopt a requirement that reviews be completed within 30 days of the last day of the period being reviewed.

**Rule 5.3**

- **“Total Assets Deposited/Withdrawn” (Rule 5.3.5(a)(ii)/(iii)):** The proposed amendments, as revised, now include a requirement, in new subsection 5.3.5(a)(v), to provide the gain or loss in the account as at the end of the period covered by the report. This figure offers meaningful information and convenience to investors as it totals the amounts already required under subsections 5.3.5(a)(i)-(iv) and, in providing this total, is consistent with the approach adopted by IIROC in its CRM proposal.

**Rule 2.8.3**

- **Clarification of Standard Acceptable Industry Practice (Rule 2.8.3):** No revisions have been made to the proposed amendments published for comment in June 2008. A number of commenters requested clarification on what are considered to be standard acceptable industry practices in Rule 2.8.3. Members are currently given flexibility with respect to reporting rates of return, provided a consistently applied standard industry method is used and a clear explanation of the method used is included on the performance statement. Standard industry practices include time weighted returns such as Global Investment Performance Standards, Modified Dietz or a dollar weighted return method (Internal Rate of Return). MFDA staff will be issuing a Member Regulation Notice to provide additional guidance with respect to standard industry practices in calculating rates of return.

**C. Issues and Alternatives Considered**

As noted, the proposed amendments, as revised, have been made after consideration of issues raised by commenters. With respect to CRM, the MFDA, in reviewing its proposal, has considered the IIROC CRM proposal and met with IIROC staff on a number of occasions to engage in a detailed review of both SRO proposals with a view to minimizing differences and ensuring that they achieve the same regulatory objectives.

As discussed below, there are certain areas in which the MFDA and IIROC have adopted different approaches to achieve the objectives under CRM. Some of these result from differences in the business of MFDA and IIROC Members or the different ways in which our existing rules are structured. In certain instances, matters addressed in the proposed IIROC Rules will be addressed or expanded upon by the MFDA in Member Regulation Notices.

**Format of Relationship Disclosure**

The IIROC proposal specifies the content of relationship disclosure, requires that it be included in a document entitled “Relationship Disclosure” and allows for other disclosure already provided in other sources to be incorporated by reference. Proposed MFDA Rule 2.2.5 prescribes the core elements of disclosure that must be provided to clients on account opening, which may be provided in one document or several. This approach has been adopted to allow Members flexibility in how they incorporate the required disclosure on their existing forms.

**Content of Relationship Disclosure**

The IIROC proposal requires that the relationship disclosure document contain a statement indicating whether or not the provision of account percentage return information will be an option available to the client as part of the account service offering. The MFDA is of the view that requiring that clients be provided with a description of the content and frequency of reporting that they will receive by default addresses the issue of services that will not be offered and so achieves the same regulatory objective.

The IIROC proposal would also require specific disclosure as to whether or not client accounts will be reviewed at times other than the regulatory minimum (such as in the event of a market disruption). MFDA Rule 2.2.5 generally requires a description of the Member's suitability obligation to clients. As part of such disclosure, clients should be advised that the overall risk of their account may change over time as a result of fluctuations in the market, which may or may not (depending on the Member's procedures) result in an assessment of the suitability of investments in the client's account. Further details with respect to this disclosure requirement in Rule 2.2.5 will be provided in a MFDA Member Regulation Notice.

The IIROC proposal would require a description of all costs the client will or may incur in making and holding investments by type of investment product. MFDA Rule 2.2.5 requires a description of the nature of compensation that may be paid to the Member with a reference to other sources for more specific information. Notwithstanding the difference in wording between the two proposals, both the IIROC and MFDA requirement contemplate high level disclosure of the compensation paid to the Member firm with respect to different types of investment products that the Member may sell as well as a statement that there may be other costs charged by the issuer or product manufacturer depending on the investment product. The general description in the relationship disclosure with respect to how the Member is compensated and the possibility of other costs associated with making or holding investments is intended to supplement more specific product disclosure with respect to fees and costs available through the prospectus or offering memorandum.

#### Account Performance Reporting

The IIROC CRM proposal requires customer account cost reports, for all accounts other than those held by institutional customers, which itemize security position cost information. The MFDA does not propose to adopt any additional requirements in this area and is of the view that its existing requirements appropriately and adequately address the regulatory objective of providing clients with sufficient information to assess the performance of their account. Under current MFDA requirements, cost information must be provided at the time of the transaction on both the account statement and trade confirmation. In addition, we note that over 80% of mutual fund assets administered by MFDA Members are registered in client name. We understand that while data with respect to cost information is currently maintained by fund managers, this information is not available at the dealer level on an accurate or consistent basis for reporting purposes.

