

13.1.9 Proposed Amendments to MFDA Rules of Procedure

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

PROPOSED AMENDMENTS TO MFDA RULES OF PROCEDURE

I. OVERVIEW

A. Current Rules of Procedure

The MFDA Rules of Procedure (“ROP”) were initially implemented on December 2, 2004. The ROP assist respondents, MFDA staff and Hearing Panels engaged in proceedings under MFDA By-law No. 1 by providing them with guidance concerning the structure of the proceedings and the manner in which the proceedings are to be conducted. The ROP currently apply to disciplinary hearings, reviews of disciplinary hearings and membership application hearings.

B. The Issues

The proposed amendments to the ROP fall into three categories: (i) minor housekeeping amendments; (ii) enhancements to the current ROP identified by MFDA staff based on proceedings that have been conducted to date; and (iii) new ROP governing applications for interim relief (proposed Part E) and the appointment of monitors to manage the affairs of Members (proposed Part F).

C. Objectives

The proposed amendments will assist Hearing Panels and parties to MFDA proceedings by providing additional guidance on issues not previously addressed, or not fully addressed, by the current ROP. The proposed amendments are intended to enhance the efficiency, effectiveness and fairness of MFDA proceedings by providing greater clarity and transparency with respect to the hearing process.

D. Effect of Proposed Amendments

The proposed amendments will clarify and simplify the process for providing pre-hearing disclosure, the availability of orders excluding witnesses from hearings and the availability of interpreters. Proposed Part E (applications for interim relief) and proposed Part F (the appointment of monitors to manage the affairs of Members) will establish a framework for issues that are not addressed in the current ROP.

II. DETAILED ANALYSIS

A. Relevant History

Pursuant to section 19.12 of MFDA By-law No. 1, the MFDA is permitted to “prescribe rules of procedures (which may be Policies) in respect of all matters relevant to the appointment of Hearing Panels and the conduct of hearings as contemplated by the By-laws.” The ROP were last updated on August 21, 2006.

B. Proposed Amendments

(i) Housekeeping Amendments

The MFDA has proposed minor housekeeping amendments to the ROP to ensure consistency of wording between sections, to make the ROP more user-friendly and to make minor corrections. These housekeeping amendments include the following:

Rule 1.2 *Definitions* will be amended to update the definition of “holiday” to account for a new statutory holiday, Family Day. Also in Rule 1.2, the definition of a “Requesting Party” will be added as a result of the proposed addition of Part E. The definition of a “monitor” will also be added as a result of the proposed addition of Part F.

Rule 4.3 *Manner of Service – Other Documents* will be amended to make the wording consistent with Rule 4.2 *Manner of Service – Notice of Hearing*. Subsection 4.3(1)(a) is to be changed from “personally” to “by personal service” and subsection 4.3(1)(b) is to be changed from “by mail or courier” to “by registered and ordinary mail or by courier.”

Rule 7.1 (2) *Notice of Hearing* will be amended to make it more user-friendly by inserting a cross-reference to the specific rule (Rule 4.2) governing the required manner of service for a Notice of Hearing.

(ii) Enhancements to the current ROP

The following proposed enhancements to the ROP address matters that are not currently addressed in the ROP and are generally consistent with the practices of other tribunals.

Proposed Rule 10.5 *Order and Directions Concerning Disclosure and Inspections* specifically authorizes a Hearing Panel to make orders and issue directions with respect to the timing and manner of pre-hearing disclosure of documents and the inspection of items. Proposed Rule 10.5 creates an express procedure for a type of order and direction that has frequently been requested by respondents and MFDA staff, and made by Hearing Panels, in proceedings to date. Proposed Rule 10.5 follows logically from ROP 10.1 to 10.4 and tracks the language of those provisions, as well as ROP 1.5 *General Powers of a Panel*.

Proposed Rule 13.6 *Orders Excluding Witnesses* allows a Hearing Panel to order that a witness (other than a respondent) be excluded from the hearing room until it is time for the witness to testify. Proposed Rule 13.6 addresses an issue anticipated to arise with greater frequency as hearings become increasingly complex and involve multiple witnesses.

Proposed Rule 13.7 *Interpreters* provides that it is the responsibility of the party requiring an interpreter in a language other than English or French at a hearing to arrange for and pay the costs of the interpreter. This issue has arisen in one proceeding to date and is reasonably expected to arise in future proceedings. Proposed Rule 13.7 also requires that such interpreters be competent, independent and honest. The MFDA currently provides French and English language interpreters at hearings upon request at its own expense and will continue this practice.

(iii) New ROP

Proposed Part E and proposed Part F are the companion ROP for the recently amended section 24.3 (Applications in Exceptional Circumstances) of MFDA By-law No. 1 and section 24.7 (Monitor) of MFDA By-law No. 1. Part E addresses the conduct and review of applications in exceptional circumstances and Part F addresses the appointment of monitors pursuant to section 24.7 of MFDA By-law No. 1.

C. Issues and Alternatives Considered

In developing the proposed amendments, MFDA staff considered the practices and rules of procedure followed by courts and other tribunals, including other securities regulatory tribunals. MFDA staff also made reference to the model rules and materials published by the Society of Ontario Adjudicators and Regulators ("SOAR"). MFDA staff also considered the cost-benefit implications of the proposed amendments.

D. Comparison with Similar Provisions

MFDA staff considered the practices and rules of procedure followed by courts and other tribunals, including other securities regulatory tribunals. MFDA staff also made reference to the model rules and materials published by the SOAR. As a whole, the MFDA considers the proposed Rules of Procedure to be aligned with the Rules of Procedure of other tribunals, including other security regulatory tribunals.

E. Systems Impact of Amendments

It is not anticipated that there will be a significant systems impact on Members as a result of the proposed amendments.

F. Best Interests of the Capital Markets

The MFDA Board of Directors has determined that the proposed amendments are consistent with the best interests of the capital markets.

G. Public Interest Objective

The proposed amendments are in the public interest and will increase the transparency of the MFDA hearing process. The proposed amendments to the ROP will clarify the structure of the hearing process for the benefit of the parties, Hearing Panels and the public.

III. COMMENTARY

A. Filing in Other Jurisdictions

The proposed amendments will be filed for approval with the Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, and Ontario Securities Commissions and the Saskatchewan Financial Services Commission.

B. Effectiveness

The proposed amendments are simple and effective.

C. Process

The proposed amendments were prepared in consultation with relevant departments within the MFDA. The MFDA Board of Directors approved the proposed amendments on March 5, 2009.

D. Effective Date

The proposed amendments will be effective on a date to be subsequently determined by the MFDA.

IV. SOURCES

Mutual Fund Dealers Association of Canada, Rules of Procedure
Mutual Fund Dealers Association of Canada, By-law No. 1, sections 19.12, 24.3 and 24.7

V. REQUIREMENT TO PUBLISH FOR COMMENT

The MFDA is required to publish for comment the proposed amendments so that the issues referred to above may be considered by the Recognizing Regulators.

The MFDA has determined that the entry into force of the proposed amendments would be in the public interest and is not detrimental to the capital markets. Comments are sought on the proposed amendments. Comments should be made in writing. One copy of each comment letter should be delivered by October 29, 2009 (within 90 days of the publication of this notice), addressed to the attention of Jason Bennett, Corporate Secretary, Mutual Fund Dealers Association of Canada, 121 King St. West, Suite 1000, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of Sarah Corrigan-Brown, Senior Legal Counsel, British Columbia Securities Commission, 701 West Georgia Street, P.O. Box 10142, Pacific Centre, Vancouver, British Columbia, V7Y 1L2.

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the MFDA website at www.mfda.ca.

