

**13.1.2 MFDA Application for Amendment and
Restatement of Terms and Conditions of Order
Recognizing Self-regulatory Organization**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA
APPLICATION FOR AMENDMENT AND
RESTATEMENT OF TERMS AND CONDITIONS
OF ORDER RECOGNIZING
SELF-REGULATORY ORGANIZATION**

October 24, 2003

The Secretary to the Commission
Ontario Securities Commission
20 Queen Street West
Suite 1900, P.O. Box 55
Toronto, Ontario
M4S 3S8

Executive Director
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, B.C.
V7Y 1L2

The Secretary to the Commission
Alberta Securities Commission
300 – 5th Avenue S.W.
4th Floor
Calgary, Alberta
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The Secretary to the Commission
Nova Scotia Securities Commission
2nd Floor, Joseph Howe Building
P.O. Box 468
1690 Hollis Street
Halifax, Nova Scotia
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The Secretary to the Commission
Saskatchewan Financial Services Commission
1919 Saskatchewan Drive
6th Floor
Regina, Saskatchewan
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Dear Sirs/Mesdames:

**Re: Mutual Fund Dealers Association of Canada
Application for amendment and restatement of
terms and conditions of order recognizing self-
regulatory organization**

1. Application

(a) Summary

This application is made by the Mutual Fund Dealers Association of Canada ("MFDA") concurrently to each of the Ontario Securities Commission, the British Columbia Securities Commission, the Alberta Securities Commission,

the Saskatchewan Securities Commission and the Nova Scotia Securities Commission (respectively, the "OSC", "BCSC", "ASC", "SSC" and "NSSC" and, together, the "Commissions") for an amendment and restatement of the terms and conditions of the Order of each such Commission recognizing the MFDA as a self-regulatory organization pursuant to section 21.1(1) of the *Securities Act* (Ontario), section 24(1) of the *Securities Act* (British Columbia), section 53.1(1) of the *Securities Act* (Alberta), section 21(2) of the *Securities Act, 1998* (Saskatchewan) and section 30 of the *Securities Act* (Nova Scotia), (respectively, the "OSA", "BCSA", "ASA", "SSA" and "NSSA" and together, the "Legislation"). The date of the Orders in respect of recognition of the MFDA referred to above by each of the OSC, BCSC, ASC, SSC and NSSC are, respectively, February 6, 2001, February 15, 2001, May 11, 2001, February 13, 2001 and November 26, 2001. The Orders of the respective Commissions recognizing the MFDA as a self-regulatory organization are referred to individually and collectively in this application as an "Order" or the "Orders" and the terms and conditions attached as Schedule A to each such order are referred to individually and collectively as "Terms and Conditions".

(b) Authority for Application

This application is made to the respective Commissions pursuant to Section 144 of the OSA, Section 171 of the BCSA, Section 214(1) of the ASA, Section 158(3) of the SSA and Section 151 of the NSSA.

(c) Terms and Conditions to be Amended

The Terms and Conditions of the OSC, BCSC, SSC and NSSC Orders to be amended (incidental amendments excepted) are: Section 1 (definitions of Approved Persons, rules and securities legislation), Section 3 (Corporate Governance), Section 7(B) and (D) (notice to Commissions of securities legislation violations), Section 12(A), (D) and (I) (delegation of compliance and enforcement functions), Section 14 (original Order required rule amendments) and Section 15 (Suspension of MFDA rule 2.4.1). The corresponding sections in the Order of the ASC are: Section 1(definitions of Approved Persons, rules and securities legislation), Section 4 (Corporate Governance), Section 8(B) and (D) (notice to Commission of securities legislation violations), Section 13(A), (D) and (I) (delegation of compliance and enforcement functions) Section 15 (original Order required rule amendments) and Section 16 (Suspension of MFDA rule 2.4.1).

2. The Applicant

The MFDA is a non-share capital corporation under Part II of the *Canada Corporations Act* incorporated on June 19, 1998 and has been recognized as a self-regulatory organization pursuant to the Orders of the Commissions referred to in paragraph 1 of this Application.

3. Basis of Application

(a) Corporate Governance

The Orders recognizing the MFDA as a self-regulatory organization pursuant to the provisions of the Legislation were made subject to the Terms and Conditions that were contained in Schedule A to the respective Orders. Section 3 of the Terms and Conditions of the Orders of the OSC, BCSC, SSC, NSSC and section 4 of the Order of the ASC related to the corporate governance of the MFDA and required, among other things, for the MFDA to file with the Commissions for approval a plan for governance of the MFDA including a plan for the orderly transition to the governance framework outlined in the Orders. The MFDA has filed with each of the Commissions the "Report of the Corporate Governance Committee on a Plan for Governance by the MFDA" as adopted by the Board of Directors (the "Board") dated February 2003 (the "Corporate Governance Report"). In particular, the Terms and Conditions of the Orders relating to corporate governance required that the governance structure of the MFDA provide, not later than the third annual meeting after the date of recognition by the respective Commissions:

- (i) a reasonable number and proportion of directors serving on the Board, and on each of the governance, executive and audit committee of the Board or similar bodies within the meaning of the MFDA rules, are public directors;
- (ii) meetings of any committee or body on which there are public directors shall have a quorum requirement including at least one public director;
- (iii) the remaining number of directors serving on the Board and on the above referred to committees and bodies of the Board, consist of directors representing the different members of the MFDA to ensure diversity of representation on the Board in accordance with its Order;
- (iv) the Investment Dealers Association of Canada ("IDA") and the Investment Funds Institute of Canada ("IFIC") no longer have rights to nominate and appoint persons to serve as directors on the Board or as members of committees or bodies of the Board;
- (v) the Chair of the Board is an individual appointed as such by the Board (constituted as required) and is not required to be the Chairperson of IFIC;
- (vi) the President and Chief Executive Officer of the MFDA is an individual appointed by the Board (constituted as required above) and is not required to be the President of the IDA.