The IIROC CRM proposal requires, for all accounts other than those held by institutional customers, customer account performance information disclosing the annual and cumulative realized and unrealized income and capital gains on the customer's account. This account performance information must be sent to customers annually, at a minimum. This requirement is addressed in MFDA Rule 5.3.5 (Account Performance Reporting) in proposed new subsection 5.3.5(a)(v) which requires the account performance reporting to include gain or loss in the account as at the end of the period covered by the report. The MFDA proposal would require performance information for the annual period rather than on an annual and cumulative basis. MFDA staff has received comments from Members that requiring this information on a cumulative basis would require significant systems changes at great cost to the industry. To the extent that cumulative reporting would entail greater costs to Members that would ultimately be passed on to clients, the MFDA is of the view that requiring performance information on an annual basis provides the appropriate level of reporting and strikes a proper balance between managing cost considerations and providing clients with core information with respect to account performance.

#### ***Requirements in Proposed IIROC Rules that will be Addressed by the MFDA in Member Regulation Notices***

There are a number of areas addressed in the IIROC proposal by way of Rules that are already generally addressed under other MFDA Rules. MFDA staff will be issuing Member Regulation Notices to provide further guidance in these areas. Areas identified for further guidance include the following:

- format of relationship disclosure
- content of relationship disclosure
- supervisory review/approval of relationship disclosure
- maintaining evidence of disclosure
- account performance reporting – standard industry practices in calculating rates of return.

#### **D. Systems and Procedures Impact of Amendments**

Commenters have indicated that significant changes may be necessary to their existing systems and procedures in order to comply with the proposed requirements and have recommended establishing sufficient transition periods to meet the new obligations.

The MFDA will seek to establish transition periods based on the amount of time required to make individual systems and/or procedure changes that may become necessary as a result of the proposed amendments. Accordingly, commenting parties are asked to provide specific input with respect to the appropriate length of transition periods for system, procedure or form changes that may be required for: (i) new account documentation requirements under the relationship disclosure prescribed in proposed Rule 2.2.5; (ii) each of the following proposed requirements under Policy No. 2: account supervision requirements, suitability assessments, trade supervision requirements and trade review thresholds; and (iii) proposed performance reporting requirements under Rule 5.3.

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

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

**F. Public Interest Objective**

The proposed amendments, as revised, are in the public interest and have been made in response to public comments and a review of the MFDA and IIROC CRM proposals to ensure that they minimize differences as much as possible and achieve the same regulatory objectives.

**III. COMMENTARY**

**A. Filing in Other Jurisdictions**

The proposed Rule amendments will be filed for approval with the Alberta, British Columbia, New Brunswick, 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 amendments were developed by MFDA staff in response to input received during the first publication for comment and discussions with IIROC staff, in respect of minimizing the differences between the CRM proposals of the two SROs. The proposed amendments have been approved by the MFDA Board of Directors.

**D. Effective Date**

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

**IV. SOURCES**

MFDA Rule 2.2, Policy No. 2, Rule 2.8 and Rule 5.3

IIROC CRM proposal

**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 90 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 1600, 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:

Aamir Mirza  
Senior Legal & Policy Counsel  
(416) 945-5128  
[amirza@mfda.ca](mailto:amirza@mfda.ca)

**SCHEDULE A**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**CLIENT ACCOUNTS (Rule 2.2)**

**(Amendments to Version Published for Comment on June 13, 2008)**

On March 5, 2009, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to Rule 2.2:

**2.2 CLIENT ACCOUNTS**

2.2.1 **"Know-Your-Client"**. Each Member and Approved Person shall use due diligence:

- (a) to learn the essential facts, ~~as may be prescribed by the Corporation from time to time~~, relative to each client and to each order or account accepted;
- (b) to ensure that the acceptance of any order for any account is within the bounds of good business practice;
- (c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client based on the essential facts relative to the client and any investments within the account;
- (d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client based on the essential facts relative to the client and the investments in the account, the Member or Approved Person has so advised the client before execution thereof and the Member or Approved Person has maintained evidence of such advice;
- (e) to ensure that the suitability of the investments within each client's account is assessed:
  - (i) whenever the client transfers assets into an account at the Member;
  - (ii) whenever the Member or Approved Person becomes aware of a material change in client information, as defined in Rule 2.2.4; or
  - (iii) by the Approved Person where there has been a change in the Approved Person responsible for the client's account at the Member; and
- (f) to ensure that, where investments in a client's account are determined to be unsuitable, the Member or Approved Person so advises the client and makes recommendations to address any inconsistencies between investments in the account and the essential facts relative to the client and the Member or Approved Person maintains evidence of such advice and recommendations.

