

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

PROPOSED AMENDMENTS TO MFDA RULES 2.2.5 (RELATIONSHIP DISCLOSURE), 2.4.4 (TRANSACTION FEES OR CHARGES) AND 5.4.2 (TRADE CONFIRMATIONS – AUTOMATIC PAYMENT PLANS)

I. OVERVIEW

A. Current Framework

Rule 2.2.5 (Relationship Disclosure) currently requires that, on account opening, Members provide all clients with prescribed information respecting the nature of their relationship with the Member and its Approved Persons. Rule 2.4.4 (Transaction Fees or Charges) requires that, prior to the acceptance of any order in respect of a transaction in a client account, the Member inform the client of any sales charge, service charge, or any other fees or charges to be deducted in respect of the transaction. Rule 5.4.2 (Trade Confirmations – Automatic Payment Plans) provides that, where a transaction relates to a client's participation in an automatic payment plan that provides for trading in the securities of a mutual fund on a monthly or more frequent basis, the Member is required to send a trade confirmation for the initial purchase only.

B. Reasons for Amendments

On March 28, 2013, the CSA published cost disclosure, performance reporting and client statement amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”) and the Companion Policy to the Instrument. The amendments came into force on July 15, 2013. Transition periods of one, two or three years have been provided for most of the new requirements.

Conforming changes are required to MFDA Rules 2.2.5 (Relationship Disclosure) and 2.4.4 (Transaction Fees or Charges) to make them consistent with requirements established under NI 31-103, which will come into effect on July 15, 2014. Conforming changes are also required to Rule 5.4.2 (Trade Confirmations – Automatic Payment Plans).

C. Objectives

The proposed amendments are conforming and consequential in nature and, as noted, are intended to ensure that requirements under MFDA Rules are consistent with those established under NI 31-103.

D. Effect of Proposed Amendments

The proposed amendments will ensure that Members are subject to consistent regulatory standards under securities legislation and MFDA Rules.

II. DETAILED ANALYSIS

A. Proposed Amendments

Below is a summary of the proposed amendments to Rule 2.2.5, Rule 2.4.4 and Rule 5.4.2. The blacklined versions of the Rules reflecting the proposed amendments are attached as Schedule “A” to this Notice.

Rule 2.2.5 (Relationship Disclosure)

The proposed consequential amendments to the Rule will conform to requirements under NI 31-103 by requiring that relationship disclosure provided by Members include a general explanation of how investment performance benchmarks might be used to assess the performance of a client’s investments and any options for benchmark information that might be available to clients by the Member.

Rule 2.4.4 (Transaction Fees or Charges)

The proposed consequential amendments to the Rule will conform to requirements under NI 31-103 by making the following changes:

- *Reasonable Estimate* – the requirements under the Rule have been revised to specify that a reasonable estimate of fees or charges shall be disclosed to the client if the actual amount is not known to the Member at the time of disclosure;
- *Deferred Sales Charges* – in the case of a purchase to which deferred charges may apply, the Rule has been revised to require disclosure that the client might be required to pay deferred sales charges on the subsequent sale of the security and the fee schedule that will apply; and
- *Trailing Commissions* – the Rule has been revised to require disclosure as to whether the firm will receive trailing commissions in respect of the security.

Rule 5.4.2 (Trade Confirmations – Automatic Payment Plans)

As noted, Rule 5.4.2 currently requires that, where a transaction relates to a client's participation in an automatic payment plan that provides for trading in the securities of a mutual fund on a monthly or more frequent basis, the Member is required to send a trade confirmation for the initial purchase only. Similar requirements under NI 31-103 are less restrictive and permit a trade confirmation to be sent only in respect of the first transaction made under either a pre-authorized payment or systematic withdrawal plan. The proposed consequential amendments to Rule 5.4.2 will conform to requirements under NI 31-103 by deleting the reference to “payment” plans and replacing initial “purchase” with initial “transaction” so that the Rule will apply to transactions made under both pre-authorized payment and systematic withdrawal plans.

B. Issues and Alternatives Considered

The proposed amendments are conforming and consequential in nature and are being made to ensure that requirements under MFDA Rules are consistent with those established under NI 31-103.