Questions may be referred to:

Shaun Devlin
Vice-President, Enforcement
416-943-4672
sdevlin@mfda.ca

SCHEDULE A

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

RULES OF PROCEDURE

On March 5, 2009, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to the Rules of Procedure:



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

RULES OF PROCEDURE

UPDATED VERSION:

AUGUST 21, 2006 **NOVEMBER 28, 2008**

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

RULES OF PROCEDURE

Updated Version: August 21, 2006 ~~November 28, 2008~~

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MUTUAL FUND DEALERS ASSOCIATION OF CANADA

RULES OF PROCEDURE

[Made Pursuant to Section 19.12 of MFDA By-law No. 1]

PART A: GENERAL MATTERS

[Applicable to all proceedings under MFDA By-law No. 1]

RULE 1: INTERPRETATION AND APPLICATION

1.1 Application of these Rules

- (1) Part A applies to all proceedings under MFDA By-law No. 1.
- (2) Part B applies to proceedings conducted pursuant to sections 20 (Disciplinary Hearings), 24.1 (Power of Hearing Panels to Discipline) and 24.4 (Settlement Agreements) of MFDA By-law No. 1.
- (3) Part C applies to proceedings conducted pursuant to sections 11.8 (Reviews of Membership Application Hearings) and 24.6.3 (Reviews of Disciplinary Hearings) of MFDA By-law No. 1.
- (4) Part ED applies to proceedings conducted pursuant to section 11.6 (Membership Application Hearings) of MFDA By-law No. 1.
- (5) Part E applies to proceedings conducted pursuant to section 24.3 (Applications in Exceptional Circumstances) of MFDA By-law No. 1.
- (6) Part F applies to proceedings conducted pursuant to sections 20 (Disciplinary Hearings), 24.1 (Power of Hearing Panels to Discipline), 24.3 (Applications in Exceptional Circumstances), 24.4 (Settlement Agreements) and 24.7 (Monitor) of MFDA By-law No. 1.

1.2 Definitions

In these Rules:

“**appeal**” means a review hearing conducted pursuant to MFDA By-law No. 1.

“**Appeal Panel**” means a panel appointed to preside over an appeal, including a single-member Appeal Panel appointed to preside over any motion or step in a proceeding.

“**Appellant**” means a party bringing a review hearing.

“**Applicant**” means a party bringing a Membership Application Hearing.

“**Corporation**” means the Mutual Fund Dealers Association of Canada and where these Rules require, includes any director, officer, employee or agent of the Corporation authorized to perform any act on behalf of the Corporation.

“**document**” means any book, record, account, statement, report, correspondence, note, memorandum, file, chart, list, voucher or any other information stored or recorded by any means or by any device, including any sound or video recording, photograph, computer file or e-mail.

“**electronic hearing**” means a hearing held by teleconference, video-conference, or any other technology that allows people to communicate electronically.

“**hearing**” means any hearing conducted pursuant to MFDA By-law No. 1.

“**Hearing Panel**” means:

- (i) a panel of three representatives of a Regional Council appointed to preside over a proceeding or a panel of one Public Representative of a Regional Council appointed to preside over a motion, an application or any step in a proceeding; or
- (ii) the board of directors of the Corporation, or any panel or committee of directors appointed by the

board of directors under the By-laws of the Corporation, that presides over a proceeding or any step in a proceeding.

“**holiday**” means:

- (i) any Saturday or Sunday;
- (ii) New Year's Day
- (iii) Family Day
- (iv) Good Friday;
- (v) Easter Monday;
- (vi) Victoria Day;
- (vii) Canada Day;
- (viii) Labour Day;
- (ix) Thanksgiving Day;
- (x) Remembrance Day;
- (xi) Christmas Day;
- (xii) Boxing Day; and
- (xiii) any other special holiday proclaimed by the federal government or a provincial government which inures to the benefit of any party to a proceeding.

“**Member**” means a member of the Corporation.

“**monitor**” means a person or company appointed to oversee and report on a Member's activities and to act in furtherance of powers granted by a Hearing Panel;

“**Moving Party**” means a party bringing a motion.

“**oral hearing**” means a hearing where the parties attend in person, also called a “hearing in person”.

“**Panel**” means a Hearing Panel or an Appeal Panel.

“**party**” means any party to a proceeding brought pursuant to MFDA By-law No. 1, including the Corporation.

“**Pre-hearing Conference Officer**” means a Public Representative of a Regional Council appointed to preside over a pre-hearing conference.

“**proceeding**” means all steps in a disciplinary, membership or appeal proceeding conducted pursuant to MFDA By-law No. 1, from the issuance of the commencing document to the final disposition of the matter.

“**Respondent**” means a Member or person under the jurisdiction of the Corporation named in a Notice of Hearing, Notice of Application or a Settlement Agreement, or a party named in a Notice of Appeal against whom the appeal is brought.

“**Responding Party**” means a party responding to a motion or a review of an application pursuant to section 24.3.6 of MFDA By-law No. 1.

“**Requesting Party**” means a party requesting a review of an application conducted pursuant to section 24.3.6 of MFDA By-law No.1.

“**Rules**” means these Rules of Procedure.

“**Secretary**” means the Secretary of the Corporation.

“**written hearing**” means a hearing held by exchanging documents.

1.3 **General Principles**

- (1) These Rules shall be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with the requirements of fairness.
- (2) Where matters are not provided for in these Rules, the practice may be determined by analogy to them.

1.4 Conflicts

- (1) Where any of these Rules are inconsistent or conflict with the provisions of a By-law of the Corporation, the provisions of the By-law shall prevail to the extent of the inconsistency or conflict.

1.5 General Powers of a Panel

- (1) A Panel may:
 - (a) exercise any of its powers under these Rules on its own initiative or at the request of a party;
 - (b) waive or vary any of these Rules at any time, on such terms as it considers appropriate;
 - (c) issue directions or make interim orders concerning the practice or procedure to be followed during a proceeding, on such terms as it considers appropriate.

1.6 Admissibility of Evidence

- (1) Subject to sub-Rule (3), a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and is not bound by the technical or legal rules of evidence.
- (2) A Panel may admit a copy of any document or other thing as evidence if it is satisfied that the copy is authentic.
- (3) Nothing is admissible in evidence which would be inadmissible by reason of a statute or a legal privilege.

1.7 Defect or Irregularity in Form

- (1) No proceeding or document, hearing, decision or step in a proceeding is invalid only by reason of a defect or irregularity in form.

1.8 Hearings Open to the Public

- (1) Subject to sub-Rules (2) and (3), all hearings shall be open to the public unless the Panel orders otherwise.
- (2) A Panel may order that all or part of a hearing be heard in the absence of the public where the Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.
- (3) An electronic hearing shall be open to the public unless the Panel makes an order under sub-Rule (2) or the Panel is of the opinion that it is not practical to hold the electronic hearing in a manner that is open to the public.
- (4) A Panel may impose such terms as it considers appropriate for the conduct of a hearing held in the absence of the public.
- (5) Exhibits, documents and transcripts relating to that part of a hearing that is held in the absence of the public shall be marked "Confidential" and shall be kept separate from the public record, and access to this material shall only be by order of the Panel.

RULE 2: TIME

2.1 Computation of Time

- (1) When computing time periods under these Rules or an order of a Panel:
 - (a) Where there is a reference to a number of days between two events, they are counted by excluding the day on which the first event happens and including the day on which the second event happens;
 - (b) Where a period of less than 7 days is prescribed, holidays are not counted;

- (c) Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday;
- (d) Where a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, it shall be deemed to be received or effective on the next day that is not a holiday.

2.2 Extension or Abridgment of Time

- (1) The time for the performance of any obligation under these Rules may be extended or abridged:
 - (a) by a Panel, at any time on such terms as it considers appropriate;
 - (b) on consent of the parties prior to the expiration of the prescribed time.

RULE 3: APPEARANCE AND REPRESENTATION

3.1 Representation before a Panel

- (1) In any proceeding, a party may act on his, her or its own behalf or may be represented by counsel or agent.

3.2 Change in Representation

- (1) A party represented by counsel or agent may change counsel or agent by immediately advising the Secretary and every other party in writing of the name, address, telephone number, fax number and e-mail address, if any, of the new counsel or agent.
- (2) A party acting on his, her or its own behalf may appoint counsel or agent by immediately advising the Secretary and every other party in writing of the name, address, telephone number, fax number and e-mail address, if any, of the counsel or agent.
- (3) A party represented by counsel or agent may elect to act on his, her or its own behalf by immediately advising the Secretary and every other party in writing of the address, telephone number, fax number and e-mail address, if any, at which the party may be contacted and served.
- (4) Where a counsel or agent ceases to act for a party, the counsel or agent should immediately notify the Secretary and every other party in writing.

RULE 4: SERVICE AND FILING

4.1 Parties to be Served

- (1) Any document required to be served under these Rules shall be served on every other party whose interests may be affected by the document.

