

**THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA  
PROPOSED AMENDMENT TO MFDA BY-LAW NO.1, SECTION 24.A (OMBUDSERVICE)**

**I. OVERVIEW**

**A. Current Requirements**

Subsection 24.A.1 of MFDA By-law No. 1 requires each MFDA Member to participate in an ombudservice approved by the Board of Directors. The approved ombudservice is the Ombudsman for Banking Services and Investments (“OBSI”). Subsection 24.A.4 addresses the disclosure of information by OBSI to the MFDA in connection with OBSI’s investigation or review of a complaint, and provides as follows:

**24.A.4 Provision of Information by Ombudservice**

*“No information, answer or statement made in connection with an investigation or the review of a complaint by the ombudservice approved by the Board of Directors shall be provided to the Corporation by the ombudservice, except for an investigation under By-law 21, or a hearing pursuant to By-law 24, into an allegation that the Member, with intent to mislead the ombudsman, provided information, documentation, answers or statements knowing them to be false; or failed to provide any information as required by By-law 24.A.”*

**B. Reasons for Amendments**

The disclosure of information by OBSI to regulators (including the MFDA) is currently addressed under section 16.5 of the OBSI Terms of Reference. The current provision in the OBSI Terms of Reference is broader with respect to the type of information that can be provided to regulators than section 24.A.4 of MFDA By-law No.1.

To avoid the potential for inconsistency and confusion, the proposed amendment to MFDA By-law No. 1 would delete subsection 24.A.4.

**C. Objectives**

The objective of the proposed amendment is to remove the potential for inconsistency between subsection 24.A.4 of MFDA By-law No. 1, and the OBSI Terms of Reference.

**D. Effect of Proposed Amendments**

The proposed deletion of subsection 24.A.4 would ensure that the provision of information by OBSI to the MFDA is governed by section 16.5 of the OBSI Terms of Reference. In addition, the deletion of subsection 24.A.4 would broaden the scope of information that may be provided by OBSI to the MFDA.

## **II. DETAILED ANALYSIS**

### **A. Proposed Amendment**

The disclosure of information by OBSI to regulators (including the MFDA) is currently addressed under section 16.5 of the OBSI Terms of Reference, which provides that:

#### **16.5 Disclosure to regulators**

*“Nothing in these Terms of Reference prevents a Complainant from sharing information with a regulator for regulatory purposes. Participating Firms and OBSI must, and Complainants may, comply with a written request from a regulator for disclosure of information, documents, records or things. Where OBSI complies with such a request, or where OBSI notifies a regulator that a Participating Firm has refused a recommendation or failed to comply with its obligations under these Terms of Reference, the Participating Firm and the Complainant may discuss the Complaint and the underlying facts with the regulator.”*

Subsection 24.A.4, which has been in effect since 2003, is more limited with respect to the scope of information that can be provided to the MFDA by OBSI. Under subsection 24.A.4, OBSI cannot provide to the MFDA any “information, answer or statement made in connection with an investigation or the review of a complaint by the ombudservice...”

The Amended and Restated Memorandum of Understanding concerning oversight of OBSI provides that the Chair of the Board of Directors of OBSI will inform the CSA of any issues that appear likely to have significant regulatory implications, including issues that appear to affect multiple clients of one or more registered firms. The CSA and OBSI have established a process for the referral and review of these issues (Systemic Issues Review Protocol).

The information that may be provided to the MFDA under the broader provision of section 16.5 of the OBSI Terms of Reference would assist the MFDA in carrying out its role under the Systemic Issues Review Protocol. Under the Protocol, the MFDA may consult with the relevant provincial securities regulator on whether a systemic issue exists and assess its impact on the registrant, registrant category and/or investors and once the initial assessment is complete, pursue the appropriate response. The broader scope of section 16.5 of the OBSI Terms of Reference would also allow the MFDA to receive information about anticipated refusals of OBSI recommendations from OBSI.

Attached as Schedule “A” to this Notice is the proposed amendment to MFDA By-law No. 1, subsection 24.A.4. The current version of the subsection has been blacklined to show changes introduced by the proposed amendment.

### **B. Comparison with Similar Provisions**

National Instrument 31-103 (*Registration Requirement, Exemptions and Ongoing Registrant Obligations*), section 13.16, which relates to participation by registered firms in OBSI, does not contain a provision similar to subsection 24.A.4 of MFDA By-law No.1. The deletion of subsection 24.A.4 would ensure that the scope of information which OBSI can provide to regulators is the same,

irrespective of whether such information is being provided to a provincial regulatory authority in respect of a MFDA Member or a non-SRO registrant, or to the MFDA in respect of a Member.

### **C. Issues and Alternatives Considered**

No other alternatives were considered.

