

13.1.6 Summary of Public Comments Respecting Proposed MFDA Policy No. 6 – Information Reporting Requirements, Notification of Change in Registration Information (Rule 1.2.5) and Consequential Amendments and Response of the MFDA

**SUMMARY OF PUBLIC COMMENTS
RESPECTING
PROPOSED MFDA POLICY 6 – INFORMATION REPORTING REQUIREMENTS,
NOTIFICATION OF CHANGE IN REGISTRATION INFORMATION (RULE 1.2.5) AND
CONSEQUENTIAL AMENDMENTS
AND
RESPONSE OF THE MFDA**

On October 27, 2006, the British Columbia Securities Commission published for public comment MFDA Proposed Policy 6 – Information Reporting Requirements (the “**Proposed Policy**”) as well as changes to MFDA Rule 1.2.5 (Notification of Changes in Registration Information) and consequential amendments.

The public comment period expired on November 27, 2006.

Five submissions were received during the public comment period:

1. Canadian Bankers Association (“CBA”)
2. The Investment Funds Institute of Canada (“IFIC”)
3. Independent Financial Brokers of Canada (“IFB”)
4. Scotia Securities Inc. (“Scotia Securities”)
5. Portfolio Strategies Corporation (“Portfolio Strategies”)

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

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

1. Need for Increased Reporting

IFB commented that it failed to see the need for increased reporting to, and oversight by, the MFDA.

MFDA Response

The information that will be required under the Proposed Policy will enable MFDA staff to proactively respond to industry trends and enhance investor protection. Many of the reporting requirements under the Proposed Policy consolidate existing MFDA reporting requirements while others are similar to the reporting requirements Members are presently subject to under Multilateral Instrument 33-109 – Registration Information (“MI 33-109”).

2. Timeframes for Reporting

Four commentators expressed the view that the timeframes for reporting contained in the Proposed Policy should be extended or eliminated.

IFIC expressed the view that requiring Approved Persons to report information to Members within 2 days and requiring Members to report to the MFDA within 5 days would result in significant additional compliance costs for Member firms. IFIC requested that consideration be given to extending these timeframes.

The CBA submitted that the requirement for the Member to report changes within 5 business days is unrealistically short. The CBA suggested that a more realistic amount of time would be a requirement to report within 5 business days after being notified by an Approved Person. The Approved Person would be required to communicate all reportable matters “promptly”.

Scotia Securities commented that under the Proposed Policy, Approved Persons must report complaints within 2 business days of being the subject of a client complaint in writing and recommended that sections 4.1(a) and 6.1(a) be amended to require that an Approved Person report within 2 business days of becoming aware that s/he is a subject of a complaint.

Portfolio Strategies recommended that Approved Persons be given 5 business days to submit reports and inquired as to who at a Member is considered authorized to receive a report.

MFDA Response

The timeframes for reporting under the Proposed Policy are the same as those required by the Investment Dealers Association (“IDA”) under IDA Policy 8, as set out in IDA Member Regulation Notice 0162. Furthermore, the reporting timelines are similar in practice to those required by MI 33-109 which requires that any changes in registration information of a Member or Approved Person be reported through the National Registration Database (“NRD”) within 5 days.

MFDA staff is of the view that there is no valid reason to adopt a different standard. Wherever possible, MFDA staff attempts to harmonize its approach to regulatory issues with those of other regulators, unless there are compelling grounds to do otherwise. MFDA staff does not believe that there are such grounds in this case.

With respect to the issue of timeliness of reporting, the intent of the Proposed Policy is that the obligation of Approved Persons and Members to report events is triggered only upon becoming aware of the event, as is reflected in Section 3.3. MFDA staff will amend the Proposed Policy to provide greater clarity on this point. The Proposed Policy has also been clarified regarding the requirement to report events immediately where a Member or Approved Person becomes aware of a reportable event after the timeframes for reporting have expired. MFDA staff will consider whether the Member has been appropriately diligent in filing such reports in assessing compliance with the requirement to report “immediately”.

Section 3.6 of the Proposed Policy requires the Member to designate a person at head office to receive reports from Approved Persons.

