

### 13.1.3 Proposed Amendments to MFDA Policy No. 3 Handling Client Complaints

#### MUTUAL FUND DEALERS ASSOCIATION OF CANADA

#### PROPOSED AMENDMENTS TO

#### MFDA POLICY NO. 3

#### HANDLING CLIENT COMPLAINTS

### I. OVERVIEW

#### A. Current Rules

MFDA Policy No. 3 *Handling Client Complaints* sets out general requirements with respect to the handling of complaints by Members. Members are currently required to establish policies and procedures to deal effectively with client complaints and address issues that include client communications, record keeping and internal escalation of serious complaints.

On July 13, 2007, the British Columbia Securities Commission and Ontario Securities Commission published proposed amendments to Policy No. 3 for a 30-day public comment period that expired on August 12, 2007. The proposed amendments are now being republished for comment as a result of additional changes made in response to comments received, particularly those in respect of the need for harmonization, and related working group discussions with staff of the Canadian Securities Administrators ("CSA") and the Investment Industry Regulatory Organization of Canada ("IIROC").

#### B. The Issues

MFDA staff has become aware of a number of procedural issues identified by clients who have filed complaints against Members and their Approved Persons. In order to improve upon the complaint handling process, further guidance is required with respect to the fair and prompt handling of complaints by Members and supervisory investigations to be conducted by Members following the receipt of a complaint.

#### C. Objectives

The objectives of the proposed amendments to Policy No. 3 are to provide additional guidance with respect to the standards that Members should have in place regarding complaint handling and supervisory investigations, respond to comments received and harmonize the complaint handling requirements of the MFDA with those of IIROC and requirements to be adopted in National Instrument 31-103 *Registration Requirements* ("NI 31-103"). The proposed amendments will replace much of what is contained in the existing Policy No. 3.

#### D. Effect of Proposed Amendments

The effect of the proposed amendments will be to clarify the obligations of Members, provide guidance as to minimum standards with respect to the fair and prompt handling of client complaints and ensure consistency between MFDA complaint handling requirements and those under IIROC Rules and NI 31-103.

It is not expected that the proposed amendments will have other significant effects on Members, other market participants, market structure or competition or result in significant additional compliance costs.

### II. DETAILED ANALYSIS

#### A. Relevant History

As noted, the British Columbia Securities Commission and Ontario Securities Commission published the proposed amendments to Policy No. 3 on July 13, 2007 for a 30-day public comment period that expired on August 12, 2007. Four submissions were received during the public comment period.

In May 2008, a working group comprised of CSA, MFDA and IIROC staff was established by the CSA for the purpose of developing a complaint handling framework to ensure that the requirements to be adopted by the two self-regulatory organizations ("SROs") and in NI 31-103 were harmonized. This working group met and had discussions over the summer and fall of 2008, during which the complaint handling proposals of the two SROs were reviewed to ensure that they were consistent with this framework, met the same regulatory objectives and minimized differences. The proposed amendments, as noted, are now being republished for comment as a result of additional changes made in response to comments received and related working group discussions with CSA and IIROC staff.

## B. Proposed Amendments to Policy No. 3

### Definition of "Complaint"

The definition of "complaint" has been amended to separate it from the process by which complaints are to be handled, thereby allowing the Policy to more clearly recognize that not all complaints are subject to the formally prescribed complaint handling procedures, as certain complaints can be adequately and appropriately addressed informally. Complaints subject to informal resolution must be handled fairly and promptly.

"Complaint" is now defined to include any written or verbal statement of grievance from a client or any person acting on their behalf, former client or prospective client, alleging a grievance involving a Member or Approved Person of a Member.

### New Sections

Section 3 (Duty to Assess All Complaints) clarifies the Member's obligation to engage in an adequate and reasonable assessment of all complaints, noting that all complaints must be handled in accordance with Part I of the Policy. The Policy has been changed so that only certain complaints are subject to additional formal requirements that have been moved to Part II. Section 3 also provides guidance to Members in respect of how to determine whether a complaint should be addressed informally (only under Part I) or formally (under Parts I and II). Section 4 (Minimum Requirements for Complaints Subject to Informal Resolution) establishes minimum requirements for complaints that can be addressed informally. Section 5 advises Members that they are expected to assist clients in documenting verbal complaints where it is apparent that such assistance is required.

### Prompt Handling of Client Complaints

The time period for providing a substantive response to the complaint remains generally as the time period expected of a reasonable Member acting diligently in the circumstances. The time period by which Members must do this "in most cases" has been reduced from six months to three months to reflect the current practices of most Members in the majority of their complaints and to harmonize the timeframe with the requirements of IROC and those under consideration by the CSA. In addition, where a Member is unable to provide a substantive response within three months, Part I now also includes a requirement for Members to provide their best estimate of the time required for the completion of the substantive response.