### **D. Systems Impact of Amendment**

It is not anticipated that the proposed amendment will have a material impact upon Members' systems, impose any material burden or constraint on competition or innovation, impose any material costs or restrictions on the activities of market participants, or result in any material increased costs of compliance.

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

The proposed amendment to MFDA By-law No. 1, subsection 24.A.4 was approved by the MFDA Board of Directors at its February 27, 2019 meeting. The Board has determined that the proposed amendment is consistent with the best interests of the capital markets.

### **F. Public Interest Objective**

The proposed amendment will maintain investor protection, and is consistent with the public interest.

### **G. Classification**

The proposed amendment have been classified as a Public Comment Rule proposal.

## **II. COMMENTARY**

### **A. Filing in Other Jurisdictions**

The proposed amendment will be filed for approval with the Alberta, British Columbia, Manitoba, Nova Scotia and Ontario Securities Commissions, the New Brunswick Financial and Consumer Services Commission, the Superintendent of Securities of Prince Edward Island, and the Saskatchewan Financial and Consumer Affairs Authority.

### **B. Effectiveness**

The proposed amendment is simple and effective.

### **C. Process**

The proposed amendment was reviewed by the MFDA Policy Advisory Committee at its January 31, 2019 meeting, the Regulatory Issues Committee of the MFDA Board of Directors at its February 13, 2019 meeting, and approved by the full MFDA Board of Directors at its February 27, 2019 meeting. In approving the proposed amendment, the MFDA has followed its established internal governance practices and has considered the need for consequential amendments.

#### **D. Effective Date**

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

#### **E. Exemption from Requirements under Securities Legislation**

The proposed amendment does not involve a Rule that the MFDA, its Members or Approved Persons must comply with in order to be exempted from a securities legislation requirement.

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

The proposed amendment does not conflict with applicable laws or the Terms and Conditions of a Recognizing Regulator's Recognition Order.

### **III. SOURCES**

- MFDA By-law No. 1, Section 24.A.4 (Ombudservice)
- National Instrument 31-103 (*Registration Requirement, Exemptions and Ongoing Registrant Obligations*), Section 13.16

### **IV. REQUIREMENT TO PUBLISH FOR COMMENT**

The MFDA is required to publish for comment the proposed amendment 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 amendment would be in the public interest and is not detrimental to the capital markets. Comments are sought on the proposed amendment.** 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:

Paige Ward  
General Counsel, Corporate Secretary and Vice-President, Policy  
Mutual Fund Dealers Association of Canada  
121 King St. West, Suite 1000  
Toronto, Ontario M5H 3T9  
[pward@mfd.ca](mailto:pward@mfd.ca)

and one copy addressed to the attention of:

Anne Hamilton  
Senior Legal Counsel  
British Columbia Securities Commission  
701 West Georgia Street  
P.O. Box 10142, Pacific Centre  
Vancouver, British Columbia, V7Y 1L2  
[ahamilton@bcsc.bc.ca](mailto:ahamilton@bcsc.bc.ca)

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:

Paige Ward

General Counsel, Corporate Secretary and

Vice-President, Policy

Mutual Fund Dealers Association of Canada

(416) 943-5838

**DM# 668974**

## Schedule “A”

### Proposed Amendment to MFDA By-Law No. 1, Subsection 24.A.4

#### 24.A. OMBUDSERVICE

##### 24.A.1 Participation in Ombudservice

Each Member shall participate in an ombudservice approved by the Board of Directors. On the client's request, any dispute, claim or controversy between a Member and a client may be submitted by the client to the ombudservice. The determination of eligibility of any dispute, claim or controversy shall be made by the ombudservice according to criteria defined in the service's terms of reference. The Member shall comply with and be bound by the rules, procedures and standards of the ombudservice. The ombudsman's recommendations with respect to any eligible dispute, claim or controversy are non-binding on each Member who participates in the service.

##### 24.A.2 Effect on Jurisdiction

Neither the participation of a Member in the ombudservice nor any recommendations made by the ombudservice in respect of the Member shall affect the jurisdiction of the Corporation or any of the Board, a Regional Council, committee or member, representative or employee of any of them, from exercising any authority under the Articles, By-laws, Rules, Policies or Forms of the Corporation or a Regional Council.

##### 24.A.3 Submission of Information

A Member, or any Approved Person, that is requested by the ombudservice to provide information in connection with an investigation shall submit the requested information, books, records, reports, filings and papers to the service in such manner and form, including electronically, as may be prescribed by such service.

##### 24.A.4 Provision of Information by Ombudservice

~~No information, answer or statement made in connection with an investigation or the review of a complaint by the ombudservice approved by the Board of Directors shall be provided to the Corporation by the ombudservice, except for an investigation under By-law 21, or a hearing pursuant to By-law 24, into an allegation that the Member, with intent to mislead the ombudsman, provided information, documentation, answers or statements knowing them to be false; or failed to provide any information as required by By-law 24.A.~~