



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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Mr. Gregory J. Ljubic
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Dear Sir and Madame:

Re: Request for Comments - Proposed Amendments to MFDA Rule 2.4.1

The Investment Industry Association of Canada (IIAC) thanks you for the opportunity to provide comments on the Proposed Amendments to the Mutual Fund Dealers Association of Canada (MFDA) Rule 2.4.1 (the Proposed Rule).

The IIAC strongly believes that to promote a level playing field in the Canadian financial services industry, there should be consistency between MFDA rules and Investment Industry Regulatory Organization of Canada (IIROC) rules. Currently, MFDA registrants can re-direct payment to personal corporations but IIROC registrants cannot. The Proposed Rule codifies that inconsistency.

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The issue of incorporation has been under review for years. In 1999, the MFDA was granted a temporary suspension of Rule 2.4.1, as it was then drafted, which required that all remuneration be paid to approved persons. At the time Rule 2.4.1 was to be introduced, it was recognized that requiring adherence with that Rule would be prejudicial to the industry and would result in major restructuring for the industry. As such, the MFDA was granted a temporary suspension of Rule 2.4.1 in some jurisdictions which would allow MFDA advisors to re-direct commissions to personal corporations.

The suspension has existed for over ten years on the understanding and condition that advisors are conducting all activities requiring registration on behalf of and through the facilities of MFDA members, as employees or agents of these members, and not on behalf of or through a personal corporation (i.e. not as an employee or agent of a personal corporation). These personal corporations are not permitted to carry on registrable activities but only to receive the sales commissions earned from the MFDA advisors carrying on the registrable activities. As stated above, IIROC advisors are not and have never been permitted to re-direct commissions to personal corporations in the same manner.

The MFDA is now attempting to institute a Rule that codifies their current practice. The Proposed Rule allows payment of commissions to personal corporations as long as a number of conditions are met in the same manner as is currently allowed.

Under the *Income Tax Act*, the Canada Revenue Agency (CRA) may recognize a corporation as carrying on a professional practice unless provincial law or the regulatory body for the particular profession provides that only individuals may practice the profession. If provincial law or the regulatory body for the profession precludes the practice of the profession by a corporation, income derived from the profession will normally be considered to be earned by the individual who rendered such professional services and not by the corporation. At this time, securities legislation across Canada provides that only individuals may engage in registrable activities. Furthermore, for a corporation to earn income they must in fact be performing services, otherwise income will be taxed as income of the individual and not of the corporation.

With respect to the tax issue, the MFDA has stated that “they do not monitor Member or Approved Person compliance with tax legislation and this position is consistent for both Approved Persons who receive their commissions directly and those who have commissions directed to corporations. Compliance with tax legislation is subject to review by the relevant taxing authorities and the MFDA does not have the expertise to properly monitor and assess it.” The Canadian Securities Administrators (CSA) has also indicated on a number of occasions that tax issues are not their concern.

The IIAC has been, and continues to be, a proponent of the IIROC Incorporation Rule which is not simply a re-direction of payment but instead expressly states that the corporation being paid the commission is carrying on the securities related activity. The IIROC Rule was approved by IIROC’s Board and presented to the CSA for approval in January 2006. The CSA was provided tax and legal opinions confirming, among other things, that there would be no change in a firm’s liability to a client because the firm would expressly assume liability for the actions of the individual advisor and the personal corporation. As such, the investor would continue to be protected. This concept was approved by the CSA when a rule was introduced to allow agents to conduct securities related business with the public under contractual arrangements. The fact that an agent now wants to incorporate in no way reduces investor protection. However, by letter dated,

June 21, 2007, the CSA advised that it was not prepared to approve the IIROC Incorporation Rule as it felt investor protection would be compromised.

The IIAC has repeatedly voiced a strong business case for adopting the IIROC incorporation approach that gives the same business and tax benefits to advisors as are available to other professionals. We also believe that a proper structure is integral to the cost-effective delivery of financial services, the facilitation of fair and open competition in the overall wealth management business, and the standardization of industry structures while ensuring that appropriate tax and other benefits are achieved in compliance with all applicable legislation including securities and tax.

While the IIAC continues to advocate the IIROC incorporation approach, we do however, request that if the MFDA proposal is adopted, that a similar opportunity be made available to IIROC members who wish to engage this type of structure.

The IIAC ultimately recommends that a committee be established with representatives from the MFDA, IIROC, the IIAC and the CSA to develop a permanent, workable solution that would provide an appropriate regulatory, corporate and tax structure and would also create a level playing field for IIROC and MFDA advisors who wish to incorporate. Advisors would have all the advantages associated with a true corporate structure while ensuring that investors are fully protected.

We would be happy to meet with you to provide any other information you may require.

Yours sincerely,

“Ian Russell”

Cc: Susan Wolburgh Jenah