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Special Supplement
Mutual Fund Dealers Association of Canada

Notice of Rule

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AND

NOTICE OF COMMISSION RECOGNITION OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA AS A SELF-REGULATORY ORGANIZATION FOR MUTUAL FUND DEALERS

Notice of Rule

The Commission has, under section 143 of the *Securities Act* (the "Act"), made Rule 31-506 SRO Membership - Mutual Fund Dealers (the "Rule"). The Rule and the material required by the Act to be delivered to the Minister of Finance were delivered on February 6, 2001.

The Commission has made the Rule for a second time. The Commission first made the Rule on October 10, 2000 and delivered it to the Minister of Finance for approval on October 12, 2000.[1]

As noted in the Notice regarding Rule 31-506 published on December 22, 2000[2], the Minister of Finance returned the October version of the Rule to the Commission for further consideration of certain specified matters.

As further described in this Notice, the Commission has considered the matters requested by the Minister of Finance and has determined that it is appropriate for the Rule to be made a rule of the Commission, subject to the approval of the Minister of Finance. The Commission has asked that the Minister of Finance consider approving the Rule so that the Rule can come into force by March 30, 2001. The date the Rule comes into force is referred to in this Notice as the effective date.

Mutual fund dealers should begin to plan for the effective date and the deadlines provided for in the Rule immediately. The requirements for mutual fund dealers imposed by the Rule are noted in the Rule and require action by mutual fund dealers to be taken within 30 days of the effective date of the Rule.

Notice of Recognition of Self-Regulatory Organization

The Commission recognized the Mutual Fund Dealers Association of Canada (the "MFDA") as a self-regulatory organization for mutual fund dealers under section 21.1 of the Act on February 6, 2001. The Recognition Order, together with the terms and conditions of recognition, follows this Notice and the text of the Rule.

In conjunction with recognizing the MFDA as a SRO for mutual fund dealers, the Commission has approved the final rules and by-law of the MFDA. These final rules and by-law are reproduced following this Notice, the text of the Rule and the Recognition Order. The MFDA Notice on Transition Periods is also reproduced; with the complete set of MFDA forms and notices, including Form 1 - MFDA Financial Questionnaire and Report, being available on the MFDA's website at http://www.mfda.ca. The MFDA's summary of the comments received on the MFDA Recognition Package (referred to below), together with its responses to those comments are also reproduced following this Notice.

Background

Since 1997, the Commission, together with other members of the Canadian Securities Administrators ("CSA"), has encouraged and supported the establishment of the MFDA. The MFDA was created in June 1998 as a non-share capital corporation with an objective of acting as a self-regulatory organization ("SRO") for mutual fund dealers in Canada.

The Commission first published the proposed Rule for a 90-day comment period in October 1997[3] and published proposed changes to the proposed Rule for 30-day comment periods on two occasions; first in June 1998[4] and secondly on June 16, 2000.[5]

In December 1999, the MFDA submitted its application to the Commission for recognition as a SRO for mutual fund dealers under section 21.1 of the Act. Concurrently with the June 16, 2000 publication of the proposed Rule, the Commission published for a 90-day comment period:

- The criteria the Commission proposed to use to assess the MFDA in determining whether to recognize the MFDA as a SRO for mutual fund dealers (the "Proposed Criteria"); and
- The response of the MFDA to the Proposed Criteria.

1 See Notice of Final Rule dated October 13, 2000 and published at (2000) 23 OSCB 6985.

2 See Notice Regarding Rule 31-506 SRO Membership - Mutual Fund Dealers dated December 22, 2000 and published at (2000) 23 OSCB 8466.

3 (1997) 20 OSCB 5051.

4 (1998) 21 OSCB 3875.

5 (2000) 23 OSCB (Supp.) 163.

The draft rules and by-law, including applicable forms and notices, of the MFDA were attached to the MFDA's response to the Commission's Proposed Criteria for recognition and were published together with such documents as the MFDA Recognition Package (the forms and notices were made available electronically on the MFDA's web-site).

On October 12, 2000, the Commission delivered the Rule to the Minister of Finance for approval under section 143.3 of the Act, after considering the comments received in respect of the Rule and the MFDA Recognition Package. The Notice of Final Rule summarized these comments and the Commission's response to those comments.[6]

On December 11, 2000, the Minister of Finance returned the Rule to the Commission for further consideration. In his letter returning the Rule to the Commission, the Minister indicated his support for the Commission's initiative in encouraging the development of the MFDA and acknowledged that the MFDA will be an important component in promoting investor confidence and consumer protection in the Canadian mutual fund sector. The Minister noted his understanding that two other provinces have concerns about implementation elements of the MFDA and requested that the Commission understand and consider their issues. The Minister also requested that the Commission continue to work with the MFDA to ensure that comments from the entire mutual fund industry are addressed appropriately.[7]

The Commission received the MFDA's revised application for recognition as a SRO for mutual fund dealers on December 18, 2000. This revised application included:

1. A summary of the comments the MFDA received on the MFDA Recognition Package and the response of the MFDA to those comments.

2. The By-law and Rules of the MFDA revised to reflect the changes made by the MFDA in response to the comments received.

3. A description of those MFDA Rules that the MFDA decided to suspend for specified transition periods. Those MFDA Rules included, among others, (i) the Rule prohibiting dealers from paying commissions to personal corporations of salespersons, (ii) the Rules requiring specified levels of capital for different categories of dealers and (iii) the MFDA Rule requiring that annual statements be sent to clients.

The MFDA's revised application for recognition, including its summary of comments and responses to those comments were made available in December 2000 on the web-site of the MFDA. The Commission summarized the status of the MFDA, including the availability of the revised application for recognition, in the December 22 Notice[8].

Commission Consideration of Issues Raised by the Minister of Finance

The Commission considers that it has appropriately considered and addressed the issues raised by the Minister of Finance in his letter to the Commission of December 11, 2000.

Industry Concerns with the MFDA Rules:

The Commission is satisfied with the responses of the MFDA to the comments received on the MFDA Recognition Package and has worked with the MFDA to ensure that the final MFDA rules and by-laws reflect appropriate regulatory responses to the issues raised. Non-substantive amendments were made to the final MFDA rules and by-law from the version submitted to the Commission in December 2000. In addition, the Commission has required, as a term and condition of Recognition, that the MFDA amend certain rules and change the specified period of suspension for specified rules prior to accepting its first member. Sections 14 and 15 of the Recognition Order provides for these required amendments.

The Commission has considered the two principal concerns raised through the comments on the MFDA rules and by-law and the Proposed Criteria; payments of commissions by dealers to entities other than registered salespersons and the governance structure of the MFDA.

The Commission has accepted the MFDA's suspension of its Rule 2.4.1, being the MFDA Rule that requires that mutual fund dealers accepted as members of the MFDA pay commissions owed to their Approved Persons (as defined in the MFDA rules) directly and in the name of those Approved Persons. The Commission understands the implications to the existing business structures of the mutual fund distribution industry and has accepted the MFDA's suspension of Rule 2.4.1.

Section 15 of the terms and conditions of Recognition set out the Commission's conditions for accepting this MFDA rule suspension. Foremost of these conditions is that the relationships amongst those mutual fund dealers accepted for membership into the MFDA and their salespersons are structured in accordance with the MFDA's Rule 1 Business Structures and Qualifications.

The Commission acknowledges that changes to the framework applicable to the relationships amongst mutual fund dealers and their salespersons are necessary to address the issues raised by the mutual fund distribution industry regarding business structures and has asked that Commission staff, together with MFDA staff and industry representatives, develop proposed solutions within the suspension period. These solutions may involve legislative changes.

Many commentators on the MFDA Recognition Package commented on the governance structure of the MFDA, whereby The Investment Funds Institute of Canada ("IFIC") and the Investment Dealers Association of Canada (the "IDA") are given certain rights to nominate and appoint directors and officers of the MFDA. The Commission is of the view that the better governance structure for a self-regulatory organization, particularly after it has been operating for a few years, is one where there is appropriate representation on a board of directors from the public (through directors that are

6 Ibid at Note 1.

7 See Notice Regarding Rule 31-506 at note 2.

8 See note 2.

independent from any member of the SRO) and from the full membership of the SRO. The Commission has accordingly recognized the MFDA on the condition that the current governance structure of the MFDA be changed by the third annual meeting after Recognition to one where IFIC and the IDA no longer have entrenched rights to nominate and appoint directors and officers and where there is appropriate representation of public and member appointed directors. Section 3 of the Terms and Conditions of Recognition set out the Commission's conditions in this regard.

The Commission is now satisfied that the issues raised by the industry concerning the MFDA rules and by-law have been addressed appropriately and the Recognition Order of the Commission reflects the Commission's decision.

Provincial Government Concerns with MFDA Implementation:

The Minister of Finance also asked the Commission to consider the issues raised by other provinces surrounding implementation of the MFDA. The Commission understands that the British Columbia Securities Commission has been in discussions with the relevant government officials and that any concerns raised initially with the MFDA implementation are expected to be resolved to the satisfaction of that government. The Commission understands that the primary concerns raised by British Columbia were around the issues of payment of commissions to entities other than registered salespersons.

The Commission notes that the British Columbia, Alberta, and Saskatchewan securities commissions have also recognized the MFDA as a SRO for mutual fund dealers in their respective provinces on substantially the same terms and conditions as imposed by the Commission on the MFDA in Ontario.

Substance and Purpose of the Rule

The purpose of the Rule is to address certain regulatory issues that arise in connection with regulatory oversight of mutual fund dealers. **The Rule requires all mutual fund dealers to apply for membership in the MFDA by the thirtieth day after the effective date of the Rule and become members of the MFDA by July 2, 2002.**

The Rule conforms to the fundamental principle in paragraph 4 of section 2.1 of the Act under which the Commission should, subject to an appropriate system of supervision, use the enforcement capability and regulatory expertise of recognized self-regulatory organizations.

Further background to the Rule is given in the Notices published with the October 1997, the June 1998, June 2000 and October 2000 versions of the Rule.

Summary of the Rule

The Rule will require all mutual fund dealers registered with the Commission in that registration category as of the effective date of the Rule to:

- prepare and submit to the MFDA an application for membership in the form prescribed by the MFDA, together with the MFDA's prescribed fees by the thirtieth day after the effective date of the Rule; and
- become members of the MFDA by July 2, 2002.

An applicant for registration as a mutual fund dealer after the effective date of the Rule will also be required to be a member of the MFDA on July 2, 2002, if it became registered as a mutual fund dealer before July 2, 2002. This means that a new applicant for registration as a mutual fund dealer can become registered with the Commission as a mutual fund dealer if it meets securities legislative requirements before July 2, 2002 and if it applies for membership in the MFDA concurrently with submitting its application for registration, but it must become a member of the MFDA to continue to be a mutual fund dealer after July 2, 2002. A new applicant for registration as a mutual fund dealer after the effective date of the Rule will be required to file an application for membership with the MFDA and pay the prescribed fees on the same date as it files its application to the Commission for registration as a mutual fund dealer in order to be considered for registration as a mutual fund dealer. Any applicant for registration as a mutual fund dealer submitting its application after July 2, 2002 will not be registered as a mutual fund dealer unless and until it becomes a member of the MFDA.

As noted in the December 22 Notice, the MFDA has posted its form of application for membership and a description of the application process on its website. The MFDA notes on its website, that it anticipates that the basic format and requirements included in the draft membership application package will be substantially similar to the final version that will be used for MFDA membership. It can be found at http://www.mfda.ca/draftapplicationpackage.pdf.

The MFDA has indicated that its complete application package will be available electronically on its website on March 1, 2001.

Summary of Changes to the Rule from the October 2000 Version

The Commission has made minor amendments to the Rule from the version of the Rule made in October 2000 to reflect the fact that the Rule was made following the Commission's recognition of the MFDA as a SRO. This section describes these minor amendments, which are expected to provide additional clarity to the applicable deadlines imposed by the Rule.