4.2 Manner of Service – Notice of Hearing

- (1) A Notice of Hearing shall be served by one of the following methods:
 - (a) by personal service on the Respondent;
 - (b) by registered and ordinary mail or by courier with confirmation of delivery to the Respondent's last known address as recorded in the Corporation's records or in the records of any securities commission with which the Respondent is or was registered;
 - (c) by providing it to the Respondent's counsel or agent, with the consent of the counsel or agent; or
 - (d) by any other means, with the consent of the Respondent or by order of the Hearing Panel.

4.3 Manner of Service – Other Documents

- (1) Where these Rules require a document other than a Notice of Hearing to be served, it may be served by delivering it:

- (a) personally; by personal service;
 - (b) by registered and ordinary mail or by courier;
 - (c) by fax, provided that the document does not exceed 16 pages, inclusive of the covering page, unless the party consents or the Panel orders otherwise;
 - (d) by e-mail, provided that the entire document is capable of being transmitted by e-mail; or
 - (e) by any other means, with the consent of the party or by order of the Panel.
- (2) Where all or part of any document referred to in sub-Rule (1) exists in an electronic format, a Panel or the Secretary may require a party to provide an electronic copy of the document or a portion thereof to any other party, on such terms as may be appropriate.

4.4 Effective Date of Service

- (1) Service of a document is deemed to be effective:
- (a) if served personally before 5 p.m., on the same day, and after 5 p.m., on the next day;
 - (b) if sent by mail, on the fifth day after the day of mailing;
 - (c) if sent by courier, on the second day after the day the document was given to the courier;
 - (d) if sent by fax or e-mail, on the same day if the transmission was received before 5 p.m., and if received after 5 p.m., on the next day.
- (2) Sub-Rule (1) does not apply where a party, counsel or agent, acting in good faith, does not receive the document whether by reason of absence, accident, illness or other cause beyond the person's control.
- (3) A document may not be served or service deemed to be effective on a holiday, except with the consent of the party being served or by order of a Panel.

4.5 Proof of Service

- (1) Where these Rules require a document to be served, the party required to serve the document shall file a single copy of a document showing proof of service within five days of the effective date of service.

4.6 Filing

- (1) Except where these Rules provide otherwise, where these Rules require a document to be filed, the document shall be filed by:
- (a) providing 4 copies of the document to the Secretary by personal delivery, mail, or courier; or
 - (b) transmitting 1 copy of the document to the Secretary by fax, provided that the document does not exceed 16 pages, inclusive of the covering page, unless the Secretary permits otherwise.
- (2) Where all or part of any document referred to in sub-Rule (1) exists in an electronic format, a Panel or the Secretary may require a party to file an electronic copy of the document or a portion thereof in addition to or instead of any other copy required to be filed by the party.

4.7 Required Information – Service and Filing

- (1) A party serving or filing a document by any means shall include the following information with the document:
- (a) the name of the proceeding to which the document relates;
 - (b) where a party is being served with the document, the name of the party being served; and
 - (c) the name, address, telephone number, fax number, and e-mail address, if any, of the party, counsel or agent serving or filing the document.

4.8 Order for Substituted Service or Waiver of Service

- (1) A Panel may order substituted service or waive the requirement for service of any document where it is satisfied that it is in the public interest to do so or the circumstances giving rise to the requirement to effect service make it unnecessary or impractical to do so.

RULE 5: ELECTRONIC HEARINGS

5.1 When Electronic Hearings may be Held

- (1) A Panel may hold an electronic hearing to determine:
 - (a) any procedural matter; or
 - (b) any other matter, unless a party objects and the Panel is satisfied that holding an electronic hearing is likely to cause significant prejudice to the party.
- (2) A Panel may continue an oral hearing as an electronic hearing, or an electronic hearing as an oral hearing, at the request of a party or on its own initiative, on such terms as it considers appropriate.
- (3) In determining whether to hold an electronic hearing, the Panel may consider any relevant factors, including:
 - (a) convenience;
 - (b) fairness;
 - (c) cost, efficiency and timeliness;
 - (d) public access to and participation in the hearing;
 - (e) the Panel's mandate;
 - (f) whether an electronic hearing is appropriate having regard to the evidence and the issues to be considered.
- (4) A Panel may impose any terms on an electronic hearing it considers appropriate, including that one or more of the parties to the electronic hearing shall pay all or part of the costs of conducting the electronic hearing.

RULE 6: MOTIONS

6.1 Bringing a Motion

- (1) A motion may be brought at any stage of a proceeding.
- (2) The Moving Party shall serve on every other party and file a Notice of Motion at least 10 days prior to the date of the motion, unless the nature of the motion or the circumstances giving rise to the motion make it unnecessary or impractical to do so.

6.2 Date for the Hearing of a Motion

- (1) Where a motion is to be heard prior to the hearing of a proceeding on its merits, the Moving Party shall obtain a date for the motion from the Secretary before serving the Notice of Motion.
- (2) Where a motion is to be heard on a date scheduled for the hearing of the proceeding on its merits, the Panel shall determine the procedure for hearing the motion.

6.3 Motions – To Whom to be Made and Form of Motion

- (1) A motion shall be heard by a Panel.
- (2) The Moving Party may propose that the motion be conducted as an oral hearing, a written hearing, or an electronic hearing, and the motion shall be heard in that form unless a Responding Party objects or the Panel directs otherwise;

- (3) A Responding Party may object to the proposed form of a motion by advising all other parties and the Secretary in writing of the grounds for the objection no later than two days after the effective date of service of the Motion Record;
- (4) The Panel shall determine the form of the motion and in doing so may consider any relevant factors, including:
 - (a) convenience;
 - (b) fairness;
 - (c) cost, efficiency and timeliness;
 - (d) public access to and participation in the hearing;
 - (e) the Panel's mandate;
 - (f) whether the proposed form of the motion is appropriate having regard to the evidence and the issues to be considered.
- (5) Where the Panel determines that the motion will be heard in a form other than the form proposed by the Moving Party, the Secretary shall notify the parties of the Panel's determination.

6.4 Contents of Notice of Motion

- (1) The Notice of Motion shall state:
 - (a) the date, time and location of the motion;
 - (b) whether it is proposed that the motion be conducted as an oral hearing, a written hearing, or an electronic hearing;
 - (c) the relief sought;
 - (d) a brief summary of the grounds for the relief sought, including reference to any relevant provisions of a By-law, Rule or Policy of the Corporation, these Rules, or a statute or regulation; and
 - (e) the list of evidence and materials to be relied upon.

6.5 Requirement to Serve and File a Motion Record

- (1) The Moving Party shall serve on every other party and file a Motion Record at least 10 days prior to the date of the motion.

6.6 Contents of the Motion Record

- (1) The Motion Record shall contain:
 - (a) the Notice of Motion; and
 - (b) copies of the evidence and materials to be relied upon.

6.7 Response to a Motion Record

- (1) The Responding Party may serve on every other party and file a Responding Record at least 5 days prior to the date of the motion.

6.8 Contents of the Responding Record

- (1) A Responding Record shall contain:
 - (a) a statement of the reasons why the relief should not to be granted; and
 - (b) copies of any additional evidence or other materials to be relied upon.

6.9 Motions on Consent

- (1) Where a motion is made on consent:
 - (a) the motion shall be heard in writing without the attendance of the parties affected, unless the Panel orders otherwise; and
 - (b) the Moving Party shall file, in addition to any other materials required for the motion, the written consent of the parties affected and a draft order.

6.10 Disposition of Motions

- (1) When a motion is heard by a Panel prior to the hearing of the proceeding on its merits, the Panel may:
 - (a) grant the relief requested;
 - (b) dismiss or adjourn the motion, in whole or in part and with or without terms; or
 - (c) adjourn the motion to be disposed of by the Panel presiding over the hearing of the proceeding on its merits.

PART B: DISCIPLINARY HEARINGS

[Pursuant to Sections 20 (Disciplinary Hearings), 24.1 (Power of Hearing Panels to Discipline) and 24.4 (Settlement Agreements) of MFDA By-law No.1]

RULE 7: COMMENCEMENT OF PROCEEDINGS

7.1 Notice of Hearing

- (1) Disciplinary hearings pursuant to sections 20 and 24.1 of MFDA By-law No. 1 shall be commenced by a Notice of Hearing signed by an officer of the Corporation.
- (2) The Notice of Hearing shall be served, in accordance with Rule 4.2, on every Respondent at least 30 days prior to the commencement of the hearing or the date of the first appearance in the hearing, unless a Hearing Panel orders otherwise;
- (3) In the case of an individual who is named as a Respondent, the Notice of Hearing shall be served on the Member or Members concerned.

