



Mutual Fund Dealers Association of Canada  
Association canadienne des courtiers de fonds mutuels  
121 King Street West, Suite 1000, Toronto, Ontario, M5H 3T9  
TEL: 416-361-6332 FAX: 416-943-1218 WEBSITE: www.mfda.ca

**MR-0049**

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## **MEMBER REGULATION NOTICE**

### **CHARITABLE DONATION PROGRAMS**

#### **Introduction**

MFDA staff has become aware of Member involvement in the promotion and recommendation of charitable donation programs to clients. Certain types of charitable donation programs, which are intended to provide clients with tax benefits, have raised concerns with respect to compliance with MFDA requirements and income tax legislation. The purpose of this Notice is to remind Members of concerns that arise in connection with charitable donation programs and applicable MFDA requirements.

#### **Applicable MFDA Requirements**

Members that recommend charitable donations programs directly to clients are reminded that MFDA requirements with respect to suitability and due diligence apply with respect to the recommendation of these programs. MFDA Rule 2.2.1 requires Members and Approved Persons to ensure that each order or recommendation made for any account of a client is suitable for the client and in keeping with the client's investment objectives. In order to discharge their suitability obligation, Members and Approved Persons are required to fully understand the product being recommended to clients. The product must not be approved for sale by the Member until it has been properly assessed and an examination of the risks and any suitability issues associated with the product has been completed. For additional information respecting requirements with respect to due diligence obligations, Members are directed to Member Regulation Notice MR-0048 ("Know-your-Product").

#### **Member Due Diligence/Understanding**

Members must ensure that they have a full understanding of the risks associated with charitable donations programs. As part of their due diligence review of the program, Members must ensure that they are aware of the position and any concerns of the Canada Revenue Agency ("CRA"). The CRA has recently issued various communications regarding the risks associated with certain charitable donation programs. Members should refer to the CRA website ([www. www.cra-arc.gc](http://www.cra-arc.gc)) for further information.

Members should also be aware that certain types of charitable donation programs might be structured in such a manner as to be considered a security under applicable securities legislation. Where charitable donation programs are considered to be securities, Approved Persons are prohibited from personally engaging in the sale of such products or selling or advising on such products through any entity other than their Member dealer.

In determining whether to recommend a charitable donation program to clients, Members should not merely rely on the legal or tax opinion of the promoter of the program or legal counsel of the promoter. As a best practice, Members should seek independent legal and tax advice with respect to compliance with applicable regulatory requirements.

In addition, Members must establish procedures to address conflicts of interest related to the promotion or recommendation of charitable donation programs, including any conflict issues that may arise with respect to compensation.

### **Clients' Understanding of Risks**

Members must also ensure that clients fully understand and are informed of the risks associated with participating in charitable donation programs. In particular, clients should be advised that the CRA has stated that it will challenge any arrangement that does not comply with tax legislation and will audit the tax returns of clients with respect to their participation in such an arrangement. Members should advise clients to obtain independent legal and tax advice prior to participating in a charitable donation program.

### **Referral Arrangements for Charitable Donation Programs**

Members are also cautioned from entering into referral arrangements with respect to charitable donation programs. Members may only enter into referral arrangements with those entities permitted under MFDA Rule 2.4.2(b). In addition, Member Regulation Notice MR-0043 ("Referrals for Specific Securities") cautions Members from entering into referrals for specific securities.

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