Section 1

The Commission deleted the definition "Date of Recognition" as that definition is no longer necessary since the MFDA has been recognized. In order to simplify the drafting, the Commission has added a definition of "effective date".

Part 2

The deadline for membership in the MFDA imposed by section 2.1 of the Rule has been amended to refer to a date certain, being July 2, 2002, instead of that date which is one year and 75 days after the Date of Recognition. Given the slight delay in the Commission's recognition of the MFDA from that proposed in October 2000, the Commission believes that it is appropriate that mutual fund dealers be given an additional two months from that proposed in October 2000 to become members in the MFDA.

Part 3

The Commission made changes to the application deadlines to ensure (i) clarity of the applicable deadlines and requirements and (ii) give mutual fund dealers thirty days between the effective date of the Rule and the requirement to apply for membership to the MFDA A new section was added to clarify the deadlines for those applicants for registration as mutual fund dealers that have not been granted such registration by the effective date. These applicants will also be required to apply for membership by the thirtieth day after the effective date.

Section 4.1

The Commission has redrafted section 4.1 to provide additional precision for the effective date of the Rule and to ensure that the effective date conforms with the requirements of the Act. As noted earlier in this Notice, the Commission has asked the Minister of Finance to give his approval of the Rule so that the Rule can come into force by March 30, 2001.

Text of Rule 31-506 SRO Membership - Mutual Fund Dealers

The text of the Rule follows.

Dated: February 16, 2001

OSC Rule 31-506

SRO Membership - Mutual Fund Dealers

ONTARIO SECURITIES COMMISSION RULE 31-506
SRO MEMBERSHIP - MUTUAL FUND DEALERS

PART 1 DEFINITIONS

1.1 Definitions - In this Rule

"effective date" means the date that this Rule comes into force under section 4.1.

"MFDA" means the Mutual Fund Dealers Association of Canada, a self-regulatory organization for mutual fund dealers.

PART 2 MEMBERSHIP REQUIRED

2.1 Membership Required - From and after July 2, 2002, a mutual fund dealer shall be a member of the MFDA.

PART 3 APPLICATION FOR MEMBERSHIP

3.1 Mutual Fund Dealers on Effective Date - A mutual fund dealer which is a mutual fund dealer on the effective date shall file with the MFDA, no later than the thirtieth day after the effective date:

(a) an application for membership in the form prescribed by the MFDA; and

(b) the fees prescribed by the MFDA for the application for membership.

3.2 New Applicants for Registration as Mutual Fund Dealers Before the Effective Date - A person or company that has applied to the Commission for registration as a mutual fund dealer before the effective date and that is not registered as a mutual fund dealer on the effective date shall file with the MFDA, no later than the thirtieth day after the effective date, the application for membership and fees referred to in section 3.1.

3.3 New Applicants for Registration as Mutual Fund Dealers After the Effective Date

(1) Subject to subsection (2) , a person or company that applies to the Commission for registration as a mutual fund dealer after the effective date shall file with the MFDA:

(a) an application for membership in the form prescribed by the MFDA; and

(b) the fees prescribed by the MFDA for the application for membership

on the same date as it files its application for registration with the Commission as a mutual fund dealer.

(2) If a person or company applies to the Commission for registration as a mutual fund dealer after the effective date, but before the end of the thirtieth day after the effective date, then it shall file the application and fees referred to in subsection (1) with the MFDA by the end of the thirtieth day after the effective date, and it is not required to file the specified documents on the same date as it files its application for registration with the Commission.

PART 4 EFFECTIVE DATE

4.1 Effective Date for Rule - This Rule shall come into force on:

(a) the later of

(i) March 30, 2001, and

(ii) that day which is 15 days after the Rule is approved by the Minister of Finance

if the Minister of Finance approves the Rule; or

(b) April 30, 2001, if the Minister of Finance does not approve the Rule, reject it or return it for further consideration.

PART 5 EXEMPTION

5.1 Exemption - The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

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MFDA Recognition Order

IN THE MATTER OF

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

AND

IN THE MATTER OF

MUTUAL FUND DEALERS ASSOCIATION OF CANADA/ ASSOCIATION CANADIENNE DES COURTIERS DE FONDS MUTUELS

RECOGNITION OF SELF-REGULATORY ORGANIZATION (Section 21.1)

WHEREAS:

(1) In December 1999, the Mutual Fund Dealers Association of Canada/Association canadienne des courtiers de fonds mutuels (the "MFDA") applied to the Commission for recognition as a self-regulatory organization for mutual fund dealers under section 21.1 of the Act.

(2) On June 16, 2000, the Commission published for comment:

(A) the criteria it proposed to use to assess the MFDA in determining whether to recognize the MFDA as a self-regulatory organization for mutual fund dealers; and

(B) the response of the MFDA to the Commission's proposed criteria for recognition, including the draft rules and by-laws of the MFDA.

(3) The Commission has considered the comments it received on its proposed recognition criteria in developing this Recognition.

(4) The Commission received a revised application for recognition from the MFDA on December 18, 2000. This revised application included the responses of the MFDA to the comments the MFDA received on its draft rules and by-laws. The MFDA publicly released its revised application on delivery to the Commission.

(5) On February 6, 2001, the Commission delivered Commission Rule 31 - 506 SRO Membership - Mutual Fund Dealers to the Minister of Finance for approval, after considering the matters that the Minister asked the Commission to consider in his letter of December 11, 2000. If approved by the Minister, Rule 31-506 will require mutual fund dealers to take certain actions set out in the Rule within specified time periods.

(6) The Commission has considered the application of the MFDA, as it has been revised in response to comments received, for recognition as a self-regulatory organization for mutual fund dealers. The Commission is satisfied that the recognition of the MFDA as a self-regulatory organization for mutual fund dealers on the terms and conditions set out in this Recognition is in the public interest.

(7) The Commission is satisfied that the MFDA will regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices.

(8) The Commission has been advised that the Mutual Fund Dealers Investor Protection Plan (the "MFIPP") will ask the Commission to consider the MFIPP to be a compensation fund for members of the MFDA. The Commission intends to publish for comment the MFIPP's application, once received, and will consider it once it has reviewed any comments received. Members of the MFDA will continue to participate in the Ontario Contingency Trust Fund as required under section 110 of the *Regulation*s under the *Act* until another compensation fund or contingency trust fund authorized by the Commission commences its coverage.

THE COMMISSION HEREBY RECOGNIZES the MFDA as a self-regulatory organization for mutual fund dealers pursuant to section 21.1 of the Act on the terms and conditions attached to this Recognition as Schedule "A", which recognition shall continue until revoked by the Commission. In the event that a term or condition is, in the view of the Commission, breached by the MFDA, the Commission shall give notice to the MFDA of its intention to revoke this Recognition and shall give the MFDA a reasonable opportunity to be heard prior to revoking this Recognition.

DATED at Toronto, this **6th** day of **February, 2001**.

"David A. Brown" ***"J. A. Geller"***

SCHEDULE "A"

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

1. DEFINITIONS

For the purposes of this Schedule:

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

"member" means a member of the MFDA;

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

"securities legislation" means the securities laws, regulations, rules and policies of the Canadian jurisdictions.

2. STATUS

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

3. CORPORATE GOVERNANCE

(A) The MFDA's arrangements with respect to the appointment, removal from office and functions of the persons ultimately responsible for making or enforcing the rules of the MFDA, being the Board of Directors (the "Board"), shall secure a proper balance between the interests of the different members of the MFDA in order to ensure diversity of representation on the Board. In recognition that the protection of the public interest is a primary goal of the MFDA, a reasonable number and proportion of directors on the Board and on the committees of the Board shall be and remain during their term of office persons ("Public Directors") who are not members or directors, partners, officers, salespersons or employees of a member, or of an associate, affiliate or related company of a member, of the MFDA, the Investment Dealers Association of Canada (the "IDA") or The Investment Funds Institute of Canada ("IFIC").

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

(i) a reasonable number and proportion of directors serving on the Board, and on each of the governance, executive and audit committee of the Board or similar bodies within the meaning of the MFDA rules, are Public Directors;

(ii) meetings of any committee or body on which there are Public Directors shall have a quorum requirement including at least one Public Director;

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

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

(v) the Chair of the Board is an individual appointed as such by the Board (constituted as required by (i) and (iii) above) and is not required to be the Chairperson of IFIC;

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

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

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

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

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

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

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

4. FEES

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

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

5. COMPENSATION OR CONTINGENCY TRUST FUNDS

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

6. MEMBERSHIP

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) authorize the MFDA to co-operate with other regulatory and self-regulatory organizations, including sharing information with these organizations; and

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

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

7. COMPLIANCE BY MEMBERS

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

(B) The MFDA shall conduct periodic reviews of its members and the members' Approved Persons to ensure compliance by its members and the members' Approved Persons with the rules of the MFDA and shall conduct such reviews at a frequency requested by the Commission or its staff. The MFDA shall also cooperate with the Commission in the conduct of reviews of its members and the members' Approved Persons as requested by the Commission or its staff, to ensure compliance by its members and their Approved Persons with applicable securities legislation.

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

(i) any member has failed to file on a timely basis any required financial, operational or other report;

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

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

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

(b) result in material financial loss; or

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

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

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

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

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

8. DISCIPLINE OF MEMBERS AND APPROVED PERSONS

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

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

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

(D) The MFDA shall notify

(i) the Commission in writing, and

(ii) the public and the media

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

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

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

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

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

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

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

9. DUE PROCESS

The MFDA shall ensure that the requirements of the MFDA relating to admission to membership, the imposition of limitations or conditions on membership, denial of membership and termination of membership

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

10. PURPOSE OF RULES

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

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

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

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

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

(v) seek to provide for appropriate discipline;

and shall not:

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

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

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

11. RULES AND RULE-MAKING

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

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

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

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

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

12. OPERATIONAL ARRANGEMENTS AND RESOURCES

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

(B) The MFDA shall respond promptly and effectively to public inquiries and generally shall have effective arrangements for the investigation of complaints (including anonymous complaints) against its members or their Approved Persons. With the consent of the Commission, such arrangements may make provision for one or more parts of that function to be performed on behalf of the MFDA (and without affecting its responsibility) by any other body or person that is able and willing to perform it. The

Commission's consent may be varied or revoked from time to time and may be subject to terms and conditions. The MFDA and any other body or person performing such function on behalf of the MFDA shall not refrain from investigating complaints due to the anonymity of the complainant where the complaint is otherwise worthy of investigation and sufficiently detailed to permit investigation.

(C) The MFDA shall ensure that it is accessible to the public and shall designate and make available to the public the names and telephone numbers of persons to be contacted for various purposes, including making complaints and enquiries.

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

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

(ii) an adequate supervisory structure;

(iii) adequate management information systems;

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

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

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

(vii) guidelines regarding appropriate disciplinary sanctions; and

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

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

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

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

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

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

(I) Management of the MFDA shall at least annually self-assess the MFDA's performance of its self-regulatory responsibilities and report thereon to the executive committee, together with any recommendations for improvements. The executive committee shall be responsible for reporting to the Board as to the MFDA's performance of its self-regulatory responsibilities. The reports shall, for each of the MFDA's member regulatory functions, set performance measurements against which performance can be compared, and identify major successes, significant problem areas, plans to resolve these problems, recruitment and training plans, and other information as reasonably requested by the Commission or its staff. The MFDA shall, within 120 days of the fiscal year end of the MFDA, provide the Commission with copies or summaries of such reports and advise the Commission of any proposed actions arising therefrom.

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

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

(L) The MFDA shall provide the Commission with reports, documents and other information as the Commission or its staff may reasonably request. The Commission or its staff may review and revise such reporting requirements as necessary on an on-going basis.

