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July 23, 2009

Mr. Jason Bennett
Corporate Secretary and Director, Regional Councils
Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9

Dear Mr. Bennett,

Re: Mutual Fund Dealers Association of Canada Proposed Amendments to MFDA Rule 2.2 (Client Accounts), Policy No.2 *Minimum Standards for Account Supervision*, Rule 2.8 (Client Communications), and Rule 5.3 (Client Reporting), (collectively, the CRM Rules)

Thank you for providing Advocis with the opportunity to comment on the Mutual Fund Dealers Association of Canada (MFDA) latest iteration of the CRM Rules.

Advocis, The Financial Advisors Association of Canada, is the largest and oldest voluntary professional membership association of financial advisors and planners in Canada. Our members are provincially licensed to sell life and health insurance, mutual funds and other securities, and are primarily owners and operators of their own small businesses who create thousands of jobs across Canada. Advocis members are professional financial advisors who provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans, disability coverage, long-term care and critical illness insurance to millions of Canadian households and businesses.

General Comments

Advocis believes there remain untapped benefits to be derived through a more inclusive consultative process with respect to policy development. We believe that consulting more broadly and earlier in the policy process will benefit the MFDA, industry stakeholders, and, most notably, the consumer. The MFDA's most recent response to concerns raised with respect to the consultative and policy development process suggest that the MFDA does not share this view. In responding to comments received during the most recent comment period, the MFDA states that it consults widely with all interested stakeholders. We fail to accept that publishing proposed rules and policies soliciting comments is proof of consulting widely with all stakeholders. Advocis advocates that a broader range of stakeholders must be involved at the earliest stages of the policy process. This means prior to the proposed rule, notice or policy being issued for comment.

With respect to the current policy development process, the MFDA states that it gives consideration to all regulatory tools available prior to taking action. In order to enhance the policy development process Advocis recommends that the MFDA develop a more robust approach to problem identification and solution crafting. The over reliance on rules, that are generally prescriptive in nature, suggests that a more focused and deliberate approach to

problem identification and options available to achieve the desired regulatory outcome in the least prescriptive manner would benefit all stakeholders. This would also highlight the MFDA's desire to work cooperatively with all stakeholders in a completely transparent manner. To this end, Advocis believes that a policy development process should be mandated that requires the MFDA to explicitly state what other regulatory options were considered, why they were rejected, and why they opted for a particular approach in addressing an issue. To support this approach, we also call for a robust cost/benefit analysis for all policies being developed. Such an approach to issue identification and solution crafting will bring about better results, as all stakeholders will have a clearer indication of the problem being addressed and the steps necessary to correct the problem.

We remain concerned with the MFDA's continued reference to regulatory initiatives being the result of findings of potentially misleading information and deficiencies uncovered in their compliance investigations. A more effective approach to regulation is to discuss specific findings with stakeholders, identify the frequency of compliance lapses, and options available to address these concerns. The disclosure currently provided by the MFDA does not allow stakeholders to truly understand the level of noncompliance or problems uncovered through compliance reviews. If the incidence of noncompliance represents only a small percentage of stakeholders, then a Notice would often be a sufficient first step in addressing concerns. Such a measured approach could save valuable regulatory resources and time which could then be directed at more pressing stakeholder concerns. Such an approach would signal to all stakeholders a willingness on the part of the MFDA to work with industry in a more collaborative manner.

In brief, Advocis believes that the current policy development, and consultative process employed by the MFDA can be improved upon. We believe that the changes we have proposed would enable the MFDA to better identify and connect with a broader cross section of those who are impacted by their regulation, and this will ultimately be in the best interest of the consumer.

Specific comments

Rule 2.8 (Client Communications)

We would like to revisit an issue that we believe the MFDA has too quickly pushed aside. Our submission to the MFDA[1] noted that proposed Rule 2.8.3(b) requires *any client communication* containing or referring to a rate of return regarding a specific account or group of accounts that is provided by an Approved Person must be approved and supervised by a Member. We believe that this could be interpreted as going beyond simply written communications. It is entirely possible that during compliance reviews MFDA investigators would interpret this provision more broadly than the MFDA has suggested is its intent. The MFDA should review this section given that the current drafting is ambiguous.

The MFDA responded directly to Advocis on this point as follows, "With respect to the requirements in proposed Rule 2.8.3(b) reference is made to 'client communication', which is defined in Rule 2.8.1 as 'any written communication by a Member or Approved Person to a client of a Member, including trade confirmations and account statements, other than an advertisement or sales communication'". The MFDA goes on to state, "Accordingly, only

[1] **Advocis' submission to the MFDA dated September 11, 2008 with respect to the CRM Rules.**

written communications and not verbal or sale conversations that reference performance are subject to the requirements of Rule 2.8.3(b)".

