

[OSC Web Editor's Correction Note dated 2009-08-28: This proposal has been re-published to reflect changes made to the transitional requirements for the MFDA's Director selection process in 2009. The re-published proposal is available at www.osc.gov.on.ca]

13.1.3 Notice and Request for Comment – Proposed Amendments to Sections 1 (Definitions) and 3 (Directors) of MFDA By-law No. 1

NOTICE AND REQUEST FOR COMMENT

**PROPOSED AMENDMENTS TO SECTIONS 1 (DEFINITIONS) AND 3 (DIRECTORS)
OF MFDA BY-LAW NO. 1**

The MFDA is proposing amendments to its By-law No. 1 related to directors following the recommendations of the final report of its Governance Review Task Force. The jurisdictions that recognize the MFDA (the Recognizing Regulators) approved amendments to the MFDA's By-law No. 1 related to directors in November 2008, but these were not implemented. The Recognizing Regulators will revoke their approval of those amendments and will consider the MFDA's current proposal in its entirety. The MFDA is publishing its proposal for comment for 30 days. The comment period ends on September 21, 2009.

Details on the process for submitting comments are included in Section V of the MFDA's notice.

August 21, 2009

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

**PROPOSED AMENDMENTS TO SECTIONS 1 (DEFINITIONS) AND 3 (DIRECTORS)
OF MFDA BY-LAW NO. 1**

I. OVERVIEW

A. Current By-Law

Section 1 of MFDA By-law No. 1 defines "Public Director". Section 3 of the By-law specifies the number and composition of the MFDA Board of Directors, the election process, terms of office, remuneration and provides details with respect to committees of MFDA Board of Directors.

Under the current By-law, the Board of Directors consists of 13 Directors.

The current definition of "Public Director" disqualifies certain individuals from acting as Public Directors on the MFDA Board of Directors. These individuals include:

- (A) a director, partner, significant shareholder, officer, employee or agent of (or an associate or affiliate of): (i) a Member protection fund or of the IDA or IFIC, or (ii) a member of such fund, the IDA or IFIC;
- (B) an employee of a federal, provincial or territorial government or Crown agency;
- (C) a member of the House of Commons or of a provincial or territorial legislature;
- (D) an employee of a federal, provincial or territorial Crown agency;
- (E) a provider of services to the MFDA, a Member protection fund or a Member; and
- (F) an individual who is a member of the immediate family of an individual who would otherwise be disqualified from being a Public Director pursuant to clauses (A) to (E) above.

In addition, individuals who, within two years prior to their election as a Public Director, would have been disqualified from acting as a Public Director under clauses (A) to (D) above are not eligible as Public Directors.

The terms of office for Industry Directors of the MFDA are 2 years with a maximum of 3 terms (i.e. 6 years); and for Public Directors the terms are 3 years with a maximum of 2 terms (i.e. 6 years).

B. The Issues

The issues that the proposed amendments to MFDA By-law No. 1 are intended to address are the subject of the Report of the MFDA Task Force on Governance Issues (the "Task Force Report") discussed below and include:

- improving the representation of the diversity of Members (particularly small and medium-sized firms) on the MFDA Board of Directors;
- broadening the pool of potentially eligible Public Directors for MFDA;
- providing flexibility in selecting directors of the MFDA by shortening the length and increasing the number of terms of office; and
- clarifying and providing transparency in the director selection and nomination process.

The Task Force Report is posted on the MFDA website at www.mfda.ca.

C. Objectives

The proposed amendments are intended to address some of the key recommendations contained in the Task Force Report, as discussed below.

D. Effect of Proposed Amendments

The proposed amendments will increase the number of Directors from 13 to an odd number of not less than 13 and no more than 17, as determined by a resolution, will address transitional matters and clarify certain terms used in the By-law. This will permit greater opportunities to ensure that the Board of Directors reflects the diversity of MFDA Members, particularly small and medium size firms.

The proposed amendments will also permit individuals currently ineligible as Public Directors on the basis described above to qualify as Public Directors where appropriate in accordance with MFDA's nominating procedures. In addition, the proposed amendments will change the terms of office of all Directors of MFDA (i.e. Industry and Public Directors) to 2 years with a maximum tenure of 4 terms.

II. DETAILED ANALYSIS

A. Relevant History

The MFDA's current governance structure, including the definition of "Public Director", is the result of the "Report of the Corporate Governance Committee on a Plan for Governance by the MFDA" as adopted by the MFDA Board of Directors in February 2003 (the "2003 Report"). The corporate governance structure adopted was intended to be rigorous and "leading edge", particularly in the area of ensuring that the public interest is best served and undesirable conflicts of interest or influence do not arise. In this regard, the 2003 Report and the structure adopted were tilted to a prescriptive approach in using detailed rules rather than a principle-based approach, which preserved the objectives of the 2003 Report but permitted some flexibility in applying the principles. This prescriptive approach is particularly apparent in the adoption of the definition of Public Directors of the MFDA. At the same time, the 2003 Report recognized that the key to sound governance for the MFDA (as is the case with most organizations) is a robust director nomination process where a strong governance committee can identify, assess and recommend the nomination of effective directors including Public Directors with appropriate independence. The MFDA's Governance Committee has been developed and operates in that manner and the MFDA believes that its Board of Directors properly reflects the balance of the diversity of MFDA Members' interests as well as having strong independent Public Directors. The terms of reference for the Governance Committee do and will continue to reflect this mandate.