7.2 Contents of the Notice of Hearing

- (1) The Notice of Hearing shall:
 - (a) identify the date, time and location of the hearing or the first appearance in the hearing;
 - (b) state the purpose of the hearing;
 - (c) identify the authority pursuant to which the hearing is held;
 - (d) provide a summary of the facts alleged and conclusions drawn by the Corporation on which the Corporation intends to rely at the hearing;
 - (e) contain the provisions of sections 20.2 (Reply), 20.3 (Acceptance of Facts and Conclusions) and 20.4 (Failure to Reply or Attend) of MFDA By-law No. 1;
 - (f) describe the penalties and costs which may be imposed on the Respondent pursuant to sections 24.1 and 24.2 respectively of MFDA By-law No. 1;
 - (g) notify the Respondent of the right to be represented by counsel or agent;
 - (h) notify the Respondent of the right to appear at the hearing, to make submissions, to call, examine and cross-examine witnesses and to present evidence; and

- (i) include any other information that the Corporation considers appropriate.

7.3 Failure to Attend Hearing

- (1) Where a Respondent fails to attend the hearing on the date and at the time and location specified in the Notice of Hearing, the Hearing Panel may:
 - (a) proceed with the hearing without further notice to and in the absence of the Respondent; and
 - (b) accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in sections 24.1 and 24.2 respectively of MFDA By-law No. 1.

RULE 8: REPLY TO NOTICE OF HEARING

8.1 Requirement to Reply

- (1) A Respondent shall serve on every other party and file a Reply within 20 days of the effective date of service of the Notice of Hearing.

8.2 Contents of Reply

- (1) Subject to sub-Rule (2), the Reply shall:
 - (a) identify the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing which the Respondent,
 - (i) admits,
 - (ii) denies, with a summary of the grounds for denying them,
 - (iii) denies, because the Respondent has no knowledge of them, and
 - (b) state any additional facts and conclusions on which the Respondent intends to rely at the hearing.
- (2) Where the Respondent admits all or substantially all of the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing, the Respondent may state in the Reply circumstances in mitigation of any penalty to be imposed.

8.3 Acceptance of Facts and Conclusions

- (1) A Hearing Panel may accept as proven any facts alleged or conclusions drawn by the Corporation in the Notice of Hearing that the Respondent does not specifically deny in the Reply in accordance with Rule 8.2(1)(a)(ii) and (iii).

8.4 Effect of Failure to Deliver a Proper Reply

- (1) Where a Respondent fails to serve and file a Reply in accordance with the requirements of Rules 8.1 and 8.2, the Hearing Panel may do any one or more of the following:
 - (a) proceed with the hearing without further notice to and in the absence of the Respondent;
 - (b) accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in sections 24.1 and 24.2 respectively of MFDA By-law No. 1;
 - (c) order that the Respondent pay costs, at any stage of the proceeding, regardless of the outcome of the proceeding and in addition to any other penalties and costs imposed on the Respondent, in an amount which reflects the extent to which, in the Hearing Panel's discretion, the hearing will be or has been unnecessarily prolonged or complicated by the failure of the Respondent to deliver a proper Reply;
 - (d) prohibit, restrict, or place terms on the right of the Respondent to call witnesses or present evidence at the hearing.

- (2) Where a Hearing Panel determines that a Reply contained false or misleading statements, or differed in a material way from the position taken by the Respondent at the hearing, the Hearing Panel may, regardless of the outcome of the proceeding and in addition to any other penalties and costs imposed on the Respondent, order that Respondent pay costs in an amount which reflects the extent to which, in the Hearing Panel's discretion, the hearing was unnecessarily prolonged or complicated by the failure of the Respondent to deliver a proper Reply.

RULE 9: PRE-HEARING CONFERENCES

9.1 *Initiation of a Pre-hearing Conference*

- (1) At any time prior to the commencement of the hearing of a proceeding on its merits, a party may request a pre-hearing conference by serving on every other party and filing a Request for a Pre-hearing Conference.
- (2) There shall not be more than one pre-hearing conference in a proceeding, except on consent of the parties or by order of a Pre-hearing Conference Officer or a Hearing Panel.
- (3) A Request for a Pre-hearing Conference shall include the party's proposal as to the form of the pre-hearing conference pursuant to Rule 9.3.
- (4) A party may object to the proposed form of a pre-hearing conference by advising all other parties and the Secretary in writing of the grounds for the objection within two days of the effective date of service of the Request for a Pre-hearing Conference.
- (5) Where the parties are unable to resolve the objection, the Pre-hearing Conference Officer assigned to the matter shall determine the form of the pre-hearing conference, having regard to the factors set out in Rule 5.1(3).
- (6) The Secretary shall notify the parties of the date, time, location and form of the pre-hearing conference.

9.2 *Pre-hearing Conference Officer*

- (1) A pre-hearing conference shall be held before a Public Representative of a Regional Council sitting as a "Pre-hearing Conference Officer".
- (2) A Pre-hearing Conference Officer shall not be a member of any subsequent Hearing Panel which presides over the hearing of the proceeding on its merits or any step in the same proceeding, unless all parties consent in writing.
- (3) A Pre-hearing Conference Officer may preside over more than one pre-hearing conference in the same proceeding.

9.3 *Form of the Pre-hearing Conference*

- (1) A pre-hearing conference may be held in person or as an electronic hearing.

9.4 *Pre-hearing Conference Materials*

- (1) In advance of the pre-hearing conference, the Secretary shall provide each party with a Pre-hearing Conference Form on which to record information which may be relevant to a consideration of the issues in the proceeding.
- (2) Each party shall provide every other party and the Secretary with a copy of the completed Pre-hearing Conference Form at least two days prior to the pre-hearing conference.
- (3) The Pre-hearing Conference Forms shall not form part of the public record of the proceeding and may be returned to the parties by the Pre-hearing Conference Officer at the conclusion of pre-hearing conference.

9.5 *Issues to be Considered*

- (1) The Pre-hearing Conference Officer may consider any issue that may assist in the just and expeditious disposition of the proceeding, including:

- (a) the settlement of any or all issues in the proceeding, including penalty and costs;
- (b) the simplification or clarification of any issues;
- (c) the disclosure of documents, including expert reports;
- (d) any facts or evidence that the parties agree upon;
- (e) identifying any issues as to the admissibility of evidence;
- (f) identifying any preliminary objections and scheduling any preliminary motions;
- (g) the date by which any steps in the proceeding are to be taken or begun;
- (h) identifying and scheduling any anticipated steps in the proceeding; and
- (i) any other procedural or substantive matters.

9.6 Orders, Agreements and Undertakings at a Pre-hearing Conference

- (1) A Pre-hearing Conference Officer may make such procedural orders with respect to the conduct of the proceeding as the Pre-hearing Conference Officer considers appropriate.
- (2) Any orders made by the Pre-hearing Conference Officer, and any agreements and undertakings made or given by the parties, shall be recorded in a memorandum prepared by the Pre-hearing Conference Officer, circulated to the parties for comment, and then approved and signed by the Pre-hearing Conference Officer and distributed to the parties.
- (3) Every memorandum recording orders, agreements and undertakings made or given at a pre-hearing conference shall be filed with the Secretary and may be made available to a Hearing Panel.
- (4) Any orders, agreements, and undertakings made or given at a pre-hearing conference are binding on the parties, unless a subsequent Pre-hearing Conference Officer or a Hearing Panel orders otherwise.

9.7 Pre-hearing Conference not Public

- (1) A pre-hearing conference shall be held in the absence of the public.
- (2) Any documents, exhibits and transcripts pertaining to a pre-hearing conference shall not be made available to the public, except a memorandum prepared in accordance with Rule 9.6.
- (3) Every memorandum recording orders, agreements, and undertakings made or given at a pre-hearing conference shall be drafted in a manner which gives effect to the principle that pre-hearing conferences are to be conducted in the absence of the public.

9.8 No Communication to a Panel

- (1) All oral or written statements made at a pre-hearing conference are without prejudice.
- (2) No communication shall be made to a Panel of any oral or written statements made at a pre-hearing conference by the parties or a Pre-hearing Conference Officer, except as may be disclosed in a memorandum made pursuant to Rule 9.6.

