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Ms. Paige Ward
General Counsel, Corporate Secretary and
Vice-President, Policy
Mutual Fund Dealers Association of Canada
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Ms. Anne Hamilton
Senior Legal Counsel
British Columbia Securities Commission
701 West Georgia Street, P.O. Box 10142
Pacific Centre,
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Dear Ms Ward and Ms. Hamilton:

RE: MFDA Bulletin #0682-P - Proposed Amendments to MFDA Rule 2.3 (Power of Attorney/Limited Trading Authorization/Discretionary Trading)

We are writing to comment on the *Proposed Amendments to MFDA Rule 2.3 (Power of Attorney/Limited Trading Authorization/Discretionary Trading)* ("Proposal").

The Proposal effectively addresses MFDA Members' needs for clarification and resolution of concerns regarding the requirements under Rule 2.3.1., while maintaining appropriate risk controls and investor protection. The additional flexibility granted to Approved Persons appears to be appropriately balanced by a heightened responsibility and oversight in the Member.

The Prohibition in Rule 2.3.1(a)

Subject to the exception discussed below, current Rule 2.3.1(a) represents an absolute prohibition on any Member or Approved Person accepting or acting upon a General Power of Attorney or other similar authorization from any client, in favor of the Member or Approved Person, or engaging in discretionary trading. Members have expressed concerns over the clarity of meaning of "other similar authorization".

We endorse the proposed revisions which will remove the phrase "other similar authorization" and clarify that the prohibition is not simply about accepting or acting on a power of attorney (which remains one example) but relates more broadly to "full or partial control of authority over the financial affairs of a client" - the focus of the regulatory concern.

This approach allows the specification of clear examples of activities constituting control over a client's financial affairs, including accepting an appointment to act as trustee or executor of a client or, in fact, acting as trustee or executor of a client's estate, activities which the MFDA, at this stage, does not intend to permit for Approved Persons.

The Exception in Rule 2.3.1

Rule 2.3.1 contains an exception (currently in Rule 2.3.1(b)) that permits an Approved Person to accept or act upon a general power of attorney from a client in favor of the Approved Person where such client is a spouse, parent or child of the Approved Person. This exception is only available on the conditions that (i) the Approved Person notifies the Member that a general

power of attorney from a client has been accepted, (ii) the account of the client granting the power of attorney is transferred to another Approved Person, and (iii) there has been compliance with any other conditions the MFDA may require. Accounts subject to a power of attorney must also be made readily identifiable for supervisory purposes.

Members' main concerns have been in connection with the requirement to transfer the account to another Approved Person, a requirement seen as being unnecessarily onerous and not justified from a risk perspective in the case of accounts of family members.

Under the Proposal the exception will be in Rule 2.3.1(c). The proposed exemption eliminates the account transfer requirement but, to maintain balance, strengthens the Members' oversight responsibility where powers of attorney from family members are permitted. Under the Proposal it would no longer be sufficient to simply notify the Member of the acceptance of a power of attorney; the Approved Person would have to obtain written approval from the Member before accepting or acting upon the power of attorney. This provides the Member with discretion over whether or not it will permit, generally or in a specific case, its Approved Persons to accept and act on powers of attorney from Related Persons. Presumably those Members that would permit use of the exemption will be expected to have an appropriate due diligence and enhanced oversight process in place through which they can satisfy themselves that granting permission in any particular case would not lessen client protections. In this regard we acknowledge the MFDA's decision to retain (and slightly broaden) the requirement that, for supervisory purposes, accounts where "the client is a Related Person of the registered salesperson" must be readily identifiable.

The Proposal would replace the phrase "spouse, parent or child" with "Related Person" as defined in the Income Tax Act, thereby expanding the scope of relationship to individuals connected by blood relationship, marriage, common law or adoption. This expansion seems appropriate as to the scope of individuals over whom an Approved Person might be able to exert "familial" influence, and in relation to which the revised exemption and conditions would apply.

We would be pleased to discuss our comments in more detail, as well as provide further information or answer any questions you may have. Please feel free to contact me by email at rhensel@ific.ca or by phone at 416-309-2314.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Ralf Hensel
General Counsel, Corporate Secretary and Vice President, Policy