2.2.2 **New Accounts.**

- (a) Each new account for a client must be opened by the Member within a reasonable time of the client's instruction to do so. Account numbers must not be assigned unless they are accompanied by the proper name and address for the client.
- (b) A New Account Application Form must be completed for each new account of a client. If the New Account Application Form does not include know-your-client information, this must be documented on a separate Know-Your-Client form. Such form or forms shall be duly completed to conform with the requirements of Rule 2.2.1 and shall be signed by the client and dated.

2.2.3 **New Account Approval.** Each Member shall designate a trading partner, director or officer or, in the case of a branch office, a branch manager reporting directly to the designated partner, director or officer, who shall be responsible for approval of the opening of new accounts and the supervision of account activity. The designated person shall, no later than one business day after the initial transaction date, approve the opening of such account and a record of such approval shall be maintained in accordance with Rule 5.



2.2.4 **Updating Client Information**

- (a) **Definition.** In this Rule, “**material change in client information**” means any information that could reasonably result in changes to the stated risk tolerance, time horizon or investment objectives of the client or would have a significant impact on the net worth or income of the client.
- (b) The Form documenting know-your-client information must be updated to include any material change in client information whenever a Member or Approved Person or ~~other employee or agent~~ becomes aware of such change including pursuant to Rule 2.2.4(e).
- (c) Subject to paragraph (d), the Member must maintain evidence of client instructions regarding any material changes in client information and all such changes must be approved by the individual designated in accordance with Rule 2.2.3 as responsible for the approval of the opening of new accounts.
- (d) A client signature or other internal controls sufficient to authenticate the client's identity and verify the client's authorization must be ~~obtained~~ used to evidence any change in client name, client address or client banking information.
- (e) Without reducing the responsibility of Members in Rule 2.2.1, all Members must at least annually, in writing, request each client to notify the Member if there has been any material change in client information previously provided to the Member or the client's circumstances have materially changed. The date of such request and the date upon which any such client information is received and recorded or amended must be retained.

2.2.5 **Relationship Disclosure.** For each new account opened, the Member shall provide written disclosure to the client:

- (a) describing the nature of the advisory relationship;
- (b) describing the products and services offered by the Member;
- (c) describing the Member's procedures regarding the receipt and handling of client cash and cheques. In the case of a Level 2 dealer, the disclosure must include an explanation that all client cheques shall be payable to the issuer or carrying dealer, as applicable;
- (d) describing the Member's obligation to ensure that each order accepted or recommendation made for any account of a client is suitable for the client in accordance with Rule 2.2.1 and advising when the Member will assess the suitability of the investments in the client's account;
- (e) defining the various terms with respect to the know-your-client information collected by the Member and describing how this information will be used in assessing investments in the account;
- (f) describing the content and frequency of reporting for the account; and
- (g) describing the nature of the compensation that may be paid to the Member and referring the client to other sources for more specific information.

**SCHEDULE B**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**MINIMUM STANDARDS FOR ACCOUNT SUPERVISION (Policy No. 2)**

**(Amendments To Version Published For Comment On June 13, 2008)**

On March 5, 2009, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to Policy No. 2:

**MFDA POLICY NO. 2**

**MINIMUM STANDARDS FOR ACCOUNT SUPERVISION**

**Introduction**

This Policy establishes minimum industry standards for account supervision. These standards represent the minimum requirements necessary to ensure that a Member has procedures in place to properly supervise account activity. This Policy does not:

- (a) relieve Members from complying with specific MFDA By-laws, Rules and Policies and securities legislation applicable to particular trades or accounts; or
- (b) preclude Members from establishing a higher standard of supervision, and in certain situations a higher standard may be necessary to ensure proper supervision.

To ensure that a Member has met all applicable standards, Members are required to know and comply with MFDA By-laws, Rules and Policies as well as applicable securities legislation which may apply in any given circumstance. The following principles have been used to develop these minimum standards:

- (a) The term "review" in this Policy has been used to mean a preliminary screening designed to detect items for further investigation or an examination of unusual trading activity or both. It does not mean that every trade must be reviewed. The reviewer must use reasonable judgement in selecting the items for further investigation.
- (b) It has been assumed that Members have or will provide the necessary resources and qualified supervisors to meet these standards.
- (c) The initial compliance with the know-your-client rule and suitability of investment requirements is primarily the responsibility of the registered salesperson. The supervisory standards in this Policy relating to know-your-client and suitability are intended to provide supervisors with a checklist against which to monitor the handling of these responsibilities by the registered salesperson.

Members that seek to adopt policies and procedures relating to branch and head office supervision or the allocation of supervisory activities that differ from those contained in this Policy must demonstrate that all of the principles and objectives and of the minimum standards set out in this Policy have been properly satisfied. Further, any such alternative policies and procedures must adequately address the risk management issues of the Member and must be pre-approved by MFDA staff before implementation.