- (vii) a proper balance amongst the interests of the members;
- (viii) appropriate representation of public directors on committees and bodies of the Board;
- (ix) appropriate qualification, remuneration, and conflict of interest provisions and provisions with respect to the limitation of liability of and indemnification protection for directors, officers and employees of the MFDA; and
- (x) a chief executive officer and other officers, all of whom, except for the Chairman of the Board, are independent of any member.

In order to implement the requirements of the Orders outlined above and as expressed therein, the Board of Directors of the MFDA have passed on June 13, 2003 By-laws Nos. 5 and 6 which have been submitted to each of the Commissions for approval, subject to publication and consideration of comments arising from such publication.

The purpose of the changes to the MFDA By-laws referred to above and as reflected in By-laws 5 and 6 is to enhance the basis on which MFDA is governed by its Members, the Board and its officers and staff. The changes will provide for a representative, responsive and transparent governance structure that is considered to be suitable for MFDA at this stage of its development. It is recognized that the mutual fund distribution business and the affairs of MFDA's Members are not static and MFDA will review its governance structure on a periodic basis.

The MFDA submits that the implementation of the recommendations made in the Corporate Governance Report as adopted by the Board of Directors together with the making of By-laws Nos. 5 and 6 of the MFDA and other administrative acts contemplated thereby, will satisfy the provisions of the Orders relating to corporate governance identified above and will enhance the governance of MFDA in general and its self-regulatory role.

(b) Other Transitional Matters

In addition to the requirements with respect to changes in the corporate governance of MFDA required by the Orders and referred to above, the Orders contained a number of miscellaneous transition Terms and Conditions which have either been satisfied or are spent and are therefore no longer relevant. MFDA has also discussed with staff of each of the Commissions certain other changes relating to the manner in which MFDA regulates its members. These matters related to, among other things:

- (i) the ability of MFDA to cooperate with other persons in the effective monitoring and enforcement of compliance with its Rules. In particular, MFDA proposes to enter into a formal arrangement with the

Bureau des services financiers ("BSF") and the Chambre de la sécurité financière ("Chambre") in Quebec to coordinate the regulation of certain affairs of MFDA Members in Quebec with those agencies. The MFDA has filed a separate application with the Commissions requesting their consent for such arrangements. In this regard, a Co-operative Agreement has been negotiated with the BSF and Chambre which has been approved by the Commission des valeurs mobilières du Quebec and is awaiting approval of the Quebec government. The arrangements provided for by the Co-operative Agreement are necessary because MFDA is not recognized as a regulatory authority in the Province of Quebec where several of its Members carry on business. The Agreement contemplates that the rules of both the BSF and MFDA in respect of the business of mutual fund dealers are substantially similar and that, with respect to prudential regulation matters, MFDA will be able to conduct regulatory activities in respect of its Members with the BSF on a co-operative basis.

- (ii) the basis on which financial planning may be conducted pursuant to Rule 1.2.1(d);
- (iii) suspension of Rules 5.3.4 and 5.3.5 relating to consolidated statements;
- (iv) sections 13.7 and 13.9 of By-law No. 1 relating to the approval of ownership interests;
- (v) amendments to the MFDA financial questionnaire and report; and
- (vi) the suspension of Rule 2.4.1 relating to the payment of the remuneration in respect of the approved persons by members of the MFDA.

The amendments to Rules required referred to above were made by the MFDA Board of Directors on February 23, 2001 and subsequently approved by the Members.

In addition to the foregoing specific amendments to MFDA's By-laws and Rules, paragraph 12(A) of the Terms and Conditions required that within one year of the date that MFDA accepted its first member that it would have "adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules." MFDA accepted its first Member in October 2001 and has hired appropriate numbers of qualified staff in its offices in Toronto, Calgary and Vancouver to commence regulation of its Members. MFDA has provided separately to the Commissions budgets, plans and staff complements.

The MFDA submits that amendments made or proposed by the MFDA and approved by the respective Commissions to date or as filed with the Commissions warrant amendments to the Terms and Conditions of the relevant Orders in that regard.

(c) Supporting Documents

Submitted with this application are the following supporting documents in original or photocopied form:

- (i) a draft order amending and restating the Terms and Conditions of the Order of each relevant Commission on the basis described herein;
- (ii) draft revised Terms and Conditions contained in Schedule A to the Orders reflecting the amendments described herein;
- (iii) By-laws No. 5 and No. 6 as passed by the Board of Directors of MFDA and submitted to each of the Commissions for approval. Each of these By-laws was published for comment by the OSC in Volume 26, Issue 34/45 of the Ontario Securities Commission Bulletin dated August 29, 2003; and
- (iv) our cheque for the fee, if any, payable to the relevant Commission.

This application has been reviewed and approved by, and is signed and made by, duly authorized officers of the MFDA and such officers confirm the truth of the facts contained herein. In addition to the undersigned officers, representatives of MFDA counsel, Borden Ladner Gervais LLP, are authorized to discuss this application and any matter related to it with the Commissions.

Yours very truly,

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

By: "Larry Waite"
Chief Operating Officer

By: "Mark T. Gordon"
Vice President, Member Regulation

Draft Amended and Restated Recognition Order

Draft: October 24, 2003

**IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5,
AS AMENDED (the "Act")**

AND

**IN THE MATTER OF
MUTUAL FUND DEALERS ASSOCIATION OF CANADA/
ASSOCIATION CANADIENNE DES
COURTIERS DE FONDS MUTUELS
(the "MFDA")**

**AMENDMENT AND RESTATEMENT OF
RECOGNITION ORDER
(Section 144)**

WHEREAS the Commission issued an order dated February 6, 2001, recognizing the MFDA as a self-regulatory organization for mutual fund dealers pursuant to section 21.1 of the Act ("Previous Order");

AND WHEREAS the Commission has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order to (a) reflect changes in the MFDA's governance structure, (b) clarify the MFDA's ability to enter into arrangements with any other suitable body or person to perform the function of enforcing compliance by MFDA members with MFDA's or such other body or person's substantially similar by-laws, rules, regulations, policies, forms, and other similar instruments, and (c) remove certain terms and conditions of the Previous Order that were transitional and have been satisfied by the MFDA;

