

CSA RELEASE OVERSIGHT REVIEW REPORT OF THE MFDA

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On September 15, 2017, the Canadian Securities Administrators (“**CSA**”) published the Oversight Review Report of the Mutual Fund Dealers Association of Canada (“**MFDA**”) (the “**Report**”). The Report evaluates whether the regulatory processes of the MFDA are operating effectively and identifies areas which require corrective action.

The MFDA is the national self-regulatory organization (“**SRO**”) that oversees mutual fund dealers in Canada. The MFDA is a recognized SRO in Alberta, British Columbia, Saskatchewan, New Brunswick, Manitoba, Nova Scotia, Ontario and Prince Edward Island (the “**Recognizing Regulators**”). The Report covers the period from August 1, 2015 to January 31, 2017 and was conducted by staff of the securities commissions in Alberta, British Columbia, Saskatchewan, Manitoba, Nova Scotia and Ontario (“**Staff**”). In its review, Staff focused on certain above-average areas of risk in the enforcement, financial compliance, and policy departments of the MFDA. The Report also reviews the progress made by the MFDA since the CSA’s last oversight report, which was published in the late fall of 2015 and covered the period from July 1, 2012 to July 31, 2015 (the “**2015 Report**”).

(i) Enforcement

The MFDA is required to discipline those who violate the rules of the MFDA and to cooperate with the Recognizing Regulators to enforce applicable securities legislation. The 2015 Report highlighted two high priority findings regarding signature falsification cases and bringing cases against dealer members when warranted. The Report concluded that the MFDA adequately addressed the issues raised in the 2015 Report, noting that the MFDA commenced almost twice the number of signature falsification proceedings as compared to the period covered by the 2015 Report. The MFDA also increased the penalties for signature falsification activity and published guidance on supervising, investigating and disciplining such activity. In addition, the MFDA opened more than twice the number of supervision cases against its members, as compared to the period covered by the 2015 Report, and significantly improved the timeliness of postings on the national registration database.

The Report identifies one low priority finding concerning the adequacy of documentation in enforcement case files. Specifically, Staff found that enforcement case files for high risk firms did not make clear that such firms had been identified for heightened review. In addition, the Report emphasized that decision-making with regard to enforcement matters should involve a holistic assessment of the firm, including the firm’s disciplinary

history and the firm's history of compliance. The Report concluded that the case files did not adequately document that a holistic approach was taken when making decisions about enforcement matters.

(ii) Financial Compliance

The MFDA is required to conduct periodic examinations of its members, as well as individuals who are employees or agents of an MFDA member who meet certain criteria, to ensure compliance with the MFDA rules. The Report concludes that the MFDA has made adequate progress in addressing deficiencies noted in the 2015 Report, but highlights one medium priority finding, being a lack of written policies and procedures for handling repeat deficiencies. The Report notes that there is no specific written guidance for MFDA staff to assist them in assessing the nature and significance of repeat deficiencies and determining a timeline for resolution. The Report stresses that, along with professional judgment, written guidance is essential in classifying and resolving repeat deficiencies. In response, the MFDA has committed to revise its policies and procedures to address this finding by September 30, 2017. Staff also expects that the MFDA will provide a report on the effectiveness of its changes by February 28, 2018.

(iii) Policy

The MFDA is required to establish rules and regulations to govern and regulate all aspects of its business and affairs. The Report concludes that the issues identified in the 2015 Report, including a medium priority issue about processes for delegating decision-making to staff of the MFDA, had been sufficiently addressed. The Report found that the MFDA had enhanced its internal documentation procedures to clarify the scope of authority of individuals who are authorized to act on behalf of the MFDA. No significant findings were noted in this area.

Conclusion

In summary, the CSA found that the MFDA has made sufficient progress in addressing the specific issues identified by the CSA in its previous oversight review report. The current Report identifies only one medium priority finding in the Financial Compliance department and one low priority finding in the Enforcement department. Low priority findings are simply issues requiring improvement, while medium priority findings highlight issues which, if not resolved, have the potential to conflict with regulatory requirements applicable to the MFDA. The Report did not identify any high priority findings, which would require immediate action by the MFDA.

The CSA will monitor the MFDA's progress in resolving these issues and we can likely expect a progress report by the CSA in its next oversight review report of the MFDA.

by Jason A. Chertin and Laura Fraser

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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