3. Penalties for Late Reporting

Portfolio Strategies and the CBA expressed concern with respect to the imposition of penalties for late filing and failure to file reports. Portfolio Strategies commented that the MFDA should publish a fee or assessment schedule.

MFDA Response

The imposition of fines for deficiencies in filing of reports will not be imposed automatically. MFDA staff’s expectation is that Members employ due diligence in order to ensure that all required reports are filed and submitted on time. MFDA staff is aware that there may be situations where a report is filed late despite a Member’s diligence and would not impose fines where due diligence is shown.

MFDA staff will publish an assessment schedule for non-compliance with reporting requirements.

4. Double Entry

IFIC and Scotia Securities expressed the view that double entry of information will be required to NRD and the new MFDA electronic reporting system. IFIC noted that the IDA addressed this concern by integrating with NRD for their Members.

MFDA Response

The requirement to file reports with NRD and the new MFDA electronic reporting system is consistent with the requirements of the IDA. The scope of IDA integration between the IDA Comset system and NRD is limited to the transfer of names of advisors and branch addresses from NRD to Comset. There is no further integration between the two programs. IDA Members must file reports to both NRD and Comset.

The issue of integration between the IDA’s Comset system and NRD was raised with the Canadian Securities Administrators (“CSA”) during the comment period for Multilateral Instrument 31-102 – National Registration Database. The CSA advised that integration between NRD and Comset was not possible for phase one of NRD due to time and budget constraints. The MFDA electronic reporting system will be based on the same software platform as the IDA’s Comset system and the MFDA will work with the IDA and the CSA to increase integration between the two systems when it becomes feasible.

5. Extent of Member Reporting Requirements

IFIC requested clarification of MFDA staff’s expectations regarding the extent of reporting required with respect to ancillary activities of the Member that do not involve securities related business.

MFDA Response

The Proposed Policy requires Members to not only report events that relate to securities related business but to all Member business. Events relating to Member business that must be reported are those set out in section 6 of the Proposed Policy and therefore are no different than the reporting requirements for events relating to securities related business. For example, if a Member receives a complaint in writing from a client regarding tax planning services that it provides, this complaint must be reported under section 6.1(a) just as a written complaint relating to securities related business would.

6. Extent of Approved Person Reporting Requirements

IFB commented that the requirement that Approved Persons report events related to securities related business and all other business conducted by the Approved Person is too broad and invasive, extending into areas of an Approved Person's business which are not under the mandate of the MFDA. IFB also commented that the categories of reports under Part A are too broad and must be restricted and expressed concern that complaints not in writing must be reported.

Scotia Securities recommended that only business that an Approved Person is required by regulation to disclose to the Member be required to be reported and that it is not clear what is meant by "all business".

Portfolio Strategies commented that the reporting of all outside business could be very onerous and that the best way to maintain high standards of conduct is to set clear standards for individual audit programs at Members.

MFDA Response

MFDA staff requires broad based reporting of Approved Person business in order to monitor compliance with the standard of conduct required of Approved Persons. MFDA staff notes that MFDA Rules require high standards of ethics and conduct in the transaction of business by Approved Persons and that such business is not limited to mutual fund dealer business. Reporting of all Approved Person business is also required in order to monitor compliance with the dual occupation requirements of MFDA Rule 1.2.1(d).

The Proposed Policy does not significantly broaden an Approved Person's regulatory reporting obligations. The categories of reports required under Part A include reporting currently required by MFDA Rules and Policies and MI 33-109. The requirement to report non-written complaints is limited to complaints concerning serious allegations which are now enumerated. Under MFDA Policy 3, Members were required to treat complaints not in writing that were of a serious nature as written complaints. The Proposed Policy now clarifies the types of complaints not in writing that are to be considered serious and which therefore need to be reported.

The reference to all Approved Person business refers to all Approved Person business which must be disclosed and approved by the Member under MFDA Rule 1.2.1(d).

