

13.1.2 MFDA Rule 1.1.7 – Business Names, Styles, etc.

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

BUSINESS NAMES, STYLES, ETC. (Rule 1.1.7)

I. OVERVIEW

On June 13, 2003, the MFDA Board of Directors approved a number of amendments to MFDA Rule 1.1.7 that were proposed to clarify the requirements with respect to the use of trade names by Approved Persons of MFDA Members. The Ontario Securities Commission published for public comment the MFDA proposal to amend Rule 1.1.7 in Volume 28, Issue 26 of the Ontario Securities Commission Bulletin, dated July 11, 2003.

Staff of the British Columbia, Alberta, Ontario and Nova Scotia Securities Commissions and Saskatchewan Financial Services Commission (the "Recognizing Jurisdictions") reviewed the proposal and provided comments suggesting that additional amendments be made to address certain concerns. The concerns relate to the size and prominence of the Member's legal name on communications where an Approved Person's trade name is used and the use of trade names by Approved Persons that suggest a corporate name.

The original proposal to amend Rule 1.1.7 is being re-published with additional amendments incorporating the suggestions received from staff of the Recognizing Jurisdictions. This notice has been issued to solicit public comments on the revised proposed amendments.

A. Current Rule

Rule 1.1.7(b)(ii) currently requires that the trade name of the Member or the legal name of the Member accompany the trade name of the Approved Person on materials communicated to the public and clients other than contracts, account statements and trade confirmations.

Pursuant to Rule 1.1.7(c), only the legal name of the Member can appear on contracts, account statements and trade confirmations.

B. The Issues

Concerns have been raised that allowing the use of an Approved Person's trade name on communications in the absence of the Member's legal name can lead to client confusion as to which legal entity is responsible and liable to the client. In addition, MFDA staff have observed in compliance examinations that some Approved Persons use corporate names or trade names that suggest corporate names. This practice is potentially misleading to clients.

C. Objectives

The proposed Rule amendments were developed to:

- i) clarify the requirements regarding the use of trade names by Approved Persons of MFDA Members;
- ii) create a more standardized approach to the issue with respect to other sectors of the industry;
- iii) eliminate the potential for client confusion.

D. Effect of Proposed Amendments

Under the proposed Rule amendments, on every communication to clients or the public where an Approved Person's trade name is used, the Member's legal name must also be included. On contracts, account statements and confirmations, the legal name of the Member must appear in equal size and prominence to the Approved Person's trade name. On other types of communications, either the Member's legal name, or a trade name of the Member must appear in equal size and prominence to the Approved Person's trade name.

It is not expected that the proposed amendments will have other significant effects on Members, other market participants, market structure or competition or that the proposed amendments will require Members to implement technological systems changes, or will result in significant additional costs for Members to comply with the proposed amended Rule.

II. DETAILED ANALYSIS

A. Relevant History

(i) Summary of Public Comments Received on Initial Amendments to Rule 1.1.7

Proposed amendments to Rule 1.1.7 were initially published for comment in July 2003. Three submissions were received during the public comment period from the following Members:

1. TWC Financial Corp.
2. Royal Mutual Funds Inc.
3. Armstrong & Quail Associates Inc.

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

Clarification regarding Requirements of Rule 1.1.7(b) – Contracts, Account Statements and Confirmations

Several commentators requested clarification regarding what names can appear on contracts, account statements and confirmations pursuant to Rule 1.1.7(b). One of these commentators suggested that a provision be added to the Rule 1.1.7(b) clarifying the MFDA's requirements with respect to the use of trade or style names owned by

Members on contracts, account statements and confirmations.

MFDA Response

The confusion surrounding the requirements with respect to contracts, account statements and confirmations resulted from a typographical error that occurred in the publication of the proposed amendments.

To clarify, under the initial proposed amendments published in July 2003 and the revised amendments to Rule 1.1.7 set out in this notice, the legal name of the Member must always appear on contracts, account statements and confirmations. A Member's trade name or the trade name of an Approved Person of the Member may also appear on these documents. Under the revised amendments to Rule 1.1.7 set out in this notice, the legal name of the Member must appear in at least equal size and prominence to the Approved Person's trade name on account statements, contracts and confirmations.