RULE 10: DISCLOSURE OF DOCUMENTS

10.1 Obligation to Disclose Documents and Items – Corporation

- (1) The Corporation shall, as soon as reasonably practicable after service of the Notice of Hearing, and in any case at least 14 days prior to the commencement of the hearing of the proceeding on its merits, provide the Respondent with copies of all documents, and a list of items other than documents, that the Corporation intends to rely on at the hearing.
- (2) The Corporation shall make available for inspection by the Respondent any item referred to in sub-Rule (1).

10.2 *Obligation to Disclose Additional Documents and Items - Respondent*

- (1) A Respondent shall, as soon as reasonably practicable after service of the Notice of Hearing, and in any case at least 14 days prior to the commencement of the hearing of the proceeding on its merits, provide the Corporation and any other Respondent with copies of all documents and a list of all items, other than those already provided by the Corporation, that the Respondent intends to rely on at the hearing.
- (2) A Respondent shall make available for inspection by the Corporation or any other Respondent any item referred to in sub-Rule (1).

10.3 *Failure to Disclose Documents or Items*

- (1) If a party fails to provide a document, or make an item available for inspection, in accordance with Rules 10.1 and 10.2, then the party may not rely on the document or item at the hearing without permission of the Hearing Panel and on such terms as the Hearing Panel considers appropriate.

10.4 *Corporation's Duty to Disclose*

- (1) Nothing in this Rule 10 derogates from the Corporation's obligation to make disclosure as required by common law, as soon as reasonably practicable after service of the Notice of Hearing.

10.5 *Order and Directions Concerning Disclosure and Inspections*

- (1) The Hearing Panel may at any stage of the proceeding make orders and issue directions with respect to the timing and manner of the disclosure of documents and the inspection of items, on such terms as it considers appropriate.

RULE 11: WITNESS LISTS AND STATEMENTS

11.1 *Provision of Witness Lists and Statements*

- (1) Subject to Rule 12, a party to a proceeding shall provide every other party with:
 - (a) a list of the witnesses the party intends to call at the hearing of the proceeding on its merits; and
 - (b) in respect of each witness named on the list, other than a Respondent who has already provided a statement recorded by the Corporation, either:
 - (i) a witness statement signed by the witness; or
 - (ii) a transcript of a recorded statement made by the witness; or
 - (iii) if no signed witness statement or transcript referred to in sub-Rules (i) and (ii) is available, a summary of the evidence that the witness is expected to give at the hearing.
- (2) Where a Respondent intends to testify to matters which were not disclosed by the Respondent in any prior recorded statements provided to the Corporation, the Respondent shall provide every other party with a signed witness statement in respect of the additional matters.
- (3) The parties shall comply with the requirements of sub-Rules (1) and (2) at least 14 days prior to the commencement of the hearing.

11.2 *Contents of Witness Statements*

- (1) A witness statement, transcript of a recorded statement or summary of the expected evidence of a witness required by Rule 11.1 shall contain:
 - (a) the substance of the evidence the witness is expected to give at the hearing; and
 - (b) the name and address of the witness or, in the alternative, the name and address of a person through whom the witness can be contacted.

11.3 Failure to Provide Witness List or Statement

- (1) If a party fails to comply with Rule 11.1, the party may not call the witness at the hearing without permission of the Hearing Panel and on such terms as the Hearing Panel considers appropriate.

11.4 Incomplete Witness Statement

- (1) A party may not call a witness to testify to matters not disclosed pursuant to Rule 11.2 without leave of the Hearing Panel and on such terms as the Hearing Panel considers appropriate.

RULE 12: EXPERT WITNESS

12.1 Expert's Report

- (1) A party that intends to call an expert witness shall provide every other party with a signed copy of the expert's report at least 60 days prior to the date of the hearing.

12.2 Expert's Report in Response

- (1) A party who intends to call an expert witness to respond to the expert witness of another party shall provide a signed copy of the expert's report at least 20 days prior to the date of the hearing.

12.3 Content of Expert's Report

- (1) An expert's report shall contain:
 - (a) the name, address and qualifications of the expert; and
 - (b) the substance of the expert's opinion.

12.4 Failure to Provide Expert's Report

- (1) A party that fails to comply with Rules 12.1, 12.2 or 12.3 may not call the expert as a witness or rely on the expert's report at the hearing without permission of the Hearing Panel and on such terms as the Hearing Panel considers appropriate.

RULE 13: CONDUCT OF DISCIPLINARY HEARINGS

13.1 Rights of a Respondent

- (1) A Respondent is entitled at the hearing of a proceeding on its merits:
 - (a) to attend and be heard in person;
 - (b) to be represented by counsel or an agent;
 - (c) to present documentary evidence;
 - (d) to call and examine witnesses;
 - (e) to cross-examine opposing witnesses; and
 - (f) to make submissions.

13.2 Order of Presentation

- (1) The order of presentation at the hearing of a proceeding on its merits shall be as follows:
 - (a) The Corporation shall make an opening address and the Respondent may either make an opening address immediately following the Corporation's opening address or prior to presenting its case in (c) below, but not both;
 - (b) The Corporation shall present its evidence and examine its witnesses and the Respondent shall be permitted to cross-examine each of the Corporation's witnesses, subject to Rule 13.4;

- (c) The Respondent shall present its evidence and examine its witnesses and the Corporation shall be permitted to cross-examine each of the Respondent's witnesses, subject to Rule 13.4; and
 - (d) The Corporation may present any evidence and call any witnesses in reply to any issues raised for the first time by the Respondent during the presentation of its case in (c) above, and the Respondent shall be permitted to cross-examine any such witnesses called by the Corporation, subject to Rule 13.4;
 - (e) The Corporation, followed by the Respondent, shall make a closing argument and the Corporation shall be permitted to reply to any issues raised by the Respondent.
- (2) Following the cross-examination of any witness, reply examination by the party that called the witness is permitted but only in respect of matters raised for the first time in cross-examination.
 - (3) In addition to any questions asked during the examination or cross-examination of a witness, the Hearing Panel may ask questions of the witness, subject to the right of all parties to ask questions of the witness regarding any matters raised by the Hearing Panel.
 - (4) Where there are two or more Respondents separately represented, the order of presentation shall be as directed by the Hearing Panel.

13.3 Evidence by Witnesses

- (1) Subject to Rule 13.4, a witness at a hearing shall provide oral testimony under oath or affirmation.
- (2) The Hearing Panel shall exercise reasonable control over the scope and manner of questioning of a witness so as to protect the witness from undue harassment or embarrassment and may disallow a question put to a witness that is vexatious or irrelevant to any matter at issue in the hearing.

13.4 Evidence by Sworn Statement

- (1) The Hearing Panel may allow the evidence of a witness or proof of a particular fact or document to be given by sworn statement unless an adverse party reasonably requires the attendance of the witness at the hearing for cross-examination.

13.5 Where a Respondent Fails to Attend a Disciplinary Hearing

- (1) Where a Respondent, having been served with a Notice of Hearing, fails to attend the hearing of the proceeding on its merits, the Hearing Panel may proceed in accordance Rule 7.3.

13.6 Orders Excluding Witnesses

- (1) The Hearing Panel may order that one or more witnesses be excluded from the hearing until called to give evidence.
- (2) An order under sub-Rule 13.6(1) may not be made in respect of a party or a witness whose presence is essential to instruct counsel or agent for a party, but the Hearing Panel may require any such party or witness to give evidence before any other witnesses are called to give evidence.
- (3) Where an order is made excluding a witness from the hearing, there shall be no communication to the witness of any evidence given during his or her absence from the hearing until after the witness has completed giving evidence, except with leave of the Hearing Panel.

13.7 Interpreters

- (1) If a party requires an interpreter in a language other than English or French, the party shall notify the Secretary and provide an interpreter at the party's own expense.
- (2) If a witness requires an interpreter in a language other than English or French, the party calling the witness shall notify the Secretary and provide an interpreter at the party's own expense.
- (3) An interpreter shall be competent and independent and shall swear or affirm that he or she will interpret accurately.

RULE 14: SETTLEMENT AGREEMENTS

14.1 Contents of Settlement Agreements

- (1) A Settlement Agreement made pursuant to section 24.4.1 (Settlement Hearings) of MFDA By-law No. 1 shall be in writing and signed by the parties and contain:
 - (a) a statement of the relevant facts;
 - (b) a statement of the violations admitted to by the Respondent, with reference to any specific By-law, Rule or Policy of the Corporation or any applicable statutory provision, and a statement as to future compliance therewith;
 - (c) the consent and agreement of the Respondent to the terms of the Settlement Agreement, including the penalties and costs to be imposed on the Respondent;
 - (d) a statement that the Respondent waives all rights to any further hearing, appeal and review;
 - (e) a statement that the Settlement Agreement is conditional upon acceptance by the Hearing Panel; and
 - (f) such other matters not inconsistent with (a) to (e).