**I. ESTABLISHING AND MAINTAINING PROCEDURES**

Effective self-regulation begins with the Member establishing and maintaining a supervisory environment which both fosters the business objectives of the Member and maintains the self-regulatory process. To that end a Member must establish and maintain procedures which are supervised by qualified individuals. A major aspect of self-regulation is the ongoing education of staff in all areas of sales compliance.

**Establishing Procedures**

- 1. Members must appoint designated individuals who have the necessary knowledge of industry regulations and Member policies to properly perform the duties.
- 2. Written policies must be established to document supervision requirements.

3. Written instructions must be supplied to all supervisors and alternates to advise them on what is expected of them.
4. All policies established or amended should have senior management approval.

#### **Maintaining Procedures**

1. Evidence of supervisory reviews must be maintained. Evidence of the review, such as inquiries made, replies received, date of completion etc. must be maintained for seven years and on-site for one year.
2. An on-going review of sales compliance procedures and practices must be undertaken both at head office and at branch offices.

#### **Delegation of Procedures**

1. Tasks and procedures may be delegated to a knowledgeable and qualified individual but not responsibility.
2. The Member must advise supervisors of those specific functions which cannot be delegated, such as approval of new accounts.
3. The supervisor delegating the task must ensure that these tasks are being performed adequately and that exceptions are brought to his/her attention.
4. Those who are delegated tasks must have the qualifications and required proficiency to perform the tasks and should be advised in writing of their duties. The general expectation is that tasks be delegated only to individuals with the same proficiency as the delegating supervisor. In certain limited circumstances, it may be acceptable to delegate specialized tasks to an individual that has not satisfied the proficiency requirements provided that the individual has equivalent training, education or experience related to the function being performed. The Member must consider the responsibilities and functions to be performed in relation to the delegated tasks and make a determination as to appropriate equivalent qualifications and proficiency. The Member must be able to demonstrate to MFDA staff that the equivalency standard has been met. Tasks related to trade supervision can only be delegated to individuals that possess the proficiency of a branch manager or compliance officer.

#### **Education**

1. The Member's current policies and procedures manual must be made available to all sales and supervisory personnel.
2. Introductory training and continuing education should be provided for all registered salespersons. For training and enhanced supervisory requirements for newly registered salespersons, please refer to the MFDA Policy No.1 entitled "New Registrant Training and Supervision Policy."
3. Relevant information contained in compliance-related MFDA Member Regulation Notices and Bulletins and compliance-related notices from other applicable regulatory bodies must be communicated to registered salespersons and employees. Procedures relating to the method and timing of distribution of compliance-related information must be clearly detailed in the Member's written procedures. Members should ensure that they maintain evidence of compliance with such procedures.

## **II. OPENING NEW ACCOUNTS**

To comply with the "Know-Your-Client" and suitability requirements set out in MFDA Rule 2, each Member must establish procedures to maintain accurate and complete information on each client. The first step towards compliance with this rule is completing proper documentation when opening new accounts. Accurate completion of the documentation when opening a new account allows both the registered salesperson and the supervisory staff to conduct the necessary reviews to ensure that recommendations made for any account are appropriate for the client and in keeping with investment objectives. Maintaining accurate and current documentation will allow the registered salesperson and the supervisory staff to ensure that all recommendations made for any account are and continue to be appropriate for a client's investment objectives.

#### **Documentation of Client Account Information**

1. A New Account Application Form ("NAAF") must be completed for each new account.
2. A complete set of documentation relating to each client's account must be maintained by the Member. Approved Persons must have access to information and documentation relating to the client's account as required to service the

~~account. The registered salesperson must also maintain a copy of the NAAF.~~—In the case of a Level 1 Introducing Dealer and corresponding Carrying Dealer, both Members must maintain a copy of each client's NAAF.

3. For each account of a client that is a natural person, the Member must obtain information sufficient to allow for the operation of the account and sufficient to determine the essential facts relative to each client ~~(the “know your client” or “KYC” information)~~, which would include, at a minimum, the following information:

- (a) name;
- (b) type of account;
- (c) residential address and contact information;
- (d) date of birth;
- (e) employment information;
- (f) number of dependants;
- (g) other persons with trading authorization on the account;
- (h) other persons with a financial interest in the account;
- (i) investment knowledge;
- (j) risk tolerance;
- (k) investment objectives;
- (l) time horizon;
- (m) income;
- (n) calculation of net worth (including details of liquid assets, ~~fixed assets and liabilities~~);
- ~~(e)(o)~~ information required by other laws and regulations applicable to the Member's business as amended from time to time including information required for relevant tax reporting; information required for compliance with the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations and any authorization necessary to provide information to the MFDA under applicable privacy legislation.
- ~~(p) — information required for compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, as amended from time to time;~~
- ~~(q) — authorization to provide personal information to the MFDA under applicable privacy legislation.~~

The preceding provides a list of minimum requirements. The Member may require clients to provide any additional information that it considers relevant. In the case of accounts jointly owned by two or more persons, information required under subparagraphs (a), (c), (d), (e), (f) and (i) must be collected with respect to each owner, with the exception of the information required under subparagraphs (b), (g), (h), (j), (k), and (l) and (m). Income and net worth may be collected for each owner or on a combined basis as long as it is clear which method has been used.