Permitting the Approved Person's Trade Name to Appear on Account Statements

One commentator disagreed with permitting the trade name of the Approved Person to appear on account statements in equal size to the Member's name. The commentator noted that it would not be able to accommodate a bulk run of account statements for all their representatives in the event that their representatives request that their trade name be of equal size to that of the dealer.

MFDA Response

The use of a trade name by an Approved Person is conditional upon the receipt of the prior written consent of the Member pursuant to Rule 1.1.7(c). Therefore, it remains the decision of the Member whether to allow the use of trade names by its Approved Persons.

(ii) CSA Staff Comments

Staff of the British Columbia, Alberta, Ontario and Nova Scotia Securities Commissions and Saskatchewan Financial Services Commission reviewed the proposed amendments and suggested that additional changes be made to address concerns relating to the size and prominence of the Member's legal name on communications where an Approved Person's trade name is used and the use of trade names by Approved Persons that suggest a corporate name. These have been reflected in the proposed amended Rule described in this notice.

B. Proposed Amendments

The proposed amendments to Rule 1.1.7 will require that whenever an Approved Person's trade name is used in a communication to clients or the public, the legal name of the Member must also appear. The Rule will be amended to permit the trade name of an Approved Person to be included on contracts, account statements and

confirmations, provided that the Member consents to such use and the Member's legal name also appears in at least equal size and prominence to the Approved Person's trade name.

The MFDA is of the view that a distinction should be made between contracts, account statements and confirmations and other types of communications to clients or the public. Account statements, confirmations and contracts are official dealer documents prescribed by legislation and MFDA Rules, which should very clearly indicate the Member's legal name so as to ensure that clients are not confused about the legal entity that is responsible and liable to them. The inclusion of an Approved Person's trade name in equal or lesser size and prominence does not defeat this objective, as long as there is proper disclosure of the Member's legal name.

The proposed amendments also provide that on all communications apart from contracts, account statements and confirmations, either the Member's legal name or a business, style or trade name of the Member must appear in at least equal size to the trade name of the Approved Person. Allowing either the trade name of the Member or the legal name of the Member to appear in equal size on these communications will provide Members and their Approved Persons with flexibility while still ensuring that clients are not confused about the legal entity with which they are conducting business.

The amended Rule 1.1.7 confirms that any business, style or trade name used by either the Member or an Approved Person must comply with applicable business names legislation, which prohibits the use of trade names with corporate endings.

Minor housekeeping amendments including the renumbering of paragraphs and the addition of sub-headings were also made to Rule 1.1.7 for clarity.

C. Issues and Alternatives Considered

No other issues or alternatives were considered.

D. Comparison with Similar Provisions

The proposed amendments are generally consistent with the IDA's requirements with respect to the use of trade names by Approved Persons. IDA By-law 29.7A requires that the full legal name of the Member accompany the trade name of an Approved Person on materials that are used to communicate to the public. IDA By-law 29.7A also permits the trade name of an Approved Person to be included on contracts, account statements and trade confirmations along with the Member's legal name.

Similarly, the proposed amendment to MFDA Rule 1.1.7 (b) will allow for the use of an Approved Person's trade name on contracts, statements and confirmations, provided that the Member's legal name appears in at least equal size and prominence to the trade name of the Approved Person. However, proposed MFDA Rule 1.1.7 differs from IDA By-law 29.7A in that it allows more flexibility on other types of

communications. On documents other than contracts, account statements and confirmations, the legal name of the Member must appear, but either the Member's legal name or a business, style or trade name of the Member can be included in at least equal size and prominence to the trade name of the Approved Person.

E. Best Interests of the Capital Markets

The Board has determined that the proposed Rule amendments are in the best interests of the capital markets.

F. Public Interest Objective

The proposed amendments would create standards with respect to the use of trade names that are consistent with practices followed by other sectors of the industry. Furthermore, the proposed amendments will assist in the protection of the investing public by ensuring that clients are not confused about the entity they are dealing with and which entity is responsible and liable to the client.