RULE 15: SETTLEMENT HEARINGS

15.1 Settlement Hearing Date

- (1) Upon entering into a Settlement Agreement, the Corporation shall request a date for the settlement hearing from the Secretary.
- (2) The Secretary shall give written notice of the settlement hearing date to all parties.

15.2 Notice and Public Access

- (1) Except where a settlement is reached after the commencement of the hearing of a proceeding on its merits, a Hearing Panel shall not consider a Settlement Agreement unless at least 10 days notice of the settlement hearing has been given by the Corporation in the same manner as a notice of penalty pursuant to section 24.5 (Publication of Notice and Penalties) of MFDA By-law No. 1 specifying:
 - (a) the date, time and place of the settlement hearing; and
 - (b) the purpose of the settlement hearing with sufficient information to identify the Member or person involved and the general nature of the allegations which are the subject matter of the settlement.
- (2) A Hearing Panel may, on its own initiative or at the request of a party, order that all or part of the settlement hearing be held in the absence of the public, having regard to the principles set out in Rule 1.8.
- (3) Where a Settlement Agreement is accepted, the Hearing Panel shall provide reasons for its decision which, along with the record of the settlement hearing, shall be made available to the public, unless the Hearing Panel is of the opinion that all or part of the reasons and the record of the settlement hearing should not be made available to the public, having regard to the principles set out in Rule 1.8.
- (4) Where a Settlement Agreement is not accepted, the Hearing Panel may provide on its own initiative, and shall provide at the request of a party, reasons for its decision and the Hearing Panel may order that all or part of the reasons and the record of the settlement hearing should not be made available to the public, having regard to the principles set out in Rule 1.8.
- (5) The acceptance or rejection of a Settlement Agreement by a Hearing Panel is final and is not subject to appeal or review pursuant to section 24.6.3 (Reviews of Disciplinary Hearings) of MFDA By-law No. 1.

15.3 Additional Facts Only to be Disclosed on Consent

- (1) The Hearing Panel may advise the parties of any additional facts which it considers necessary to assess the settlement but unless the parties consent, any facts which are not contained in the Settlement Agreement shall not be disclosed to the Hearing Panel.
- (2) If a Respondent is not present at the settlement hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

PART C: APPEALS

[Pursuant to sections 11.8 (Reviews of Membership Application Hearings) and 24.6.3 (Reviews of Disciplinary Hearings) of MFDA By-law No. 1]

RULE 16: COMMENCEMENT OF AN APPEAL

16.1 Notice of Appeal

- (1) **Disciplinary Hearings** - An Appellant shall commence an appeal by serving on every other party and filing a single copy of a Notice of Appeal within 30 days of the effective date of service of the decision under appeal.
- (2) **Membership Application Hearings** - Either an Applicant or the Corporation may commence an appeal by serving on all other parties and filing with the Secretary a Notice of Appeal within 21 days of the effective date of service of any decision of the Hearing Panel made pursuant to section 11.6 of MFDA By-law No. 1.

16.2 Contents of Notice of Appeal

- (1) The Notice of Appeal shall contain:
 - (a) a statement of the relief sought;
 - (b) a brief summary of the grounds for the appeal; and
 - (c) a list of the exhibits and transcripts from the hearing that the Appellant believes are required for the appeal.

16.3 Respondent's Notice of Required Evidence

- (1) Within 15 days of the effective date of service of the Notice of Appeal, each Respondent may serve on every other party and file a single copy of a Respondent's Notice of Required Evidence listing any additional exhibits and transcripts from the hearing that the Respondent believes are required for the appeal.

RULE 17: APPEAL MATERIALS

17.1 Contents of the Appeal Record

- (1) **Disciplinary Hearings** - The Appeal Record shall be prepared by the Secretary and contain copies of the following:
 - (a) the Notice of Appeal;
 - (b) the Respondent's Notice of Required Evidence;
 - (c) the Notice of Hearing;
 - (d) the Reply;
 - (e) the decision and reasons appealed from;
 - (f) the order appealed from;
 - (g) any other orders and decisions made in the proceeding; and
 - (h) all of the exhibits and transcripts listed in the Notice of Appeal and in any Respondent's Notice of Required Documents that the parties believe are required for the appeal.

- (2) **Membership Application Hearings** - The Appeal Record shall be prepared by the Secretary and contain copies of the following:
- (a) the Notice of Appeal;
 - (b) the Notice of Required Evidence;
 - (c) the Request for Membership Application Hearing;
 - (d) the Applicant's Statement;
 - (e) the Response;
 - (f) the decision and reasons appealed from;
 - (g) the order appealed from;
 - (h) the proposed disposition;
 - (i) any other orders or decisions made in the proceeding; and
 - (j) all of the exhibits and transcripts listed in the Notice of Appeal and the Notice of Required Documents, if filed, that the parties believe are required for the Appeal.

17.2 Costs and Procedure for Ordering Transcripts

- (1) Within 45 days of the effective date of service of the Notice of Appeal, each party shall serve and file a single copy of a document showing proof that all of the transcripts that the party believes are required for the appeal have been ordered from the transcribing agency.
- (2) When a transcript has been completed, the transcribing agency will notify all of the parties and the Secretary in writing.
- (3) Each party shall serve and file, or arrange for the transcribing agency to deliver to every party and the Secretary, a copy of a transcript ordered by the party within 10 days of receiving notice from the transcribing agency that the transcript has been completed.
- (4) Each party is responsible for paying the costs of obtaining the transcripts that the party believes are required for the appeal. Where two or more Appellants or Respondents require the same transcript, they may agree to share the cost of obtaining the transcript.

17.3 Completed Appeal Record and Date of Appeal

- (1) The Secretary shall provide each party with a copy of the Appeal Record and written notice of the appeal date:
 - (a) within 21 days of receiving the last transcript required for the appeal; or
 - (b) where no transcripts have been ordered by any party, within 40 days of the effective date of service of the Notice of Appeal.

17.4 Appeal by way of an Agreed Statement of Facts

- (1) Where the parties intend to proceed on appeal by way of an Agreed Statement of Facts, they shall notify the Secretary in writing of their intentions.
- (2) Notwithstanding that the parties intend to proceed by way of an Agreed Statement of Facts, a Respondent shall comply with Rule 16.3 and all parties shall comply with Rule 17.2.
- (3) The parties will make arrangements with the Secretary to obtain access to or copies of any exhibits required to prepare the Agreed Statement of Facts.

- (4) The parties shall file the Agreed Statement of Facts, which may include copies of any exhibits and transcripts:
 - (a) within 40 days of receiving notice from the transcribing agency that the last transcript required for the appeal has been completed; or
 - (b) within 60 days of the effective date of service of the Notice of Appeal, where no transcripts have been ordered by any party.
- (5) Where the parties reach an Agreed Statement of Facts, the Appeal Record shall contain the items in Rule 17.1(1)(a) to (f), together with the Agreed Statement of Facts, and the Secretary shall provide each party with a copy of the Appeal Record and written notice of the appeal date within 14 days of the Agreed Statement of Facts being filed.
- (6) Where the parties are unable to reach an Agreed Statement of Facts, they shall notify the Secretary in writing and the Secretary shall provide each party with a copy of the Appeal Record, containing all of the items in Rule 17.1, and written notice of the appeal date within 21 days of the last day on which the parties could have filed an Agreed Statement of Facts.

17.5 Written Argument

- (1) The parties shall prepare a written argument which shall contain:
 - (a) a statement of the issues to be argued on the appeal;
 - (b) the facts and law relied upon, with reference to any supporting materials in the Appeal Record; and
 - (c) the relief sought.
- (2) The written argument shall not exceed 25 pages in length, double-spaced, unless the Appeal Panel permits otherwise.
- (3) The written argument shall be served and filed as follows:
 - (a) by the Appellant, within 30 days of receipt of the Appeal Record;
 - (b) by the Respondent, within 30 days of the effective date of service of the Appellant's written argument.
- (4) The Appellant may serve and file a supplementary written argument not exceeding 5 pages in length, double-spaced, in response to any new issues raised in the Respondent's written argument, within 7 days of being served with the Respondent's written argument.
- (5) A party should serve and file a Case Book, containing copies of any cases, articles or other materials referred to in its written argument or that the party intends to rely on at the appeal, at the same time as the party serves and files its written argument and, in any event, no later than 5 days prior to the appeal.