IT IS ORDERED pursuant to section 144 of the Act that the Previous Order be amended and restated as follows:

**IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5,
AS AMENDED (the "Act")**

AND

**IN THE MATTER OF
MUTUAL FUND DEALERS ASSOCIATION OF CANADA/
ASSOCIATION CANADIENNE DES
COURTIERS DE FONDS MUTUELS
(the "MFDA")**

**RECOGNITION ORDER
(Section 21.1)**

WHEREAS the Commission recognized the MFDA as a self-regulatory organization for mutual fund dealers on February 6, 2001 ("Previous Order"), subject to terms and conditions;

AND WHEREAS the MFDA has requested in an application dated October 24, 2003, that certain changes be made to the Previous Order;

DATED on ●, 2004.

AND WHEREAS the Board of Directors of the MFDA has passed amendments to the MFDA's by-laws to change the MFDA's governance structure in order to provide for a proper balance among the interests of MFDA members and appropriate representation of individuals who represent the public interest on the MFDA Board of Directors and its committees and bodies;

AND WHEREAS the MFDA intends to enter into arrangements with other parties for such other parties to perform the function of enforcing compliance by MFDA members, who conduct securities related business in Quebec, with the MFDA's or such other parties' substantially similar by-laws, rules, regulations, policies, forms, and other similar instruments;

AND WHEREAS certain terms and conditions of the Previous Order were transitional in nature and the Commission is satisfied that the MFDA has met those terms and conditions;

AND WHEREAS the MFDA will continue to regulate, in accordance with its Rules, the operations and the standards of practice and business conduct of its members and their Approved Persons as defined under its Rules;

AND WHEREAS the Commission has considered the application and related submissions of the MFDA for continued recognition as a self-regulatory organization for mutual fund dealers;

AND WHEREAS the Commission has received certain representations and acknowledgements from the MFDA in connection with the MFDA's continued recognition as a self-regulatory organization;

AND WHEREAS the Commission considers it appropriate to set out in an order the terms and conditions of MFDA's continued recognition as a self-regulatory organization for mutual fund dealers, which terms and conditions are set out in Schedule A attached;

AND WHEREAS the MFDA has agreed to the terms and conditions set out in Schedule A;

AND WHEREAS the Commission has determined that continuing to recognize the MFDA is not prejudicial to the public interest;

THE COMMISSION HEREBY AMENDS AND RESTATES the MFDA's recognition as a self-regulatory organization so that the recognition pursuant to section 21.1 of the Act continues, subject to the terms and conditions attached as Schedule A.

Draft: October 24, 2003
(Changes from current terms and conditions are marked.)

SCHEDULE "A"
TERMS AND CONDITIONS
OF RECOGNITION OF THE MUTUAL FUND DEALERS
ASSOCIATION OF
CANADA
AS A SELF-REGULATORY ORGANIZATION FOR
MUTUAL FUND DEALERS

1.1. DEFINITIONS

For the purposes of this Schedule:

~~"Approved Person" means, in respect of a member of the MFDA, an individual who is a partner, director, officer, compliance officer, branch manager or alternate manager, employee or agent of the member who conducts or participates in the business of the member MFDA and who (i) is registered, licensed or approved in the appropriate category, where required by applicable securities legislation, by the Commission and (ii) is designated and qualified as such in accordance with the rules or (iii) is otherwise subject to the jurisdiction of the MFDA;~~
"Approved Person" means, in respect of a member of the MFDA, an individual who is a partner, director, officer, compliance officer, branch manager or alternate manager, employee or agent of the member who conducts or participates in the business of the member MFDA and who (i) is registered, licensed or approved in the appropriate category, where required by applicable securities legislation, by the Commission and (ii) is designated and qualified as such in accordance with the rules or (iii) is otherwise subject to the jurisdiction of the MFDA;

~~"member" means a member of the MFDA;~~
"member" means a member of the MFDA;

~~"rules", except where used in the definition of "securities legislation", means the by-laws, rules, regulations, policies, forms, and other similar instruments of the MFDA; and~~
"rules", except where used in the definition of "securities legislation", means the by-laws, rules, regulations, policies, forms, and other similar instruments of the MFDA; and

~~"securities legislation" means the securities laws, regulations, rules and policies of the Canadian jurisdictions.~~
"securities legislation" means the securities laws, regulations, rules and policies of the Canadian jurisdictions. has the same meaning as that defined in National Instrument 14-101.

2.2. STATUS

The MFDA is and shall remain a not-for-profit corporation.

3.3. CORPORATE GOVERNANCE

~~(A) The MFDA's arrangements with respect to the appointment, removal from office and functions of the persons ultimately responsible for making or enforcing the rules of the MFDA, being the Board of Directors (the "Board"), shall secure a proper balance between the interests of the different members of the MFDA in order to ensure diversity of representation on the Board. In recognition that the protection of the~~
(A) The MFDA's arrangements with respect to the appointment, removal from office and functions of the persons ultimately responsible for making or enforcing the rules of the MFDA, being the Board of Directors (the "Board"), shall secure a proper balance between the interests of the different members of the MFDA in order to ensure diversity of representation on the Board. In recognition that the protection of the

public interest is a primary goal of the MFDA, a reasonable number and proportion of directors on the Board and on the committees of the Board shall be and remain during their term of office persons ("Public Directors") who are not members or directors, partners, officers, salespersons or employees of a member, or of an associate, affiliate or related company of a member, of the MFDA, the Investment Dealers Association of Canada (the "IDA") or The Investment Funds Institute of Canada ("IFIC"). and a Public Director is a director:

~~(B) Not later than the third annual meeting after the date of its Recognition, the MFDA shall ensure that:~~
(B) Not later than the third annual meeting after the date of its Recognition, the MFDA shall ensure that:

~~(a) who is not a current director (other than a Public Director), officer or employee of, or of an associate or affiliate of:~~
(a) who is not a current director (other than a Public Director), officer or employee of, or of an associate or affiliate of:

~~(i) the MFDA;~~
(i) the MFDA;

~~(ii) any protection or contingency fund in which Members (at the time the director holds the relevant office) are required to participate; or~~
(ii) any protection or contingency fund in which Members (at the time the director holds the relevant office) are required to participate; or

~~(iii) the Investment Funds Institute of Canada or the Investment Dealers Association of Canada;~~
(iii) the Investment Funds Institute of Canada or the Investment Dealers Association of Canada;

~~(b) who is not a current director, partner, significant shareholder, officer, employee or agent of a Member, or of an associate or affiliate of a Member, of:~~
(b) who is not a current director, partner, significant shareholder, officer, employee or agent of a Member, or of an associate or affiliate of a Member, of:

~~(i) the MFDA;~~
(i) the MFDA;

~~(ii) any protection or contingency fund in which Members (at the time the director holds the relevant office) are required to participate; or~~
(ii) any protection or contingency fund in which Members (at the time the director holds the relevant office) are required to participate; or

~~(iii) the Investment Funds Institute of Canada or the Investment Dealers Association of Canada;~~
(iii) the Investment Funds Institute of Canada or the Investment Dealers Association of Canada;

(c) who is not a current employee of a federal, provincial or territorial government or a current employee of an agency of the Crown in respect of such government;

(d) who is not a current member of the federal House of Commons or member of a provincial or territorial legislative assembly;

(e) who has not, in the two years prior to election as a Public Director, held a position described in (a)-(d) above;

(f) who is not:

(i) an individual who provides goods or services to and receives direct significant compensation from, or

(ii) an individual who is a director, partner, significant shareholder, officer or employee of an entity that receives significant revenue from services the entity provides to, if such individual's compensation from that entity is significantly affected by the services such individual provides to.

the MFDA or any protection or contingency fund in which Members are required to participate, or a Member of the MFDA; and

(g) who is not a member of the immediate family of the persons listed in (a)-(f) above.

For the purposes of this definition:

(i) "significant compensation" and "significant revenue" means compensation or revenue the loss of which would have, or

appear to have, a material impact on the individual or entity;

(ii) "significant shareholder" means an individual who has an ownership interest in the voting securities of an entity, or who is a director, partner, officer, employee or agent of an entity that has an ownership interest in the voting securities of another entity, which voting securities in either case carry more than 10% of the voting rights attached to all voting securities for the time being outstanding.

(B) The MFDA's governance structure shall provide for:

(i) at least 50% of its directors, other than its President and Chief Executive Officer, shall be Public Directors;

(ii) the President and Chief Executive Officer of the MFDA is deemed to be neither a Public Director nor a non-Public Director;

(iii) appropriate representation of Public Directors on committees and bodies of the Board, in particular:

(i) a reasonable number and proportion (a) at least 50% of directors serving on the Board, and on each of the governance committee of the Board shall be Public Directors, executive and

(b) a majority of directors on the audit committee of the Board or similar bodies within the meaning of the MFDA rules, are shall

be Public Directors, and

~~(c)~~ at least 50% of directors on the executive committee of the Board, if any, shall be Public Directors;

~~(d)~~ meetings of the Board shall have a quorum requirement of a reasonable number and proportion of Public Directors and non-Public Directors, with at least two Public Directors, and

~~(ii)(e)~~ meetings of any committee or body on which there are Public Directors of the Board shall have a quorum requirement including of a reasonable number and proportion of Public Directors and non-Public Directors, provided that if the committee or body has Public Directors then the quorum must require at least one Public Director; be present;

~~(iii)(iv)~~ the remaining number of directors serving on the Board and on the above referred to committees and bodies of the Board, shall consist of directors representing the different members of the MFDA to ensure diversity of representation on the Board in accordance with paragraph (A);

~~(iv)~~ the IDA and IFIC no longer have rights to nominate and appoint persons to serve as directors on the Board or as members of committees or bodies of the Board;

~~(v)~~ the Chair of the Board is an individual appointed as such by the Board (constituted as required by (i) and (iii) above)

and is not required to be the Chairperson of IFIC;

~~(vi)~~ (the President and Chief Executive Officer of the MFDA is an individual appointed by the Board (constituted as required by (i) and (iii) above) and is not required to be the President of the IDA.

~~(C)~~ Without limiting the generality of the foregoing, not later than the third annual meeting after the date of its Recognition, the MFDA's governance structure shall provide for:

~~(i)~~ a proper balance amongst the interests of the members;

~~(ii)~~ appropriate representation of Public Directors on committees and bodies of the Board;

~~(iii)(v)~~ appropriate qualification, remuneration, and conflict of interest provisions and provisions with respect to the limitation of liability of and indemnification protection for directors, officers and employees of the MFDA; and

~~(iv)(vi)~~ a chief executive officer and other officers, all of whom, except for the chairman chair of the Board, are independent of any member.

~~(D)~~ Not later than the second anniversary after the date of its Recognition, the MFDA shall file with the Commission for its approval, a plan for the governance of the MFDA, including a plan for the orderly transition to the governance framework outlined in this paragraph 3.

4.4. FEES

~~(A)(A)~~ Any and all fees imposed by the MFDA on its members shall be equitably allocated and bear a reasonable relation to the costs of regulating members, carrying out the MFDA's objects and protecting the public interest. Fees shall not have the effect of creating unreasonable barriers to membership and shall be designed to ensure that the MFDA has sufficient revenues to discharge its responsibilities.

~~(B)~~ (B) The MFDA's process for setting fees shall be fair, transparent, and appropriate.

5.5. COMPENSATION OR CONTINGENCY TRUST FUNDS

The MFDA shall co-operate with compensation funds or contingency trust funds that are from time to time considered by the Commission under securities legislation to be compensation funds or contingency trust funds for mutual fund dealers and with any such fund that has applied to the Commission to be considered such funds (the "IPPs"). The MFDA shall ensure that its rules give it the power to assess members, and require members to pay such assessments, on account of assessments or levies made by or in respect of an IPP.