C. Comparison with Similar Provisions

As noted, the proposed amendments are conforming and consequential in nature and, as a result, follow the text of similar provisions under NI 31-103.

D. Systems Impact of Amendments

It is not anticipated that the proposed amendments will have any additional impact upon Members' systems, impose any burden or constraint on competition or innovation, impose costs or restrictions on the activities of market participants, or result in any increased costs of compliance beyond those that might arise as a result of compliance with similar requirements under NI 31-103.

E. Best Interests of the Capital Markets

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

F. Public Interest Objective

The proposed amendments are conforming and consequential in nature and will ensure that Members are subject to consistent requirements under MFDA Rules and securities legislation. The proposed amendments are consistent with the public interest.

G. Classification

The proposed amendments have been classified as Public Comment Rule proposals.

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, the Superintendent of Securities of Prince Edward Island, and the Saskatchewan Financial and Consumer Affairs Authority.

B. Effectiveness

The proposed amendments are simple and effective.

C. Process

The proposed amendments have been developed in consultation with the MFDA Policy Advisory Committee (“PAC”) and relevant departments within the MFDA. The MFDA Board of Directors approved the proposed amendments on September 26, 2013. In approving the proposed amendments, the MFDA has followed its established internal governance practices and has considered the need for consequential amendments.

D. Effective Date

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

E. Exemption from Requirements under Securities Legislation

Section 9.4 of NI 31-103 exempts MFDA Members from relationship disclosure information requirements under section 14.2 of the Instrument, provided that MFDA Members comply with the corresponding MFDA provisions that are in effect. MFDA requirements in respect of relationship disclosure information are set out under Rule 2.2.5.

F. Conflict with Applicable Laws or Terms and Conditions of Recognition Order

The proposed amendments do not conflict with applicable laws or the Terms and Conditions of a Recognizing Regulator’s Recognition Order.

IV. SOURCES

MFDA Rule 2.2.5 (Relationship Disclosure)

MFDA Rule 2.4.4 (Transaction Fees or Charges)

MFDA Rule 5.4.2 (Trade Confirmations – Automatic Payment Plans)

National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

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 **60** days of the publication of this notice, addressed to the attention of:

Paige Ward
General Counsel and Vice-President, Policy
Mutual Fund Dealers Association of Canada
121 King St. West, Suite 1000
Toronto, Ontario
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and one copy addressed to the attention of:

Kate Lioubar
Senior Legal Counsel, Capital Markets Regulation Division
British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
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V7Y 1L2
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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.

Questions may be referred to:

Paige Ward
General Counsel and Vice-President, Policy
Mutual Fund Dealers Association of Canada
(416) 943-5838

DM#352506

Schedule "A"

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

On September 26, 2013, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to the MFDA Rules 2.2.5 (Relationship Disclosure), 2.4.4 (Transaction Fees or Charges) and 5.4.2 (Trade Confirmations – Automatic Payment Plans):

Proposed Amendments to MFDA Rule 2.2.5

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; and
- (h) including a general explanation of how investment performance benchmarks might be used to assess the performance of a client's investments and any options for benchmark information that might be available to clients by the Member.

Proposed Amendments to MFDA Rule 2.4.4

2.4.4 **Transaction Fees or Charges.** Prior to the acceptance of any order in respect of a transaction in a client account, the Member shall disclose to ~~inform~~ the client:

(a) of any sales charge, service charge or any other fees or charges to be deducted in respect of the transaction, or a reasonable estimate if the actual amount of the charges is not known to the Member at the time of the disclosure;

(b) in the case of a purchase to which deferred charges may apply, that the client might be required to pay a deferred sales charge on the subsequent sale of the security and the fee schedule that will apply; and

(c) whether the Member will receive trailing commissions in respect of the security.

Proposed Amendments to MFDA Rule 5.4.2

5.4.2 **Automatic ~~Payment~~ Plans.** Where a transaction relates to a client's participation in an automatic ~~payment~~ plan that provides for systematic trading in the securities of a mutual fund on a monthly or more frequent basis, and the Member registers the mutual funds pursuant to the plan, the Member is required to send a trade confirmation for the initial transaction ~~purchase~~ only.