



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels
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March 22, 2006

Attn: Mr. David McKellar
Director, Market Regulation
Alberta Securities Commission
4th Floor, 300 – 5th Avenue S.W.
Calgary, AB T2P 3C4

Dear Mr. McKellar:

Re: MFDA 2005 Oversight Review Report

In July 2005 staff of the Alberta Securities Commission (“ASC”) performed an oversight review of the MFDA Prairie Region’s compliance, enforcement and membership services functions. We are in receipt of the ASC’s Oversight Review Report of the Mutual Fund Dealers Association of Canada dated January 2006.

We would like to take this opportunity to thank you and your staff for your courteous, professional approach to the audit process.

In your letter of March 3, 2006 you invited our comments in response to the Report. We understand our comments will be published on the ASC website concurrently with the release of the Report. We appreciate the opportunity to comment on the Report. It underscores the cooperative relationship between the ASC and the MFDA in the interest of effective and transparent regulation.

Our comments follow. Specific sub-section and sub-heading references below are cross-referenced to those in the Report.

Enforcement

3. Staffing and Training

In accordance with the MFDA’s staffing plans for the 2005 - 2006 budget year, we have now hired the planned second investigator for the Prairie Regional Office. This will ensure that new investigators hired in future will have ongoing face-to-face training with an experienced investigator. We have also implemented procedures to have new regional investigators spend time training at the MFDA’s Toronto head office to gain additional experience.

4. Communications

The MFDA maintains duplicate copies of such correspondence in our electronic documents management system and this information is available through that means. We agree, however, that hard copies of such correspondence should be maintained in the files and we have enhanced our file documentation procedures to address this issue.

5. Benchmarks

As provided for in *MFDA Enforcement Procedure 012 – Enforcement Department Performance Benchmarks*, we have now developed additional benchmarks for case handling stages based on experience gathered during calendar year 2005. These additional benchmarks are being tested against current cases to ensure they are appropriate, and we will be formally revising our procedures and case management reports to incorporate these benchmarks once testing is complete.

7. Case Assessment and 8. Investigations

General Comments

We agree that in some cases MFDA files were not well organized and reasons for decisions were not fully documented. We would generally note that the files reviewed by ASC staff were ones that were handled at various points throughout the period November 2002 to June 30, 2005. All of our procedures were revised and significantly upgraded during that period. Many of the cases that ASC staff reviewed were ones that were handled under earlier versions of our procedures that are not reflective of our current procedures.

It is important also to note that management continually hired and trained staff and the MFDA enforcement department grew from 7 to 28 employees during that period, while still ensuring that cases were handled in a timely manner.

We have continued to revise and enhance our procedures in a number of areas since the date of the oversight examination, including file organization and documentation as identified by ASC staff. One procedure provides detailed guidance on which documents should be in the files and how they should be organized. Another procedure provides for the mandatory use of standard file documentation checklists that act as an internal control to ensure the file documentation standards are maintained in each case. We are enhancing our procedures for further management review and to implement additional internal controls relating to the organization and documentation of files.

Case Assessment – Review Point 4.

MFDA staff agrees that material changes in know-your-client information must be adequately documented. MFDA Rule 2.2.4 requires that know-your-client information must be updated to include any material change in client information

whenever a Member or Approved Person or other employee or agent becomes aware of such change. In this case, the Approved Person failed to meet this requirement and MFDA staff issued a warning letter to the Approved Person, which was copied to the Member.

It is important to note in this case that the initial investment recommendation to the client by the Approved Person was not unsuitable, and no action was necessary with regard to the Approved Person on that issue.

We note ASC staff's concern that the Member did not at the time of the recommendation to the client proactively ask the Approved Person whether the previously documented know your client information was still correct. While we share ASC staff's views on the importance of member supervision regarding suitability issues, it is MFDA Staff's view that members must conduct supervision that is reasonable. While we note the existence of ASC Policy 3.1, we also note that there is no obligation on the part of Members under MFDA rules to proactively query Approved Persons on the accuracy of documented KYC information on a trade-by-trade basis, although MFDA staff would agree that in the appropriate circumstances it is a good practice. Accordingly, in our view, taking formal or informal discipline against the member in this case was not warranted.

Investigations – Review Point 2.

We agree that this is an example of the failure in some cases to document our actions, which we acknowledged in our comments above. In this case, the MFDA took action in another file with regard to the same Member to ensure that KYC information was updated for all files and that adequate supervision was in place. The MFDA relied on its actions in that other file as a basis for taking no action in the file reviewed by ASC staff, but we did not document that in our investigation report. Our above general comments regarding the actions we have since taken to enhance our procedures apply to this and all similar cases.

Compliance

3.3. Sales Compliance Examination Programs

MFDA staff began using a revised Compliance Examination Program in January 2006. The revised Program provides further guidance to MFDA compliance staff regarding the factors to be considered when selecting samples and requires compliance staff to document the sample and the selection methodology employed. In addition, for each applicable program test, minimum sample sizes are provided and compliance staff are required to document the rationale for deviating from these minimum sizes. These steps and expectations regarding the documentation of samples were reviewed with MFDA staff during training sessions in November 2005 and February 2006.

The objectives of the testing procedures performed during MFDA compliance examinations are to assess the Member's systemic procedures and internal controls and to note any deviations from MFDA requirements. Accordingly, the sample sizes employed to perform the testing and achieve the noted objectives are judgmental rather than statistical and so the population size is not necessarily determinative of the sample size. The Compliance Examination Program also includes a detailed planning section that permits Staff to identify higher risk areas for each Member and to plan appropriate testing in those areas.

The examination procedures and sample testing performed during compliance examinations have allowed us to accurately identify and communicate compliance issues to ensure appropriate corrective action is taken.

We would be pleased to meet with ASC staff to discuss any points raised in this response letter or provide further information if required. We look forward to our continued co-operative relationship as partners in regulation.

Sincerely,

John L. Smeeton
Vice-President, Prairie Region