However, the experience of the MFDA's Governance Committee in identifying and assessing potential Public Directors has demonstrated that certain aspects of the criteria for Public Directors may be too rigid and inappropriate. This conclusion is not surprising in light of the fact that the 2003 Report was developed without the benefit of much MFDA Board selection experience. Moreover, the standards for general corporate governance have been subject to considerable scrutiny and change in the past few years. These kinds of changes were anticipated in the Report, as it endorsed the need for the MFDA's governance to be under regular review. The proposed amendments are a result of such review and are based on the actual experience of the MFDA's Public Director nomination process.

In February of 2008, the MFDA Board of Directors approved amendments to MFDA By-law No. 1 relating to the definition of "Public Director" to permit individuals currently ineligible as Public Directors on the basis described above to qualify as Public Directors where appropriate in accordance with MFDA's nominating procedures. In addition, and in a manner that is consistent

with the approach adopted by the Investment Industry Regulatory Organization of Canada ("IIROC"), amendments to MFDA By-law No. 1 were passed to change the terms of office of all Directors of MFDA (i.e. Industry and Public Directors) to 2 years with a maximum tenure of 4 terms (i.e. 8 years).

On March 18, 2008, the MFDA applied to the securities regulatory authorities of the Recognizing Jurisdictions for: (i) an amendment and restatement of the terms and conditions of the Order of each such Commission recognizing the MFDA as a self-regulatory organization respecting the definition of the term "Public Director" in order to remove the definition from the terms and conditions; and (ii) approval for corresponding amendments to the definition of "Public Director" in the MFDA By-law No. 1.

The Recognizing Jurisdictions issued the requested variation orders and approvals or non-objection of the proposed amendments in fall of 2008. The MFDA planned for the variation orders and approvals to be effective for and acted upon at the Annual General and Special Meeting of Members ("AGM") to be held on December 4, 2008 and the proposed amendments to By-law No. 1 were presented to the meeting for confirmation. As it happened, for various reasons, the proposed amendments were not confirmed by vote of a sufficient (2/3) majority of the Members, with the result that they did not become effective. The further result of the proposed amendments not becoming effective was that three Public Directors were not elected as proposed and the extended terms of the office for all directors were not effective. The response of the MFDA and its Board of Directors to this circumstance was to immediately review and determine the reasons for the failure of the proposed amendments to be approved by the Members and to identify solutions to various governance issues that had arisen in the interests of Members and the public.

This work was entrusted to a special Task Force that was established and the Task Force recently completed its Report of Task Force on Governance Issues and presented it to the MFDA Board of Directors at its meeting held on June 22, 2009. The Board unanimously approved the release and publication of the Task Force Report for comment by Members, interested industry groups and the public. Copies of the Task Force Report were filed with the Recognizing Jurisdictions. In addition, the MFDA communicated with the Recognizing Jurisdictions as to its work and has responded to specific requests for information made by the Recognizing Jurisdictions relating to the status of MFDA's governance following the 2008 AGM. The Task Force received and considered the comments submitted and finalized its Report on August 11, 2009. The Board of Directors accepted the Task Force Report at its meeting on August 18, 2009 and also passed the proposed amendments and approved other matters relating to the Board selection process including revised terms of reference for the Governance Committee. A special meeting of the Members of the MFDA has been scheduled for October 2, 2009 to confirm the proposed amendments, subject to regulatory approval.

The Task Force Report contains detailed information as to the work of the Task Force and communication with Members, as well as several recommendations relating to the governance structure of the MFDA. The Task Force endorsed the changes to the MFDA By-laws, as approved by the Recognizing Jurisdictions in fall 2008, subject to some enhancements that would increase the role of Members in the Board selection process.

Accordingly, the Task Force Report recommended that the MFDA's director nomination process ensure that at all times two Industry Directors be selected by the Members at large. As stated in the Task Force Report, the practical result will be that small/medium size firms will be assured a determinative voice in selecting a portion of the Industry Directors because they represent a large majority of Members. In order to better accommodate this change, the size of the Board is to be increased from 13 to 15.

The proposed revised director nomination and selection process would be provided for in the MFDA Governance Committee terms of reference, and not in the By-law. The revised terms of reference for the Governance Committee reflect the recommendations in the Task Force Report, in particular Recommendations 5 through 10, inclusive. In summary, the governance structure will balance: (i) the ability of Members to ensure that two Industry Directors at all times are, in effect, selected by Members with (ii) the ability of the Governance Committee to nominate other directors under the current system. The approach is intended to ensure that the Board diversity, as required by the Orders, is maintained. The revised terms of reference for the Governance Committee will be included in the materials sent to Members for the October 2, 2009 meeting.