### Other Changes

- **Part I – Minimum Requirements for Complaints Subject to Informal Resolution:** For the purpose of clarifying obligations in respect of complaints subject to informal resolution, the Policy has been amended with the addition of a requirement that any complaint made in writing must be responded to in writing;
- **Part I – Duty to Assess all Complaints:** A commenter expressed concern that the requirement for Members to handle complaints with respect to investment suitability from individuals who are not clients of the Member is overly broad and should be deleted. In response to this comment, the Policy has been amended to clarify that Members are only required to handle complaints related to unsuitable investments or leveraging when the complaints are from clients;
- **Part I – Fair Handling of Client Complaints:** A Member's obligation to handle complaints in accordance with the Policy has been clarified to note that it is not altered when a complainant engages legal counsel but has not commenced litigation. In addition, where the complainant does initiate litigation, the Member must participate in the process in a timely manner *and* refrain from acting in a way that is clearly unfair;
- **Part I – General Complaint Handling Requirements:** A new section heading has been added to clarify the general requirements applicable to all complaints. The only new provision under this section is in respect of follow-up documentation for complaints. Follow-up documentation for all complaints must be kept in a central location along with the consolidated log of complaints. Alternatively, where a Member has various regional head offices, the Member may keep follow-up documentation at any one regional office, provided information about the handling of complaints is in the Member head office log and the follow-up documentation can be produced in a timely manner;
- **Part II – Additional Complaint Handling Requirements:** This section now contains the requirements for the initial and substantive response letters. If a complaint can be concluded in less than 5 business days of its receipt, there is no longer a requirement to send an initial response letter. In addition, the initial response letter must now include a statement advising clients that each province and territory has a time limit for taking legal action. Commenters expressed the view that the obligation to inform clients several times that each

province or territory has a timeline for taking legal action is excessive and may encourage the client to proceed with such action whether it is merited or not. To address this concern while ensuring that clients receive meaningful and timely disclosure in respect of limitation periods, MFDA staff proposes including reference to all applicable limitation periods in the Client Complaint Information Form (“CCIF”), which is included with the Initial Response Letter. The CCIF will also be amended to outline client options if the client is not satisfied with the Member’s substantive response. The Policy has been amended to reduce the frequency with which limitation periods are mentioned in the Initial Response letter by directing complainants to the attached CCIF. Members are not explicitly required to detail the limitation periods in the Initial Response. In addition, the substantive response letter must now include a reminder to complainants that they have a right to consider litigation/civil action or any other applicable options, such as an internal ombudservice provided by an affiliate of the Member;

- **Part III – Supervisory Investigations:** This section retains the same principles as the original but has been redrafted to clarify that: (i) there is a general duty to monitor information regarding potential breaches of applicable requirements, whether the information is received by way of complaint or otherwise; (ii) where necessary, Members must investigate specific breaches of requirements; and (iii) in certain serious case types, the Member will generally always have to conduct a detailed supervisory investigation where the possibility of such conduct has been raised.

Related Amendments to Rule 2.11 (Complaints), Policy No. 6 *Information Reporting Requirements* and Section 24.A.5 (Ombudservice – Member to Provide Written Material to Clients) of MFDA By-law No. 1.

### **Rule 2.11**

Rule 2.11 requires Members to log complaints and establish written policies and procedures for dealing with complaints fairly and promptly. Consequential amendments are required to the Rule to reflect the definition of “complaint” and other requirements contained in proposed MFDA Policy No. 3.

The proposed amendments delete the word “client” from the Rule to reflect the fact that, under the definition of “complaint” in proposed Policy No. 3, a “complaint” is not limited to a client complaint in all circumstances, such as where the allegations are of a serious nature. The requirement to keep a log of client complaints has been removed from the Rule as this requirement is now part of proposed Policy No. 3. The proposed amendments also clarify that the MFDA may set minimum standards for complaint handling which are set out in proposed Policy No. 3.

### **Policy No. 6**

Policy No. 6 sets out information reporting requirements for MFDA Members and Approved Persons upon the occurrence of certain events, including client complaints. Amendments are required to Policy No. 6 to harmonize the treatment of complaints of a serious nature under proposed Policy No. 3 and Policy No. 6. The proposed amendments also clarify some of the reporting obligations under Policy No. 6 and when updates to Member Event Tracking System (“METS”) reports are required.

The proposed amendments are intended to ensure that a serious complaint that must be handled pursuant to Policy No. 3 is generally reported pursuant to Policy No. 6. The proposed amendments add “breach of client confidentiality”, “engaging in an undeclared occupation outside of the Member” and “personal financial dealings with clients” to the types of allegations that must be reported regardless of the form or source of the complaint. The proposed amendments delete the words “any provision of” and “has contravened” in section 6.1(b) in order to clarify and simplify the sentence.

