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September 11, 2008

Mr. Gregory J. Ljubic
Corporate Secretary
Mutual Fund Dealers Association of Canada
121 King Street West Suite 1000
Toronto, ON M5H 3T9

Dear Mr. Ljubic:

Re: MFDA Proposed Amendments to Rule 5.3 (Client Reporting) and MFDA Rule 2.8 (Client Communications)

Advocis appreciates the opportunity to comment on the Proposed Amendments to MFDA Rules 5.3 and 2.8 (the "Proposed Amendments").

Advocis is a national professional association that is committed to preparing, promoting and protecting financial advisors in the public interest. We do this by providing a professional platform including career support, designations, best practices direction, education, timely information and professional liability insurance. This strengthens the relationship of trust and respect between financial advisors and their clients, the public, and government. Advocis is Canada's largest association of financial advisors, representing life and health insurance licensees, and mutual fund and securities registrants across the country for over a century. Our members are individuals, the majority of whom carry on business as either sole proprietors or independent, small businesses. A smaller proportion of Advocis members operate under employee-employer arrangements of financial services firms. We represent advisors at all stages of the business cycle, ranging from new entrants to the industry through to mature practices led by leaders in the industry serving a significant client base.

The MFDA Proposed Amendments to Rule 5.3 will require all clients to be provided with account performance reporting on an annual basis covering at least a 12 month period. Members may satisfy this requirement by either providing: the total market value of the account as at the start of the period covered by the report; assets deposited/withdrawn during the period of the report; the total market value of the account as at the end of the period covered by the report; or annualized percentage rate of return information presented in accordance with the requirements of Rule 2.8.3.

Rule 2.8.3 will be amended to clarify that where a client communication discloses a rate of return, the rate of return must be calculated in accordance with standard industry practices.

The Proposed Amendments are drafted with an outcomes-based focus and this is an encouraging development. However, concerns remain with respect to the policy process adopted by the MFDA which excludes some stakeholders from the early policy formulation process.

General Comments

We acknowledge the efforts of the MFDA in drafting a rule that in general is outcomes-based. We believe this is in keeping with efforts that are being made by the Canadian Securities Administrators (CSA) in looking first to principles-based solutions to identified problems. Despite this positive step, we believe there remain significant flaws in the policy development process adopted by the MFDA.

We are encouraged by elements in the Proposed Amendments, for example 5.3.5 Account Performance Reporting. The drafting in this section of the Proposed Amendments demonstrates the benefits of an outcomes- based format, stating what must be included in disclosures to clients, yet allowing Members to provide the information in a format of their choosing. This allows for innovative methods of presenting materials to clients, thus allowing industry participants the opportunity to differentiate themselves, and also avoids the institutionalization of boiler plate methods.

Further, it is important to note in the MFDA drafting that the Proposed Amendments do not require that returns be reported, but does impose requirements where the Member or Approved Persons opt to provide such information to clients. This flexibility is welcomed and demonstrates that consumer protection need not suffer in an outcomes-based approach to regulatory drafting. In general, we believe that the Proposed Amendments are beneficial to clients and have minimal impact on our Members, with one very serious exception that will be discussed under our heading, "Identified Problem with the Proposed Amendments".

With respect to your "COMMENTARY" section under "Process" you state, "[t]he proposed amendments have been prepared in consultation with relevant departments within the MFDA". With respect to the "DETAILED ANALYSIS" of the Proposed Amendments we note the following: "[t]he possibility of conducting a cost/benefit analysis of changes proposed in relation to the CRM project was also discussed. However, no agreement with potential participants was reached regarding the approach to be followed in conducting the analysis". We have two concerns with these statements. In the first instance we believe that the MFDA must not only consult with their internal departments, but encourage and accept early participation from those in industry who will be directly impacted by the proposed regulation. Also, a cost/benefits analysis is critical in determining if the benefits to be derived from proposed regulatory intervention outweigh the costs. Regulation inevitably results in compliance costs that will be passed along to clients. Our concern is that the MFDA disclosure with respect to the cost/benefit analysis increasingly appears to be boiler plate. Proper consideration is not being given to assess the costs and benefits of proposed regulation.

Under your heading "Best Interest of the Capital Markets," it is stated that "[t]he Board has determined that the proposed amendments are in the best interests of the capital markets", yet there is a failure to indicate how this conclusion has been reached. We feel that bold conclusions such as these must be supported with concrete information and examples.

