

**13.1.3 Notice of Commission Approval –  
Amendments to MFDA Rule 5.3.1 –  
Delivery of Account Statement**

**THE MUTUAL FUND DEALERS ASSOCIATION (MFDA)  
NOTICE OF COMMISSION APPROVAL  
AMENDMENTS TO MFDA RULE 5.3.1 –  
DELIVERY OF ACCOUNT STATEMENT**

The Ontario Securities Commission approved amendments to MFDA Rule 5.3.1 regarding delivery of account statement. In addition, the Alberta Securities Commission, Nova Scotia Securities Commission and Saskatchewan Financial Services Commission approved; and the British Columbia Securities Commission did not object to the amendments. The amendments to MFDA Rule 5.3.1 allow a MFDA Member operating in client name to rely on the trustee administering self-directed registered plans to send account statements under certain conditions. The amendments also permit a Member to rely on the affiliated fund manager to send the client account statements, when the Member is affiliated with a mutual fund manager and, in connection with a specific client account, is only selling the mutual fund securities of an issuer managed by the affiliated manager. A copy and description of these amendments were published on July 11, 2003 at (2003) 26 OSCB 5409. A summary of the public comments received and the final amendments to Rule 5.3.1 blacklined from the version published on July 11, 2003 are contained in Appendix "A" and "B" respectively.

## APPENDIX "A"

### Summary of Public Comments Respecting Proposed Amendments to MFDA Rule 5.3.1 - Delivery of Account Statement And Response of the MFDA

On July 11, 2003, the Ontario Securities Commission published for public comment proposed amendments to MFDA Rule 5.3.1 – Delivery of Account Statement. The MFDA proposal was published in Volume 28, Issue 26 of the Ontario Securities Commission Bulletin, dated July 11, 2003.

The public comment period expired on August 11, 2003.

Five submissions were received during the public comment period:

1. Royal Mutual Funds Inc.
2. Sun Life Assurance Company of Canada on behalf of IQON Financial Inc.
3. Manulife Securities International Ltd.
4. Performa Financial Group Ltd.
5. Independent Planning Group Inc.

Copies of comment submissions may be viewed at the offices of the MFDA, 121 King Street West, Suite 1600, Toronto, Ontario by contacting Laurie Gillett, Corporate Secretary and Membership Services Manager, (416) 943-5827.

The following is a summary of the comments received, together with the MFDA's responses.

#### 1. Rule 5.3.1(c) – Self-Directed Registered Plans Administered by a Trustee

##### A. General Comments

One commentator expressed the view that the stated objective of the proposed amendment, to avoid client confusion associated with receiving multiple statements from different sources, would not be achieved since Rule 5.3.1 would still require that Members send annual statements for non-intermediary accounts. The commentator stated that clients would continue to receive statements from multiple sources: Members, intermediaries and mutual fund companies. This commentator was of the view that client confusion would not be eliminated by the proposed amendment for the following reasons:

- Many Members do not have the technology to exclude intermediary accounts from their statement runs, which will result in the dealer having to send intermediary account information

regardless. Under these circumstances, Members will not be able to provide clients with true and complete intermediary account information with respect to stocks, bonds and cash holdings.

- Even if Members can exclude intermediary information from their account statements, they would have to send a separate cover letter with all the statements in order to provide clients with an explanation as to why the Member is not including all holdings on the statement, which will lead to further confusion.
- Data transfers from mutual fund companies continue to have errors and exclusions and Members are continually processing exception reports as a result of receiving incorrect or missing data from fund companies. Industry data standards have not been implemented by all fund companies. Fund company statements must continue to be sent to clients to ensure that clients are receiving accurate information from at least one source.

The commentator suggested that Members who operate solely in client name should be excluded from the requirement to provide annual statements or at the very least be excluded from having to provide clients with a listing of transactions. The commentator expressed concern regarding the expense incurred by Members in sending annual statements with transactions and noted that fund company statements are considered more accurate than dealer statements. The commentator also requested that consideration be given to developing a policy to address electronic options with respect to the delivery of account statements whereby clients would have secure internet access to view their accounts and transactions at any time.

Several commentators expressed general support for Rule 5.3.1(c), but had concerns with specific aspects of the amendments and the proposed conditions as drafted.

#### MFDA Response

The objective of the amendment is to avoid client confusion as the client will receive a statement from the Member and the trustee for the same account. For "non-intermediary" or trustee accounts, there would be no duplication as only the Member would be sending an account statement.

This amendment does not impose a requirement for a Member to rely on a trustee to send an account statement but rather provides the option of relying on the trustee to send an account statement. If a Member does not have the technology to exclude trustee accounts from its statement runs, the Member could still send its own account statement.

