



Canadian Foundation *for*  
Advancement *of* Investor Rights  
Fondation canadienne *pour* l'avancement  
*des* droits *des* investisseurs

May 7, 2018

Ken Woodard  
Director, Membership Services  
Mutual Fund Dealers Association of Canada  
121 King Street West, Suite 1000  
Toronto, ON M5H 3T9  
Sent via e-mail to: kwoodard@mfd.ca

**RE: Proposed MFDA Staff Notice on MFDA Member Intermediary Arrangements**

---

FAIR Canada is pleased to offer brief comments on the proposed Staff Notice by the Mutual Fund Dealers Association of Canada (“MFDA”) intending to clarify requirements under MFDA Rules 1.1.3 (Service Arrangements) and 1.1.6 (Introducing and Carrying Arrangement). FAIR Canada only became aware of this consultation today and so provides high level comments.

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice of Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit [www.faircanada.ca](http://www.faircanada.ca) for more information.

**1. High Level Comments**

- 1.1. The MFDA lists several regulatory concerns it has in respect of intermediary arrangements administered by entities that are not registered under securities legislation (Non-Registered Intermediaries – “NRI’s”). NRIs could be a bank, or presumably a managing general agency or life insurance agency, for example.
- 1.2. FAIR Canada agrees that the MFDA should justifiably be concerned with the practices it describes in the proposed Staff Notice under section IV.(B). FAIR Canada is of the view that confusion as to who is responsible for the financial consumers’ investments should be avoided and responsibility and regulatory oversight of the client’s investments (both securities and non-securities) should be seamless and avoid regulatory gaps.
- 1.3. FAIR Canada urges the MFDA to provide greater specificity, perhaps through examples, of the theoretical arrangements it provides.
- 1.4. The proposed Staff Notice raises more issues than it addresses through the relationships and arrangements it describes. For example, what position do the banking regulators and insurance regulators take regarding these arrangements? In addition, what are the compensation arrangements between the two entities? Are these arrangements occurring in part due to investors wishing to purchase, in part, some types of investments that MFDA Members are not able to sell, such as ETFs, in the absence of meeting specific requirements including meeting required proficiency and training requirements, and how can regulators best protect investors and advance their interests?

- 1.5. While we understand the MFDA's position that such intermediary arrangements should be entered into as Introducing/Carrying Dealer arrangements pursuant to requirements under Rule 1.1.6, we wonder if that can be a complete solution since, from the description provided in the proposed Staff Notice, such arrangements only permit clients to hold investments in which the Member is able to trade or advise.
- 1.6. We also question whether this will lead to greater outside business activities by Members. FAIR Canada observes that there has been a significant incidence of non-compliance with the rules for outside business activities including the conduct of securities related business "off book" or not through the Member. This often results in actual serious harm or the risk of serious harm to investors. Past MFDA Enforcement Reports highlight that the regulator continues to see a high incidence of cases involving undisclosed outside business activities<sup>1</sup>. FAIR Canada reiterates that more fundamental reform to strengthen protections for investors with respect to outside business activities is overdue. We refer you to our letter to the MFDA dated September 15, 2015 containing our recommendations regarding reform of the rules governing outside business activities.<sup>2</sup>
- 1.7. We also urge the MFDA and other regulators to adopt a statutory best interest standard for the relationship between financial services firms and their clients wherein firms and their financial services representatives would be required to avoid conflicts of interest rather than inadequately "manage" harmful conflicts through disclosure.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Frank Allen at 647-256-6693/frank.allen@faircanada.ca or Marian Passmore at 647-256-6691/marian.passmore@faircanada.ca.

Sincerely,



Canadian Foundation for Advancement of Investor Rights

---

<sup>1</sup> The MFDA's 2017 Enforcement Report notes that there were 27 cases opened where the primary allegation related to outside business activities/dual occupation. There were 9 in 2016 and 9 in 2015. The MFDA's 2013 Enforcement Report made special mention of the high incidence of violations of the outside business activities rules."

<sup>2</sup> FAIR Canada comments on Proposed Amendments to MFDA Rule 1.2 (Individual Qualifications) regarding Outside Business Activities Including Financial Planning, online: <[http://faircanada.ca/wp-content/uploads/2015/09/150816-Final-Draft-Submission-to-MFDA3\\_signed.pdf](http://faircanada.ca/wp-content/uploads/2015/09/150816-Final-Draft-Submission-to-MFDA3_signed.pdf)>.