13. INFORMATION SHARING

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

14. REQUIRED RULE AMENDMENTS

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

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

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

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

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

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

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

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

15. SUSPENSION OF MFDA RULE 2.4.1

The MFDA shall comply with the following conditions during the period that MFDA Rule 2.4.1 is suspended as set out in its MFDA Notice to Members entitled "Transition Periods":

(A) the MFDA shall co-operate with the Commission and its staff, including participating on any joint industry and regulatory committee struck by the Commission and its staff, in their efforts to develop amendments to applicable securities legislation that would, among other things, allow an Approved Person to carry on securities related business (within the meaning of the MFDA rules) through a corporation, while preserving that Approved Person's and the member's liability to clients for the Approved Person's actions;

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

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

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

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

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Draft: January 31, 2001

MUTUAL FUND DEALERS ASSOCIATION OF CANADA/ ASSOCIATION CANADIENNE DES COURTIERS DE FONDS MUTUELS

BY-LAW NO. 1
(as amended by By-law No. 3)

NOTE TO READER: This draft By-law of the Mutual Fund Dealers Association of Canada / Association canadienne des courtiers de fonds mutuels (MFDA) has been prepared in connection with the application of MFDA for recognition as a self-regulatory organization pursuant to applicable provincial securities legislation. The By-law, together with the Rules, Forms and Policies of MFDA, is based on statutory requirements, the recommendations of the Board of Directors and various MFDA Industry Committees, current industry practices, the standards of similar self-regulatory organizations and the announced requirements of securities regulators. Further amendments may be made as MFDA develops and regulatory policy for MFDA Members is determined. The application of some sections of the draft By-law may be delayed for limited periods of time to permit orderly transition and compliance by Members and Approved Persons.

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BY-LAW NO. 1
(as amended by By-law No. 3)

being the General By-law of

MUTUAL FUND DEALERS ASSOCIATION OF CANADA/ ASSOCIATION CANADIENNE DES COURTIERS DE FONDS MUTUELS
(hereinafter referred to as the "Corporation")

INTERPRETATION AND EFFECT

1. **Definitions**. In this By-law, unless the context otherwise specifies or requires:

"Act" means the *Canada Corporations Act*, R.S.C. 1970, c. C-32 as from time to time amended and every statute that may be substituted therefor and, in the case of such substitution, any references in the By-laws of the Corporation to provisions of the Act shall be read as references to the substituted provisions therefor in the new statute or statutes;

"affiliate" or "affiliated corporation" means in respect of two corporations, either corporation if one of them is the subsidiary of the other or if both are subsidiaries of the same corporation or if each of them is controlled by the same person;

"Annual Meeting" means the Annual Meeting of the Corporation;

"applicable" in relation to a Regional Council means the Regional Council for the Region:

(1) in which the applicant for Membership or the Member has its principal office;

(2) in which a Member has a branch office;

(3) in which the respondent, if an individual in a disciplinary action pursuant to Section 25, was approved at the time the activities which are the subject of the disciplinary action primarily occurred, provided that,

(a) if the individual was approved in more than one Region at the relevant time, and the matter which is the subject of the disciplinary action involves a client in a Region where the respondent was approved other than that in which the respondent resides, then in which such client resided at the time such activities occurred; or

(b) if the applicable Regional Council cannot otherwise be determined, then in which the respondent resided at the relevant time; or

(4) in which the activities which are the subject of a disciplinary action against a respondent Member pursuant to Section 25 primarily occurred, or, if such activities are not referable to any specific Region, in which the principal office of the respondent Member is located, provided that, if a disciplinary action involves both an individual and a Member, the Regional Council having jurisdiction pursuant to clause (3) herein.

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

"assets under administration" means the assets under administration of the business of a Member as prescribed by the Board of Directors from time to time in accordance with Section 14.1;

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

(i) 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;

(ii) a partner of that person acting on behalf of the partnership of which they are partners;

(iii) 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;

(iv) any relative of such person, including his/her spouse, or his/her spouse 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;

"Board of Directors" means the board of directors of the Corporation and any committee or panel of directors appointed by the Board under the By-laws with the authority to exercise any powers of the Board of Directors;

"branch office" means any office or location from which any dealer business of a Member is conducted;

"By-laws" means any By-law of the Corporation from time to time in force and effect;

"carrying dealer" means a Member that carries customer accounts in accordance with Rule 1.1.6 to the extent, at a minimum, of clearing and settling trades, maintaining books and records of customer transactions and the holding of client cash, securities and other property;

"client name" means in respect of an account or client property, an account established by a Member for a client in accordance with the By-laws and Rules, and the cash, securities or other property held for such account, where the cash, securities and property is held in the name of and by a person other than the Member;

"**control" or "controlled"**, in respect of a corporation by another person or by two or more corporations, means the circumstances where:

(i) voting securities of the first-mentioned corporation carrying more than 50% of the votes for the election of directors are held, other than by way of security only, by or for the benefit of the other person or by or for the benefit of the other corporations; and

(ii) the votes carried by such securities are entitled, if exercised, to elect a majority of the Board of Directors of the first-mentioned corporation,

and where the Board of Directors orders that a person shall, or shall not, be deemed to be controlled by another person, then such order shall be determinative of their relationships in the application of the By-laws, Rules and Forms with respect to that Member;

"Corporation" means Mutual Fund Dealers Association of Canada \ Association canadienne des courtiers de fonds mutuels, a corporation incorporated pursuant to the Act, and any reference in the By-laws, Rules and Policies to an act being or to be performed by the Corporation shall be deemed to be a reference to the Corporation acting through any duly authorized director, officer, employee or agent of the Corporation;

"financial year" or **"fiscal year"** means the financial year of the Corporation determined in accordance with Section 35;

"firm" means a partnership, or other form of unincorporated business organization approved as such by the Corporation;

"Form" means a form prescribed or provided for by the By-laws, Rules or Policies;

"guaranteeing" includes becoming liable for, providing security for or entering into an agreement (contingent or otherwise) having the effect or result of so becoming liable for or providing security for a person, including an agreement to purchase an investment, property or services, to supply funds, property or services or to make an investment primarily for the purpose of directly or indirectly enabling such person to perform its obligations in respect of such security or investment or assuring the investor of such performance;

"IDA" means the Investment Dealers Association of Canada;

"IFIC" means the Investment Funds Institute of Canada;

"individual" means a natural person;

"introducing dealer" means a Member that introduces customer accounts to a carrying dealer in accordance with Rule 1.1.6;

"Letters Patent" means the letters patent and any supplementary letters patent of the Corporation;

"Member" means a member of the Corporation;

"Member corporation" means an incorporated Member;

"Membership" means membership in the Corporation;

"mutual fund dealer" means a person registered or licensed by a securities commission to deal in mutual fund or investment fund securities, other than a securities dealer;

"nominee name" means, in respect of an account or client property, an account established by a Member for a client in accordance with the By-laws and Rules in which the securities or other property is held by the Member, its agent or its custodian in the name of the Member or its agent or its custodian, for the benefit of the client;

"Notice of Hearing" means a notice of hearing given pursuant to Section 25.3;

"officer" means the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the assistant-secretary, the treasurer, the assistant treasurer, the comptroller or the general manager of a Member, or any other person designated an officer of a Member by by-law or similar authority;

"ownership interest" means all direct or indirect ownership of the securities of a Member;

"person" means an individual, a partnership, or corporation, a government or any department or agency thereof, a trustee, any unincorporated organization and the heirs, executors, administrators or other legal representatives of an individual;

"Policies" means the guidelines, policies, bulletins, notices and other communications developed and issued pursuant to Section 26.4;

"previous director" means a director referred to in Section 3.7.

"public director" means a director referred to in Section 3.4.1;

"Region" means any geographic area in Canada designated by the Board of Directors as a Region of the Corporation in accordance with Section 17.1.

"Regional Annual Meeting" means the annual meeting of Members of a Region held in accordance with Section 18.2;

"Regional Council" means a council established pursuant to Section 19 of the By-laws;

"Regulations" means the regulations made under the Act as from time to time amended and every regulation that may be substituted therefor and, in the case of such substitution, any references in the By-laws of the Corporation to provisions of the regulations shall be read as references to the substituted provisions therefor in the new regulations.

"related Member" means a sole proprietorship, partnership or corporation which:

(i) is a Member; and

(ii) is related to a Member in that either of them, or their respective partners, directors, officers, shareholders and employees, individually or collectively, have at least a 20% ownership interest in the other of them, including an interest as a partner or shareholder, directly or indirectly, and whether or not through holding companies;

provided that the Board of Directors may, from time to time, include in, or exclude from this definition any person, and change those included or excluded;

"Rules" means the Rules made pursuant to Section 26 and any Forms prescribed thereunder;

"securities commission" means in any jurisdiction in Canada, the commission, person or other authority authorized to administer any legislation relating to trading in securities and/or to the registration or licensing of persons engaged in trading securities;

"securities dealer" means a person acting as dealer (principal) or broker (agent) in carrying out transactions in securities and commodity futures contracts or options on behalf of clients and includes, without limitation, acting as an underwriter or advisor, but excludes a person registered or licensed as a mutual fund dealer;

"securities legislation" means any legislation relating to trading in securities in Canada enacted by the Government of Canada or any province or territory of Canada and includes all regulations, rules, orders or other regulatory directions made pursuant thereto by any authorized body including, without limitation, a securities commission;

"securities related business" means any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities for the purposes of applicable securities legislation in any jurisdiction in Canada, including for greater certainty, securities sold pursuant to exemptions under applicable securities legislation;

"sub-branch" means any branch office having in total less than four Approved Persons and supervised by an Approved Person as required under the Rules who is not normally present at such sub-branch office;

"subordinated debt" means any debt the terms of which specify that its holder will not be entitled to receive payment if any payment to any holder of a senior class of debt is in default;

"subsidiary", in respect of a corporation and another corporation, means the first mentioned corporation if:

(i) it is controlled by:

(a) that other; or

(b) that other and one or more corporations each of which is controlled by that other; or

(c) two or more corporations each of which is controlled by that other; or

(ii) it is a subsidiary of a corporation that is that other's subsidiary;

2. **Interpretation**. This By-law, the Rules and the Policies shall be, unless the context otherwise requires, construed and interpreted in accordance with the following:

2.1 **Act and Regulations.** All terms contained herein and which are defined in the Act or the Regulations shall have the meanings given to such terms in the Act or such Regulations.

2.2 **Words Importing the Singular.** Words importing the singular number only shall include the plural and vice versa; and the word "person" shall include individuals, bodies corporate, corporations, companies, partnerships, syndicates, trusts and any number or aggregate of persons.

2.3 **Words importing any gender.** Words importing gender shall include all genders.

2.4 **Headings.** The headings used in this By-law, the Rules and Policies are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions thereof or to be deemed in any way to clarify, modify or explain the effect of any such terms or provisions.

2.5 **References**. Unless otherwise specified or the context requires, references to Sections in the By-laws and Rules shall be references to the Sections of this By-law 1.

2.6 **Interpretation of the Board of Directors**. In the event of any dispute as to the intent or meaning of the Letters Patent, By-Laws, Rules or Forms, the interpretation of the Board of Directors, subject to the provisions of Section 27.1, shall be final and conclusive.

DIRECTORS AND OFFICERS

3. **Directors.**

3.1 **Duties and Number.** The affairs of the Corporation shall be managed by a Board of Directors. Subject to Section 3.3, the number of directors on the Board shall be a minimum of three and a maximum of 21, provided that it shall in any event be an integral multiple of three.

3.2 **Qualifications**. Every director shall be at least 18 years of age.

3.3 **First Directors**. The four applicants for incorporation shall become the first directors of the Corporation whose term of office on the Board of Directors shall continue until their successors are elected at the first meeting of Members. The Board of Directors then elected shall replace the first directors named in the Letters Patent.

3.4 **Composition of the Board of Directors.**

3.4.1 At any time, but subject to vacancies occurring and not yet filled, 1/3 of the directors shall be nominees of the Investment Dealers Association of Canada (the "IDA"), 1/3 shall be nominees of the Investment Funds Institute of Canada ("IFIC") (1 of which IFIC nominees shall be a director, officer or employee of a mutual fund distributor which is not a member, or an associate or an affiliate of a member, of IFIC) and 1/3 shall be and remain during their term of office persons who are not directors, partners, officers, salespersons or employees of a Member, or of an associate, affiliate or related company of a Member, or of the Corporation, the IDA or IFIC, or of a member, or an associate or an affiliate of a member, of the IDA or IFIC ("public directors").