MFDA Rule 5.3.4 provides that “only transactions executed by the Member may appear on the statement of account.” Non-member transactions where the assets are held with a trustee should not appear on a Member’s account statement.

This amendment does not prohibit or otherwise discuss the sending of account statements by fund companies.

The requirement to send an account statement for client name accounts was subject to public comment during the MFDA’s recognition process. No amendments have been proposed for Rule 5.3.1(a).

MFDA Notice MR-0015 provides for electronic delivery of account statements under the conditions contained within the notice.

**B. Member May Not Act as Agent for Trustee**

One commentator expressed cautious support for the proposed amendment but questioned the policy basis behind the proposed condition that the Member not act as an agent for the trustee in order for a Member to rely on the trustee administering self-directed registered plans to send client account statements. The commentator noted that it acts as an investment agent for the trustee for client name registered plans but does not exercise what could be considered a trusteeship function. The commentator further noted that this type of agency relationship is typical in the industry. The commentator suggested that this condition be eliminated or alternatively clarified to cover only situations where Members act as agent in furtherance of the trusteeship function.

**MFDA Response**

The condition that a Member not act as agent for the trustee is relevant because those Members who act as agents for the trustee are delegated the responsibility for client record keeping and reporting of investment activities by the trustee. Accordingly, the Member is required to send an account statement where it is acting as agent for the trustee.

Where the trustee is responsible for these activities, it follows that the trustee should be responsible for sending the client account

statements and the Member afforded the option of relying on the trustee to send account statements provided certain conditions are met.

**C. Member’s Full Legal Name must Appear on Account Statement**

Another commentator expressed concern regarding the proposed condition that the Member’s full legal name appears on the account statement together with the name of the trustee. The commentator questioned what would happen where investments held in a self-directed account are held by more than one Member and suggested that the presence of the legal name of the Member may cause some clients to believe that the Member is responsible for all the assets held in the self-directed account. This commentator stated that the account statements should disclose which investments are held through the Member.

**MFDA Response**

The trustee account statement must clearly disclose which transactions have been made through the Member. Further guidance will be provided in a companion Member Regulation Notice.

**D. Member Must Receive Copies of the Statements to Ensure Accuracy of Information Regarding transactions Executed by the Member**

Two commentators questioned the proposed condition that they receive copies of the statements to ensure that the information contained therein matches its own information regarding the transactions it executes.

One commentator felt that this proposed condition is not necessary and will result in extra expense to both parties. The commentator noted that few Members will actually review the statements as most rely on electronic data files and exception reports to verify the accuracy of the data and that it would be the Approved Person that would have a chance of noticing an error upon visual review of the statements.

The other commentator was concerned about the potential violation of privacy rights of clients that the proposed condition might involve. The commentator noted that a dealer may not be entitled to view information with respect to client investments purchased through other entities and thus the trustee would need to ensure that they obtain client consent to release statements to the dealer or provide only information relating to investments purchased through the dealer. The commentator was of the view that this would be a costly undertaking that would ultimately increase

costs to consumers. The commentator also noted that it may not be possible for larger Members to review all of the statements in a timely and cost effective manner and that the requirement would be onerous and logistically difficult to implement. The commentator felt that the proposed condition was seriously flawed and should be reworked.

#### **MFDA Response**

MFDA Rule 2.8 requires that no client communication, including account statements, be misleading. If the Member is not sending an account statement but relying on the statement sent by the trustee, the Member is still required to ensure that the information is not misleading.

Additionally, MFDA Policy 2 requires Members to review account statements within 21 days of the period covered by the statement. Without a copy of the account statement sent by the trustee, in electronic or paper form, the Member cannot comply with this requirement.

If client consent is required, the Member and trustee should obtain such authorization prior to relying on this proposed amendment.

Rule 5.3.1(c) has been amended to incorporate the proposed conditions that were referenced in the commentary accompanying Proposed Rule 5.3.1(c) when it was published for comment. Attached is a black-lined version of the amendments to Rule 5.3.1(c) indicating the changes from the previously published version.

#### **2. Rule 5.3.1(d) - Member Exclusively Distributing the Funds of an Affiliated Fund Manager**

Two commentators while expressing support for the general intent and objective of proposed Rule 5.3.1(d), were of the view that the amendment as drafted was too limited in its application.

One commentator expressed concern with respect to the restriction in the proposed amendment that would require a Member to sell only the mutual fund securities of an issuer managed by the affiliated fund manager. The commentator noted that they would not be able to avail themselves of the exception where they are selling only the mutual fund securities of an issuer managed by their affiliated fund manager with respect to their client name accounts if they also sell third party funds in nominee name. The commentator requested that the proposed amendment be revised to clarify that the restriction in the proposed amendment applies at the account level rather than the Member level. The commentator suggested that the proposed amendment be reworded to provide that where a Member is affiliated with a mutual fund manager and is selling only the mutual fund securities of an issuer

managed by an affiliated fund manager in respect of its client name accounts, the Member would be entitled to rely on the fund manager to send the account statement in respect of those accounts.