~~3.4.~~ For each account of a client that is a corporation, trust or other type of legal entity, the Member must obtain information sufficient to allow for the operation of the account and sufficient to determine the essential facts relative to the client, which would include, at a minimum, the following information:

- (a) legal name;
- (b) head office address and contact information;
- (c) type of legal entity (i.e. corporation, trust, etc.);

- (d) form and details regarding the organization of the legal entity (i.e. articles of incorporation, trust deed, or other constating documents)
- (e) nature of business;
- (f) persons authorized to provide instructions on the account and details of any restrictions on their authority;
- (g) investment knowledge of the persons to provide instructions on the account;
- (h) risk tolerance;
- (i) investment objectives;
- (j) time horizon;
- (k) income;
- (l) calculation of net worth (including details of liquid assets, ~~fixed assets and liabilities~~);
- (m) ~~information required by other laws and regulations applicable to the Member's business as amended from time to time including information required for relevant tax reporting; information required for compliance with the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations and any authorization necessary to provide information to the MFDA under applicable privacy legislation.~~
- ~~(m) — information required for relevant tax reporting;~~
- ~~(m) — information required for compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, as amended from time to time;~~
- ~~(n) — authorization to provide personal information to the MFDA under applicable privacy legislation.~~

The preceding provides a list of minimum requirements. The Member may require clients to provide any additional information that it considers relevant.

5. For supervisory purposes, registered accounts, leveraged accounts and accounts of any registered salesperson's family member operating under a limited trading authorization or operating under a power of attorney in favour of the registered salesperson must be readily identifiable.
6. If the NAAF does not include KYC information, this must be documented on a separate KYC form(s). Such form(s) must be signed by the client and dated. A copy of the completed NAAF and KYC form, if separate from the NAAF, must be provided to the client.
7. The Member must have internal controls and policies and procedures in place with respect to the entry of KYC information on their back office systems. Such controls should provide an effective means to detect and prevent inconsistencies between the KYC information used for account supervision with that provided by the client.
8. Except as noted in the following paragraph, NAAF's must be prepared and completed for all new clients prior to the opening of new client accounts. The new account or KYC information must be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3 ~~no later than one business day after the date that the account is opened no later than one business day after the initial transaction date~~. Records of all such approvals must be maintained in accordance with Rule 5.
9. Notwithstanding the preceding paragraph, NAAF's for clients of a registered salesperson transferring to the Member must be prepared and completed within a reasonable time (but in any event no later than the time of the first trade). The new accounts or KYC information for clients of the transferring salesperson must be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3 no later than one business day after the date that the NAAF is completed. Records of all such approvals must be maintained in accordance with Rule 5.
10. In the event that a NAAF is not completed prior to or within a reasonable time after opening an account, as required by this Policy, the Member must have policies and procedures to restrict transactions on such accounts to liquidating trades until a fully completed NAAF is received.

11. ~~When there is a change of registered salesperson responsible for a client's account at a Member, the new registered salesperson must review the information on the NAAF and any separate KYC form to ensure it is current and record the date of such review on the form or forms.~~

### **Changes to Know-Your-Client Information**

1. The ~~registered salesperson~~ Approved Person or Member must update the KYC information whenever they become aware of a material change in client information as defined in Rule 2.2.4(a).
2. On account opening, the Member should advise the client to promptly notify the Member of any material changes in the client information, as defined in Rule 2.2.4(a), previously provided to the Member and provide examples of the types of information that should be regularly updated.
3. In accordance with Rule 2.2.4(e), Members must also, on an annual basis, request in writing that clients notify them if there has been any material change in client information, as defined in Rule 2.2.4(a), previously provided, or if the client's circumstances have materially changed.
4. Access to amend KYC information must be controlled and instructions to make any such amendments must be properly documented.
5. A client signature, which may include an electronic signature, or other internal controls sufficient to authenticate the client's identity and verify the client's authorization must be ~~obtained~~ used to evidence any change in client name, client address or client banking information.
6. ~~Other m~~Material changes to client information, as defined in Rule 2.2.4(a), may be evidenced by a client signature, which may include an electronic signature or, alternatively, such changes may be evidenced by maintaining notes in the client file detailing the client's instructions to change the information and verified by providing written confirmation to the client with details of the instructions and providing an opportunity for the client to make corrections to any changes that have been made.
7. All material changes in client information, as defined in Rule 2.2.4(a), must be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3 no later than one business day after the date on which notice of the change in information is received from the client. When approving material changes, branch managers should be reviewing the previous KYC information to assess whether the change appears reasonable. Branch managers should be aware of situations where material changes may have been made to justify unsuitable trades or leveraging. For example, branch managers should investigate further material changes that accompany trades in higher risk investments or leveraging or changes made within a short period of time (for example 6 months). Records of all such approvals must be maintained in accordance with Rule 5.
8. Where any material changes have been made to the information contained in the NAAF or KYC form(s), the client must promptly be provided with a document or documents specifying the current risk tolerance, investment objectives, time horizon, income and net worth ~~all KYC information~~ that applies to the client's account.
9. The last date upon which the KYC information has been updated or confirmed by the client must be indicated in the client's file and on the Member's back office system.