B. Proposed Amendments

The proposed amendments to MFDA By-law No. 1 relate to: (a) the increase in the size of the Board to a minimum of 13 persons and a maximum of 17 persons; (b) changes in the definition of "Public Director" to permit individuals currently ineligible as Public Directors on the basis described above to qualify as Public Directors where appropriate in accordance with MFDA's nominating procedures; (c) changes in the terms of office of all Directors of MFDA (i.e. Industry and Public Directors) to 2 years with a maximum tenure of 4 terms (i.e. 8 years); and (d) transitional matters and some terminology clarifications.

C. Issues and Alternatives Considered

Issues that relate to the proposed amendments (identified in Section I.B above) have been considered previously by the MFDA, its 2003 Corporate Governance Committee, the Recognizing Jurisdictions and Member groups. In these reviews, the

governance structures of other comparator organizations have been considered, the closest of which is the Investment Industry Regulatory Organization of Canada ("IIROC"). IIROC and its sponsored investor protection organization, the Canadian Investor Protection Fund ("CIPF"), have each adopted by-laws similar in effect to the proposed amendments. The Board of MFDA's corresponding investor protection organization, the MFDA Investor Protection Corporation ("MFDA IPC") has also approved similar by-law amendments (not yet in effect pending the proposed amendments becoming effective).

D. Comparison with Similar Provisions

Reference is made to the comparator organizations identified in Section II.C and the fact that corresponding governance provisions have been considered. However, the history of the MFDA's development and the mutual fund dealer industry in Canada which it regulates are unique in many respects and the work of the Task Force, including its recommendations relating to MFDA's By-laws, attempt to respond to the special circumstances of MFDA.

E. Systems Impact of Amendments

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

F. Best Interests of the Capital Markets

The Board has determined that the proposed amendments are consistent with the best interests of the capital markets in that the self-regulation of mutual fund dealers in Canada will improve.

G. Public Interest Objective

The proposed amendments are in the public interest and will permit a broader range of persons to be considered as Public Directors, providing the MFDA governance process with a wider choice of potential candidates. The MFDA governance and nominating procedures allow for adequate consideration as to whether any particular individual is appropriate to serve as a Public Director.

The proposed amendments are in the public interest as they address the recommendations contained in the Task Force Report by, among other things, increasing the number of Directors on the MFDA Board of Directors and thereby improving the diversity of Member representation on the Board.

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 have been prepared in consultation with relevant departments within the MFDA. The MFDA Board of Directors approved the proposed amendments on August 18, 2009.

D. Effective Date

The proposed amendments will be effective on a date to be subsequently determined by the MFDA. The intention is that the resulting changes to the MFDA's board selection process will be applied for the Annual General Meeting of Members to be held in December 2009.

IV. SOURCES

MFDA By-law No. 1

IIROC By-law No. 1

CIPF By-law No. 1

2003 Report of the Corporate Governance Committee and Plan for Governance by the MFDA

June 22, 2009 MFDA Report of the Task Force on Governance Issues

V. REQUIREMENT TO PUBLISH FOR COMMENT

The MFDA is required to publish for comment the proposed amendments to its By-laws 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 **Monday, September 21, 2009** (within 30 days of the publication of this notice), addressed to the attention of the 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:

Jason Bennett
Corporate Secretary & Director, Regional Councils
Mutual Fund Dealers Association of Canada
(416) 943-7431

SCHEDULE A

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

DEFINITION OF PUBLIC DIRECTOR (Sections 1 and 3 of By-law No. 1)

**CHANGES FROM THE BY-LAW APPROVED BY THE RECOGNIZING
JURISDICTIONS IN 2008**

On August 18, 2009, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to sections 1 (Definitions) and 3 (Directors) of MFDA By-law No. 1:

1. DEFINITIONS

"**Associate**", where used to indicate a relationship with any person, means:

- (a) any corporation of which such person beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the corporation for the time being outstanding;
- (b) a partner of that person;
- (c) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity;
- (d) any relative of such person who resides in the same home as that person;
- (e) any person who resides in the same home as the person and to whom that person is married, or with whom that person is living in a conjugal relationship outside of marriage; or
- (f) any relative of a person mentioned in clause (e) above who has the same home as such person;

"**Public Director**" means a Director who is not:

- (a) an officer (other than the Chair or a Vice-Chair) or an employee of the Corporation;
- (b) a current partner, director, officer, employee or person acting in a similar capacity of, or the holder of a Significant Interest in:
 - (i) a Member;
 - (ii) an Associate of a Member; or
 - (iii) an affiliate of a Member; or
- (c) an Associate of a partner, director, officer, employee or person acting in a similar capacity of, or the holder of a Significant Interest in, a Member.

For all purposes of this By-law, a Public Director as at the date this definition of Public Director became effective and who does not qualify as a Public Director under such definition shall be deemed to qualify as a Public Director and to continue so qualified as long as and until he or she ceases to be qualified as a Public Director according to the definition of that term in force immediately before the date this definition becomes effective.