6.6. MEMBERSHIP REQUIREMENTS

~~(A)~~ (A) The MFDA's rules shall permit all properly registered mutual fund dealers who satisfy the membership criteria to become members thereof and shall provide for the non-transferability of membership.

~~(B)~~ (B) Without limiting the generality of the foregoing, the MFDA's rules shall provide for:

~~(i)~~ (i) reasonable financial and operational requirements, including minimum capital and capital adequacy, debt subordination, bonding, insurance, record-keeping, new account, knowledge of clients, suitability of trades, supervisory practices, segregation, protection of clients' funds and securities, operation of accounts, risk management, internal control and compliance (including a written compliance program), client statement, settlement, order taking, order processing, account inquiries, confirmation and back office requirements;

~~(ii)~~ (ii) reasonable proficiency requirements (including training, education and experience) with respect to ~~partners, directors, officers, employees and agents~~ Approved Persons of members;

~~(iii)~~ (iii) consideration of disciplinary history, including breaches of

applicable securities laws/legislation, the rules of other self regulatory organizations or MFDA rules, prior involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings or civil proceedings involving business conduct or alleging fraudulent conduct or deceit, and prior business and other conduct generally, of applicants for membership and any partners, directors and officers, in order that membership may, where appropriate, be refused where any of the foregoing have previously engaged in improper conduct, and shall be refused where the past conduct of any of the foregoing affords reasonable grounds for belief that the applicant's business would not be conducted with integrity;

~~(iv)~~ (iv) reasonable consideration of relationships with other members and other business activities to ensure the appropriateness thereof; and

~~(v)~~ (v) consideration of the ownership of applicants for membership under the criteria established in paragraph 6(E).

~~(C)~~ (C) The MFDA shall require members to confirm to the MFDA that persons that it wishes to sponsor, employ or associate with as Approved Persons comply with applicable securities legislation and are properly registered.

~~(D)~~ (D) The MFDA's rules shall require a member to give prior notice to the MFDA before any person or company acquires a material registered or beneficial interest in securities or indebtedness of or any other ownership interest in the member, directly or indirectly, or becomes a transferee of any such interests, or before the member engages in any business combination, merger, amalgamation, redemption or repurchase of securities, dissolution or acquisition of assets. In each case there may be appropriate exceptions in the case of publicly traded securities, de minimis transactions that do not involve changes in de facto or legal control or the acquisitions of material interests or

assets, and non-participating indebtedness.

information with these organizations; and

~~(E)~~ **(E)** The MFDA rules shall require approval by the MFDA in respect of all persons or companies proposing to acquire an ownership interest in a member in the circumstances outlined in paragraph 6(D) and, except as provided in paragraph 6(F), for approval of all persons or companies that satisfy criteria providing for:

~~(v)~~ **(v)** provide the MFDA with such information as it may from time to time request and full access to and copies of any records.

(i) **(i)** consideration of disciplinary history, including breaches of applicable securities ~~laws~~ **legislation**, the rules of other self-regulatory organizations or MFDA rules, involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings or civil proceedings involving business conduct or alleging fraudulent conduct or deceit, and prior business and other conduct generally; and

~~(G)~~ **(G)** The MFDA shall notify the Commission forthwith of members whose rights and privileges will be suspended or terminated or whose membership will be terminated, and in each case the MFDA shall identify the member, the reasons for the proposed suspension or termination and provide a description of the steps being taken to ensure that the member's clients are being dealt with appropriately.

(ii) **(ii)** reasonable consideration of relationships with other members and involvement in other business activities to ensure the appropriateness thereof.

7-7. COMPLIANCE BY MEMBERS WITH MFDA RULES

~~(F)~~ **(F)** The MFDA rules shall give the MFDA the right to refuse approval of all persons or companies that are proposing to acquire an ownership interest in a member in the circumstances outlined in paragraph 6(D) who do not agree to:

~~(A)~~ **(A)** The MFDA shall enforce, as a matter of contract between itself and its members, compliance by its members and their Approved Persons with the rules of the MFDA and the MFDA shall cooperate with the Commission in ensuring compliance with applicable securities legislation relating to the operations, standards of practice and business conduct of members and Approved Persons, without prejudice to any action that may be taken by the Commission under securities legislation.

(i) **(i)** submit to the jurisdiction of the MFDA and comply with its rules;

~~(B)~~ **(B)** The MFDA shall conduct periodic reviews of its members and the members' Approved Persons to ensure compliance by its members and the members' Approved Persons with the rules of the MFDA and shall conduct such reviews at a frequency requested by the Commission or its staff. The MFDA shall **provide notice to staff of the Commission of any material violations of securities legislation of which it becomes aware in the ordinary course operation of its business. The MFDA shall** also cooperate with the Commission in the conduct of reviews of its members and the members' Approved Persons as requested by the Commission or its staff, to ensure compliance by its members and their Approved Persons with applicable securities legislation.

(ii) **(ii)** notify the MFDA of any changes in his, her or its relationship with the member or of any involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings or in civil proceedings involving business conduct or alleging fraudulent conduct or deceit;

(iii) **(iii)** accept service by mail in addition to any other permitted methods of service;

(iv) **(iv)** authorize the MFDA to cooperate with other regulatory and self-regulatory organizations, including sharing

~~(C)~~ **(C)** The MFDA shall promptly report to the Commission when:

(i) **(i)** any member has failed to file on a timely basis any required

financial, operational or other report;

~~(ii)~~ (ii) early warning thresholds established by the MFDA that would reasonably be expected to raise concerns about a member's liquidity, risk-adjusted capital or profitability have been triggered by any member; and

~~(iii)~~ (iii) any condition exists with respect to a member which, in the opinion of the MFDA, could give rise to payments being made out of an IPP, including any condition which, alone or together with other conditions, could, if appropriate corrective action is not taken, reasonably be expected to:

~~(a)~~ (a) inhibit the member from promptly completing securities transactions, promptly segregating clients' securities as required or promptly discharging its responsibilities to clients, other members or creditors;

~~(b)~~ (b) result in material financial loss; or

~~(c)~~ (c) result in material misstatement of the member's financial statements.

