

## Chapter 13

# SROs, Marketplaces and Clearing Agencies

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### 13.1 SROs

#### 13.1.1 MFDA – Proposed Amendments to MFDA Rule 5.3 (Client Reporting)

#### MUTUAL FUND DEALERS ASSOCIATION OF CANADA

#### PROPOSED AMENDMENTS TO MFDA RULE 5.3 (CLIENT REPORTING)

### I. OVERVIEW

#### A. Current Rule

Under MFDA Rule 5.3.1(a)(i), Members are currently required to send account statements to clients once every 12 months for a client name account. For nominee name accounts, under MFDA Rule 5.3.1(a)(ii)(iii), Members must send an account statement once a month where there is an entry during the month and a cash balance or security position, and quarterly where no entry has occurred in the account and there is a cash balance or security position at the end of the quarter.

#### B. The Issues

National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”) currently requires mutual fund dealers to deliver account statements to clients at least once every three months for both client name and nominee name accounts. Conforming changes are required to Rule 5.3 to ensure that frequency of account statement delivery requirements under MFDA Rules are consistent with those established under NI 31-103.

We understand that the Canadian Securities Administrators (“CSA”) are currently reviewing the applicability of account statement requirements under NI 31-103 to Exempt Market Dealers and note that additional conforming amendments to Rule 5.3 will be made if necessary.

#### C. Objectives

The proposed amendments are consequential in nature and, as noted, are intended to ensure that requirements under MFDA Rules are consistent with those under NI 31-103.

#### D. Effect of Proposed Amendments

MFDA Members and Approved Persons must comply with requirements under securities legislation as well as MFDA Rules. The effect of the proposed amendments will be to avoid Member confusion by ensuring that Members are subject to consistent requirements in respect of the frequency of account statement delivery under both MFDA Rules and NI 31-103.

### II. DETAILED ANALYSIS

#### A. Proposed Amendments

- **Rule 5.3.1(a) (Delivery of Account Statement)** – Conforming amendments have been made to: (i) eliminate distinctions between delivery requirements for accounts held in client and nominee name; and (ii) adopt the NI 31-103 requirement for registered dealers (including mutual fund dealers) to deliver a statement to all clients at least once every three months.
- **Rule 5.3.2 (Automatic Payment Plans)** – This Rule, which requires quarterly statement delivery in respect of automatic payment plan transactions for client assets held in nominee name, has been deleted. This requirement is no longer necessary as quarterly statements will be required for all accounts.

**B. Issues and Alternatives Considered**

The CSA have established regulatory working groups to consider and develop requirements under NI 31-103. MFDA staff participates on these working groups and, during the course of working group meetings, has communicated issues, concerns and alternatives to staff of the CSA.

**C. Comparison with Similar Provisions**

As noted, the proposed amendments are conforming and consequential in nature and are required to ensure consistency between frequency of account statement delivery requirements under MFDA Rules and those established under NI 31-103.

**D. System Impact of Amendments**

Under NI 31-103, MFDA Members registered solely as mutual fund dealers were given a two-year transition period from September 28, 2009 (i.e. until September 28, 2011) to comply with account statement delivery requirements under the Instrument, including the requirement to deliver quarterly account statements to clients. As the proposed amendments are intended to conform to requirements in respect of which a transition period has already been provided, it is not anticipated that they will give rise to a significant systems impact for Members.

**E. Best Interests of the Capital Markets**

The Board has determined that the proposed amendments are consistent with the best interests of the capital markets.

**F. Public Interest Objective**

As noted, MFDA Members and Approved Persons must comply with requirements under securities legislation and MFDA Rules. The proposed amendments are in the public interest as they will eliminate inconsistencies between MFDA Rules and NI 31-103.

**III. COMMENTARY**

**A. Filing in Other Jurisdictions**

The proposed amendments will be filed for approval with the Alberta, British Columbia, Manitoba, New Brunswick, 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 have been prepared in consultation with relevant departments within the MFDA. The MFDA Board of Directors approved the proposed amendments on September 28, 2011.