One commentator was of the view that the proposed amendment should not be limited to a Member which only sells funds of an affiliated fund manager but should extend to any Member in respect of a client of the Member where the client only holds funds managed by a single fund manager. The commentator suggested that where a Member's client elects to invest in funds managed by more than one fund manager, the exemption would no longer apply and the Member would be required to issue an account statement. The commentator submitted that the reasons supporting Rule 5.3.1(d) as currently drafted support an exemption in these circumstances as well.

#### **MFDA Response**

The proposed amendment has been clarified to reflect that it is applicable on an account level for client name accounts only. In addition, the reference to "any conditions which may be imposed" has been removed as the MFDA does not contemplate any additional conditions to relying on Rule 5.3.1(d) at this time. Attached is a black-lined version of the amendments to Rule 5.3.1(d) indicating the changes from the previously published version.

The proposed amendment includes the requirement that the fund manager be affiliated and does not related to unaffiliated fund managers because the Member has more access and control to information of affiliates.

#### **3. Consolidated Account Statements**

On a related topic, several commentators expressed opposition to the withdrawal of proposed Rule 5.3.5, which would have permitted the delivery of consolidated account statements. One commentator was of the view that Members should be allowed to provide consolidated statements to clients similar to those that clients would otherwise receive from the trustee pursuant to proposed Rule 5.3.1(c). This commentator felt that at a minimum, the MFDA should allow Members to embed portfolio summaries in account statements.

Another commentator was of the view that clients would benefit tremendously from receiving a single, consolidated statement which clearly discloses the legal entities that are related to particular transactions and holdings rather than requiring separate statements. This commentator further stated that while they support the MFDA's objective of ensuring that clients understand which

entity they are transacting business with when purchasing mutual fund securities, they were of the view that this objective could be satisfied through appropriate disclosure on a consolidated statement.

Another commentator expressed the view that all products sold through a Member should be allowed to appear in a single corporate account statement. This commentator stated that not allowing the Member to include other assets such as segregated funds in the statement of account will prevent the Member from offering valuable service to the client. The commentator further noted that dealers will probably choose not to report the assets, holding them in client name, thereby offering less information to clients. The commentator was of the view that if the dealer does not report the assets, Approved Persons may prepare ad hoc consolidated account statements of their own, increasing the risk of confusion, error and fraud.

**MFDA Response**

Following discussions with the Alberta, British Columbia, Ontario and Saskatchewan Securities Commissions together with the MFDA Investor Protection Corporation and after considering the comments received, the MFDA reconsidered its original approach to the delivery of consolidated statements set out in proposed Rule 5.3.5. The MFDA was of the view that despite the disclosure requirements set out in proposed Rule 5.3.5, the practice of consolidated reporting would result in client confusion about the investor protection applicable to the financial products shown in a consolidated statement.

To address the issue of consolidated statements, the MFDA will be issuing a notice regarding portfolio summaries, which can be sent in addition to the Member's client account statement under certain conditions.

**APPENDIX "B"**  
**The Final Amendments to Rule 5.3.1 - Delivery of Account Statement**

**Rule 5.3.1 Delivery of Account Statement**

- (a) Each Member shall send an account statement to each client in accordance with the following minimum standards:
  - (i) once every 12 months for a client name account;
  - (ii) once a month for nominee name accounts of clients where there is an entry during the month and a cash balance or security position; and
  - (iii) quarterly for nominee name accounts where no entry has occurred in the account and there is a cash balance or security position at the end of the quarter.
- (b) A Member may not rely on any other person (including an Approved Person) to send account statements as required by this Rule.
- (c) Notwithstanding the provisions of 5.3.1(b), a Member may rely on the trustee administering a self-directed registered plan to send the account statement required by paragraph (a)(i) where the following conditions ~~prescribed by the Corporation~~ are met:
  - (i) The Member does not act as agent for the trustee for the registered plans;
  - (ii) The trustee meets the definition of "Acceptable Institution" as defined in Form 1;
  - (iii) There is a services agreement in place between the Member and the trustee which complies with the requirements of MFDA Rule 1.1.3 and provides that the trustee is responsible for sending account statements to clients of the Member that comply with the requirements of MFDA Rule 5;
  - (iv) There is clear disclosure about which trades are placed by the Member;
  - (v) Clear disclosure must be provided on the account statement regarding which securities positions referred to on the statement are eligible for coverage by the MFDA Investor Protection Corporation and which are not (once the Corporation is offering coverage);
  - (vi) The Member's full legal name must appear on the account statement