"**Significant Interest**" means in respect of any person the holding, directly or indirectly, of the securities of such person carrying in aggregate 10% or more of the voting rights attached to all of the person's outstanding voting securities.

3. DIRECTORS

3.1 Duties and Number

The affairs of the Corporation shall be managed by a Board of Directors: consisting of an odd number of directors of not less than 13 and not more than 17. The number of persons comprising the Board of Directors shall be 13. directors shall be determined from time to time by a resolution passed at a meeting of directors.

3.2 Composition of the Board of Directors

The Board of Directors shall be composed of ~~6~~the same even number of Public Directors, ~~6~~ and Industry Directors and the President and Chief Executive Officer. The members of the Board of Directors (other than the President and Chief Executive Officer) shall collectively and over time be nominated and ~~elected~~appointed on the basis that there will be timely and appropriate regional representation on the Board of Directors of Members of the Corporation across Canada, provided that at any time (subject to the occurrence of vacancies) not less than 4 of the directors shall represent regions other than the Provinces of Ontario and Quebec. In addition, at any time (subject to the occurrence of vacancies) ~~five~~5 of the Industry Directors shall be officers or employees of a Member of the Corporation or of an affiliate or corporation which is an Associate of a Member. No Member, affiliate or corporation which is an Associate of a Member shall have more than 1 director, officer, employee or other representative on the Board of Directors and, if such event should occur, the Board of Directors in its discretion may request the resignation of or remove as a director, any director or directors in order that the requirements of this section are satisfied. Each director shall be at least 18 years of age.

3.3 Election and Term

3.3.1 Public Directors

At each Annual Meeting, 3 Public Directors shall be elected to fill the vacancies created by the expiry of the terms of office of the ~~3~~ Public Directors whose terms have expired at such meeting or since the last Annual Meeting. The term for each Public Director to be elected at an Annual Meeting shall expire at the second Annual Meeting next following such election on the election of his or her successors, unless expired earlier in accordance with this By-law. The Board of Directors shall be authorized to fix the term of any Public Director to be elected for a period of less than 2 years in order to maintain the intended staggered terms of all Public Directors; but no such term shall be shortened if the Public Director has commenced his or her term of office. A Public Director shall be eligible to serve for only 4 successive terms of 2 years which shall include any shorter term as may have been fixed by the Board of Directors in accordance with this By-law, but shall exclude any portion of a term of office in respect of a vacancy filled pursuant to Section 3.5. Each Public Director to be elected at an Annual Meeting shall have been recommended by the Governance Committee to the Board of Directors for nomination for election by the Members according to the requirements of the By-laws and the terms of reference of the Governance Committee adopted by the Board of Directors. Any Member shall be entitled to submit to the Governance Committee recommendations for Public Directors provided that such recommendations shall have been received by the Corporation not less than 60 days prior to the relevant Annual Meeting.

3.3.2 Industry Directors

At each Annual Meeting, 3 Industry Directors shall be elected to fill the vacancies created by the expiry of the terms of office of the ~~3~~ Industry Directors whose terms have expired at such meeting or since the last Annual Meeting. The term for each Industry Director to be elected at an Annual Meeting shall expire at the second Annual Meeting next following such ~~election~~ appointment on the ~~election~~ appointment of his or her successors, unless expired earlier in accordance with this By-law. The Board of Directors shall be authorized to fix the term of any Industry Director to be elected for a period of less than 2 years in order to maintain the intended staggered terms of all Industry Directors, but no such term shall be shortened if the Industry Director has commenced his or her term of office. An Industry Director shall be eligible to serve only 4 successive terms of 2 years which shall include any shorter term as may have been fixed by the Board of Directors in accordance with this By-law, but shall exclude any portion of a term of office in respect of a vacancy filled pursuant to Section 3.5. Each Industry Director to be elected at an Annual Meeting shall have been recommended by the Governance Committee to the Board of Directors for nomination for election by the Members according to the requirements of the By-laws and the terms of reference of the Governance Committee adopted by the Board of Directors. Any Member shall be entitled to submit to the Governance Committee recommendations for Industry Directors provided that such recommendations shall have been received by the Corporation not less than 60 days prior to the relevant Annual Meeting.

3.3.3 Transition

At the Annual Meeting in ~~2008~~ when this Section 3.3.3 is sanctioned and becomes effective 2009,

- (i) Public Directors whose terms expire at such time (having then served 2 consecutive 2 or 3 year terms) shall be eligible to be nominated and elected for 1 further 2 year term;
- (ii) Public Directors whose terms do not expire at such time (having served less than 2 consecutive 2 or 3 year terms) shall remain eligible to be nominated and elected as Public Directors at subsequent Annual Meetings for further consecutive 2 year terms provided that no such Public Director shall be eligible to serve in aggregate for more than 8 consecutive years as a Public Director;

- (iii) Industry Directors whose terms expire at such time (having then served 3 consecutive 2 year terms) shall be eligible to be nominated and elected for 1 further 2 year term; and
- (iv) Industry Directors whose terms do not expire at such time (having served less than 3 consecutive 2 year terms) shall remain eligible to be nominated and elected as Industry Directors at subsequent Annual Meetings for further consecutive 2 year terms provided that no such Industry Director shall be eligible to serve in aggregate for more than 8 consecutive years as an Industry Director.