Several amendments were also made in order to clarify some of the reporting obligations under Policy No. 6. The wording “in any civil court in Canada” relating to the reporting of garnishments under sections 4.1(h) and 6.1(e) has been deleted in order to reflect the fact that not all garnishments, such as those imposed by tax authorities, are rendered in a civil court. The word “declared” is replaced with “deemed” under sections 4.1(g) and 6.1(d) in respect of the requirement to report when an Approved Person becomes insolvent. The use of the word “declared” may have been understood to imply that a person must be declared insolvent by a judicial body before a METS report is required. In practice individuals are not declared insolvent under the *Bankruptcy and Insolvency Act* (the “Act”) but are deemed to be insolvent by operation of the Act if the individual meets the requirements of an insolvent person as defined under the Act.

The proposed amendments to section 7.1 are intended to clarify that Members are required to update METS reports upon both the resolution of an event and when there are any updates to the event. The section has also been amended to clarify the MFDA’s expectations with respect to timelines for reporting such updates and resolutions.

**Section 24.A.5 of By-law No. 1**

Section 24.A.5 of By-law No. 1 requires Members to provide to new clients, and to clients who submit written complaints to the Member, a copy of the written material approved by the Corporation which describes the ombudservice approved by the Board of Directors pursuant to By-law 24.A.1. Section 24.A.5 of By-law No. 1 is being repealed as Policy No. 3 now includes this requirement.

Under Policy No. 3, as proposed, Members must, on account opening, provide clients with a copy of the CCIF, as approved by MFDA staff, which describes complaint escalation options, including complaining to the Ombudsman for Banking Services and Investments. Where the CCIF is required to be delivered (i.e. in respect of complaints that must be addressed in accordance with Parts I and II of the Policy), it must be provided to the client along with both the initial and substantive response letters. In addition, the substantive response letter must include a specific reminder to the complainant that they have the right to consider other complaint resolution options, including presenting their complaint to the Ombudsman.

**C. Issues and Alternatives Considered**

No other alternatives were considered.

**D. Comparison with Similar Provisions**

The MFDA complaint handling proposal is consistent with and meets the same regulatory objectives as the complaint handling framework and IIROC proposal, while being structured differently. This approach has been adopted to ensure that the MFDA proposal conforms to existing MFDA Rules and the regulatory obligations to which Members are subject and avoids confusion or inconsistent reporting in respect of these existing obligations.

**E. Systems Impact of Amendments**

It is not anticipated that there will be a significant systems impact on Members as a result of the proposed amendments. However, to allow Members sufficient time to comply with the revised Policy and make any systems changes that may be necessary, a 30-day transition period will be applicable to new requirements under the Policy.

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

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

**G. Public Interest Objective**

The proposed amendments are in the public interest, respond to comments received and will assist in the protection of the investing public by providing additional clarity and consistency in the complaint handling processes of Member firms. The proposed amendments also meet the same regulatory objectives as the complaint handling framework and IIROC proposal and minimize differences.

**III. COMMENTARY**

**A. Filing in Other Jurisdictions**

The proposed By-law amendments will be filed for approval with the Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, and Ontario Securities Commissions and the Saskatchewan Financial Services Commission.

**B. Effectiveness**

The proposed amendments are simple and effective.

**C. Process**

The proposed Policy has been prepared in consultation with relevant departments within the MFDA and has been reviewed by the Policy Advisory Committee of the MFDA and the Regulatory Issues Committee of the Board. The MFDA Board of Directors approved the proposed amendments on March 5, 2009.

**D. Effective Date**

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

**IV. SOURCES**

MFDA Policy No. 3  
MFDA Member Regulation Notice MR-0059  
IDA Member Regulation Notice MR-0441  
IIROC Complaint Handling Proposal  
Complaint Handling Framework

**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 the Corporate Secretary, Mutual Fund Dealers Association of Canada, 121 King St. West, Suite 1000, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of Sarah Corrigan-Brown, Senior Legal Counsel, British Columbia Securities Commission, 701 West Georgia Street, P.O. Box 10142, Pacific Centre, Vancouver, British Columbia, V7Y 1L2.

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:

Shaun Devlin  
Vice-President, Enforcement  
Mutual Fund Dealers Association of Canada  
(416) 943-4672

**SCHEDULE A**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**COMPLAINT HANDLING, SUPERVISORY INVESTIGATIONS AND INTERNAL DISCIPLINE (Policy No. 3)**

On March 5, 2009, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to MFDA Policy No. 3:

**MFDA POLICY NO. 3  
(Amendments to Version Published for Comment on July 13, 2007)**

**HANDLING CLIENT COMPLAINTS  
COMPLAINT HANDLING, SUPERVISORY INVESTIGATIONS AND INTERNAL DISCIPLINE**

**Introduction**

This Policy establishes minimum industry standards for handling client complaints. A "complaint" shall be deemed to mean any written statement of a client or any person acting on behalf of a client alleging a grievance involving the conduct, business or affairs of the Member or any registered salesperson, partner, director or officer of the Member.

Although the definition of "complaint" refers to only written complaints, there may be instances where a Member receives a verbal complaint from a client which will warrant the same treatment as a written complaint. Such situations depend upon the nature and severity of the client's allegations and require the professional judgement of the Member's supervisory staff handling the complaint.