The MFDA shall, in each case, identify the member, describe the circumstances that gave rise to the reportable event and describe the MFDA's proposed response to ensure the identified circumstances are resolved.

~~(D)~~ (D) The MFDA shall promptly report to the Commission actual or apparent misconduct by members and their Approved Persons and others where investors, creditors, members, an IPP or the MFDA may reasonably be expected to suffer serious damage as a consequence thereof, including where the solvency of a member is at risk, fraud is present or there exist serious deficiencies in supervision or internal controls or non-compliance with MFDA rules or securities legislation. The MFDA shall, in each case, identify the member,

the Approved Persons, or others, and the misconduct or deficiency as well as the MFDA's proposed response to ensure that the identified problem is resolved.

~~(E)~~ (E) The MFDA shall advise the Commission promptly following the taking of any action by it with respect to any member in financial difficulty.

~~(F)~~ (F) The MFDA shall promptly advise each other self-regulatory organization and IPP of which a member is a participant or which provides compensatory coverage in respect of the member, of any actual or apparent material breach of the rules thereof of which the MFDA becomes aware.

8-8. DISCIPLINE OF MEMBERS AND APPROVED PERSONS

~~(A)~~ (A) The MFDA shall, as a matter of contract, have the right to and shall appropriately discipline its members and their Approved Persons for violations of the rules of the MFDA and shall cooperate with the Commission in the enforcement of applicable securities legislation relating to the operations, standards of practice and business conduct of the members and Approved Persons, without prejudice to any action that may be taken by the Commission under securities legislation.

~~(B)~~ (B) The MFDA's rules shall enable it to prevent the resignation of a member from the MFDA if the MFDA considers that any matter affecting the member or any registered or beneficial holder of a direct or indirect ownership interest in securities, indebtedness or other interests in the member, or in a person or company associated or affiliated with the member or affecting the member's Approved Persons or any of them, should be investigated or that the member or any such person, company or Approved Person should be disciplined.

~~(C)~~ (C) The MFDA shall require its members and their Approved Persons to be subject to the MFDA's review, enforcement and disciplinary procedures.

~~(D)~~ (D) The MFDA shall notify

~~(i)~~ (i) the Commission in writing, and

~~(ii)~~ (ii) the public and the media

~~(a)~~ (a) of any disciplinary or settlement hearing, as soon as practicable and in any event not less than 14 days prior to the date of the hearing; and

~~(b)~~ (b) of the disposition of any disciplinary action or settlement, including any discipline imposed, and shall promptly make available any written decision and reasons.

~~(E)~~ (E) Any notification required under paragraph 8 (D) shall include, in addition to any other information specified in paragraph 8 (D), the names of the member and the relevant Approved Persons together with a summary of circumstances that gave rise to the proceedings.

~~(F)~~ (F) The MFDA shall maintain a register to be made available to the public, summarizing the information which is required to be disclosed to the Commission under paragraphs 8 (D) and (E).

~~(G)~~ (G) The information given to the Commission under paragraphs 8 (D) and (E) will be published by the Commission unless the Commission determines otherwise.

~~(H)~~ (H) The MFDA shall at least annually review all material settlements involving its members or their Approved Persons and their clients with a view to determining whether any action is warranted, and the MFDA shall prohibit members and their Approved Persons from imposing confidentiality restrictions on clients vis-a-vis the MFDA or the Commission, whether as part of a resolution of a dispute or otherwise.

~~(I)~~ (I) Disciplinary and settlement hearings shall be open to the public and media except where confidentiality is required for the protection of confidential matters. The criteria and any changes thereto for determining these exceptions shall be specified and submitted to the Commission for approval.

9.9. DUE PROCESS

The MFDA shall ensure that the requirements of the MFDA relating to admission to membership,

the imposition of limitations or conditions on membership, denial of membership and termination of membership are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of a record, the giving of reasons and provision for appeals.

40-10. PURPOSE OF RULES

~~(A)~~ (A) The MFDA shall, subject to the terms and conditions of its Recognition and the jurisdiction and oversight of the Commission in accordance with securities legislation, establish such rules as are necessary or appropriate to govern and regulate all aspects of its business and affairs and shall in so doing:

~~(i)~~ (i) seek to ensure compliance by members and their Approved Persons with applicable securities legislation relating to the operations, standards of practice and business conduct of the members;

~~(ii)~~ (ii) seek to prevent fraudulent and manipulative acts and practices and to promote the protection of investors, just and equitable principles of trade and high standards of operations, business conduct and ethics;

~~(iii)~~ (iii) seek to promote public confidence in and public understanding of the goals and activities of the MFDA and to improve the competence of members and their Approved Persons;

~~(iv)~~ (iv) seek to standardize industry practices where appropriate for investor protection;

~~(v)~~ (v) seek to provide for appropriate discipline;

and shall not:

~~(vi)~~ (vi) permit unfair discrimination among investors, mutual funds, members or others; or

~~(vii)~~ (vii) impose any barrier to competition that, ~~having regard to the above purposes,~~ is not appropriate.

~~(B)~~ (B) Unless otherwise approved by the Commission, the rules of the MFDA governing the conduct of member business regulated by the MFDA shall afford investors protection at least equivalent to that afforded by securities legislation, provided that higher standards in the public interest shall be permitted and are encouraged.

11. RULES AND RULE-MAKING

~~(A)~~ (A) No new rules, changes to rules (which shall include any revocation in whole or in part of a rule) or suspension of rules shall be made effective by the MFDA without prior approval of the Commission. Any such rules, changes or suspensions shall be justified by reference to the permitted purposes thereof (having regard to paragraph 10). The approval process shall be subject to a memorandum of understanding between the Commission and the MFDA to be established regarding the review and approval of rules and amendments and suspensions thereto.