The statement made by the MFDA is not consistent with their drafting. We remain of the view that the drafting of the proposed rule amendment is ambiguous and should be modified. Specifically, the definition crafted by the MFDA in Rule 2.8.1 states, "For the purpose of the By-laws and Rules '**client communication**' means any written communication …" [emphasis added]. Proposed Rule 2.8.3 (b) reads, "***any*** **client communication** containing or referring to a rate of return". [emphasis added]. The use of the terms "client communication" in proposed Rule 2.8.3 (b) would, by definition, mean 'any written communication". However, proposed Rule 2.8.3 (b) does not use the defined term 'client communication', rather it states '*any* client communication'. The latter usage arguably has a broader meaning than the defined term provided. Therefore the language used in proposed Rule 2.8.3 (b) could well be interpreted to go beyond written communications. In deed, if the MFDA intends to limit client communications to only written communications, then one would reasonably expect that they would use their defined term as accurately as possible. If the ambiguity is the result of a drafting error, then the appropriate solution would be to remove the term "**any**" from s 2.8.3 (a) and proposed s 2.8.3 (b). This would provide greater clarity and remove any possible ambiguity or potential future regulatory reach and compliance problems for industry.

We would encourage the MFDA to review this section and our proposed change, as we believe it more accurately captures the MFDA's stated intent.

Policy No 2 Minimum Standards for Account Supervision

Under the heading, *Documentation of Client Account Information* in Policy No 2, section 3 states, "[f]or each account of a client that is a natural person, the Member must obtain information sufficient to allow for the operation of the account and sufficient to determine the essential facts relative to each client which would include, at a minimum the following." Subsection (p) has been removed, however, the content of this subsection has been incorporated into subsection (o) which reads, "information required by other laws and regulation applicable to the Member's business or amended from time to time including information required for relevant tax reporting; information required for compliance with Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations and any authorization necessary to provide information to the MFDA under applicable privacy legislation."

It is our understanding that Members and Approved Persons must abide by applicable federal and provincial laws. We are at a loss to understand why the MFDA would include in a policy a reference to specific laws, or, indeed, need to tell Members and Approved Persons that they must follow the law. Advocis, like the MFDA, is concerned if Members or Approved Persons are not abiding by all laws that apply to them. If compliance reviews conducted by the MFDA are demonstrating shortcomings in this area, there are two more simple corrective actions than can be taken. The MFDA can work with professional associations like Advocis through sharing the frequency of incidence of violation of federal or provincial laws, and request that we work with them to ensure the proper information is communicated to industry members. In addition, it would seem only reasonable to issue a notice or bulletin, and not a policy on this matter, in conjunction with working with professional associations.

We would like to draw your attention to the MFDA's stated position on this matter as expressed in the June 19, 2009 publication for comment, *Mutual Fund Dealers Association of Canada*

Proposed Amendments to MFDA Rule 2.4.1 (Payment of Commission to Unregistered Corporation). Here the MFDA made the following statement, "[t]he MFDA does not monitor Members or Approved Persons compliance with tax legislation … Compliance with tax legislation is subject to review by the relevant taxing authority … The foregoing position does not mean that the MFDA would not be concerned if its Members or their Approved Persons were not complying … (as would be the case with any legislation) …"

We believe there is a clear lack of consistency between the MFDA published position of June 19, 2009 and its actions with respect to Policy No 2 of the CRM Rules. There would be no need to include the reference in section 3, subsection (o) of Policy No 2 absent some findings of non-compliance with tax legislation, and legislation relating to Money Laundering and Terrorist Financing, if it were not part of the MFDA compliance review process. Yet your statement of June 19, 2009 is in complete contradiction of this. Inconsistencies on fundamental positions, such as this, by the MFDA make it difficult for industry to work cooperatively with your organization for the benefit of consumer and the industry. We agree with the position taken by the MFDA in the June 19, 2009 publication, and would note that it is consistent with our original submission[2] on Policy No 2 that was not accepted by the MFDA. In light of the MFDA's statement of June 19, 2009 we would request that the MFDA reconsider the drafting of subsection (o). Consistent with our general theme, we would encourage the MFDA to work cooperatively with organizations such as Advocis in ensuring that compliance issues beyond the scope to the MFDA's authority are addressed through our joint efforts.

Thank you for providing us with the opportunity to provide further comments on the CRM Rules.

We would be pleased to discuss any matters raised in our submissions with you at your convenience.

Sincerely,

Greg Pollock
President and CEO

Kris K. Birchard
Chair, National Board of Directors

c.c. Sarah Corrigall-Brown, Senior Legal Counsel, British Columbia Securities Commission

[2] Advocis' submission of September 11, 2008 titled, *MFDA Proposed Amendments to MFDA Rule 2.2 (Client Accounts) and MFDA Policy No.2 Minimum Standards for Account Supervision*, states on page 5, " … The requirements under Money Laundering are federally legislated and compliance is mandatory. Accordingly, 3(p) is an example of unnecessary and duplicative regulation for nor apparent benefit, and should be removed. Our members are obliged to comply with Proceeds of Crime legislation and regulation without direction from the MFDA on this matter". This is consistent with the MFDAs position as stated on June 19, 2009.