

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

PROPOSED AMENDMENTS TO MFDA RULE 1.1.1(a) (BUSINESS STRUCTURES - MEMBERS)

I. OVERVIEW

A. Current Requirements

MFDA Rule 1.1.1(a) currently requires all securities related business engaged in by a Member or Approved Person in respect of a Member to be carried on for the account of the Member, through the facilities of the Member, other than trading in deposit instruments by an Approved Person not on account of the Member, and business conducted by an Approved Person as an employee of a bank, in accordance with the Bank Act (Canada) and the regulations thereunder and applicable securities legislation.

B. Reasons for Amendments

Certain MFDA Members have Approved Persons dually employed with credit unions. Securities legislation together with provincial credit union legislation permit credit union employees to sell credit union securities. In each jurisdiction, there are exemptions from dealer registration and prospectus requirements applicable to credit unions similar to those available to banks. These exemptions exist either under the provincial Securities Act, Credit Union Act or local rules made by the provincial securities commissions. MFDA Rule 1.1.1 does not currently provide an exception for business conducted by an Approved Person as an employee of a credit union or caisse populaire similar to the exception available to Approved Persons dually employed by banks.

C. Objectives

The objective of the proposed amendments is to permit Approved Persons to engage in securities related business as an employee of the credit union, as permitted by applicable securities legislation, for the account of, and through, the facilities of the credit union, rather than the Member.

D. Effect of Proposed Amendments

The effect of the proposed amendments will be to more closely align MFDA Rules with existing exemptions available under securities legislation and provincial credit union legislation, and adopt greater consistency within Rule 1.1.1 with respect to the granting of exceptions where another regulatory framework is in place.

II. DETAILED ANALYSIS

A. Proposed Amendments

As noted, the proposed amendments would expressly allow Approved Persons to sell securities issued by a credit union to its members through the credit union rather than the MFDA Member. Attached as Schedule “A” to this Notice is a blackline of Rule 1.1.1(a), which shows the text of the proposed amendments.

B. Comparison with Similar Provisions

No comparison with similar provisions was made.

C. Issues and Alternatives Considered

As noted, the exception currently available under Rule 1.1.1 to Approved Persons dually employed by banks is provided because of the existence of another regulatory framework. The activities of credit unions are, likewise, subject to regulatory oversight at the provincial level. The dealer registration and prospectus requirements under securities legislation are supported by provincial credit union legislation, which prescribes a framework for credit unions to issue and sell their securities to their members, including investor disclosure requirements or specific regulatory approval.

Consideration was given to not making the proposed amendments to Rule 1.1.1(a). However, this would have resulted in the application of MFDA requirements in a circumstance where another regulatory framework is already in place. The amendments, as proposed, which would expressly allow Approved Persons to sell securities issued by a credit union to its members through the credit union rather than the MFDA Member, are appropriate, and will reduce unnecessary regulatory burden.

D. Systems Impact of Amendments

It is not anticipated that the proposed amendments 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 amendments to Rule 1.1.1(a) were approved by the full MFDA Board of Directors at their October 3, 2019 meeting. 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 will align MFDA Rules more closely with existing exemptions under securities legislation and provincial credit union legislation, adopt greater consistency within Rule 1.1.1 with respect to the granting of exceptions where another regulatory framework is in place, not impair investor protection, and 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, 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 amendments are simple and effective.

C. Process

The proposed amendments were reviewed by the MFDA Policy Advisory Committee at its September 9, 2019 meeting, the Regulatory Issues Committee of the MFDA Board of Directors at its September 19, 2019 meeting, and approved by the full MFDA Board of Directors at its October 3, 2019 meeting. 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

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

IV. SOURCES

- MFDA Rule 1.1.1 (Business Structures – Members);
- the *Securities Acts* of the various CSA jurisdictions, and related local rules;
- *Bank Act* (Canada);
- Provincial credit union legislation.

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 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

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

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, Corporate Secretary and

Vice-President, Policy

Mutual Fund Dealers Association of Canada

(416) 943-5838

DM#701332

SCHEDULE A

1.1 BUSINESS STRUCTURES

1.1.1 Members

No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:

- (a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than:
 - (i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and
 - (ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the Bank Act (Canada) and the regulations thereunder, or as an employee of a credit union or caisse populaire and in accordance with applicable legislation governing such credit union or caisse populaire, and in each case, in accordance with ~~and~~ applicable securities legislation.

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