**Complaint Procedure**

Each Member must establish procedures to deal effectively with client complaints, which should include the following:

1. Each Member must acknowledge all client complaints.
2. Each Member must convey the results of its investigation of a client complaint in writing to the client in due course.
3. Client complaints involving the sales practices of a Member, its partners, directors, officers, salespersons or employees or agents must be handled by qualified sales supervisors/compliance staff.
4. Each Member must ensure that registered salespersons and their supervisors are made aware of all complaints filed by their clients.
5. Each Member must put procedures in place so that senior management is made aware of complaints of serious misconduct and of all legal actions.
6. Each Member must maintain in a central place an orderly, up-to-date record of complaints together with follow-up documentation regarding such complaints, for regular internal/external compliance reviews. For each complaint, the record should include the following information:
  - the date of the complaint;
  - the complainant's name;
  - the name of the person who is the subject of the complaint;
  - the security or services which are the subject of the complaint; and
  - the date and conclusions of the decision rendered in connection with the complaint.

This record must be retained for a period of seven years from the date of receipt of the complaint.

8. Each Member must establish procedures to ensure that breaches of MFDA By-laws, Rules and Policies are subjected to appropriate internal disciplinary procedures.
9. When a Member finds complaints to be a significant factor, internal procedures and practices should be reviewed, with recommendations for changes to be submitted to the appropriate management level.

## Settlement Agreements and Dispositions of Securities-Related Claims

No Approved Person shall, without the prior written consent of the Member, enter into any settlement agreement with a client.

No Member or Approved Person of such Member may impose confidentiality restrictions on clients with respect to the MFDA or a securities commission, regulatory authority, law enforcement agency, self-regulatory organization, stock exchange or other trading market as part of a resolution of a dispute or otherwise.

### I. Complaints

#### 1. Introduction

MFDA Rule 2.11 requires Members to establish and implement written policies and procedures for dealing with client complaints that ensure that such complaints are dealt with promptly and fairly. This Policy establishes minimum standards for the development and implementation of those procedures.

Compliance with the requirements of MFDA Rule 2.11 and this Policy must be supervised and monitored by the Member and its personnel in accordance with MFDA Rule 2.5.

#### 2. Definition General

A "complaint" shall be deemed to include any written or verbal statement of grievance, including electronic communications, from of a client, former client, or any person who is acting on behalf of a client and has written authorization to so act, or of a prospective client who has dealt with a Member or Approved Person, alleging a grievance involving the Member, Approved Person of the Member or former Approved Person of the Member, if the grievance involves matters that occurred while the Approved Person was an Approved Person of the Member;

- any written or verbal statement of grievance from a client or any other person relating to:
  - (i) theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading; or
  - (ii) engaging in securities related business outside of the Member; and
- any other verbal statement of grievance from a client for which the nature and severity of the client's allegations will warrant, in the professional judgement of the Member's supervisory staff handling the complaint, the same treatment as a written complaint.

#### 3. Duty to Assess All Complaints

Members have a duty to engage in an adequate and reasonable assessment of all complaints.

All complaints are subject to the complaint handling requirements set out in Part I of this Policy. Certain complaints are subject to additional complaint handling requirements as set out in Part II of this Policy. Complaints must be assessed to determine whether in the reasonable professional judgment of the Member's supervisory staff handling the complaint, that it be treated in accordance with the Additional Complaint Handling Requirements prescribed by Part II of this Policy.

All complaints, including complaints from non-clients in respect of their own affairs, in any way relating to the following must be dealt with in accordance with the Additional Complaint Handling Requirements prescribed by Part II of this Policy:

- a breach of client confidentiality;
- unsuitable investments or leveraging (except for non-clients);
- theft, fraud, misappropriation of funds or securities, forgery, misrepresentation, unauthorized trading;
- engaging in securities related business outside of the Member;
- engaging in an undeclared occupation outside the Member;
- personal financial dealings with a client, money laundering, market manipulation or insider trading.

In determining whether any other complaints not relating to the matters set out above should be subject to the Additional Complaint Handling Requirements prescribed by Part II of this Policy supervisory staff should consider whether the complaint alleges a matter similar in nature or seriousness to those set out above, the complainant's expectation as to how the complaint should be handled and whether the complainant is alleging any financial harm. Where supervisory staff determines that a complaint does not meet any of these criteria the complaint must be handled fairly and promptly but can be concluded through an informal resolution.

#### **4. Minimum Requirements for Complaints Subject to Informal Resolution**

Any complaints that are subject to informal resolution must be handled fairly and responded to promptly (i.e. generally in less time than it would take for complaints subject to the Additional Complaint Handling Requirements prescribed by Part II of this Policy). Such complaints must also be resolved in accordance with internal Member complaint handling policies and procedures that clearly describe the process to be followed in the assessment and resolution of such matters. Certain complaints subject to informal resolution must also be reported under Policy No. 6.