3.4.2 The directors in office at the date of enactment of this Section are hereby confirmed as directors of the Corporation and shall hold office until their successors are elected or appointed in accordance with the provisions of this By-law.

3.5 **Appointment, Election and Term**.

3.5.1 ***Nominees of the IDA and IFIC:*** Nominees of the IDA and IFIC shall serve as directors until they cease to be directors in accordance with Section 3.6 or until they are replaced by their respective nominators by notice given to the Chair of the Corporation in accordance with Section 3.7, whichever occurs first.

3.5.2 ***Public directors:***

(a) At such time following the first annual meeting after the date on which the Corporation is recognized as a self-regulatory organization under any applicable securities legislation, the directors then in office shall elect seven public directors, who have been selected in accordance with Section 3.10 and who may but need not be the public directors in office at such time. Of the seven public directors so elected, three shall serve until their successors are elected at the first directors' meeting following the next annual meeting and four shall serve until their successors are elected at the first directors' meeting following the next succeeding annual meeting. The names of the three public directors who shall serve for one-year terms shall be chosen by lot at the time of such election.

(b) Thereafter at the first directors' meeting following each annual meeting of Members, the directors then in office shall elect three or four public directors, as the case may be, to replace those public directors whose terms have expired.

(c) Subject to the provisions of this By-law, the public directors' term of office shall be from the time at which they are elected until their successors are elected at the first directors' meeting following the second annual meeting of Members held after their election or until they are removed or replaced in accordance with the provisions of this By-law, whichever occurs first. Subject to the provisions of Section 3.7.2, each public director shall be eligible (if otherwise qualified) for re-election for a maximum of two further consecutive terms; provided that a public director who ceases to be a member of the Board of Directors for at least two years shall thereafter be eligible (if otherwise qualified) for election and re-election for a maximum of three further consecutive terms.

3.6 **Vacancies**. The office of a director shall automatically be vacated:

3.6.1 in the case of a director who has been nominated by the IDA or IFIC, if a written notice is received by the Corporation that the IDA or IFIC, as the case may be, has revoked such director's nomination;

3.6.2 in the case of a public director, if the director ceases to be qualified as a public director under Section 3.4 or if at a meeting of the Board of Directors, a resolution is passed by at least 3/4 of the votes cast by the members of the Board removing such public director;

3.6.3 if the director becomes bankrupt or suspends payment of debts generally or compounds with creditors or makes an authorized assignment or is declared insolvent;

3.6.4 if the director is found to be a mentally incompetent person or becomes of unsound mind;

3.6.5 if the director by notice in writing to the Corporation resigns 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; or

3.6.6 if the director dies.

3.7 **Filling Vacancies**. If a director (the "previous director") ceases to be a director for any reason, the vacancy so created shall be filled by a nominee of the nominator who nominated the previous director or, in the case of a public director, by a person elected by the remaining directors.

3.7.1 ***IDA or IFIC nominee:*** In the case of a nominee of the IDA or IFIC, notice of the nomination shall be in writing, signed by an authorized signing officer of the nominator and delivered to the Chair of the Corporation as

soon as reasonably possible. The notice may fix a date on which the nominee's appointment shall take effect but, if the notice does not fix such a date, the nominee's appointment to the Board of Directors shall take effect on the date on which the Chair receives the notice. If a nominee of the IDA or of IFIC, as the case may be, is not appointed to fill a vacancy in accordance with the foregoing within 60 days of the previous director ceasing to be a director, a director nominated by whichever organization then has the greater number of nominees on the Board of Directors (including for this purpose, as if he or she were a director nominated by IFIC, the director who is a director, officer or employee of a mutual fund dealer which is not a Member of IFIC) shall cease to be a director upon the expiration of such 60-day period, the intention being that at the end of such 60-day period each of the IDA and IFIC shall have equal representation on the Board of Directors. The director who shall cease to be a director in these circumstances shall be determined by alphabetical order (i.e., by the first letter of such director's surname).

3.7.2 ***Public director:*** In the case of a person elected to fill a vacancy among the public directors prior to the expiry of the previous director's term, the person shall serve for the balance of such term and shall thereupon be eligible, if otherwise qualified, to serve three further consecutive terms.

3.8 **Executive Committee**. The Board of Directors may establish an executive committee composed of such directors as the Board may from time to time determine provided that there shall be equal representation by nominees of the IDA and IFIC and by public directors. The executive committee shall exercise such powers as are authorized by the Board of Directors including, without limitation, the authority to exercise any powers of the Board of Directors. Subject to the By-laws and any resolution of the Board of Directors, meetings of the executive committee shall be held at any time and place to be determined by the members of the executive committee provided that 48 hours' written notice of such meeting shall be given, other than by mail, to each member of the executive committee. Notice by mail shall be sent at least 14 days prior to the meeting. A majority of the members of the executive committee shall constitute a quorum. No error or accidental omission in giving notice of any meeting of the executive committee shall invalidate such meeting or make void any proceedings taken at such meeting. Any executive committee member may be removed by resolution of the Board of Directors.

3.9 **Audit Committee**. The Board of Directors shall establish an audit committee composed of such directors as the Board of Directors may from time to time determine provided that there shall be equal representation by nominees of the IDA and IFIC and by public directors. The audit committee shall review and report to the Board of Directors on the annual financial statements of the Corporation prior to their approval by the Board of Directors and shall perform such other duties and activities as may from time to time be authorized by the Board of Directors. Subject to the By-laws and any resolution of the Board of Directors, meetings of the audit committee shall be held at any time and place to be determined by the members of the audit committee provided that 48 hours' written notice of such meeting shall be given, other than by mail, to each member of the audit committee. Notice by mail shall be sent at least 14 days prior to the meeting. A majority of the members of the audit committee shall constitute a quorum. No error or accidental omission in giving notice of any meeting of the audit committee shall invalidate such meeting or make void any proceedings taken at such meeting. Any audit committee member may be removed by resolution of the Board of Directors.

3.10 **Governance Committee**. The Board of Directors shall establish a Governance Committee composed of such directors as the Board of Directors may from time to time determine provided that there shall be equal representation by nominees of the IDA and IFIC and by public directors. The Governance Committee shall select and review individuals to be put forth to the Board of Directors for consideration and election as public directors under Section 3.5.2. Subject to the By-laws and any resolution of the Board of Directors, meetings of the Governance Committee shall be held at any time and place to be determined by the members of the Governance Committee provided that 48 hours' written notice of such meeting shall be given, other than by mail, to each member of the Governance Committee. Notice by mail shall be sent at least 14 days prior to the meeting. A majority of the members of the Governance Committee shall constitute a quorum. No error or accidental omission in giving notice of any meeting of the Governance Committee shall invalidate such meeting or make void any proceedings taken at such meeting. Any Governance Committee member may be removed by resolution of the Board of Directors.

3.11 **Other Committees**. The Board of Directors may from time to time appoint any other committee or committees as it deems necessary or appropriate for such purposes and with such powers as the Board shall see fit including, without limitation, the authority to exercise any powers of the Board of Directors. Any committee so appointed shall have equal representation by nominees of the IDA and IFIC and by public directors. Any such committee may formulate its own rules of procedure, subject to such regulations or directions as the Board may from time to time make. Any committee member may be removed by resolution of the Board of Directors. The Board of Directors may fix any remuneration for committee members who are not also directors of the Corporation.

3.12 **Remuneration of Directors**. Except for public directors, who may receive such reasonable remuneration, if any, as may be determined by the Board from time to time, the directors shall serve as such without remuneration and shall not directly or indirectly receive any profit from occupying the position of director; provided that any director may be reimbursed for reasonable expenses incurred by the director in the performance of the director's duties. Subject to Section 6, 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.

4. Meetings of Directors.

4.1 **Place of Meeting**. Meetings of the Board of Directors may be held at any place within Canada.

4.2 **Notice**. A meeting of directors may be convened by the Chair of the Board, the Vice-Chair of the Board, the President and Chief Executive Officer or any two directors at any time. The Secretary, when directed or authorized by any of such officers or any two directors, shall convene a meeting

of directors. Unless sent by mail, seven days notice of such meeting shall be given to each director. Notice of any such meeting that is sent by mail shall be served in the manner specified in Section 32 not less than 14 days (exclusive of the day on which the notice is given) before the meeting is to take place; provided always that a director may in any manner and at any time waive notice of a meeting of directors and attendance of a director at a meeting of directors shall constitute a waiver of notice of the meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called; provided further that meetings of directors may be held at any time without notice if all the directors are present (except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called) or if all of the absent directors waive notice before or after the date of such meeting.

4.3 **Error or Omission in Giving Notice**. No error or accidental omission in giving notice of any meeting of directors shall invalidate such meeting or make void any proceedings taken at such meeting.

4.4 **Chair and Secretary**. The Chair of the Board or, in his or her absence, the Vice-Chair, shall be chair of any meeting of the directors. If no such officer is present, the directors present shall choose one of their number to be chair. If the Secretary is absent, the chair of the meeting shall appoint some person, who need not be a director, to act as secretary of the meeting.

4.5 **Adjournment**. Any meeting of directors may be adjourned from time to time by the Chair of the meeting, with the consent of the meeting, to a fixed time and place. Notice of any adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting. Any adjourned meeting shall be duly constituted if held in accordance with the terms of the adjournment and a quorum is present thereat. The directors who formed a quorum at the original meeting are not required to form the quorum at the adjourned meeting. If there is no quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated forthwith after its adjournment. Any business may be brought before or dealt with at any adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

4.6 **Regular Meetings**. The Board of Directors may appoint a day or days in any month or months for regular meetings of the Board of Directors at a place or hour to be named by the Board of Directors and a copy of any resolution of the Board of Directors fixing the place and time of regular meetings of the Board of Directors shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meetings.

4.7 **Quorum**. A majority of the directors then in office shall form a quorum for the transaction of business provided that at least one public director is present and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of directors.

4.8 **Voting**. Each director is authorized to exercise 1 vote. Questions arising at any meeting of directors shall be decided by a majority of votes. In case of an equality of votes the Chair of the meeting in addition to an original vote shall not have a second or casting vote.

4.9 **Telephone Participation**. If all the directors of the Corporation consent in advance, any meeting of directors may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to hear each other simultaneously and instantaneously, and a director participating in such meeting by such means is deemed to be present at that meeting. The directors shall take such reasonable precautions as may be necessary to ensure that such telephone, electronic or other communications facilities are secure from unauthorized interception or monitoring. For purposes of determining those present and recording votes at such a meeting the chair of the meeting shall require each director participating by such means to identify himself or herself and to acknowledge by voice such director's presence or vote, as the case may be, and the chair of the meeting and the Corporation shall be entitled to rely thereon in the absence of evidence to the contrary.

4.10 **Resolution in Lieu of Meeting**. If permitted by law, a resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors, is as valid as if it had been passed at a meeting of directors or committee of directors.

5. **Powers of Directors.**

5.1 **Administer Affairs**. The Board of Directors shall administer the affairs of the Corporation in all things and make or cause to be made for the Corporation, in its name, any kind of contract which the Corporation may lawfully enter into and, save as hereinafter provided, generally, shall exercise all such other powers and do all such other acts and things as the Corporation is by its Letters Patent or otherwise authorized to exercise and do.

5.2 **Expenditures**. The Board of Directors shall have power to authorize expenditures on behalf of the Corporation from time to time and to delegate by resolution such power to an officer or officers of the Corporation.