### **Pending/Supporting Documents**

1. Members must have procedures in place to ensure supporting documents are received within a reasonable period of time of opening the account.
2. Supporting documentation that is not received or is incomplete must be noted, filed in a pending documentation file and reviewed on a periodic basis.
3. Failure to obtain required documentation within 25 days of the opening of the account must result in positive actions being taken.

### **Client Communications**

1. All hold mail must be authorized by the client in writing and be controlled, reviewed on a regular basis and maintained by the responsible supervisor. Hold mail should never be permitted to occur over a prolonged period of time (i.e. in excess of 6 months).

2. Returned mail is to be promptly investigated and controlled.

### **III. ASSESSING SUITABILITY OF INVESTMENTS AND LEVERAGING STRATEGIES**

1. In accordance with Rule 2.2.1, Members and registered salespersons are responsible for the suitability of each recommendation made for an account of a client and must assess the suitability of the investments in each client's account under the circumstances described in Rule 2.2.1(e).
2. Members must have policies and procedures with respect to their suitability obligations, including criteria for the purpose of assessing the suitability of a client's use of leveraging and describing appropriate client circumstances for recommending the use of leverage.
3. The Member's policies and procedures must describe the information required to be maintained in the client file to facilitate proper Member supervision. Whenever the Member or registered salesperson recommends or becomes aware that a client is using a leverage strategy, the Member or registered salesperson must either maintain copies of the lending documents or make sufficient inquiries to obtain details of the loan, including interest rate, terms for repayment and the outstanding loan value. Where the Member or registered salesperson assists the client in completing the loan application, the Member must maintain copies of lending documents in the file, including copies of the loan application.
4. The Member's criteria for selecting trades for review, the inquiry and resolution process, supervisory documentation requirements, and the escalation and disciplinary process must be documented and clearly communicated to all registered salespersons and all relevant employees. Registered salespersons must be advised of the criteria the Member uses in assessing suitability, actions the Member will take when a trade has been flagged for review and appropriate options for resolution.
5. Registered salespersons must assess the suitability of investments in each client account within a reasonable time, but in any event no later than the time of the next trade, whenever:
  - the client transfers to the Member or transfers assets into an account at the Member;
  - the Member or registered salesperson becomes aware of a material change in the client's KYC information; and
  - the client account has been re-assigned to the registered salesperson from another registrant at the Member.

The determination of "reasonable time" in a particular instance will depend on the circumstances surrounding the event that gives rise to the requirement to perform the suitability assessment. For example, with respect to client transfers, the volume of accounts to be reviewed may be a relevant factor in determining reasonable time.

6. Should a registered salesperson identify unsuitable investments in a client's account, the registered salesperson must advise the client and take appropriate steps to determine if there has been any change to client circumstances that would warrant altering the KYC information. It is inappropriate to alter the KYC information in order to match the investments in the client's account. If there is no change to the KYC information, or if investments in the account continue to be unsuitable after the KYC information has been amended, the registered salesperson should discuss any inconsistencies with the client and provide recommendations as to rebalancing investments in the account. Transactions in the account must only be made in accordance with client instructions and any recommendations made with respect to the rebalancing of the account must be properly recorded.
7. Registered salespersons must maintain evidence of completion of all suitability assessments performed and any follow up action taken with respect to such assessments.

### **IV. BRANCH OFFICE SUPERVISION**

Each branch manager must undertake certain activities within the branch for purposes of assessing compliance with the Member's policies and procedures and regulatory requirements. These activities should be designed to identify failures to adhere to required policies and procedures and provide a means of revealing and addressing undesirable account activity.

#### **Daily Activity**

1. All new account applications and updates to client information must be reviewed and approved in accordance with this Policy.