3.4 Vacancies

The office of a director shall be automatically vacated:

- 3.4.1 if the director by notice in writing to the Corporation resigns his or her office, which resignation shall be effective at the time it is received by the Secretary of the Corporation or at the time specified in the notice, whichever is later;
- 3.4.2 if the director is found to be a mentally incompetent person or becomes of unsound mind;
- 3.4.3 if the director dies;
- 3.4.4 if the director becomes bankrupt or suspends payment of debts generally or makes an arrangement with creditors or makes an assignment or is declared insolvent;
- 3.4.5 in the case of a Public Director, if the director ceases to be qualified as a Public Director;
- 3.4.6 if the director is requested to resign pursuant to Section 3.2 and does not do so in a reasonable time;
- 3.4.7 if the Public or Industry Director is removed by a resolution passed by either three-quarters of the votes cast at a meeting of the Board of Directors or two-thirds of the votes cast at a meeting of Members;
- 3.4.8 in the case of the President and Chief Executive Officer, the director ceases to hold such office.

3.5 Filling Vacancies

If a vacancy in the Board of Directors shall occur for any reason, the vacancy shall be filled by a resolution electing or appointing a director passed by either a majority of the votes cast at a meeting of the Members or the Board of Directors, provided that in either case the director has been identified and recommended by the Governance Committee to the Board of Directors for nomination for election or appointment and the nominee is otherwise qualified as a director. In recommending any such nominee as a director, the Governance Committee shall ensure the requirements for the composition of the Board of Directors set out in Section 3.3.2 are satisfied and that the nomination process followed by the Governance Committee shall be in accordance with the requirements for nominees to be recommended to the Board of Directors for the election of directors at Annual Meetings except that no notice of the vacancy or request for nominations need be given to Members.

3.6 Committees

3.6.1 Governance Committee

The Board of Directors shall establish a Governance Committee composed of 2 Public Directors and 2 Industry Directors. The 2 Industry Director members of the Governance Committee shall be officers or employees of a Member of the Corporation or of an affiliate or corporation which is an Associate of a Member. The Chair of the Governance Committee shall be 1 of the 2 Public Directors as selected by the Board of Directors. The Governance Committee shall be responsible for identifying and recommending to the Board of Directors Public and Industry Directors for election or appointment to the Board of Directors in accordance with the By-laws and the terms of reference adopted for the Governance Committee by the Board of Directors. In addition, the Governance Committee shall perform such other duties as the Board of Directors may delegate or direct from time to time. 1 Public Director and 1 Industry Director shall constitute a quorum of the Governance Committee.

3.6.2 Audit Committee

The Board of Directors shall establish an Audit Committee composed of 2 Public Directors and 1 Industry Director. The Chair of the Audit Committee shall be 1 of the 2 Public Directors as selected by the Board of Directors. The Audit Committee shall review and report to the Board of Directors on the annual financial statements of the Corporation and shall perform such other duties as the Board of Directors may delegate or direct from time to time. 1 Public Director and 1 Industry Director shall constitute a quorum of the Audit Committee.

3.6.3 *Executive Committee*

The Board of Directors may in its discretion establish an executive committee (which may be otherwise named) composed of an equal number of Public Directors and Industry Directors. The Chair of the Executive Committee, if any, may be either a Public Director or Industry Director and shall be selected by the Board of Directors. The Executive Committee shall exercise such powers and such duties as are delegated or directed by the Board of Directors including, without limitation, the authority to exercise any of the powers of the Board of Directors. 1 Public Director and 1 Industry Director shall constitute a quorum of the Executive Committee.

3.6.4 *Other Board Committees*

The Board of Directors may from time to time in its discretion appoint any other committee or committees as it considers necessary or appropriate for such purposes and with such powers as the Board of Directors may determine including, without limitation, the authority to exercise any of the powers of the Board of Directors and to act in all matters for and in the name of the Board of Directors under the By-laws. Subject to any provisions of the By-laws otherwise, any such committee may be composed of Public Directors or Industry Directors, or both. A majority of the members of a committee established under this Section 3.6.4 shall constitute a quorum, provided that if the committee is composed of 1 or more Public Directors, a quorum shall include 1 Public Director.