5.3 **Borrowing Power**. The Board of Directors may from time to time:

5.3.1 borrow money on the credit of the Corporation;

5.3.2 limit or increase the amount to be borrowed;

5.3.3 issue, sell or pledge debt obligations (including bonds, debentures, debenture stock, notes or other like liabilities whether secured or unsecured) of the Corporation;

5.3.4 charge, mortgage, hypothecate or pledge all or any currently owned or subsequently acquired real or personal, movable or immovable property of the Corporation, including book debts, rights, powers and undertakings, to

secure any debt obligations or any money borrowed, or other debt or liability of the Corporation; and

5.3.5 delegate the powers conferred on the directors under this Section to such officer or officers of the Corporation and to such extent and in such manner as the directors shall determine.

The powers hereby conferred shall be deemed to be in supplement of and not in substitution for any powers to borrow money for the purposes of the Corporation possessed by its directors or officers independently of this By-law.

5.4 **Agents and Employees**. The Board of Directors may appoint such agents and engage such employees as it shall deem necessary from time to time and such persons shall have such authority and shall perform such duties as shall be prescribed by the Board of Directors at the time of such appointment.

6. **Interested Director Contracts.**

6.1 **Conflict of Interest**. A director who is in any way directly or indirectly interested in a contract or proposed contract with the Corporation shall make the disclosure required by the Act and except as provided by the Act, no such director shall vote on any resolution to approve any such contract. In supplement of and not by way of limitation upon any rights conferred upon directors by Section 98 of the Act and specifically subject to the provisions contained in that Section, it is declared that no director shall be disqualified from any such office by, or vacate any such office by reason of, holding any office with the Corporation or with any corporation in which the Corporation shall be a shareholder or by reason of being otherwise in any way directly or indirectly interested or contracting with the Corporation as vendor, purchaser or otherwise or being concerned in any contract or arrangement made or proposed to be entered into with the Corporation in which the director is in any way directly or indirectly interested as vendor, purchaser or otherwise. Subject to compliance with the Act, no contract or arrangement entered into by or on behalf of the Corporation in which any director shall be in any way directly or indirectly interested shall be void or voidable and no director shall be liable to account to the Corporation or any of its Members or creditors for any profit realized by or from any such contract or arrangement by reason of any fiduciary relationship.

6.2 **Submission of Contracts or Transactions to Members for Approval**. The Board of Directors in its discretion may submit any contract, act or transaction with the Corporation for approval or ratification at any annual meeting of the Members or at any general or special meeting of the Members called for the purpose of considering the same and, subject to the provisions of Section 98 of the Act, any such contract, act or transaction that shall be approved or ratified or confirmed by a resolution passed by a majority of the votes cast at any such meeting (unless any different or additional requirement is imposed by the Act, the Letters Patent or the By-laws) shall be as valid and as binding upon the Corporation and upon all the Members as though it had been approved, ratified or confirmed by every Member of the Corporation.

6.3 **Interest Respecting the IDA or IFIC.** For the purposes of Sections 6.1 and 6.2, the Act, the Letters Patent, this By-law or any other principle of law, the fact that a director is a director, officer or employee of any of the IDA, IFIC, or of a member of either of them or of the Corporation or of a mutual fund distributor which is not a member of IFIC, shall not be considered to constitute a conflict of interest or a basis for requiring a contract, act or transaction involving the Corporation to be submitted to the Members or disclosed as required by the Act, this By-law or at law.

7. **Officers.**

7.1 **Appointment**. The Board of Directors shall annually or more often as may be required, appoint a Chair of the Board (who shall be the Chairperson of IFIC [unless the organization with which he or she is affiliated does not have as a core business the retail distribution of mutual funds, in which event the Chair shall be the Chair of the Retail Distributor Council of Governors of IFIC]), and a President and Chief Executive Officer (who shall be the President of the IDA), and may, as often as may be required, appoint a Vice Chair of the Board, a Chief Operating Officer, one or more Vice-Presidents, a Secretary, a Treasurer and one or more Assistant Secretaries and/or one or more Assistant Treasurers. No person shall serve as Chair of the Board for more than a one year term. For purposes of this Section 7.1, the term of office of a person who is appointed to fill a vacancy as Chair of the Board shall not include the remainder of the term during which such vacancy occurred. If the foregoing provisions would otherwise result in the Chair of the Board being reappointed to a consecutive term as Chair, the [Chair of the Retail Distributor Council of Governors of IFIC] shall be appointed Chair of the Board. A director may be appointed to any office of the Corporation but none of the said officers need be a director or Member of the Corporation except that the Chair of the Board, the Vice-Chair of the Board and the President and Chief Executive Officer shall be directors of the Corporation. Two or more of the aforesaid offices may be held by the same person. In case and whenever the same person holds the offices of Secretary and Treasurer that person may but need not be known as the Secretary-Treasurer. The Board of Directors may from time to time appoint such other officers and agents as it shall deem necessary who shall have such authority and shall perform such duties as may from time to time be prescribed by the Board of Directors.

7.2 **Vacancies**. Notwithstanding the foregoing, each incumbent officer shall continue in office until the earlier of:

7.2.1 that officer's resignation, which resignation shall be effective at the time the written resignation is received by the Secretary of the Corporation or at the time specified in the resignation, whichever is later;

7.2.2 the appointment of a successor;

7.2.3 that officer ceasing to be a director if such is a necessary qualification of appointment;

7.2.4 the meeting at which the directors annually appoint the officers of the Corporation;

7.2.5 that officer's removal;

7.2.6 that officer's death.

If the office of any officer of the Corporation shall be or become vacant, the directors may, by resolution, appoint a person to fill such vacancy.

7.3 **Remuneration of Officers**. The remuneration of all officers appointed by the Board of Directors shall be determined from time to time by resolution of the Board of Directors or by any officer authorized by the Board of Directors. All officers shall be entitled to be reimbursed for reasonable expenses incurred in the performance of the officer's duties.

7.4 **Removal and Reappointment of Officers**. Officers shall be subject to removal by resolution of the Board of Directors at any time, with or without cause. If the Chair of the Board is removed by resolution of the Board of Directors, a nominee of IFIC shall be appointed by the directors as Chair of the Board until a new Chairperson of IFIC is appointed, whereupon the new Chairperson of IFIC shall become the Chair of the Board unless the organization with which he or she is affiliated does not have as a core business the retail distribution of mutual funds, in which event the Chair shall be the Chair of the Retail Distributor Council of Governors of IFIC. If the President and Chief Executive Officer is removed by resolution of the Board of Directors, the directors shall appoint a nominee of IDA, other than the President of IDA, to serve as President and Chief Executive Officer for the remainder of the then-current term of office and annually thereafter until the President of IDA is replaced, whereupon the new President of IDA shall become the President and Chief Executive Officer of the Corporation.

7.5 **Duties of Officers May be Delegated**. In case of the absence or inability to act of any officer of the Corporation or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may delegate all or any of the powers of any such officer to any other officer or to any director for the time being.

7.6 **Powers and Duties**. All officers shall sign such contracts, documents or instruments in writing as require their respective signatures and shall respectively have and perform all powers and duties incidental to their respective offices and such other powers and duties respectively as may from time to time be assigned to them by the Board of Directors. The duties of the officers shall include:

7.6.1 *Chair of the Board*. If appointed, the Chair shall, subject to the provisions of the Act, preside at all meetings of the Board of Directors and the Members.

7.6.2 *Vice-Chair of the Board*. If the Chair of the Board is absent or is unable or refuses to act, the Vice-Chair of the Board, if any, shall, when present, preside at all meetings of the Board of Directors and the Members.

7.6.3 *President and Chief Executive Officer*. The President and Chief Executive Officer shall be the chief executive officer of the Corporation and, subject to the authority of the Board of Directors shall have general supervision of the business of the Corporation and shall have such other powers and duties as the Board may specify.

7.6.4 *Chief Operating Officer*. The Chief Operating Officer shall be the chief operating officer of the Corporation, shall report to the President and Chief Executive Officer and, under the President and Chief Executive Officer's direction, manage the staff of the Corporation and carry out such administrative functions as are required for the operations of the Corporation. In addition, where required by any agreement or arrangement made between the Corporation and the IDA, the Chief Operating Officer shall report directly to the Board of Directors or the Executive Committee.

7.6.5 *Vice-President*. A vice-president shall have such powers and duties as the Board or the President and Chief Executive Officer may specify.

7.6.6 *Secretary*. The Secretary, as and when requested to do so, shall: attend and be the secretary of all meetings of the Board of Directors, Members and committees of the Board of Directors and enter or cause to be entered in records kept for that purpose minutes of all proceedings thereat; give or cause to be given, as and when instructed, all notices to Members, directors, officers, auditors and Members of committees of the Board of Directors; be the custodian of the stamp or mechanical device generally used for affixing the corporate seal of the Corporation (if any) and of all books, papers, records, documents and instruments belonging to the Corporation, except when some other officer or agent has been appointed for that purpose; and have such other powers and duties as the Board of Directors or the chief executive officer may specify.

7.6.7 *Controller*. The controller shall keep proper accounting records in compliance with the Act and shall be responsible for the deposit of money, the safekeeping of securities and the disbursement of the funds of the Corporation; the controller shall render to the Board whenever required an account of all his or her transactions as controller and of the financial position of the Corporation; and the controller shall have such other powers and duties as the Board or the chief executive officer may specify.

7.6.8 *Powers and Duties of Other Officers*. The powers and duties of all other officers shall be such as the terms of their engagement call for or as the Board or the chief executive officer may specify. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the Board or the chief executive officer otherwise directs.

8. **For the Protection of Directors and Officers.**

8.1 **Limitation of Liability**. No director, officer, employee or agent shall be liable for the acts, receipts, neglects or defaults of any other director, officer, employee or agent, or for joining in any receipt or other act for conformity, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any of the moneys, securities or effects of the Corporation shall be deposited, or for any loss occasioned by any error of judgment or oversight on his or her part, or for any other loss, damage or misfortune

whatever which shall happen in the execution of the duties of his or her office or in relation thereto; provided that nothing herein shall relieve any director or officer from the duty to act in accordance with the Act and the regulations thereunder or from liability for any breach thereof.

8.2 **Indemnity**. Every director or officer of the Corporation, or other person who has undertaken or is about to undertake any liability on behalf of the Corporation or any company controlled by it, and their heirs, executors and administrators, and estate and effects, respectively, shall from time to time and at all times, be indemnified and saved harmless out of the funds of the Corporation, from and against:

8.2.1 all costs, charges and expenses which such director, officer or other person sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against him or her, or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him or her, in or about the execution of the duties of his or her office or in respect of any such liability; and

8.2.2 all other costs, charges and expenses which he or she sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his or her own wilful neglect or default.

The Corporation shall also indemnify such persons in such other circumstances as the Act permits or requires. Nothing in this By-law shall limit the right of any person entitled to indemnity apart from the provisions of this By-law.

8.3 **Insurance**. The Corporation may purchase and maintain insurance for the benefit of any person referred to in Section 8.2 against such liabilities and in such amounts as the Board may from time to time determine and are permitted by the Act.

MEMBERSHIP

9. **Eligibility.**

9.1 **Discretion of the Board of Directors.** The Board of Directors shall, in its discretion, decide upon all applications for Membership.

9.2 **Requirements.** Any firm or corporation shall be eligible to apply for Membership if:

9.2.1 in the case of a firm, it is a resident of Canada and, in the case of a corporation, it is incorporated under the laws of Canada or one of its provinces or territories;

9.2.2 the applicant carries on, or proposes to carry on, business in Canada as a mutual fund dealer and is registered or licensed in each jurisdiction in Canada where the nature of its business requires such registration or licensing, and is in compliance with such applicable securities legislation and the requirements of any securities commission having jurisdiction over the applicant; and

9.2.3 the applicant and its directors, officers, partners, employees and agents, and related companies (if any), would comply with, or would otherwise be subject to a regulatory regime with rules, by-laws or policies similar in effect to, the By-laws, Rules, Policies and Forms of the Corporation that would apply to them if the applicant were a Member.

9.3 **Amalgamation of Members.** If two or more Members propose to amalgamate and continue as one Member, the continuing Member shall not be considered to be a new Member or be required to re-apply for Membership, except as otherwise determined by the Board of Directors and provided that the continuing Member otherwise complies with the By-laws and Rules including the payment of Member fees.

