

OSC Investor Advisory Panel
c/o Ursula Menke, Chair
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Re: Mutual Fund Dealers Association of Canada Proposed Amendments to MFDA Rule 2.3 (Power of Attorney/Limited Trading Authorization/Discretionary Trading)

Background

Under current MFDA rules, “*no member or approved person can accept or act upon a general power of attorney or other similar authorization from a client in favour of the member or approved person – or engage in any discretionary trading.*” There is an exception that allows for an Approved Person to act upon power of attorney, however this requires that the account be transferred to another Approved Person.

The MFDA is proposing to amend its rules to address concerns that this account transfer requirement is unnecessarily onerous “and not justified from a risk perspective in the case of accounts of family members.” MFDA members are also seeking clarification on what is meant by “other similar authorization” as set out in the rule.

The MFDA’s proposed amendment seeks to address these concerns and provide clarity. The exception has been amended to require that the client be a Related Person of the Approved Person and the requirement to transfer the account to another Approved Person has been deleted. Related Person has also been clarified as defined under the Income Tax Act to include individuals connected by blood relationship, marriage common law partnership or adoption.

The words “or similar authorization” have also been removed.

Panel’s View

The Panel supports these changes which will add clarity and smooth out the process for clients and individuals in a Power of Attorney situation. However, our support for the amendments comes with a caveat: the changes should only apply in cases where the registrant is acting for a related person. The MFDA must also ensure that the representative and the dealer act in all dealings and execution as fiduciaries and within a best interest standard.

The Panel is concerned that execution, under the current requirements, is subject to far less rigorous standards of suitability. For this amendment to benefit investors without putting them at risk, we recommend the MFDA review the entire process and its approach to suitability and ensure its members are held to a higher standard of fiduciary duty and best interest.

A best interest standard that benefits investors and leads to unbiased advice which puts their interests first is of paramount interest to the Panel.