17.6 New Evidence

- (1) No party shall introduce evidence on an appeal which was not before the Hearing Panel whose decision is under appeal without the permission of the Appeal Panel, which may permit the introduction of such evidence on any terms it considers appropriate.
- (2) A party who intends to request permission to introduce evidence on an appeal which was not before the Hearing Panel whose decision is under appeal:
 - (a) shall, not later than 60 days prior to the appeal date, serve on all other parties to the appeal a sworn statement of the evidence and attach as exhibits any related documents; and
 - (b) shall not file the statement with the Secretary prior to the appeal date and, in any event, without the permission of the Appeal Panel.

17.7 Failure to Comply with Appeal Procedure

- (1) Where a party fails to comply with a required step in the appeal procedure in a timely manner or at all, the Appeal Panel may:
 - (a) waive compliance with the step;
 - (b) place terms on the party's obligation or right to perform the required step or any other step in the appeal;
 - (c) grant, dismiss, or adjourn the appeal, in whole or in part and with or without terms; or
 - (d) make any other order it considers appropriate.
- (2) The Appeal Panel may impose costs on any party to an appeal, regardless of the outcome of the appeal, where the party has, in the opinion of the Appeal Panel, unreasonably required any transcripts or exhibits from the hearing to be included in the Appeal Record.

PART ED: MEMBERSHIP APPLICATION HEARINGS
[Pursuant to Section 11.6 of MFDA By-law No.1]

RULE 18: COMMENCEMENT OF A MEMBERSHIP APPLICATION HEARING

18.1 Request for Membership Application Hearing

- (1) A hearing pursuant to section 11.6 of MFDA By-law No. 1 shall be commenced by an Applicant filing a Request for Membership Application Hearing (a "Request for Hearing") with the Secretary.
- (2) The Applicant must file a Request for Hearing within 14 days of effective service of a proposal by the Board of Directors to approve its application for membership subject to terms and conditions or to refuse the its application for membership.
- (3) A Request for Hearing shall be in the form provided by the Secretary.
- (4) If the Applicant fails to request a hearing in accordance with this Rule 18.1, the Hearing Panel may approve the application subject to terms and conditions or refuse the application.

18.2 Applicant's Statement of Relief Sought, Grounds and Particulars

- (1) The Applicant shall serve a Statement of Relief Sought, Grounds and Particulars (the "Applicant's Statement") on the Corporation, and file a copy of the Applicant's Statement with the Secretary, within 45 days of the date on which the Request for Membership Application Hearing was filed with the Secretary.
- (2) The Applicant's Statement shall state:
 - (a) the specific relief sought;
 - (b) the grounds for the relief sought; and
 - (c) the full particulars of the grounds for the relief sought.
- (3) If the Applicant fails to serve and file the Applicant's Statement in accordance with this Rule 18.2, the hearing may be deemed to be abandoned and the Hearing Panel may approve the application subject to terms and conditions or refuse the application.

18.3 Date, Time and Location of Hearing

- (1) The Secretary shall notify the parties of the date, time and location of the hearing.

18.4 Failure to Attend Hearing

- (1) Where an Applicant fails to attend or otherwise participate in the hearing on the date and at the time and location as notified pursuant to Rule 18.3, the hearing may be deemed to be abandoned and the Hearing Panel may approve the application subject to terms and conditions or refuse the application.

RULE 19: RESPONSE

19.1 Response to the Applicant's Statement

- (1) The Corporation shall serve and file a Response to the Applicant's Statement (the "Response") within 30 days of the effective date of service of the Applicant's Statement.
- (2) The Response shall contain a statement of the grounds upon which the relief sought by the Applicant should not be granted.

RULE 20: DISCLOSURE OF DOCUMENTS

20.1 Obligation to Disclose Documents and Other Items

- (1) A party shall, as soon as reasonably practicable after the date on which the Response is filed, and in any case at least 14 days prior to the commencement of the hearing, provide the other party with copies of all documents, and a list of items other than documents, other than those already provided by the party, upon which the party intends to rely at the hearing.
- (2) A party shall make available for inspection by the other party any item referred to in sub-Rule (1).

20.2 Failure to Disclose Documents and Other Items

- (1) If a party fails to provide a document, or make any other item available for inspection, in accordance with Rules 20.1, then that party may not rely on the document or item at the hearing without the permission of the Hearing Panel and on such terms as the Hearing Panel considers appropriate.

20.3 Common Law Duty to Disclose

- (1) Nothing in this Rule 20 derogates from the obligation of the Corporation to make disclosure as required by common law as soon as reasonably practicable after the date on which the Response is filed.

RULE 21: WITNESS LISTS AND STATEMENTS

21.1 Provision of Witness Lists and Statements

- (1) Subject to Rule 22, a party to a hearing conducted pursuant to section 11.5.3 of MFDA By-law No. 1 shall provide the other party with:
 - (a) a list of the witnesses the party intends to call at the hearing; and
 - (b) in respect of each witness named on the list either:
 - (i) a witness statement signed by the witness; or
 - (ii) a transcript of a recorded statement made by the witness; or
 - (iii) if no signed witness statement or transcript referred to in sub-Rules (i) and (ii) is available, a summary of the evidence that the witness is expected to give at the hearing.
- (2) The parties shall comply with the requirements of sub-Rule (1) at least 14 days prior to the commencement of the hearing.

21.2 Contents of Witness Statements

- (1) A witness statement, transcript of a recorded statement or summary of the expected evidence of a witness required by Rule 21.1 shall contain:
 - (a) the substance of the evidence the witness is expected to give at the hearing; and
 - (b) the name and address of the witness or, in the alternative, the name and address of a person through whom the witness can be contacted.

21.3 Failure to Provide Witness List or Statement

- (1) If a party fails to comply with Rule 21.1, the party may not call the witness at the hearing without permission of the Hearing Panel and on such terms as the Hearing Panel considers appropriate.

21.4 Incomplete Witness Statement

- (1) A party may not call a witness to testify to matters not disclosed in accordance with Rule 21.2 without the permission of the Hearing Panel and on such terms as the Hearing Panel considers appropriate.

RULE 22: EXPERT WITNESS

22.1 Expert's Report

- (1) A party that intends to call an expert witness shall provide the other party with a signed copy of the expert's report at least 40 days prior to the date of the hearing.

22.2 Expert's Report in Response

- (1) A party that intends to call an expert witness to respond to the expert witness of another party shall provide the other party with a signed copy of the expert's report at least 14 days prior to the date of the hearing.

22.3 Contents of Expert's Report

- (1) An expert's report shall contain:
 - (a) the name, address and qualifications of the expert; and
 - (b) the substance of the expert's opinion.

22.4 Failure to Provide Expert's Report

- (1) A party that fails to comply with Rules 22.1, 22.2 or 22.3 may not call the expert as a witness or rely on the expert's report at the hearing without the permission of the Hearing Panel and on such terms as the Hearing Panel considers appropriate.

RULE 23: CONDUCT OF MEMBERSHIP APPLICATION HEARINGS

23.1 Rights of Parties

- (1) A party to a hearing conducted pursuant to section 11.5.3 of MFDA By-law No. 1 is entitled:
 - (a) to attend before the Hearing Panel and be heard in person;
 - (b) to be represented by counsel or an agent;
 - (c) to present documentary evidence;
 - (d) to call and examine witnesses;
 - (e) to cross-examine opposing witnesses; and
 - (f) to make submissions on matters at issue in the Hearing.

23.2 Order of Presentation

- (1) The order of presentation at a hearing shall be as follows:
 - (a) The Applicant shall make an opening address and the Corporation may either make an opening address immediately following the Applicant's opening address or prior to presenting its case in (c) below, but not both;
 - (b) the Applicant shall present its evidence, examine its witnesses and make submissions and the

Corporation shall be permitted to cross-examine each of the Applicant's witnesses, subject to Rule 23.3;

- (c) the Corporation shall present its evidence, examine its witnesses and make submissions and the Applicant shall be permitted to cross-examine each of the Corporation's witnesses, subject to Rule 23.3;
 - (d) the Applicant may present any evidence and call any witnesses in reply to any issues raised for the first time by the Corporation during the presentation of its case in sub-Rule (c), and the Corporation shall be permitted to cross-examine any such witnesses called by the Applicant, subject to Rule 23.3;
 - (e) The Applicant, followed by the Corporation, shall be permitted to make a closing argument.
- (2) Subject to the Hearing Panel's discretion, the Applicant may request that the order of presentation be reversed.