10. **Application.**

10.1 **Form.**

10.1.1 An application for Membership shall be in such form and executed in such manner as the Board of Directors may prescribe and shall contain or be accompanied by such information and documents as the By-laws or the Board of Directors may require.

10.1.2 The prescribed Form shall be signed by the applicant.

10.2 **Review Deposit.** An application for Membership shall be accompanied by a non-refundable application review deposit in an amount to be determined by the Board of Directors, to be credited towards the Annual Fee in the event that the application is approved by the Board of Directors.

10.3 **Reimbursement for Excessive Costs and Expenses.** If in connection with the review or consideration of any application for Membership, the Board of Directors is of the opinion that the nature of the applicant's business, its financial condition, the conduct of its business, the completeness of the application, the basis on which the application was made or any Corporation review in respect of the application in accordance with the By-laws of the Corporation has required, or can reasonably be expected to require, excessive attention, time and resources of the Corporation, the Board of Directors may require the applicant to reimburse the Corporation for some or all of its costs and expenses which are reasonably attributable to such excessive attention, time and resources or provide an undertaking or security in respect of such reimbursement. If an applicant is to be required to make such reimbursement of costs and expenses, the Corporation shall provide to the applicant a breakdown and explanation of such costs and expenses in sufficient detail to permit the applicant to understand the basis on which the costs and expenses were or are to be calculated.

11. **Approval Process.**

11.1 **Preliminary Review by the Corporation.** An application for Membership with any accompanying documents shall be submitted to the Corporation, which shall make a preliminary review of the same and either:

11.1.1 if such review discloses substantial compliance with the requirements of the By-laws and Rules, transmit a copy to the Chair of the Board or a director or committee of directors authorized for that purpose; or

11.1.2 if such review discloses any substantial non-compliance with the requirements of the By-laws and Rules, notify the applicant as to the nature of such non-compliance and request that the application for Membership be amended in accordance with the notification of the Corporation and refiled or be withdrawn. If the applicant declines to amend or withdraw the application for Membership, the Corporation shall forward the same to the Chair of the Board or a director or committee of directors authorized for that purpose, together with any accompanying material and a copy of the notification to the applicant.

11.2 **Submission of Financial Information.** The application shall be accompanied by:

11.2.1 financial statements of the applicant as of a date not more than 90 days prior to the date of application for Membership (or as of such other date as the Corporation may require), prepared in accordance with Form 1 and audited by an auditor acceptable to the Corporation;

11.2.2 interim unaudited monthly financial statements, prepared in accordance with Form 1, for the period following the date of the audited financial statement submitted under Section 11.2.1 up to the most recent month prior to the date of the Membership application;

11.2.3 a report by the applicant's auditor to the effect that, based on his examination of the affairs of the applicant, the applicant keeps a proper system of books and records; and

11.2.4 such additional financial information, if any, relating to the applicant as the Corporation may in its discretion request.

11.3 **Notification to the Board of Directors.** If and when the Corporation has received the financial statements and report referred to in Section 11.2, and is satisfied with respect to all relevant matters, then the Corporation shall so notify the Board of Directors.

11.4 **Determination of the Board of Directors.** Upon receipt of the application for Membership from the Corporation and the notification from the Corporation pursuant to Section 11.3, the Board of Directors may:

11.4.1 at the expiration of a period of six months or such lesser period as the Board of Directors may in any particular case determine, approve the application;

11.4.2 approve the application subject to such terms and conditions as may be considered appropriate by the Board of Directors if, in the opinion of the Board of Directors, such terms and conditions are necessary in order to ensure that the By-laws and Rules will be complied with by the applicant; or

11.4.3 refuse the application if, in the opinion of the Board of Directors, having regard to such factors as it may consider relevant including, without limitation, the past or present conduct, business or condition of the applicant;

(a) it is not satisfied that the By-laws and Rules will be complied with by the applicant;

(b) the applicant is not qualified by reason of the ownership, integrity, solvency, training or experience of the applicant or any of its partners, directors, officers, employees or agents, or any person having an ownership interest in the capital or indebtedness of the applicant; or

(c) such approval is not in the public interest.

11.5 **Right to be Heard.** If the Board of Directors proposes to approve an application subject to terms and conditions pursuant to Section 11.4.2 or to refuse an application pursuant to Section 11.4.3:

11.5.1 the applicant shall be provided with a statement of the grounds upon which the Board of Directors proposes to approve the application subject to terms and conditions or to refuse the application, and the particulars of those grounds;

11.5.2 the applicant shall be provided with a summary of the facts and evidence which are to be considered by the Board of Directors;

11.5.3 the Board of Directors shall permit the applicant to appear before it on reasonable notice, and with counsel or other representative, to call evidence and cross-examine witnesses in order to show cause why the application should not be subject to terms and conditions or should not be refused.

11.6 **Hearing.**

11.6.1 A hearing held pursuant to Section 11.5 shall be open to the public except where the Board of Directors determines that all or any part of the hearing should be held in camera in accordance with the principles set out in Section 25. To the extent not otherwise specified in this Section 11, the procedures applicable to proceedings under Section 25 shall be applicable to a hearing under this Section 11, mutatis mutandis.

11.6.2 If within 14 days of being notified of a proposal to approve an application subject to terms and conditions or to refuse an application, the applicant fails to request a hearing, the Board of Directors may approve the application subject to the proposed terms and conditions or refuse the application. If the applicant requests a hearing, the Board of Directors may, after permitting the parties to be heard, exercise any of its powers in accordance with Section 11.4.

11.6.3 No member of the Board of Directors who has participated in a decision to propose the imposition of terms and conditions on an applicant or the refusal of an application shall subsequently participate in a hearing pursuant to Section 11.7 regarding that application.

11.6.4 Any decision of the Board of Directors at a hearing held pursuant to Section 11.5 shall be in writing and shall contain a concise statement of the reasons for the decision. Notice of a decision shall be delivered to the Corporation which shall then promptly give notice to the applicant. A copy of the decision shall accompany the notice.

11.7 **Power to Vary or Remove Terms and Conditions.**

11.7.1 The Board of Directors shall have the power to vary or remove any such terms and conditions as may have been imposed on an applicant that may be considered appropriate by the Board of Directors, if such terms and conditions are or are no longer, as the case may be, necessary to ensure that the By-laws and Rules will be complied with by the applicant. In the event that the Board of Directors proposes to vary terms and conditions in a manner which would be more burdensome to the applicant, the provisions of Sections 11.5 and 11.6, inclusive, shall apply in the same manner as if the Board of Directors was exercising its powers thereunder in regard to the applicant.

11.7.2 If, pursuant to the provisions of Section 11.4, the Board of Directors approves an application subject to terms and conditions or refuses an application, the Board of Directors may order that the applicant may not apply for removal or variation of terms and conditions or reapply for approval, for such period as the Board of Directors provides.

11.8 **Actions Upon Approval of Application.**

11.8.1 If and when the application is approved by the Board of Directors, the Corporation shall compute the amount of the Annual Fee to be paid by the applicant pursuant to Section 14.

11.8.2 Subject to the provisions of Section 10.3, the Corporation shall advise at the next meeting of the Board of Directors the amount of the Annual Fee to be paid by the applicant, less the amount of the deposit submitted by the applicant pursuant to Section 10.2

11.8.3 If and when the application has been approved by the Board of Directors, and the applicant has been duly licensed or registered to carry on business as a mutual fund dealer under the applicable law of the province or provinces or territories in which the applicant carries on or proposes to carry on business, and upon payment of the balance of the Annual Fee, the applicant shall become and be a Member.

11.8.4 Notwithstanding the foregoing, if an applicant qualifies for exemption from payment of the Annual Fee and if the Board of Directors approves of such exemption and gives its approval to the application for Membership, the applicant shall be admitted to Membership if all other conditions relating to an application for Membership have been duly complied with except such conditions, if any, as the Board of Directors may deem appropriate to be waived under the circumstances of any particular case.

11.8.5 The Corporation shall keep a register of the names and business addresses of all Members and of their respective Annual Fees. The Annual Fees of Members shall not be made public by the Corporation.

12. **Members' Meetings.**

12.1 **Time and Place of Meetings.** Subject to compliance with Section 102 of the Act, the Annual Meeting shall be held on such day in each year and at such time as the directors may determine at any place within Canada.

12.2 **Annual Meetings**. At every Annual Meeting, in addition to any other business that may be transacted, the names and nominators of the directors of the Corporation, the report of the directors, the financial statements and the report of the auditors shall be presented to the Members and auditors appointed for the ensuing year. The Members may consider and transact any business, either special or general, at any meeting of Members.

12.3 **Special Meetings**. Other meetings of the Members may be convened by order of the Chair of the Board, the Vice-Chair of the Board, the President and Chief Executive Officer, if a director, or by the Board of Directors at any date and time and at any place within Canada. The Board of Directors shall call a special general meeting of Members on written requisition of Members carrying not less than 20% of the voting rights.

12.4 **Notice**. 14 days' written notice shall be given in the manner specified in Section 32.1 to each voting Member of any annual or special general meeting of Members. Notice of any meeting where special business will be transacted should contain sufficient information to permit the Member to form a reasoned judgment on the decision to be taken. Notice of each meeting of Members must remind the Member that the Member has the right to vote by proxy.

12.5 **Error or Omission in Giving Notice**. No error or omission in giving notice of any annual or special meeting or any adjourned meeting of the Members of the Corporation shall invalidate any resolution passed or any proceedings taken at any meeting of Members.

12.6 **Chair, Secretary and Scrutineers**. The Chair of the Board or, in his or her absence, the Vice-Chair of the Board shall be the chair of any meeting of Members. If no such officer is present within 15 minutes from the time fixed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be the chair of the meeting. If the Secretary is absent, the chair of the meeting shall appoint some person, who need not be a Member, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Members, may be appointed by the chair of the meeting with the consent of the meeting.

12.7 **Quorum**. A quorum at any meeting of the Members (unless a greater number of Members and/or proxies are required to be present by the Act or by the Letters Patent or any other By-law) shall be persons present being 10 in number and being or representing by proxy 10% of the Members entitled to vote at such meeting. No business shall be transacted at any meeting unless the requisite quorum be present at the time of the transaction of such business. If a quorum is not present at the time appointed for a meeting of Members or within such reasonable time thereafter as the Members present may determine, the persons present and entitled to vote may adjourn the meeting to a fixed time and

place but may not transact any other business and notice of the adjourned meeting shall be given to all Members in accordance with the provisions of Section 32. If a meeting of Members is so adjourned, quorum at the adjourned meeting shall consist of 10 persons present in person and being or representing by proxy 10% of the Members entitled to vote at such meeting.

12.8 **Adjournment**. The Chair of any meeting of Members may with the consent of the meeting adjourn the same from time to time to a fixed time and place and no notice of such adjournment need be given to the Members. Any business may be brought before or dealt with at any adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

12.9 **Telephone Participation**. If all the Members consent in advance, any meeting of Members may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to hear each other simultaneously and instantaneously, and a Member participating in such meeting by such means is deemed to be present at that meeting. Before calling such meeting to order, the chair of such meeting shall be satisfied that all participants have taken reasonable precautions to ensure that such telephone, electronic or other communications facilities are secure from unauthorized interception or monitoring. For purposes of determining those present and recording votes at such a meeting the chair of the meeting shall require each Member participating by such means to identify the Member and to acknowledge by voice such Member's presence or vote, as the case may be, and the chair of the meeting and the Corporation shall be entitled to rely thereon in the absence of evidence to the contrary.

12.10 **Resolution in Lieu of Meeting**. If permitted by law, a resolution in writing, signed by all the Members entitled to vote on that resolution at a meeting of Members, is as valid as if it had been passed at a meeting of Members.