3.6.5 *Committee Membership and Procedures*

Members of any committee of the Board of Directors including, without limitation, the Governance Committee, Audit Committee, Executive Committee (if any) or any other committee established pursuant to Section 3.6.4 and shall be appointed and subject to removal by the Board. The Board of Directors may prescribe rules and procedures not inconsistent with the Act and the By-laws relating to the calling of meetings of, and conduct of business by, committees of the Board. Subject to the By-laws and any resolution of the Board of Directors, meetings of any such committee shall be held at any time and place to be determined by the Chair of the committee or its members provided that 48 hours' prior written notice of such meetings shall be given, other than by mail, to each member of the committee. Notice by mail shall be sent at least 14 days prior to the meeting. No error or accidental omission in giving notice of any meeting of a committee shall invalidate such meeting or make void any proceedings taken at such meeting.

3.7 **Remuneration of Directors**

The Board of Directors may determine from time to time such reasonable remuneration, if any, to be paid to the directors of the Corporation for serving as such and the Board may determine that such remuneration need not be the same for all directors including, without limitation, as between Public and Industry Directors. Public and Industry Directors may be reimbursed for reasonable expenses incurred by the director in the performance of the director's duties. Subject to Sections 6 and 7.1, nothing herein contained shall be construed to preclude any director from serving the Corporation as an officer or in any other capacity and receiving compensation therefor.

SCHEDULE B

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

DEFINITION OF PUBLIC DIRECTOR (Sections 1 and 3 of By-law No. 1)

CHANGES FROM THE CURRENT BY-LAW, APPROVED BY THE MFDA BOARD OF DIRECTORS
ON FEBRUARY 7, 2008 AND AUGUST 18, 2009

1. DEFINITIONS

"Associate", where used to indicate a relationship with any person, means:

- (a) any corporation of which such person beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the corporation for the time being outstanding;
- (b) a partner of that person ~~acting on behalf of the partnership of which they are partners;~~
- (c) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity;
- (d) any relative of such person who resides in the same home as that person including his/her spouse, or his/her spouse who has the same home as such person;
- (e) any person who resides in the same home as the person and to whom that person is married, or with whom that person is living in a conjugal relationship outside of marriage; or
- (f) any relative of a person mentioned in clause (e) above who has the same home as such person;

but where the Board of Directors orders that two persons shall, or shall not, be deemed to be associates, then such order shall be determinative of their relationships in the application of By-laws, Rules and Forms, with respect to that Member;

"Public Director" means a ~~Director who is not:~~

- (a) an officer (other than the Chair or a Vice-Chair) or an employee of the Corporation;
- (b) a current partner, director, officer, employee or person acting in a similar capacity of, or the holder of a Significant Interest in:
 - (i) a Member;
 - (ii) an Associate of a Member; or
 - (iii) an affiliate of a Member; or
- (c) an Associate of a partner, director, officer, employee or person acting in a similar capacity of, or the holder of a Significant Interest in, a Member.

For all purposes of this By-law, a Public Director as at the date this definition of Public Director became effective and who does not qualify as a Public Director under such definition shall be deemed to qualify as a Public Director and to continue so qualified as long as and until he or she ceases to be qualified as a Public Director according to the definition of that term in force immediately before the date this definition becomes effective.

"Significant Interest" means in respect of any person the holding, directly or indirectly, of the securities of such person carrying in aggregate 10% or more of the voting rights attached to all of the person's outstanding voting securities.

- (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;

- (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;~~
 - (b) ~~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;~~
 - (c) ~~who is not a current member of the federal House of Commons or member of a provincial or territorial legislative assembly;~~
 - (d) ~~who has not, in the two years prior to election as a Public Director, held a position described in (a) (d) above;~~
 - (e) ~~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~~
- (f) ~~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.~~

3. DIRECTORS

3.1 Duties and Number

The affairs of the Corporation shall be managed by a Board of Directors ~~consisting of an odd number of directors of not less than 13 and no more than 17. The number of persons comprising the Board of Directors shall be 13~~directors shall be determined from time to time by a resolution passed at a meeting of directors.

3.2 Composition of the Board of Directors

The Board of Directors shall be composed of ~~6 the same even number of~~ Public Directors, 6 ~~and~~ Industry Directors and the President and Chief Executive Officer. The members of the Board of Directors (other than the President and Chief Executive Officer) shall collectively and over time be nominated and ~~elected~~ appointed on the basis that there will be timely and appropriate regional representation on the Board of Directors of Members of the Corporation across Canada, provided that at any time (subject to the occurrence of vacancies) not less than 4 of the directors shall represent regions other than the Provinces of Ontario and Quebec. In addition, at any time (subject to the occurrence of vacancies) ~~five~~ 5 of the Industry Directors shall be officers or employees of a Member of the Corporation or of an affiliate or ~~associated corporation which is an Associate~~ Associate of a Member. No Member, affiliate or ~~associated corporation which is an Associate~~ of a Member shall have more than 1 director, officer, employee or other representative on the Board of Directors and, if such event should occur, the Board of Directors in its discretion may request the resignation of or remove as a director, any director or directors in order that the requirements of this section are satisfied. Each director shall be at least 18 years of age.