Where a complaint subject to informal resolution is received in writing the Member must provide its substantive response in writing.

#### **5. Member Assistance in Documenting Verbal Complaints**

Members should be prepared to assist clients in documenting verbal complaints where it is apparent that such assistance is required.

#### **6. Client Access**

At the time of account opening, Members must provide to new clients a written summary of the Member's complaint handling procedures, which is clear and can easily be understood by clients. On account opening, the Member must also provide a Client Complaint Information Form ("CCIF"), as approved by MFDA staff, describing complaint escalation options, including complaining to the Ombudsman for Banking Services and Investments (the "Ombudsman") and complaining to the MFDA.

Members must ensure that information about facilitate other access to their complaint handling process is made generally available to clients procedures so that clients are informed as to how to file a complaint and to whom they should address a complaint. For example, Members who maintain a website must post their complaint handling procedures on their website.

Member procedures must provide a specific point of initial contact at head office for complaints or information about the Member's complaint handling process. This contact may be a designated person or may be a general inbox or telephone number that is continuously monitored. Members may also advise clients to address their complaints to the Approved Person servicing their account and or to the Branch Manager supervising the Approved Person.

#### **7. Fair Handling of Client Complaints**

To achieve the objective of handling complaints fairly, Members' complaint handling procedures must include standards that allow for a factual investigation and an analysis of the matters specific to the complaint. Members must not have policies that allow for complaints to be dismissed without due consideration of the facts of each case. There must be a balanced approach to the gathering of facts that objectively considers the interests of the complainant, the Approved Person and the Member.

The basis of the Member's analysis must be reasonable. For example, a suitability complaint must be considered in light of the same principles that would be applied by a reasonable Member in conducting a suitability review, which would include an acknowledgement of the complainant's stated risk tolerance. It would not be reasonable for a Member to assess suitability based on a risk level presumed by the Member that is higher than that indicated by the complainant. A further example of an unreasonable analysis is where a Member dismisses a complaint due to a simple uncorroborated denial by the Approved Person notwithstanding evidence in support of the complainant.

A Member's obligation to handle complaints in accordance with this Policy is not altered when a complainant engages legal counsel in the complaint process and where no litigation has commenced. Where litigation has been initiated is commenced by the complainant, the Member is expected to participate in the litigation process in a timely manner in accordance with the rules of procedure of the applicable jurisdiction and to refrain from acting in a way that is clearly unfair.

The Member's review of the complaint must result in the Member's substantive response to the complainant. Examples of an appropriate substantive response include a fair offer to resolve the complaint or a denial of the complaint with reasons. MFDA staff does not require that the complainant accept the Member's offer in order for the offer to be considered fair.



## 8. Prompt Handling of Client Complaints

Upon receipt of a client complaint, each Member must send an initial response letter to the complainant within a reasonable time, and generally within 5 business days of receipt of the complaint.

The Member must handle the complaint and provide its substantive response within the time period expected of a Member acting diligently in the circumstances. The time period may vary depending on the complexity of the matter. The Member should determine its substantive response and notify the complainant in writing in most cases within no more than three six months of receipt of the complaint, although in most cases the Member will be expected to do so within less time.

Further, staff recognizes that, if the complainant fails to co-operate during the complaint resolution process, or if the matter requires an extensive amount of fact-finding or complex legal analysis, time frames for the substantive response may need to be extended. In cases where a substantive response will not be provided within three six-months, the Member must advise the complainant as such, and provide an explanation for the delay and also provide the Member's best estimate of the time required for the completion of the substantive response.

It is not required that the complainant accept the Member's substantive response. Where the Member has communicated its substantive response, the Member must continue to proactively address further communications from the complainant in a timely manner until no further action on the part of the Member is required.

## 9. General Complaint Handling Requirements Procedures

Each Member's procedures for complaint handling must include the following:

1. **Initial Response**—The initial response letter must include the following information:
  - ~~\_\_\_\_\_ A written acknowledgment of the complaint;~~
  - ~~\_\_\_\_\_ The name, job title and full contact information of the individual at the Member handling the complaint;~~
  - ~~\_\_\_\_\_ A statement indicating that the complainant should contact the individual at the Member handling the complaint if he/she would like to inquire about the status of the complaint;~~
  - ~~\_\_\_\_\_ A summary of the Member's internal complaint handling process, including general timelines for providing the Member's response to complaints;~~
  - ~~\_\_\_\_\_ A request to the complainant for any additional reasonable information required to resolve the complaint; and~~
  - ~~\_\_\_\_\_ A reference to the CCIF, a copy of which must be included for the complainant.~~
2. **Substantive Response**—The substantive response letter, which Members must provide to the complainant, may be accompanied by a summary of the Member's complaint handling procedures and must include a copy of the CCIF. The substantive response letter to complainants should also include the following information:
  - ~~\_\_\_\_\_ An outline of the complaint;~~
  - ~~\_\_\_\_\_ The Member's substantive decision on the complaint, including reasons for the decision; and~~
  - ~~\_\_\_\_\_ A reminder to the complainant that he/she has the right to consider: (i) presenting the complaint to the Ombudsman which will consider complaints brought to it within six months of the substantive response letter; or (ii) making a complaint to the MFDA.~~
31. ~~\_\_\_\_\_ All client complaints and supervisory obligations must be handled by qualified sales supervisors/compliance staff. Generally, individuals who are the subject of a complaint should not handle the complaint unless other qualified supervisory staff is not available.~~
42. ~~\_\_\_\_\_ Each Approved Person must report certain all complaints and other information relevant to this Policy to the Member as required under MFDA Policy No. 6.~~
53. ~~\_\_\_\_\_ Each Member must put procedures in place so that senior management is made aware of complaints of serious misconduct and of all legal actions. Each member must ensure that the relevant Approved Persons and their supervisors and compliance officers are made aware of all complaints.~~
64. ~~\_\_\_\_\_ Members may use the electronic reporting system designated under MFDA Policy No. 6 (the "Member Event Tracking System" or "METS") as their complaint log for those complaints reported on METS. For complaints that are not required to be reported through METS Members must have policies and procedures for the detection of frequent and repetitive complaints made with respect to the same matter which, may, on a cumulative basis indicate a serious problem. However, Members are also reminded that they must maintain a complaint log of their service complaints. Each Member must put procedures in place so that senior management is made aware of complaints of serious misconduct and of all legal actions.~~

~~75. Each Member must maintain in a central place an orderly, up to date record of complaints together with follow-up documentation for all regarding such complaints must be kept in a central location along with the consolidated log of complaints. Alternatively, where a Member has various regional head offices, the Member may keep follow-up documentation at any one regional head office, so long as information about the handling of the complaint is in the Member head office log and the follow-up documentation can be produced in a timely manner. for regular internal/external compliance reviews. For each complaint, the record should include the following information:~~

- ~~• the date of the complaint;~~
- ~~• the complainant's name;~~
- ~~• the name of the person who is the subject of the complaint;~~
- ~~• the security or services which are the subject of the complaint; and~~
- ~~• the date and conclusions of the decision rendered in connection with the complaint.~~

~~Members may use the electronic reporting system designated under MFDA Policy 6 (the "Member Event Tracking System" or "METS") as their complaint log for those complaints reported on METS. However, Members are reminded that they must also maintain a complaint log of their service complaints.~~

~~8. Members must monitor information on complaints and supervisory investigations and should note trends in risk, including those related to specific Approved Persons or branches, subject matter, product types and procedures. When a Member finds this activity to indicate material risk, internal procedures and practices must be reviewed and appropriate supervisory or other action must be taken.~~

~~96. Where the events relating to a complaint took place in part at another Member or a member of another SRO, Members and Approved Persons must cooperate with other Members or SRO members in the sharing of information necessary to address the complaint.~~

## **10. Settlement Agreements**

No Approved Person shall, without the prior written consent of the Member, enter into any settlement agreement with, pay any compensation to or make any restitution to a client.

No Member or Approved Person of such Member may impose confidentiality restrictions on clients or a requirement to withdraw a complaint with respect to the MFDA or a securities commission, regulatory authority, law enforcement agency, SRO, stock exchange or other trading market as part of a resolution of a dispute or otherwise.

## **II. Additional Complaint Handling Requirements Supervisory Investigations**

~~As noted above, a Member must conduct a reasonable investigation into all client complaints. The level of an investigation will in part depend on the severity of the allegation and the complexity of the issues.~~

Each Member's procedures for handling complaints that are subject to the requirements of this section must include the following:

1. Initial Response – An The initial response letter must be sent to the complainant within a reasonable time, and generally within 5 business days of receipt of the complaint. If a complaint can be concluded in less than 5 business days then an initial response letter is not necessary. The initial response letter must include the following information:

- ~~• A written acknowledgment of the complaint;~~
- ~~• A request to the complainant for any additional reasonable information required to resolve the complaint;~~
- ~~• The name, job title and full contact information of the individual at the Member handling the complaint;~~
- ~~• A statement indicating that the complainant should contact the individual at the Member handling the complaint if he/she would like to inquire about the status of the complaint;~~
- ~~• A summary of the Member's internal complaint handling process, including general timelines for providing the Member's response to complaints and a statement advising clients that each province and territory has a time limit for taking legal action; and~~
- ~~• A request to the complainant for any additional reasonable information required to resolve the complaint; and~~

- A reference to an attached copy of the CCIF, and a reference to the fact that the CCIF contains information about applicable limitation periods, a copy of which must be included for the complainant.

2. **Substantive Response** – The substantive response letter, which Members must provide to the complainant, may be accompanied by a summary of the Member's complaint handling procedures and must include a copy of the CCIF.