12.11 **Voting of Members**. Each Member shall have one vote. At all meetings of the Members, every question shall be determined on a show of hands by a majority of votes unless otherwise specifically provided by the Act or by these By-laws. In the case of an equality of votes the Chair of the meeting shall both on a show of hands and at a poll have a second or casting vote in addition to the vote or votes to which the Chair may be otherwise entitled.

No Member shall be entitled in person or by proxy to vote at meetings of Members of the Corporation unless the Member has paid all of its Annual fee, assessments or other fees, if any, then payable by the Member.

At any meeting, unless a poll is demanded, a declaration by the Chair of the meeting that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact.

A poll may be demanded either before or after any vote by show of hands by any person entitled to vote at the meeting. If at any meeting a poll is demanded on the election of a Chair or on the question of adjournment it shall be taken forthwith without adjournment. If at any meeting a poll is demanded on any other question, the vote shall be taken by ballot in such manner and either at once, later in the meeting or after adjournment as the Chair of the meeting directs. The result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded. A demand for a poll may be withdrawn.

12.12 **Proxies**. Votes at meetings of the Members may be given either personally or by proxy or, in the case of a Member who is a body corporate or association, by an individual authorized by a resolution of the Board of Directors or governing body of the body corporate or association to represent it at meetings of Members of the Corporation. At every meeting at which a Member is entitled to vote, every Member and/or person appointed by proxy to represent one or more Members and/or individual so authorized to represent a Member who is present in person shall have one vote on a show of hands. Upon a poll and subject to the provisions, if any, of the Letters Patent, every Member who is entitled to vote at the meeting and who is present in person or represented by an individual so authorized shall have one vote and every person appointed by proxy shall have one vote for each Member who is entitled to vote at the meeting and who is represented by such proxy holder.

A proxy shall be executed by the Member or the Member's attorney authorized in writing or, if the Member is a body corporate or association, by an officer or attorney thereof duly authorized.

A person appointed by proxy must be a Member.

A proxy may be in the following form:

The undersigned Member of Mutual Fund Dealers Association of Canada / Association canadienne des courtiers de fonds mutuels appoints _____ of _____ or failing the person appointed above, _____ of _____ as the proxy of the undersigned to attend and act at the _____ meeting of the Members of the said Corporation to be held on the _____ day of _____ 20__, and at any adjournment or adjournments thereof in the same manner, to the same extent and with the same power as if the undersigned were present at the said meeting or such adjournment or adjournments thereof.

DATED this _____ day of_____, 20___.

_____
Signature of Member

The Board of Directors may from time to time make regulations regarding the lodging of proxies at some place or places other than the place at which a meeting or adjourned meeting of Members is to be held and for particulars of such proxies to be sent by facsimile or in writing before the meeting or adjourned meeting to the Corporation or any agent of the Corporation for the purpose of receiving such particulars and providing that proxies so lodged may be voted upon as though the proxies themselves were produced at the meeting or adjourned meeting and votes given in accordance with such regulations shall be valid and shall be counted. The Chair of any meeting of Members may, subject to any regulations made

as aforesaid, in the Chair's discretion accept facsimile or written communication as to the authority of any person claiming to vote on behalf of and to represent a Member notwithstanding that no proxy conferring such authority has been lodged with the Corporation, and any votes given in accordance with such facsimile or written communication accepted by the Chair of the meeting shall be valid and shall be counted.

13. **Resignations, Reorganizations and Terminations.**

13.1 **Resignations**. A Member wishing to resign shall address a letter of resignation to the Board of Directors in care of the Secretary.

13.2 **Letter of Resignation**. A Member which tenders its resignation shall in its letter of resignation state its reasons for resigning and shall file with the Corporation either:

13.2.1 a balance sheet of the Member reported upon by the Member's auditor without qualification as of such date as the Corporation may require which balance sheet shall indicate that the Member has liquid assets sufficient to meet all its liabilities other than subordinated loans, if any; or

13.2.2 a report from the Member's auditor without qualification that in his opinion the Member has liquid assets sufficient to meet all its liabilities other than subordinated loans, if any;

and a report from the Member's auditor that the Member is in compliance with the By-laws and Rules with respect to the holding of client cash, securities and other property. If the financial information required by Section 13.2.1 or 13.2.2 above is not filed with the letter of resignation the Member shall indicate in the letter of resignation the date by which such financial information shall be filed.

13.3 **Notice of Letter of Resignation**. Notice of such letter of resignation shall forthwith be given by the Corporation to the Board of Directors, the applicable Regional Council, all other Members and the securities commissions of all of the provinces of Canada.

13.4 **Time at Which Resignation Becomes Effective**. Unless the Board of Directors, in its discretion otherwise declares, a resignation shall take effect as of the close of business (5:00 p.m. head office local time) on the date Board of Directors (by its Chair, a Vice-Chair or the President) receives confirmation from the Corporation that, in its opinion, the reports of the Member's auditor pursuant to Section 13.2 are in order and if, to the knowledge of the Corporation after due enquiry, the Member is not indebted to the Corporation and no complaint against the Member or any investigation of the affairs of the Member by the Corporation is pending.

13.5 **Notice that Resignation Effective**. When the resignation of a Member becomes effective the Corporation shall so advise the Member resigning and all other Members, the Board of Directors, the securities commissions of all of the provinces of Canada and such other persons or bodies as the Board of Directors may direct.

13.6 **Payment of Annual Fee**. A Member resigning from the Corporation shall make full payment of its Annual Fee for the financial year in which such Member tenders its resignation. A Member resigning from the Corporation shall not be entitled to a refund of any part of the Annual Fee for the financial year in which its resignation becomes effective.

13.7 **Reorganizations, etc**. Notwithstanding the provisions of this Section 13, if the business or ownership of a Member is proposed to be reorganized or transferred, amalgamated or otherwise combined in whole or in part with another person (including a Member) in a manner which the Member or its business will cease to exist in, or will be substantially changed from, its then current form, or a change of control of the Member may occur, the Member (not less than 30 days prior to the proposed effective date of such event) shall give written notice to the Corporation. Upon receipt of such notice, the Corporation shall review the proposed transaction and may request from the Member, its auditors or any other person involved in the transaction, such information as it or the Board of Directors may require including, without limitation, reports with information similar to that referred to in Section 13.2 (as modified for the relevant circumstances) as well as any other information as the Corporation may consider necessary or desirable. The Corporation may either (a) approve the proposed transaction (which approval may be subject to terms and conditions) or (b) direct that the transaction not be completed if the Corporation determines in its sole discretion that the obligations of the Member to its clients cannot be satisfied or the By-laws and Rules will not be complied with by the Member or any continuing, new or reorganized entity, as the case may be.

13.8 **Ceasing to Carry on Business as a Mutual Fund Dealer**. If a Member has ceased to carry on business as a mutual fund dealer or its business has been acquired by a person which is not a Member of the Corporation, the Board of Directors may, unless the Member has voluntarily resigned in accordance with this Section 13, terminate the Membership of the Member after the Member has been given the opportunity to be heard in accordance with the provisions of Section 25. A former Member whose Membership has been terminated pursuant to the provisions of this Section 13.8 shall cease to be entitled to exercise any of the rights and privileges of Membership but shall remain liable to the Corporation for all amounts due to the Corporation from the former Member.

13.9 **Ownership**. No Member shall permit an investor, alone or together with its associates and affiliates, proposes to own:

(a) a significant equity interest in the Member; or

(b) special warrants or any other securities that are convertible or exchangeable at any time in the future, into a significant equity interest in the Member;

without the prior approval of the Corporation.

For the purposes of this By-law 13.9, a significant equity interest means the holding of:

(c) voting securities carrying 20 per cent or more of the votes carried by all voting securities of the

Member or of a holding company of a Member;

(d) 20 per cent or more of the outstanding participating securities of the Member or of a holding company of a Member; or

(e) an interest of 20 per cent or more of the total equity in the Member.

Notwithstanding the foregoing, the legal representatives of a deceased person who had been approved by the Corporation as the owner of a significant equity interest may continue as a registered holder or to hold such interest for such period as the Corporation may permit.

ANNUAL AND OTHER FEES

14. **Annual Fee.**

14.1 **Calculation of Annual Fee.** The Annual Fee for each Member shall be such amount, not less than $3,000 for Members designated as being in Level 1, 2 or 3 under Rule 3.1.1, and not less than $10,000 for Members designated as being in Level 4, determined in accordance with a formula which is based upon the assets under administration of the business of the Member. The Board of Directors in its discretion shall from time to time prescribe such formula and the basis on which the assets under administration of a business are to be determined.

14.2 **Re-determination of Annual Fee.** The Board of Directors may from time to time re-determine the Annual Fee to be payable by any Member. Before any such determination or re-determination is made, the Board of Directors shall obtain, but shall not be obliged to act upon, the recommendation of the Corporation.

14.3 **Timing of Payment.** The Annual Fee shall be paid in quarterly instalments (on the 15th day of July, October, January and April in each year) by each Member beginning not later than the first quarter after admission to Membership of such Member and any additional or redetermined Annual Fee shall be paid in its entirety on or before July 31 in each year.

14.4 **Exemption from Payment.** Notwithstanding the foregoing, in the event that:

14.4.1 an applicant for Membership has acquired the whole or a substantial part of the business and assets of a Member or Members in good standing whose Annual Fee for the then current fiscal year has been paid in full and who is or are resigning from Membership concurrently with the admission of the applicant to Membership; and

14.4.2 at least a majority in number of the partners of the applicant, in the case of a firm, or at least a majority in number of the directors and at least a majority in number of the officers of the applicant, in the case of a corporation, are partners, or directors and officers, as the case may be, of the retiring Member or Members;

then the applicant, if the Board of Directors so approves, shall be exempted from payment of the Annual Fee for the then current fiscal year.

15. **Other Fees.**

15.1 **Power to Make Assessment.** Notwithstanding Section 14, the Board of Directors shall have power to make an assessment in any fiscal year upon each Member on account of:

15.1.1 any extraordinary costs and expenses of the Corporation incurred in connection with the review and/or approval of any reorganization, takeover or other substantial change in the business, structure or affairs of a Member;

15.1.2 fees levied by the Corporation in connection with:

(a) exemption application filings or any other such filing fees which the Board of Directors in its discretion may determine from time to time;

(b) a Member changing its name from that which is shown on the most recent Membership List; or

(c) an application for Membership under Section 10; or

15.1.3 assessments or levies made by the Mutual Fund Dealers Investor Protection Plan in respect of Members of the Corporation.

15.2 **Timing of Payment.** Each Member shall pay the amount so assessed upon it within thirty days after receiving written notification thereof from the Corporation.

16. **Effect of Non-Payment of Fees.**

If the Annual Fee of a Member has not been paid within the time specified in Section 14.3, or the amount assessed upon any Member pursuant to Section 15 has not been paid within the time specified in Section 15.2, the Corporation shall, by registered mail, request the Member to pay the same and draw the Member's attention to the provisions of this Section 16. If the entire amount owing by the Member has not been paid within thirty days from the date the Corporation has mailed the request, the Corporation shall notify the Board of Directors to this effect and the Board of Directors may, in its discretion, terminate the Membership of the Member in default. If the Board of Directors decides to terminate the Membership of a Member pursuant to the provisions of this Section 16, the Corporation will notify the Member, by registered mail, of the decision of the Board of Directors. A former Member whose Membership has been terminated pursuant to the provisions of this Section 16 shall cease to be entitled to exercise any of the rights and privileges of Membership but shall remain liable to the Corporation for all amounts due to the Corporation from the former Member.

REGIONAL COUNCILS

17. **Regions**

17.1 **Designation.** The Board of Directors may from time to time designate any geographic area in Canada as a Region of the Corporation, and may change or terminate any such designation.

17.2 **Regions.** The following geographic areas of Canada have been designated as Regions of the Corporation, until changed or terminated by the Board of Directors:

1. Atlantic (Nova Scotia / New Brunswick / Newfoundland / Prince Edward Island);
2. Ontario;
3. Alberta / Manitoba / Saskatchewan;
4. British Columbia / Territories.