3.3 Election and Term

3.3.1 Initial Election

~~At the Annual Meeting of the Corporation when this Section 3 By-law No. 1 is sanctioned and becomes effective, 12 directors shall be elected from persons nominated and recommended to the Board of Directors by an ad hoc nominating committee established by the Board of Directors according to the requirements of Section 3.6.1 as if that Section were in force and a Governance Committee has been established in accordance with its provisions. Of the 6 Public Directors to be so elected, the terms of 3 Public Directors to be designated by the Board of Directors shall each expire at the second and third successive Annual Meetings. Of the 6 Industry Directors to be so elected, the terms of 3 such Industry Directors to be designated by the Board of Directors shall each expire at the first and second successive Annual Meetings on the election of their successors.~~

3.3.21 Public Directors

~~At each Annual Meeting commencing in the year 2005, 3 Public Directors shall be elected to fill the vacancies created by the expiry of the terms of office of the 3 Public Directors whose terms have expired at such meeting; or since the last Annual Meeting. The term for each Public Director to be elected at an Annual Meeting shall expire at the thirdsecond Annual Meeting next following such election on the election of his or her successors, unless expired earlier in accordance with this By-law. The Board of Directors shall be authorized to fix the term of any Public Director to be elected for a period of less than 3 2 years in order to maintain the intended staggered terms of all Public Directors, but no such term shall be shortened if the Public Director has commenced his or her term of office. A Public Director shall be eligible to serve for only 2 4 successive terms of 3 2 years which shall include any shorter term as may have been fixed by the Board of Directors in accordance with this By-law, but shall exclude any portion of a term of office in respect of a vacancy filled pursuant to Section 3.5. Each Public Director to be elected at an Annual Meeting shall have been recommended by the Governance Committee to the Board of Directors for nomination for election by the Members according to the requirements of the By-laws and the terms of reference of the Governance Committee adopted by the Board of Directors. Any Member shall be entitled to submit to the Governance Committee nominationsrecommendations for Public Directors provided that such nominationsrecommendations shall have been received by the Corporation not less than 60 days prior to the relevant Annual Meeting.~~

3.3.32 Industry Directors

~~At each Annual Meeting commencing in the year 2004, 3 Industry Directors shall be elected to fill the vacancies created by the expiry of the terms of office of the 3 Industry Directors whose terms have expired at such meeting; or since the last Annual Meeting. The term for each Industry Director to be elected at an Annual Meeting shall expire at the second Annual Meeting next following such election appointment on the election appointment of his or her successors, unless expired earlier in accordance with this By-law. The Board of Directors shall be authorized to fix the term of any Industry Director to be elected for a period of less than 2 years in order to maintain the intended staggered terms of all Industry Directors, but no such term shall be shortened if the Industry Director has commenced his or her term of office. An Industry Director shall be eligible to serve only 3 4 successive terms of 2 years which shall include any shorter term as may have been fixed by the Board of Directors in accordance with this By-law, but shall exclude any portion of a term of office in respect of a vacancy filled pursuant to Section 3.5. Each Industry Director to be elected at an Annual Meeting shall have been recommended by the Governance Committee to the Board of Directors for nomination for election by the Members according to the requirements of the By-laws and the terms of reference of the Governance Committee adopted by the Board of Directors. Any Member shall be entitled to submit to the Governance Committee nominationsrecommendations for Industry Directors provided that such nominationsrecommendations shall have been received by the Corporation not less than 60 days prior to the relevant Annual Meeting.~~

3.3.3 Transition

~~At the annual Meeting in 2009,~~

- ~~(i) Public Directors whose terms expire at such time (having then served 2 consecutive 2 or 3 year terms) shall be eligible to be nominated and elected for 1 further 2 year term;~~
- ~~(ii) Public Directors whose terms do not expire at such time (having served less than 2 consecutive 2 or 3 year terms) shall remain eligible to be nominated and elected as Public Directors at subsequent Annual Meetings for further consecutive 2 year terms provided that no such Public Director shall be eligible to serve in aggregate for more than 8 consecutive years as a Public Director;~~
- ~~(iii) Industry Directors whose terms expire at such time (having then served 3 consecutive 2 year terms) shall be eligible to be nominated and elected for 1 further 2 year term; and~~
- ~~(iv) Industry Directors whose terms do not expire at such time (having served less than 3 consecutive 2 year terms) shall remain eligible to be nominated and elected as Industry Directors at subsequent Annual Meetings~~

for further consecutive 2 year terms provided that no such Industry Director shall be eligible to serve in aggregate for more than 8 consecutive years as an Industry Director.

3.4 Vacancies

The office of a director shall be automatically vacated:

- 3.4.1 if the director by notice in writing to the Corporation resigns his or her office, which resignation shall be effective at the time it is received by the Secretary of the Corporation or at the time specified in the notice, whichever is later;
- 3.4.2 if the director is found to be a mentally incompetent person or becomes of unsound mind;
- 3.4.3 if the director dies;
- 3.4.4 if the director becomes bankrupt or suspends payment of debts generally or makes an arrangement with creditors or makes an assignment or is declared insolvent;
- 3.4.5 in the case of a Public Director, if the director ceases to be qualified as a Public Director;
- 3.4.6 if the director is requested to resign pursuant to Section 3.2 and does not do so in a reasonable time;
- 3.4.7 if the Public or Industry Director is removed by a resolution passed by either three-quarters of the votes cast at a meeting of the Board of Directors or two-thirds of the votes cast at a meeting of Members;
- 3.4.8 in the case of the President and Chief Executive Officer, the director ceases to hold such office.