The substantive response letter to complainants must ~~should~~ also include the following information:

- An outline of the complaint;
- The Member's substantive decision on the complaint, including reasons for the decision; and
- A reminder to the complainant that he/she has the right to consider: (i) presenting the complaint to the Ombudsman for Banking Services and Investments which will consider complaints brought to it within six months of the substantive response letter; or (ii) making a complaint to the MFDA; (iii) litigation/civil action; or (iv) any other applicable options, such as an internal ombudservice provided by an affiliate of the Member.

### **III. Supervisory Investigations**

A Member must monitor, through its supervisory personnel, all information that it receives regarding potential breaches of applicable requirements on the part of the Member and its current and former Approved Persons that raise the possibility of risk to the Member's clients or other investors. Applicable requirements include MFDA By-laws, Rules and Policies, other applicable legal and regulatory requirements and the Member's related internal policies and procedures. This applies to information received from both internal and external sources. For example, such information may come from client complaints, be identified during the Member's routine supervisory activity, or come from other Approved Persons of the Member or individuals outside the Member who are not clients.

For purposes of clarity, where the information is received by way of a client complaint, the supervisory duty goes beyond addressing the relief requested by the complainant and extends to a consideration of general risk at the Member. The duty to deal with the supervisory aspects of the matter continues when a complainant purports to withdraw the complaint or indicates satisfaction with the result of the Member's complaint handling.

Members must take reasonable supervisory action in relation to such information, the extent of which will in part depend on the severity of the allegation and the complexity of the issues. In all cases, the Member must track such information and note trends in risk, including those related to specific Approved Persons or branches, subject matter, product types, procedures and cases, and take necessary action in response to those trends as appropriate. In some cases, it will be necessary to conduct an active supervisory investigation in relation to the information received in specific situations and the level of the investigation must be reasonable in the circumstances.

For example, where the Member identifies unsuitable investment or leveraging recommendations by one of its Approved Persons, the investigation may extend to include determining relevant matters such as the understanding of the Approved Person and applicable supervisory personnel of the Member's policies and procedures and the possibility that such conduct occurred in relation to other clients.

With regard to the type of conduct outlined in Part I, Section 3 of this Policy, other than suitability, the Member has a duty to conduct a detailed investigation in all situations where there is information from any source, written or verbal, whether from an identified source or anonymous, to raise the possibility that such conduct occurred. This duty applies to all conduct by the current or former Approved Person, whether it occurred inside or outside the Member.

~~In the case of certain serious cases outlined below, the Member has a duty to conduct a detailed investigation regardless of how the information came to the attention of the Member. For example, such information may, instead of coming through a complaint, be identified during the Member's routine supervisory activity, or come from other Approved Persons of the Member or individuals outside the Member who are not clients. In addition, this duty arises whether the information comes to the Member in written or verbal form. If the information comes to the attention of the Member through a complaint the duty to conduct the supervisory investigation continues when a complainant purports to withdraw the complaint or indicates satisfaction with the result of the Member's complaint handling.~~

~~A Member has a duty to conduct a detailed investigation where it receives information to suggest the possibility that the Member or any current or former Approved Person has or may have contravened any provision of any law or has contravened any regulatory requirement, relating to:~~

- ~~(i) — theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading; or~~

- (ii) ~~engaging in securities related business outside of the Member;~~
- (iii) ~~engaging in an undeclared occupation outside the Member; or~~
- (iv) ~~personal financial dealings with a client.~~

~~The investigation must be sufficiently detailed investigation and must include all reasonable steps to determine whether the potential activity occurred. Examples of the activities that the Member may need to take in the circumstances may include:~~

~~a) interviewing or otherwise communicating with individuals such as:~~

- ~~• the individuals of concern;~~
- ~~• related supervisory personnel;~~
- ~~• other branch staff;~~
- ~~• head office personnel; or~~
- ~~• the client or other external individuals who brought the information to the Member's attention; or~~
- ~~• other clients who may have been affected by the activity.~~

~~b) conducting a review at the branch or sub-branch.~~

~~c) reviewing documentation such as:~~

~~The detailed investigation may also require:~~

- ~~• conducting a review at the branch or sub-branch;~~
- ~~• reviewing files of the Approved Person relating to Member business; or~~
- ~~• reviewing files and other documents in the Approved Person's custody or control that relate to outside business, where there is a reasonable possibility that such information is relevant to the investigation. Members have the right to require such information to meet their supervisory responsibilities and Approved Persons have an obligation to cooperate with such requests.~~

#### **IV. III.—Internal Discipline**

Each Member must establish procedures to ensure that breaches of MFDA By-laws, Rules and Policies are subjected to appropriate internal disciplinary measures.

#### **IV. Record Retention**

Documentation associated with a Member's activity under this Policy shall be maintained for a minimum of 7 years from termination of the Member's relationship with the client and made available to the MFDA upon request.