2. The branch manager (or alternate) must review the previous day's trading for unsuitable trades and any other unusual trading activity using any convenient means. This review must include, at a minimum, all:
- initial trades;
  - trades in exempt securities (excluding guaranteed investment certificates);
  - leveraged trades/leverage recommendations for open accounts;
  - trades in accounts of family members of registered salespersons operating under a power of attorney in favour of the registered salesperson; ~~and~~
  - redemptions over \$10,000;
  - trades over \$1,0002,500 in moderate-high or high risk investments;
  - trades over \$5,000 in moderate or medium risk investments; and
  - trades and redemptions over \$5,00010,000 ~~for~~ in all other investments.

For the purposes of this section, "trades" does not include redemptions except where specifically referenced.

3. When reviewing redemptions, branch managers should seek to identify and assess:
- the suitability of the redemption with regard to the composition of the remaining portfolio;
  - the impact and appropriateness of any redemption charges;
  - possible outside business activity where money may be leaving the Member for reinvestment into other potentially inappropriate or unauthorized investments; and
  - potential churning, including situations where redemption proceeds are being held on a temporary basis pending reinvestment.
4. The branch manager (or alternate) is responsible for following up on unusual trades identified by head office.
5. The branch manager must assess the suitability of investments in each client account where the Member becomes aware of a material change in the client's KYC information that results in a significant decrease in the client's risk tolerance, time horizon, income or net worth or more conservative investment objectives. The suitability assessment must be performed no later than one business day after the date on which notice of the change in information is received from the client.
6. In addition to transactional activity, branch managers must also keep themselves informed as to other client-related compliance matters such as complaints.

## **V. HEAD OFFICE SUPERVISION**

A two-tier structure is required to adequately supervise client account activity. While the head office or regional area level of supervision by its nature cannot be in the same depth as branch level supervision, it should cover the same elements. Head office review should be focused on unusual activity or reviews that cannot be carried out at the branch level. Head office reviews must include procedures to effectively detect unsuitable investments and excessive trading in client accounts.

### **Daily Reviews**

1. In addition to the trading review criteria for branch managers, head office must conduct daily reviews of account activity which must include, at a minimum, all:
- redemptions over \$50,000;
  - trades over \$5,000 in exempt securities (excluding guaranteed investment certificates), moderate-high or high risk investments, or leveraged trades/recommendations infor open accounts;
  - trades over \$10,000 in moderate or medium risk mutual funds; and



- trades over \$10,000 ~~50,000~~ for ~~in~~ all other investments (excluding money market funds); and
- ~~redemptions greater than \$10,000.~~

For the purposes of this section, “trades” does not include redemptions except where specifically referenced.

2. There must be closer supervision of trading by registered salespersons who have had a history of questionable conduct. Questionable conduct may include trading activity that frequently raises questions in account reviews, frequent or serious complaints, regulatory investigations or failure to take remedial action on account problems identified.
3. Daily reviews should be completed within one business day unless precluded by unusual circumstances.
4. Daily reviews should be conducted of client accounts of producing branch managers.
5. On a sample basis, the Member must review the suitability of investments in accounts where clients have transferred assets into an account ~~or where there has been a material change in client information~~. The Member must have policies and procedures regarding sample size and selection, which should be based on the risk level associated with the account, focusing on accounts that hold higher risk investments, exempt securities or products not normally sold by the Member, accounts that are operated under a power of attorney in favour of a registered salesperson and accounts employing a leverage strategy. The Member’s reviews must be completed within a reasonable time.

#### **VI. IDENTIFICATION OF TRENDS IN TRADING ACTIVITY**

1. ~~In addition to performing daily reviews,~~ Members must establish policies and procedures to identify trends or patterns that may be of concern including:
  - excessive trading or switching between funds indicating possible unauthorized trading, lack of suitability or possible issues of churning (for example, redemptions made within 3 months of a purchase, DSC purchases made within 3 months of a DSC redemption or accounts where there are more than 5 trades per month);
  - excessive switches between no load funds and deferred sales charge or front load funds;
  - excessive switches between deferred sales charge funds and front load funds; and
  - excessive switches where a switch fee is charged.
2. Head office supervisory review procedures must include, at a minimum, the following criteria:
  - a review of all accounts generating commissions greater than \$1,500 within the month;
  - a quarterly review of reports on assets under administration (“AUA”) comparing current AUA to AUA at the same time the prior year;
  - a quarterly review of commission reports for the previous 12 month period comparing commissions received in the current year to commissions received for the same period in the prior year.

Significant increases in commissions or AUA beyond those caused by market fluctuations may indicate issues with churning or leveraging strategies. Significant decreases may indicate potential inappropriate outside business activity.

3. Reviews should be completed within 2130 days of the last day of the period being reviewed unless precluded by unusual circumstances.