In addition to the above noted process concerns, we would like to comment on what is becoming a standard reference to MFDA compliance reviews. For example, "[m]any of the proposed amendments, however, were developed in part to address regulatory concerns identified in the course of the MFDA's regular compliance and enforcement activities", and " in the course of completing compliance reviews, the MFDA has noted inconsistencies and potentially misleading information in performance reports provided to clients directly by some

Approved Persons". We are concerned that the MFDA, in developing policy, is not immediately engaging all of its stakeholders. Regulatory actions are more often than not predicated on the MFDA findings resulting from compliance reviews. This begs the question, why would the MFDA move immediately to proposing rules and polices prior to discussing their findings with stakeholders. Involving stakeholders upon first identifying a problem will result in better two-way communications, greater discussion about the nature of the problem and plausible corrective actions, in addition to greater buy-in from stakeholders when a course of action has been determined. We believe that the MFDA policy process presupposes an adversarial relationship between the regulator and those whom they both directly and indirectly regulate. We propose a relationship based on mutual respect and inclusiveness. We share with the MFDA the goal of consumer protection. In sharing their compliance findings and concerns with stakeholders earlier in the process, we believe that industry participants will be willing to provide supplemental resources by way of their own internal expertise and ideas. Such collaboration will enhance the goal of consumer protection and result in more options for consideration at the start of the policy development process.

The MFDA also references the fact that the Investment Dealers Association (IDA), now the Investment Industry Regulatory Organization of Canada (IIROC), and CSA have been working together to implement various aspects of the Client Relationship Model (CRM) project. Proposed National Instrument 31-103, *Conduct Rules*, (NI 31-103) also deals with these matters through an outcome-based proposal. In our estimation, neither IIROC nor the MFDA can develop policies and rules on this subject that are totally consistent with NI 31-103, as the latter remains in the development process. As NI 31-103 is not final, it seems counterintuitive for SRO's to draft rules and policies in the absence of a compelling argument of harm to the market or investors prior to the CSA completing its task. The current process with respect to the CRM adopted by the MFDA is confusing to stakeholders who are following and participating in the formulation of NI 31-103. In future, it would be beneficial for CSA policy instruments that directly impact SRO policies, guidelines and rules to be completed before SROs begin their own consultative process.

Identified Problem with the Proposed Amendments

The stated objectives of the Proposed Amendments are to clarify the supervisory obligations of Members in relation to performance reporting provided directly to clients by Approved Persons, and to establish a minimum standard with respect to the provision of performance of the investments in ones account. It is intended that this be accomplished while allowing a degree of flexibility in meeting the objectives set out in the Proposed Amendments.

The Proposed Amendments do clarify Member's supervisory requirements regarding client communications that disclose a rate of return. Rule 2.8.3(a), *Rates of Return*, is outcomes-based leaving the specifics relating to the disclosure of annualized rates of return to be calculated in accordance with "standard industry practices". This is a positive drafting development. However, Rule 2.8.3 (b) requires **any 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 the Member.

If the information provided to a client complies with 2.8.3 (a) we don't see the need for subsection (b). Subsection(b) is very problematic. In conversations with clients, a financial advisor (Approved Person) will regularly be asked about the performance of their investments. It would appear that this section would require the financial advisor to first speak with the

compliance personnel at the Member office prior to disclosing any information. This requirement is needlessly broad and fails to recognize the relationship that advisors have with their clients. Financial advisors often deal with their clients outside standard business hours. Compliance with subsection (b) would require Members to have compliance personnel available at all hours. We feel this is a clear example of the pitfalls of developing policy without speaking with advisors at the outset, and the failure associated with not engaging in a cost/benefits analysis to determine if compliance with a provision outweigh the costs associated with the requirement. Further, Rule 2.8.3 (b) has the potential to undermine the trust and faith that is paramount in the client and Financial Planner relationship.

Financial advisors are the front line professionals interfacing with clients, introducing products, and establishing long term relationships and investment strategies that will allow the client to achieve their financial goals. Increasingly, we are seeing regulatory developments that are interfering with this very important relationship that demonstrate a lack of understanding of the client-advisor relationship. We propose that the MFDA engage all interested industry participants whom may be impacted by policy and regulatory undertakings at the outset of the process. A failure to implement an inclusive policy formulation process will result in unintended consequences, policy implementation delays, additional cost to regulators and industry participants, and ultimately the consumer. Regulatory proposals should be accompanied by a robust cost-benefit analysis clearly demonstrating the costs to market participants and any possible negative impacts on investors in addition to the benefits to investors.

Thank you for providing us with the opportunity to comment on these important matters.

Yours truly,

Steve Howard, CA
President and CEO
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c.c. Sarah Corrigall-Brown, Senior Legal Counsel, British Columbia Securities Commission