23.3 Evidence by Sworn Statement

- (1) The Hearing Panel may allow the evidence of a witness or proof of a particular fact or document to be given by sworn statement unless the other party reasonably requires the attendance of the witness at the hearing for cross-examination.

23.4 Evidence by Witnesses

- (1) Subject to Rule 23.3, a witness at a hearing shall provide oral testimony under oath or affirmation.
- (2) The Hearing Panel shall exercise reasonable control over the scope and manner of questioning of a witness so as to protect the witness from undue harassment or embarrassment and may disallow a question put to a witness that is vexatious or irrelevant to the matters at issue in the hearing.

PART E: APPLICATIONS IN EXCEPTIONAL CIRCUMSTANCES
[Pursuant to Section 24.3 (Applications in Exceptional Circumstances) of MFDA By-law No. 1]

RULE 24: COMMENCEMENT OF PROCEEDINGS

24.1 Notice of Application

- (1) An application pursuant to section 24.3 of MFDA By-law No. 1 shall be commenced by a Notice of Application signed by an officer of the Corporation.
- (2) The application may be made:
 - (a) with notice to the Respondent; or
 - (b) without notice pursuant to sections 24.3.1(b) or 24.3.2(b) of MFDA By-law No. 1.

24.2 Contents of the Notice of Application

- (1) A Notice of Application shall state:
 - (a) the specific relief sought;
 - (b) whether notice has been provided to the Respondent;
 - (c) whether it is proposed that the application be conducted as an oral hearing, a written hearing or an electronic hearing;
 - (d) the date, time and location of the application, if applicable;
 - (e) the grounds for the relief sought including reference to any relevant provision of a By-law, Rule or Policy of the Corporation, these Rules, or a statute or regulation; and
 - (f) the list of evidence and materials to be relied upon.

24.3 Date of Application

- (1) Where the application is to be conducted as an oral hearing or an electronic hearing, the Corporation shall obtain a date for the application from the Secretary.
- (2) Where the application is to be conducted as a written hearing, no date will be set.

24.4 Application – To Whom to be Made and Form of Application

- (1) The application shall be heard by a Hearing Panel.
- (2) The Corporation may propose that the application be conducted as an oral hearing, a written hearing or an electronic hearing and the application shall be heard in that form unless the Hearing Panel directs otherwise.
- (3) The Hearing Panel shall determine the form of the application and in doing so may consider any relevant factors, including:
 - (a) convenience;
 - (b) fairness;
 - (c) cost, efficiency and timeliness;
 - (d) public access to and participation in the hearing;
 - (e) the Hearing Panel's mandate;
 - (f) whether the proposed form of the application is appropriate having regard to the evidence and the issues to be considered.

24.5 Filing of Application Record

- (1) The Corporation shall file a copy of the Application Record as soon as practicable.

24.6 Contents of the Application Record

- (1) The Application Record shall contain copies of:
 - (a) the Notice of Application; and
 - (b) the evidence and materials to be relied upon.

24.7 Application With Notice

- (1) Where notice has been provided to a Respondent, the Respondent may object to the proposed form of the application by advising all other parties and the Secretary in writing of the grounds for the objection as soon as practicable.
- (2) Where notice has been provided to a Respondent and the Hearing Panel determines that the application will be heard in a form other than the form proposed by the Corporation, the Secretary shall notify the parties of the Hearing Panel's determination.
- (3) In the case of a person who is named as a Respondent and who has been provided with notice, a copy of the Notice of Application shall be served on the Member or Members concerned.
- (4) Where notice has been provided to a Respondent, and the Respondent has confirmed their attendance at the application, the Corporation shall serve a copy of the Application Record on the Respondent as soon as practicable, unless the Hearing Panel directs otherwise.
- (5) Where the Corporation proceeds with notice to the Respondent or at any stage of the application, the Hearing Panel requires that notice of the application be given to the Respondent, the Corporation shall serve a copy of the Notice of Application on the Respondent:

- (a) In a manner reasonably likely to bring the application to the attention of the Respondent; or
- (b) On such terms and condition as the Hearing Panel considers appropriate.

24.8 Responding Record

- (1) Where notice has been provided to a Respondent, the Respondent may serve on every other party and file a Responding Record as soon as practicable, unless the Hearing Panel directs otherwise.
- (2) The Responding Record shall contain:
 - (a) a statement of the reasons why the relief should not be granted; and
 - (b) copies of any additional evidence or other materials to be relied upon.

24.9 Order

- (1) Once the Hearing Panel makes an order in the application the Corporation shall forthwith:
 - (a) serve a copy of the reasons for decision, if any and the order on the Respondent and Member or Members concerned;
 - (b) where notice has not been provided to a Respondent, serve a copy of the Notice of Application and at the discretion and on such terms and conditions as the Hearing Panel may consider as appropriate such evidence and material relied upon in the application; and
 - (c) advise the Respondent in writing of the right to request a review pursuant to section 24.3.6 of MFDA By-law No. 1.

RULE 25: REVIEW OF APPLICATION

25.1 Notice of Request for Review

- (1) A request for a review of an application pursuant section 24.3.6 of MFDA By-law No. 1. shall be commenced by a Notice of Request for Review.
- (2) The Requesting Party shall serve on every other party and file with the Secretary a Notice of Request for Review within 30 days of the notice of the penalty being given in accordance with section 24.5 of MFDA By-law No. 1.

25.2 Contents of Notice of Request for Review

- (1) A Notice of Request for Review shall state:
 - (a) the specific relief sought;
 - (b) the grounds for the relief sought including reference to any relevant provision of a By-law, Rule or Policy of the Corporation, these Rules, or a statute or regulation; and
 - (c) evidence and materials required for the review of the application that were not in the Application Record, the Responding Record or filed at the application.

25.3 Reply to a Review of an Application

- (1) Responding Party may serve on every other party and file a Reply as soon as practicable and in any event at least seven days prior to the date of the review of the application, unless the Hearing Panel directs otherwise.
- (2) The may contain statements and documents pertaining to matters raised in the Notice of Application or in the Notice of Request for Review.

25.4 Date of Review of an Application

- (1) Notice of the date, time and location of the review of an application will be provided to the parties by the Secretary.
- (2) The date of the review of an application shall be no later than 21 days after the filing of the Notice of Request for Review unless a Hearing Panel directs or the parties agree otherwise.

25.5 Ordering Transcripts

- (1) Where the application has been conducted as an oral hearing or an electronic hearing, upon request, the Secretary will provide the Requesting Party and the Responding Party with a copy of the transcript of the application.

PART F: MONITOR

[Pursuant to Sections 20 (Disciplinary Hearings), 24.1 (Power of Hearing Panels to Discipline), 24.3 (Applications in Exceptional Circumstances), 24.4 (Settlement Agreements) and 24.7 (Monitor) of MFDA By-law No.1]

RULE 26: APPOINTMENT OF MONITOR

26.1 Factors to Consider for Appointment of a Monitor

- (1) In exercising its discretion to appoint a monitor, a Panel may consider:
 - (a) the harm or potential harm to the investing public;
 - (b) the financial solvency of the Member;
 - (c) the adequacy of the Member's internal controls and operating procedures;
 - (d) the failure of the Member to respond to requests by the Corporation to address deficiencies in its internal controls and operating procedures;
 - (e) the failure of the Member to comply with any agreement with the Corporation;
 - (f) the Member's ability to maintain regulatory capital requirements;
 - (g) any previous suspension of the Member for failing to meet regulatory capital requirements;
 - (h) regulatory history of Member or key persons at Member;
 - (i) the costs to the Member associated with the appointment of the monitor; and
 - (j) any other relevant factors.

26.2 Terms, Conditions and Costs

- (1) In exercising its discretion to appoint a monitor, a Panel shall:
 - (a) appoint a monitor on such terms as it considers appropriate; and
 - (b) require that the Member pay the whole or part of the expenses related to a monitor.