3.5 Filling Vacancies

If a vacancy in the Board of Directors shall occur for any reason, the vacancy shall be filled by a resolution electing or appointing a director passed by either a majority of the votes cast at a meeting of the Members or the Board of Directors, provided that in either case the director has been identified and recommended by the Governance Committee to the Board of Directors for nomination for election or appointment and the nominee is otherwise qualified as a director. In recommending any such nominee as a director, the Governance Committee shall ensure the requirements for the composition of the Board of Directors set out in Section 3.3.2 are satisfied and that the nomination process followed by the Governance Committee shall be in accordance with the requirements for nominees to be recommended to the Board of Directors for the election of directors at Annual Meetings except that no notice of the vacancy or request for nominations need be given to Members.

3.6 Committees

3.6.1 Governance Committee

The Board of Directors shall establish a Governance Committee composed of 2 Public Directors and 2 Industry Directors. The 2 Industry Director members of the Governance Committee shall be officers or employees of a Member of the Corporation or of an affiliate or ~~associated~~-corporation which is an Associate of a Member. The Chair of the Governance Committee shall be 1 of the 2 Public Directors as selected by the Board of Directors. The Governance Committee shall be responsible for identifying and recommending to the Board of Directors Public and Industry Directors for election or appointment to the Board of Directors in accordance with the By-laws and the terms of reference adopted for the Governance Committee by the Board of Directors. In addition, the Governance Committee shall perform such other duties as the Board of Directors may delegate or direct from time to time. 1 Public Director and 1 Industry Director shall constitute a quorum of the Governance Committee.

3.6.2 Audit Committee

The Board of Directors shall establish an Audit Committee composed of 2 Public Directors and 1 Industry Director. The Chair of the Audit Committee shall be 1 of the 2 Public Directors as selected by the Board of Directors. The Audit Committee shall review and report to the Board of Directors on the annual financial statements of the Corporation and shall perform such other duties as the Board of Directors may delegate or direct from time to time. 1 Public Director and 1 Industry Director shall constitute a quorum of the Audit Committee.

3.6.3 Executive Committee

The Board of Directors may in its discretion establish an executive committee (which may be otherwise named) composed of an equal number of Public Directors and Industry Directors. The Chair of the Executive Committee, if any, may be

either a Public Director or Industry Director and shall be selected by the Board of Directors. The Executive Committee shall exercise such powers and such duties as are delegated or directed by the Board of Directors including, without limitation, the authority to exercise any of the powers of the Board of Directors. 1 Public Director and 1 Industry Director shall constitute a quorum of the Executive Committee.

3.6.4 Other Board Committees

The Board of Directors may from time to time in its discretion appoint any other committee or committees as it considers necessary or appropriate for such purposes and with such powers as the Board of Directors may determine including, without limitation, the authority to exercise any of the powers of the Board of Directors and to act in all matters for and in the name of the Board of Directors under the By-laws. Subject to any provisions of the By-laws otherwise, any such committee may be composed of Public Directors or Industry Directors, or both. A majority of the members of a committee established under this Section 3.6.4 shall constitute a quorum, provided that if the committee is composed of 1 or more Public Directors, a quorum shall include 1 Public Director.

3.6.5 Committee Membership and Procedures

Members of any committee of the Board of Directors including, without limitation, the Governance Committee, Audit Committee, Executive Committee (if any) or any other committee established pursuant to Section 3.6.4 and shall be appointed and subject to removal by the Board. The Board of Directors may prescribe rules and procedures not inconsistent with the Act and the By-laws relating to the calling of meetings of, and conduct of business by, committees of the Board. Subject to the By-laws and any resolution of the Board of Directors, meetings of any such committee shall be held at any time and place to be determined by the Chair of the committee or its members provided that 48 hours' prior written notice of such meetings shall be given, other than by mail, to each member of the committee. Notice by mail shall be sent at least 14 days prior to the meeting. No error or accidental omission in giving notice of any meeting of a committee shall invalidate such meeting or make void any proceedings taken at such meeting.

3.7 Remuneration of Directors

The Board of Directors may determine from time to time such reasonable remuneration, if any, to be paid to the directors of the Corporation for serving as such and the Board may determine that such remuneration need not be the same for all directors including, without limitation, as between Public and Industry Directors. Public and Industry Directors may be reimbursed for reasonable expenses incurred by the director in the performance of the director's duties. Subject to Sections 6 and 7.1, nothing herein contained shall be construed to preclude any director from serving the Corporation as an officer or in any other capacity and receiving compensation therefore.