With respect to the quantum of reports relating to outside business activities of Approved Persons being onerous, all complaints regarding outside business activities that relate to the enumerated allegations in section 4.1(b) of the Proposed Policy are required. The allegations under section 4.1(b) are of a serious nature and must be reported in order for the MFDA to conduct proper oversight of the conduct of business of Approved Persons. All other complaints relating to an Approved Person's outside business are reported under section 4.1(a) which only requires that such reports be filed if the complainant is also a client of the Member. Once such reports are submitted by the Approved Person to the Member, a Member is required to review the complaint and will not have to report service issue complaints or complaints that do not relate to Member business so long as the complaint does not relate to one of the enumerated allegations in section 6.1(b)(i) of the Proposed Policy. Any complaint relating to one of the enumerated allegations must be reported by the Member, regardless of the form of business. MFDA staff is of the view that the reporting requirements relating to outside business activities strike a reasonable balance in that they do not require that every complaint regarding an Approved Person's outside business be reported, but do require the reporting of complaints that are of a serious nature.

In order to ensure high standards of conduct by Approved Persons in their outside business activities, MFDA staff expects Members to conduct discussion, testing and reviews of outside business activities. These expectations are set out in MFDA Policy 5. Member Regulation Notice 40 sets out ongoing Member obligations with respect to outside business activities which includes the obligation to monitor Approved Person outside business to ensure compliance with MFDA By-laws, Rules, Policies and applicable legislation. However, an audit program and monitoring by the Member do not replace the need for regulatory reporting which enables MFDA staff to track industry trends and to commence enforcement proceedings when appropriate.

7. Use of Information Reported

The CBA commented that upon receiving reports about criminal charges, MFDA staff should only initiate concurrent investigations and review an individual's client files in cases where the charges raise substantial concerns about risk to the public.

MFDA Response

As is consistent with current practice, MFDA staff will not use information received for purposes other than enforcing our regulatory mandate. MFDA staff reviews all known criminal matters and only investigate those that relate to the MFDA's regulatory mandate such as where information is received that discloses a potential investor protection issue. In such instances, MFDA staff will continue to review the matter until satisfied that no further action on the part of MFDA staff is required.

8. Privacy and Confidentiality Concerns regarding Approved Persons

Scotia Securities commented that Section 3.3 of the Proposed Policy states that a Member's obligation to report is "...regardless of the means by which it became aware of the event". Scotia Securities recommends that the Proposed Policy be revised to clarify that "regardless of the means" is limited to supervisory activity, citing privacy and confidentiality concerns.

Portfolio Strategies commented that the requirement of an Approved Person to report complaints regarding non-Member business may not be consistent with privacy legislation.

MFDA Response

When read together, Sections 3.3 and 3.4 of the Proposed Policy clarify that Members must report matters regarding Approved Persons of which they become aware, and that Members are expected to be aware of matters regarding Approved Persons through Approved Person reports and through the discharge of their supervisory obligations over Approved Persons. However, a Member's obligation to report a matter is not limited to these two instances. If a Member becomes aware of a reportable matter, it must be reported regardless of the means through which the Member became aware of the matter. MFDA staff's view is that this requirement does not raise any significant privacy and confidentiality concerns with respect to Approved Persons as Approved Persons operate in a regulated sphere of activity where reporting matters to various regulatory authorities is required.

With respect to concerns regarding complainants whose complaints relate to non-Member business of an Approved Person, the MFDA does not require reporting that would be contrary to privacy legislation. When such issues arise, one method to remain in compliance with privacy legislation would be to report the existence and substance of the complaint but not any personal information related thereto that is considered private. The MFDA will issue further guidance with respect to compliance with privacy legislation respecting such reports in the future.

9. Transition Period

Portfolio Strategies recommended that a two-year transition period should be implemented to allow for the submission of paper-based reports and to allow all Members to become accustomed to electronic reporting.

MFDA Response

MFDA staff will provide a detailed user manual to all Members to assist Members with the implementation of electronic reporting. There will be a period of time where the reporting system will be functional but where electronic reporting will not be mandatory. Training sessions will be held by MFDA staff so that Members can become familiar and accustomed to the system. Members are already required to submit financial reports through the MFDA Electronic Filing System ("EFS") which is a web-based reporting system. Given that all electronic reporting under the Proposed Policy will be through a web-based interface, Members should already be familiar with web-based electronic reporting, and MFDA staff is of the view that a two year transition period is unnecessary.