III. COMMENTARY

A. Filing in Other Jurisdictions

The proposed Rule amendments will be filed for approval with the Alberta, British Columbia, Nova Scotia, and Ontario Securities Commissions and the Saskatchewan Financial Services Commission.

B. Effectiveness

The proposed amendments are simple and effective.

C. Process

The proposed amendments were developed by MFDA staff in response to comments received from Members and based on input from staff of the Recognizing Jurisdictions. The proposed amendments have been approved by the MFDA Board of Directors.

D. Effective Date

The proposed amendments will be effective on a date to be subsequently determined by the MFDA.

IV. SOURCES

- MFDA Rule 1.1.7
- IDA By-law 29.7A

V. OSC 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 Ontario Securities Commission staff.

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 30 days of the publication of this notice, addressed to the attention of the Corporate Secretary, Mutual Fund Dealers Association of Canada, 121 King St. West, Suite 1600, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of the Manager of Market Regulation, Ontario Securities Commission, 20 Queen Street West, 19th Floor, Box 55, Toronto, Ontario, M5H 3S8.

On request, the MFDA will make available all comments received during the comment period.

Questions may be referred to:

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MUTUAL FUND DEALERS ASSOCIATION OF CANADA

BUSINESS NAMES, STYLES, ETC. (Rule 1.1.7)

On June 18, 2004, the Board of Directors of the Mutual Fund Dealers Association of Canada made and enacted the following amendments to Rule 1.1.7:

1.1.7 Business Names, Styles, Etc.

(a) **Use of Member Name.** Except as permitted pursuant to Rule 1.1.6 with respect to introducing dealers and carrying dealers and subject to Rule 1.1.7(b) and (c), all business carried on by a Member or by any person on its behalf shall be in the name of the Member or a business or trade or style name owned by the Member, ~~an Approved Person in respect of the Member or an affiliated corporation of either of them, and the Member shall notify the Corporation prior to the use of any business or style or trade names other than the Member's legal name.~~

(b) Contracts, Account Statements and Confirmations. ~~Notwithstanding the provisions of paragraph (a), the legal name of the Member shall be included on any contracts, account statements or confirmations of the Member.~~

(b)(c) Use of Approved Person Trade Name. ~~Notwithstanding the provisions of paragraph (a),~~ No an Approved Person shall may conduct any business of the Member in accordance with (a) in a business or trade name or style name that is not that of, or owned by, the Member or its affiliated corporation unless if:

- i) the Member has given its prior written consent; and
- ii) ~~the name is used together with the Member's legal name or a business or trade name or style of the Member in at least equal size in all materials communicated to clients or the public (other than contracts, account statements or confirmations in accordance with (iii)e);~~

(A) the name is used together with the Member's legal name; and

(B) the Member's legal name or a business or trade or style name of the Member is at least equal in size and prominence to the business or trade or style name used by the Approved Person;

iii) on contracts, account statements or confirmations, the Member's legal name must be at least equal in size and prominence to the business or trade or style name used by the Approved Person.

~~(e) Notwithstanding the provisions of paragraph (b), only the legal name of the Member shall appear on any contracts, account statements or confirmations of the Member.~~

(d) Notification of Trade Names. Prior to the use of any business or style or trade names other than the Member's legal name, the Member shall notify the Corporation.

(e) Compliance with Applicable Legislation. Any business or trade or style name used by a Member or Approved Person must comply with the requirements of any applicable legislation relating to the registration of business or trade or style names.

~~(d)(f)~~ **Single Use of Trade Names.** No Member or Approved Person of such Member shall use any business or trade or style name that is used by any other Member, unless the relationship with such other Member is that of an introducing dealer and carrying dealer, in compliance with Rule 1.1.6.

~~(e)(g)~~ **Misleading Trade Name.** No Member or Approved Person shall use any business or trade or style name that is deceptive, misleading or likely to deceive or mislead the public.

~~(f)(h)~~ **Prohibition of Use of Trade Name.** The Corporation may prohibit a Member or Approved Person from using any business or trade or style name in a manner that is contrary to any provision of this Rule 1.1.7 or that is objectionable or contrary to the public interest.