**SCHEDULE B**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

On March 5, 2009, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to MFDA Rule 2.11 (Complaints), MFDA Policy No. 6 *Information Reporting Requirements* and section 24.A.5 (Ombudsman – Member to Provide Written Material to Clients) of MFDA By-law No 1:

**Rule 2.11 (Complaints)**

Every Member ~~shall maintain a log of client complaints and~~ shall establish written policies and procedures for dealing with client complaints which ensure that such complaints are dealt with promptly and fairly, and in accordance with the minimum standards prescribed by the Corporation from time to time.

**Policy No. 6 *Information Reporting Requirements***

**4. Approved Person Reporting Requirements**

- 4.1. An Approved Person shall report the following events to his or her current Member in such detail as required by the Member, within 2 business days:
- (a) the Approved Person is the subject of a client complaint in writing;
  - (b) the Approved Person is aware of a complaint from any person, whether in writing or any other form, and with respect to him or herself, or any other Approved Person, involving allegations of:
    - (i) theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading; ~~or~~
    - (ii) a breach of client confidentiality;
    - (iii) engaging in securities related business outside of the Member;
    - (iv) engaging in an undeclared occupation outside the Member; or
    - (v) personal financial dealings with a client.
  - (c) whenever the Approved Person has reason to believe that he or she has or may have contravened, or is named as a defendant or respondent in any proceeding, in any jurisdiction, alleging the contravention of:
    - (i) any securities law; or
    - (ii) any regulatory requirements.
  - (d) the Approved Person is charged with, convicted of, pleads guilty or no contest to, any criminal offence, in any jurisdiction;
  - (e) the Approved Person is named as a defendant in a civil claim, in any jurisdiction, relating to the handling of client accounts or trading or advising in securities;
  - (f) the Approved Person is denied registration or a license that allows the Approved Person to deal with the public in any capacity by any regulatory body, or has such registration or license cancelled, suspended or terminated, or made subject to terms and conditions;
  - (g) the Approved Person becomes bankrupt or suspends payment of debts generally or makes an arrangement with creditors or makes an assignment or is ~~declared~~ deemed insolvent;
  - (h) there are garnishments outstanding or rendered against the Approved Person ~~in any civil court in Canada.~~

**6. General Events to be Reported**

6.1. Members shall report to the MFDA:

- (a) all client complaints in writing, against the Member or a current or former Approved Person, relating to member business, except service complaints;
- (b) whenever a Member is aware, through a written or verbal complaint or otherwise, that the Member or any current or former Approved Person has or may have contravened ~~any provision of any law or has contravened any regulatory requirement~~, relating to:
  - (i) theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading; ~~or~~
  - (ii) a breach of client confidentiality;
  - (iii) ~~engaging in securities related business outside of the Member;~~
  - (iv) engaging in an undeclared occupation outside the Member; or
  - (v) personal financial dealings with a client.
- (c) whenever the Member, or a current or former Approved Person, is:
  - (i) charged with, convicted of, pleads guilty or no contest to, any criminal offence, in any jurisdiction;
  - (ii) named as a defendant or respondent in, or is subject of, any proceeding or disciplinary action, in any jurisdiction, alleging contravention of any securities law;
  - (iii) named as a defendant or respondent in, or is the subject of, any proceeding or disciplinary action, in any jurisdiction, alleging contravention of regulatory requirements;
  - (iv) denied registration or a license that allows a person to deal with the public in any capacity by any regulatory body, or has such registration or license cancelled, suspended or terminated, or made subject to terms and conditions;
  - (v) named as a defendant in a civil claim, in any jurisdiction, relating to handling of client accounts or trading or advising in securities.
- (d) whenever an Approved Person becomes bankrupt or suspends payment of debts generally or makes an arrangement with creditors or makes an assignment or is ~~declared~~ deemed insolvent;
- (e) there are garnishments outstanding or rendered against the Member or an Approved Person ~~in any civil court in Canada.~~

**7. Reporting of Updates and Resolution of Events**

7.1. Members shall update event reports previously reported to reflect ~~the updates to, or the resolution of,~~ any event that has been reported pursuant to section 6.1 of this Policy within 5 business days of the occurrence of the update or resolution and such update or resolutions shall include but not be limited to:

- (a) any judgments, awards, arbitration awards or orders and settlements in any jurisdiction;
- (b) compensation paid to clients directly or indirectly, or any benefit received by clients from a Member or Approved Person directly or indirectly;
- (c) any internal disciplinary action or sanction against an Approved Person by a Member;
- (d) the termination of an Approved Person;
- (e) the results of any internal investigation conducted.

. . .

**Section 24.A.5 (Ombudservice – Member to Provide Written Material to Clients) of By-law No. 1**

**24.A.5 – Member to Provide Written Material to Clients**

Each Member shall provide to new clients, and to clients who submit written complaints to the Member, a copy of the written material approved by the Corporation which describes the ombudservice approved by the Board of Directors pursuant to By-law 24.A.1