**D. Effective Date**

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

**IV. SOURCES**

MFDA Rule 5.3 (Client Reporting)  
National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, Section 14.14 (Account Statements)

**V. 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 the Recognizing Regulators. In light of the fact that the proposed amendments are being made to conform to current law, the comment period will be 30 days in length.

**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:

Paige Ward  
Director, Policy & Regulatory Affairs  
Mutual Fund Dealers Association of Canada  
121 King St. West, Suite 1000  
Toronto, Ontario  
M5H 3T9  
[pward@mfd.ca](mailto:pward@mfd.ca)

and one copy addressed to the attention of:

Anne Hamilton  
Senior Legal Counsel, Capital Markets Regulation Division  
British Columbia Securities Commission  
701 West Georgia Street  
P.O. Box 10142, Pacific Centre  
Vancouver, British Columbia  
V7Y 1L2  
[ahamilton@bcsc.bc.ca](mailto:ahamilton@bcsc.bc.ca)

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the MFDA website at [www.mfda.ca](http://www.mfda.ca).

Questions may be referred to:

Paige Ward  
Director, Policy & Regulatory Affairs  
Mutual Fund Dealers Association of Canada  
(416) 943-5838

**SCHEDULE "A"**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**CLIENT REPORTING (Rule 5.3)**

On September 28, 2011, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to MFDA Rule 5.3 (Client Reporting):

**5.3 CLIENT REPORTING**

**5.3.1 Delivery of Account Statement**

- (a) Each Member shall, in a timely manner send an account statement to each client in accordance with the following minimum standards:
  - (i) ~~at least once every 12~~<sup>3</sup> months for a client name account; and
  - (ii) ~~at least once every 3a~~ months for a nominee name account~~s 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 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 together with the name of the trustee; and
  - (vii) The Member must receive copies of the statements, or have other systems in place, to ensure that the information contained on the statements matches its own information regarding the transactions it executes.
- (d) Notwithstanding the provisions of Rule 5.3.1(b), where a Member is affiliated with a fund manager and in connection with a specific client account is selling only the mutual fund securities of an issuer managed by such affiliated fund manager for that client account, the Member may rely on the affiliated fund manager to send the account statement required by paragraph (a)(i) for that specific account.

~~5.3.2 Automatic Payment Plans. Notwithstanding the provisions of Rule 5.3.1(a)(ii), where a Member holds client assets in nominee name and the only entry in the client's account in a month relates to the client's participation in:~~

- ~~(a) any automatic payment plan that provides for systematic trading in the securities of a mutual fund on a monthly or more frequent basis, or~~

~~(b) other automatic entries such as dividends and reinvested distributions,~~

~~The Member shall send an account statement to the client quarterly.~~

5.3.32 **Content of Account Statement.** Each account statement must contain the following information:

- (a) for nominee name accounts or accounts where the Member acts as an agent for the trustee for the purposes of administering a self-directed registered retirement savings or similar plan:
  - (i) the opening balance;
  - (ii) all debits and credits;
  - (iii) the closing balance;
  - (iv) the quantity and description of each security purchased, sold or transferred and the dates of each transaction, and;
  - (v) the quantity, description and market value of each security position held for the account;
- (b) for client name accounts:
  - (i) all debits and credits;
  - (ii) the quantity and description of each security purchased, sold or transferred and the dates of each transaction; and
  - (iii) for automatic payment plan transactions, the date the plan was initiated, a description of the security and the initial payment amount made under the plan.
- (c) for all accounts:
  - (i) the type of account;
  - (ii) the account number;
  - (iii) the period covered by the statement;
  - (iv) the name of the Approved Person(s) servicing the account, if applicable; and
  - (v) the name, address and telephone number of the Member.

5.3.34 **Member Business Only.** Only transactions executed by the Member may appear on the statement of account required pursuant to Rule 5.3.3.