~~(B)~~ (B) Prior to proposing a new rule, changes to a rule (which shall include any revocation in whole or in part of a rule) or a suspension of a rule, the Board shall have determined that the entry into force of such rule or change or the suspension of the rule would be in the public interest and every proposed new rule, change or suspension must be accompanied by a statement to that effect.

~~(C)~~ (C) All rules, changes to rules and suspensions of rules adopted by the Board must be filed with the Commission.

~~(D)~~ (D) A copy of all written notices relevant to the rules or to the business and activities of members, their Approved Persons or other employees or agents to assist in the interpretation, application of and compliance with the rules and legislation relevant to such business and activities shall be provided to the Commission.

~~(E)~~ (E) The MFDA shall, wherever practicable, document its interpretations of its rules and distribute copies of that documentation to its members and the Commission.

12. OPERATIONAL ARRANGEMENTS AND RESOURCES

~~(A)~~ (A) Within one year of the date that the MFDA accepts its first member, the (A)

The MFDA shall have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules. With the consent of the Commission, the arrangements for monitoring and enforcement may make provision for one or more parts of that function to be performed on behalf of the MFDA (and without affecting its responsibility) by any other body or person that is able and willing to perform it. The Commission's consent may be varied or revoked from time to time and may be subject to terms and conditions the following:

(i) one or more parts of those functions to be performed (and without affecting its responsibility) by any other body or person that is able and willing to perform it; and

(ii) its members and their Approved Persons to be deemed in compliance with its rules by complying with the substantially similar rules of such other body or person.

The Commission's consent may be varied or revoked from time to time and may be subject to terms and conditions.

~~(B)~~ (B) The MFDA shall respond promptly and effectively to public inquiries and generally shall have effective arrangements for the investigation of complaints (including anonymous complaints) against its members or their Approved Persons. With the consent of the Commission, such arrangements may make provision for one or more parts of that function to be performed on behalf of the MFDA (and without affecting its responsibility) by any other body or person that is able and willing to perform it. The Commission's consent may be varied or revoked from time to time and may be subject to terms and conditions. The MFDA and any other body or person performing such function on behalf of the MFDA shall not refrain from investigating complaints due to the anonymity of the complainant where the complaint is otherwise worthy of investigation and sufficiently detailed to permit investigation.

~~(C)~~ (C) The MFDA shall ensure that it is accessible to the public and shall designate and make available to the public the names and telephone numbers

of persons to be contacted for various purposes, including making complaints and enquiries.

~~(D)~~ Within one year of the date that the MFDA accepts its first member, ~~the~~ (D) The arrangements and resources referred to in paragraphs (A) and (B) above shall consist at a minimum of:

~~(i)~~ (i) a sufficient complement of qualified staff, including professional and other appropriately trained staff;

~~(ii)~~ (ii) an adequate supervisory structure;

~~(iii)~~ (iii) adequate management information systems;

~~(iv)~~ (iv) a compliance department and an enforcement department with appropriate reporting structures directly to senior management, and with written procedures wherever practicable;

~~(v)~~ (v) procedures and structures that minimize or eliminate conflicts of interest within the MFDA;

~~(vi)~~ (vi) inquiry and complaint procedures and a public information facility, including with respect to the discipline history of members and their Approved Persons;

~~(vii)~~ (vii) guidelines regarding appropriate disciplinary sanctions; and

~~(viii)~~ (viii) the capacity and expertise to hold disciplinary hearings (including regarding proposed settlements) utilizing public members within the meaning of the current section 19.6 of the MFDA's By-law No. 1 together with member representatives.

~~On the first business day after the date that is one year after the MFDA accepts its first member, the MFDA shall report to the Commission on its compliance with paragraphs 12 (A), (B), (C) and (D).~~

~~(E)~~ The MFDA shall advise the Commission at least annually of its self regulatory staff complement, by function, and of any material changes or reductions in self regulatory staff, by function.

~~(F)~~ The MFDA shall advise the Commission in advance of any proposed material changes or reductions in its financial review program or operational and sales compliance review programmes, including as to procedures or scope, of any proposed changes in its external audit instructions and of any proposed material changes or reductions in the operation of its investigation or enforcement programmes.

~~(G)~~ (E) The MFDA shall cooperate and assist with any surprise, regular or other reviews of its self-regulatory functions by an IPP or the Commission. In addition, in the event that the Commission is of the view that there has been a serious actual or apparent failure in the MFDA's fulfilment of its self-regulatory functions, the MFDA shall, where requested by the Commission, undergo an independent third party review on terms and by a person or persons satisfactory to or determined by the Commission, which review shall be at the expense of the MFDA.

~~(H)~~ (E) The MFDA shall cooperate and assist with any surprise, regular or other reviews of its corporate governance structure by the Commission. In addition, in the event that the Commission is of the view that there has been a serious weakness in the MFDA's corporate governance structure, the MFDA shall upon the request of the Commission undergo an independent third party review on terms and by a person or persons satisfactory to or determined by the Commission, which review shall be at the expense of the MFDA.

~~(I)~~ Management of the MFDA shall at least annually self assess the MFDA's performance of its self-regulatory responsibilities and report thereon to the executive committee, together with any recommendations for improvements. The executive committee shall be responsible for reporting to the Board as to the MFDA's performance of its self-regulatory responsibilities. The reports shall, for each of the MFDA's member regulatory functions, set performance measurements against which

performance can be compared, and identify major successes, significant problem areas, plans to resolve these problems, recruitment and training plans, and other information as reasonably requested by the Commission or its staff. The MFDA shall, within 120 days of the fiscal year end of the MFDA, provide the Commission with copies or summaries of such reports and advise the Commission of any proposed actions arising therefrom.