**SCHEDULE C**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**CLIENT REPORTING (Rule 5.3)**

**(Amendments To Version Published For Comment On June 13, 2008)**

On March 5, 2009, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to MFDA Rule 5.3:

**5.3 CLIENT REPORTING**

**5.3.1 Delivery of Account Statement**

- (a) Each Member shall, in a timely manner send an account statement to each client in accordance with the following minimum standards:
  - (i) once every 12 months for a client name account;
  - (ii) once a month for nominee name accounts of clients where there is an entry during the month and a cash balance or security position; and
  - (iii) quarterly for nominee name accounts where no entry has occurred in the account and there is a cash balance or security position at the end of the quarter.
- (b) A Member may not rely on any other person (including an Approved Person) to send account statements as required by this Rule.
- (c) Notwithstanding the provisions of 5.3.1(b), a Member may rely on the trustee administering a self-directed registered plan to send the account statement required by paragraph (a)(i) where the following conditions are met:
  - (i) The Member does not act as agent for the trustee for the registered plans;
  - (ii) The trustee meets the definition of "Acceptable Institution" as defined in Form 1;
  - (iii) There is a services agreement in place between the Member and the trustee which complies with the requirements of MFDA Rule 1.1.3 and provides that the trustee is responsible for sending account statements to clients of the Member that comply with the requirements of MFDA Rule 5;
  - (iv) There is clear disclosure about which trades are placed by the Member;
  - (v) Clear disclosure must be provided on the account statement regarding which securities positions referred to on the statement are eligible for coverage by the MFDA Investor Protection Corporation and which are not (once the Corporation is offering coverage);
  - (vi) The Member's full legal name must appear on the account statement together with the name of the trustee; and
  - (vii) The Member must receive copies of the statements, or have other systems in place, to ensure that the information contained on the statements matches its own information regarding the transactions it executes.
- (d) Notwithstanding the provisions of Rule 5.3.1(b), where a Member is affiliated with a fund manager and in connection with a specific client account is selling only the mutual fund securities of an issuer managed by such affiliated fund manager for that client account, the Member may rely on the affiliated fund manager to send the account statement required by paragraph (a)(i) for that specific account.

**5.3.2 Automatic Payment Plans.** Notwithstanding the provisions of Rule 5.3.1(a)(ii), where a Member holds client assets in nominee name and the only entry in the client's account in a month relates to the client's participation in:

- (a) any automatic payment plan that provides for systematic trading in the securities of a mutual fund on a monthly or more frequent basis, or
- (b) other automatic entries such as dividends and reinvested distributions,

the Member shall send an account statement to the client quarterly.

5.3.3 **Content of Account Statement.** Each account statement must contain the following information:

- (a) for nominee name accounts or accounts where the Member acts as an agent for the trustee for the purposes of administering a self-directed registered retirement savings or similar plan:
  - (i) the opening balance;
  - (ii) all debits and credits;
  - (iii) the closing balance;
  - (iv) the quantity and description of each security purchased, sold or transferred and the dates of each transaction, and;
  - (v) the quantity, description and market value of each security position held for the account;
- (b) for client name accounts:
  - (i) all debits and credits;
  - (ii) the quantity and description of each security purchased, sold or transferred and the dates of each transaction; and
  - (iii) for automatic payment plan transactions, the date the plan was initiated, a description of the security and the initial payment amount made under the plan.
- (c) for all accounts:
  - (i) the type of account;
  - (ii) the account number;
  - (iii) the period covered by the statement;
  - (iv) the name of the Approved Person(s) servicing the account, if applicable; and
  - (v) the name, address and telephone number of the Member.

5.3.4 **Member Business Only.** Only transactions executed by the Member may appear on the statement of account required pursuant to Rule 5.3.3.

5.3.5 **Account Performance Reporting.** The Member must provide information to clients on an annual basis with respect to the performance of the client's account at the Member.

- (a) Subject to paragraphs (b) and (c), the account performance reporting must include the following information for the annual period:
  - (i) the total market value of the account as at the start of the period covered by the report;
  - (ii) total assets deposited to the account during the period covered by the report;
  - (iii) total assets withdrawn from the account during the period covered by the report;
  - (iv) the total market value of the account as at the end of the period covered by the report;
  - (v) gain or loss in the account as at the end of the period covered by the report.

- (b) Notwithstanding the provisions of paragraph (a), where market values cannot be readily and reliably determined by the Member in respect of security positions held in the account, such values shall not be included in the report and the Member must disclose to the client in the report the security positions for which values have not been included and why the information has not been included in the report.
- (c) A Member need not send the information contained in paragraph (a) where the Member sends a client communication that contains an annualized percentage rate of return for the client's account in accordance with the requirements of Rule 2.8.3.