MFDA issues further guidance on the use of electronic signatures

June 12, 2020

On June 8, 2020, the Mutual Fund Dealers Association of Canada (MFDA) released Bulletin #0825-P (Electronic Signatures), which addresses updates to MSN-0016, *Electronic Signatures*.

The MFDA first permitted the use of electronic or digital signatures in January 2003, when MSN-0016 was initially released. The guidance at the time provided that electronic signatures were permitted where a signature was required with respect to agreements, contracts or transactions with and between the Member and its clients, Approved Persons, other Members, the MFDA and any other person or company where a signature was required to be executed. Certain conditions were attached to the usage of electronic signatures, including that Members were required to obtain a reliable legal opinion confirming their digital signature technology and system satisfied the legislative requirements in the jurisdictions in which it was intended to be applied.

In announcing the updates to MSN-0016, the MFDA noted the significant evolution in the law with respect to electronic signatures since that time, as well as the increased availability of technology that facilitates the electronic signing of documents while complying with legal and regulatory requirements. Moreover, the COVID-19 pandemic has meant that MFDA Members and Approved Persons are now primarily servicing their clients remotely.

Key takeaways

1. Electronic signatures continue to be permitted by the MFDA

The MFDA permits the use of an electronic signature on an electronic document where a signed document is required by MFDA Rules, Policies and Forms. There is no carve-out for client signatures. In fact, the MFDA indicates the use of electronic signatures by Members addresses concerns relating to the use of pre-signed or altered forms by Approved Persons by no longer requiring clients to attend in-person to sign documents.

Moreover, there is no longer a requirement for Members to submit a legal opinion to the MFDA confirming the Member's digital signature technology and system satisfies the legislative requirements in the jurisdictions in which it is intended to be applied.

2. Be mindful of applicable laws relevant to the use of electronic signatures

While the MFDA permits the use of electronic signatures on electronic documents, Members should review federal, provincial and territorial laws which may prohibit the legally valid use of electronic signatures, or prescribe requirements or other formalities to ensure the legal validity of electronic signatures and documents.

Further, the use of electronic signatures may present security and privacy risks. Members should consider the guidance in MFDA Bulletin #0690-C (Cybersecurity) and comply with all applicable federal and provincial personal information protection laws.

3. Review your technologies and record retention systems

Electronic signatures can raise potential risks with respect to confidentiality, authenticity and fraud. Members should obtain the appropriate technical and legal advice with respect to implementing electronic signature technologies and record retention systems to protect confidentiality and security of electronic documents, obtain assurances of authenticity of signatures and ensure reliable record retention. The MFDA indicates Members may wish to consult Fundserv's *Fund Industry Guidelines for Electronic Signatures* when selecting and implementing appropriate electronic signature technologies and record retention systems.

4. Update your policies and procedures

Where Members use electronic signatures in compliance with MFDA Rules, they must have policies and procedures in place regarding the acceptance and use of electronic signatures. Members must establish and maintain written policies and procedures for dealing with clients and ensuring compliance with all MFDA Rules, By-laws and Policies, as well as applicable securities legislation.

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