~~(J)~~ The MFDA shall provide its budget and audited financial statements to the Commission on an annual basis following adoption thereof and within 120 days of its fiscal year end, and with such other information as the Commission or its staff may reasonably request.

~~(K)~~ (G) The MFDA shall not make material changes to its organizational structure, which would affect its self-regulatory functions, without prior approval of the Commission, and shall give the Commission notice of new directors, officers and committee chairpersons, including a 5 year employment history and information as to involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings and civil proceedings involving business conduct or alleging fraudulent conduct or deceit in respect of each such person.

~~(L)~~ (H) The MFDA shall comply with reporting requirements set out in Appendix A, as amended from time to time by the Commission or its staff. The MFDA shall also provide the Commission with with other reports, documents and other information as the Commission or its staff may reasonably request. The Commission or its staff may review and revise such reporting requirements as necessary on an on-going basis.

43-13. INFORMATION SHARING

The MFDA shall cooperate, by sharing information and otherwise, with IPPs, the Commission and its staff, and other Canadian federal, provincial and territorial recognized self-regulatory organizations and regulatory authorities, including without limitation, those responsible for the supervision or regulation of securities firms, financial institutions, insurance matters and competition matters. The Commission and its staff shall have unrestricted access to the books and records, management, staff and systems of the MFDA.

44. REQUIRED RULE AMENDMENTS

Prior to the MFDA accepting its first member, the MFDA shall amend its rules as set out below:

~~(A)~~ (A) Rule 1.2.1(d) to provide that an Approved Person may only carry on financial planning services through the member or through another entity that is otherwise regulated or that is subject to the rules of a widely recognized professional association.

~~(B)~~ (B) Rule 5.3.4 and Rule 5.3.5 to suspend the operation of Rule 5.3.5 until such time as it has been published for comment for a minimum of 30 days and approved by the Commission;

~~(C)~~ (C) Sections 13.7 and 13.9 of By Law No. 1 to provide that the MFDA must approve all reorganizations and acquisitions of significant equity interests of 20 percent or more.

~~(D)~~ (D) Form 1 MFDA Financial Questionnaire and Report to amend the requirements of MFDA Form 1 MFDA Financial Questionnaire and Report to require a member to provide margin for mutual fund securities held by the member calculated as follows:

(i) 5 percent of the market value of money market mutual funds, as defined by National Instrument 81-102 Mutual Funds

(ii) 50 percent of the market value of all other mutual funds

For this purpose, the MFDA shall amend, before it is issued, its MFDA Notice to Members entitled "Transition Periods" to reflect the rule suspensions noted in this paragraph.

45-14. SUSPENSION OF MFDA RULE 2.4.1

The MFDA Rule 2.4.1 is suspended and will continue to be suspended until December 30, 2006 in the Provinces of British Columbia, Saskatchewan and Ontario, and during such period the MFDA shall comply with the following conditions during the period that MFDA Rule 2.4.1 is suspended as set out in its MFDA Notice to Members entitled "Transition Periods":

~~(A)~~ (A) the MFDA shall co-operate with the Commission and its staff, including participating on any joint industry and regulatory committee struck by the Commission and its staff, in their efforts to develop amendments to applicable securities legislation that would, among other things, allow an Approved Person to carry on securities related business

(within the meaning of the MFDA rules) through a corporation, while preserving that Approved Person's and the member's liability to clients for the Approved Person's actions;

~~(B)~~ (B) the MFDA shall, as a condition of a member or Approved Person being entitled to rely on the suspension of Rule 2.4.1, require that the member and its Approved Persons agree, and cause any recipient of commissions on behalf of Approved Persons that is itself not registered as a dealer or a salesperson to agree, to provide to the MFDA, the Commission and the applicable member access to its books and records for the purpose of determining compliance with the rules of the MFDA and applicable securities legislation;

~~(C)~~ (C) the MFDA shall ~~prepare a Notice to Members, which Notice shall be acceptable to the Commission and its staff, describing the effect of~~ ensure in connection with the suspension of Rule 2.4.1 ~~and the requirement that members and Approved Persons comply with the remaining Rules, with specific reference to Rule 1 Business Structures and Qualifications, Rule 1.2.1(d) Dual Occupations and the rule noted above in paragraph (B), and shall publish this Notice, once approved by the Commission or its staff, before accepting its first member;~~

~~(D)~~ (D) the MFDA shall ensure that members applying for membership are made aware of the requirements of Rule 1 by delivering to each applicant a copy of ~~the~~ its Notice ~~referred to above~~ MR-0002; and

~~(E)~~ (E) the MFDA shall not accept a member whose relationship with its Approved Persons does not comply with the rules of the MFDA and in particular, Rule 1, unless the MFDA has granted exemptive relief to that applicant under the authority granted to the Board of Directors under section 38 of By-law No. 1.

APPENDIX A

Reporting Requirements

1. Prior Notification

1.1 The MFDA shall advise the Commission in advance of any proposed material changes or reductions in its financial review program or operational and sales compliance review programs, including as to procedures or scope, or any proposed changes in its external audit instructions and of any proposed material changes or reductions in the operation of its investigation or enforcement programs.

2. Immediate Notification

2.1 The MFDA shall give the Commission notice of new directors, officers and committee chairpersons, including a 5 year employment history and information as to the involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings and civil proceedings involving business conduct or alleging fraudulent conduct or deceit in respect of each such person.

3. Annual Reporting

The MFDA shall within 120 days of its fiscal year end file the following information and reports to the Commission:

3.1 The MFDA's self-regulatory staff complement, by function, and of any material changes or reductions in self-regulatory staff, by function;

3.2 Copy or summary of self-assessment by management of the MFDA's performance of its self-regulatory responsibilities and any proposed actions arising therefrom. The self-assessment shall, for each of the MFDA's member regulatory functions, set performance measurements against which performance can be compared, and identify major successes, significant problem areas, plans to resolve these problems, recruitment and training plans, and other information as reasonably requested by the Commission or its staff; and

3.3 The MFDA's budget and audited financial statements.