18. **Members of a Region**

18.1 **Members.** The Members of a Region shall be:

18.1.1 Members having their head or principal office in the Region;

18.1.2 Members having one or more branch offices in the Region; and

18.1.3 Members licensed or registered to conduct securities related business by the securities commission having jurisdiction in the Region.

18.2 **Regional Annual Meetings.** A meeting of the Members of each Region shall be called by the Regional Council and held during each calendar year on a date determined by the Regional Council. Notice of the time and place of any such meeting shall be given to the Members of the Region. Seven Members of the Region entitled to vote, present personally or by a partner, director or officer as proxyholder shall be a quorum for any meeting of the Members of the Region.

18.3 **Voting.** Voting at the Regional Annual Meeting of the Members of a Region may be carried out in the same manner as provided for at meetings of Members of the Corporation. Instruments of proxy for such purpose shall be lodged with the Chair of the Regional Council not later than 30 minutes prior to the commencement of the meeting or of any adjournment thereof, and unless so lodged no proxy shall be used or acted upon.

18.4 **Election of Regional Council.** At each Regional Annual Meeting, the Members of each Region shall elect the members of the Regional Council to succeed the members retiring at such Regional Annual Meeting of the Region. The members of such Regional Council shall be elected for a one year term, with the members who have been in office to retire at each Regional Annual Meeting. A retiring member shall be eligible for re-election. In the event of a vacancy on the Regional Council caused by the death, resignation or disability to act of a member thereof, the Regional Council may appoint a person to fill the vacancy for the remainder of the term of such member.

19. **Regional Councils**

19.1 **Establishment and Composition.** There shall be a Regional Council for each Region which, subject to the By-laws, shall represent the Members of such Region. Each Regional Council shall be composed of from 4 to 20 Members, including a Chair and a Vice-Chair but exclusive of ex-officio members, as may be determined at the Regional Annual Meeting of Members called to elect the Council in accordance with Section 18.4. The immediate Past Chair of a Region, the Chair of the Corporation, the President and the Regional Director of the Corporation for the Region in which the Regional Council is located shall be ex-officio Members of such Regional Council entitled to attend and vote at meetings of the Council.

19.2 **Chair and Vice-Chair.** The Regional Council of each Region shall annually, at least four weeks before the Regional Annual Meeting, elect the Chair and the Vice-Chair of the Regional Council for such Region for the succeeding year. No person shall be elected Chair of a Regional Council for more than two terms in succession. In the event of a vacancy in the office of Chair caused by the death, resignation or disability to act of the Chair, the Vice-Chair shall succeed to the office of Chair for the remainder of the term. In the event of a vacancy in the office of Chair as aforesaid at a time when there is no Vice-Chair, the members of the Regional Council may appoint a Chair to fill the vacancy for the remainder of the term. The election of the Chair and the Vice-Chair and members of a Regional Council may be by vote by members of the Regional Council, or in such other manner as the Regional Council may determine.

19.3 **Notice.** At least 15 days before the Regional Annual Meeting for each Region, the Regional Council for each Region shall advise the Secretary in writing of the names of the Chair, the Vice-Chair elected for the ensuing year, and the newly elected Chair, the Vice-Chair and Council shall take office on the date of the annual meeting for the Region next following their election.

19.4 **Default.** In the event that the Regional Council or members of any Region shall in any year fail to elect a Chair, a Vice-Chair and/or members of the Regional Council, the President may at any time before the Regional Annual Meeting of the Region appoint a Chair, a Vice-Chair and/or members to succeed those whose terms will expire at the ensuing Regional Annual Meeting, and the term of office of any Chair, Vice-Chair or members so appointed shall be the same as if he or she and/or they had been elected by the Regional Council or Members of the Region.

19.5 **Term of Office.** The Chair, Vice-Chair and the members of a Regional Council shall hold office until their successors are duly appointed or elected.

19.6 **Public Members.** Each Regional Council shall at its first meeting after the Regional Annual Meeting appoint a roster of individuals (herein called "public members") who shall be eligible only to vote at hearings held by the Regional Council pursuant to Section 25 and shall be eligible for selection as public members to participate in such hearings.

No person shall be eligible to be elected or remain a public member if he or she is or becomes during his or her term of office a Member, a partner, director, officer, employee or agent of a Member or associate or affiliate or related company of a Member, an officer, employee or agent of the Corporation, a member of the Regional Council, or any associate thereof. The number of public members appointed to the roster shall be in the discretion of the Regional Council, and individuals may be added to or deleted from such roster from time to time in accordance with the requirements of the Regional Council.

19.7 **Legal Counsel.** Each Regional Council shall be entitled to retain legal advisors for the account of the Corporation in connection with any hearing held pursuant to Section 25.

19.8 **Frequency of Meetings.** Each Regional Council shall meet at least once in each calendar year and shall report to the Secretary forthwith after each meeting in respect of any matters brought up at such meeting affecting the interests of the Corporation and shall from time to time report on all matters affecting the interests of the Corporation within its Region. The Secretary shall submit all such reports to the Board of Directors.

19.9 **Telephone, Electronic Meetings.** If all the members of the Regional Council present at or participating in the meeting consent, a meeting of a Regional Council may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and a member of a Regional Council participating in such a meeting by such means is deemed to be present at that meeting.

19.10 **Special Meetings.** The Chair or any two members of a Regional Council may call a special meeting of such Council at any time.

19.11 **Proxies.** A voting member of a Regional Council may by written proxy appoint a person to attend and vote as his or her representative at any meeting of such Council. No person shall be entitled to so act as a representative unless he or she is a member of the Regional Council or is a partner, director, officer, employee or agent of a Member of the Region.

19.12 **Quorum.** Three members of a Regional Council present in person shall form a quorum at any meeting thereof and any action taken by a majority of those members of the Council present at any meeting of the Council at which a quorum is present shall constitute the action of the Council.

19.13 **Written Resolutions.** A resolution consented to in writing by 80% of the members of the Regional Council shall be as effective as if passed at a duly constituted meeting of the Regional Council. The consent in writing of a member of the Regional Council may be given by facsimile, e-mail, telex, telegram or other similar electronic means of written communication.

19.14 **Powers of Council.** Unless otherwise provided in the By-laws, a Regional Council shall not act for or in the name of the Corporation and shall not have any power to bind the Corporation except as may be authorized by resolution of the Board of Directors.

19.15 **Remuneration.** Except for public members, who may receive such reasonable remuneration, if any, as may be determined by the Corporation from time to time, the members of the Regional Council shall serve as such without remuneration and shall not, directly or indirectly, receive any profit or remuneration from occupying the position as a member of a Regional Council; provided that any member may be reimbursed for reasonable expenses incurred by such member in the performance of the member's duties.

20. **Committees**

20.1 **Appointment.** The Corporation and a Regional Council for a Region may together appoint such standing committees of the Regional Council to consider and report on such matters related to the regulation of Members in a Region as they may consider appropriate. Any reports or determinations by such committees shall be submitted to the Regional Council and to the Corporation.

20.2 **Duration.** The life of any standing committee or other regional committee shall not extend beyond the term of office of the Regional Council for which it is appointed or authorized.

EXAMINATIONS AND INVESTIGATIONS

21. **Power to Conduct Examinations and Investigations.** The Corporation shall make such examinations of and investigations into the conduct, business or affairs of any Member, Approved Person of a Member or any other person under the jurisdiction of the Corporation pursuant to the By-laws and/or the Rules as it considers necessary or desirable in connection with any matter relating to compliance by such person with:

21.1 the By-laws, Rules or Policies of the Corporation;

21.2 any securities legislation applicable to such person including any rulings, policies, regulations or directives of any securities commission; or

21.3 the by-laws, rules, regulations and policies of any self-regulatory organization.

22. **Basis of Examination or Investigation.** Any examination or investigation made pursuant to Section 21 may be instituted upon the basis of:

22.1 a complaint received by or directed to the Corporation;

22.2 the direction of the Board of Directors;

22.3 the request of a securities commission or self-regulatory organization having jurisdiction; or

22.4 any information received or obtained by the Corporation relating to the conduct, business or affairs of the Member or person involved.

23. **Investigatory Powers.**

23.1 For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

(a) to submit a report in writing with regard to any matter involved in any such investigation;

(b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated; and

(c) to attend and give information respecting any such matters;

and the Member or person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any Member or person subject to an investigation conducted pursuant to this By-law shall be advised in writing of the matters under investigation and may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any Member or person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.

23.2 For the purpose of any examination or investigation pursuant to this By-law, the Corporation shall be entitled to free access to, and to make and retain copies of, all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the Member or person concerned, and no such Member or person shall withhold, destroy or conceal any information, documents or thing reasonably required for the purpose of such examination or investigation.

23.3 The Corporation, may, with respect to any information received:

(a) refer a matter to the applicable Regional Council for consideration in accordance with the provisions of Section 25; or

(b) refer a matter to the appropriate securities regulatory authority, self-regulatory organization or law enforcement agency; or

(c) take such other action under the By-laws or Rules which it considers appropriate in the circumstances.

24. **Co-operation with Other Authorities**

24.1 **Request for Information.** Any Member, Approved Person or any person under the jurisdiction of the Corporation, that is requested by any securities commission or regulatory authority, law enforcement agency, self-regulatory organization, stock exchange or other trading market to provide information in connection with an investigation of trading in securities shall submit the requested information, books, records, reports, filings and papers to the commission, authority, organization, exchange or market making the request in such manner and form, including electronically, as may reasonably be prescribed by such commission, authority, organization, exchange or market.

24.2 **Agreements**. The Corporation may enter into in its own name agreements or arrangements with any securities commission or regulatory authority, law enforcement agency, self-regulatory organization, stock exchange or other trading market or other organization regulating or providing services in connection with securities trading located in Canada or any other country for the exchange of any information (including information obtained by the Corporation pursuant to the By-laws or Rules or otherwise in its possession) and for other forms of mutual assistance for market surveillance, investigation, enforcement and other regulatory purposes relating to trading in securities in Canada or elsewhere.

24.3 **Assistance**. The Corporation may provide to any securities commission or regulatory authority, law enforcement agency, self-regulatory organization, stock exchange or other trading market or other organization regulating or providing services in connection with securities trading located in Canada or any other country any information obtained by the Corporation pursuant to the By-laws or Rules or otherwise in its possession and may provide other forms of assistance for surveillance, investigation, enforcement and other regulatory purposes relating to trading in securities in Canada or elsewhere.

DISCIPLINE

25. **Discipline Procedures.**

25.1 **Power of Regional Councils to Discipline.**

25.1.1 ***Approved Persons.*** The applicable Regional Council shall have power to impose upon an Approved Person or any other person under the jurisdiction of the Corporation any one or more of the following penalties:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $1,000,000.00 per offence; and

(ii) an amount equal to three times the pecuniary benefit which accrued to such person as a result of committing the violation;

(c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Regional Council may determine;

(d) revocation of the authority of such person to conduct securities related business;

(e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;

(f) such conditions of authority to conduct securities related business as may be considered appropriate by the Regional Council;

if, in the opinion of the Regional Council, the person:

(g) has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;

(h) has failed to comply with the provisions of any By-law, Rule or Policy of the Corporation;

(i) has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or

(j) is otherwise not qualified whether by integrity, solvency, training or experience.

25.1.2 ***Members.*** The applicable Regional Council shall have power to impose upon a Member any one or more of the following penalties:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $1,000,000.00 per offence; and

(ii) an amount equal to three times the pecuniary benefit which accrued to the Member as a result of committing the violation;

(c) suspension of the rights and privileges of the Member (and such suspension may include a direction to the Member to cease conducting securities related business) for such specific period and upon such terms as such Regional Council may determine, or, if the rights and privileges have already been suspended under Section 25.15, the continuation of such suspension (including a prohibition on the Member conducting securities related business) for such specified period and upon such terms as such Regional Council may determine;

(d) termination of the rights, privileges and Membership of the Member;

(e) expulsion of the Member from the Corporation;

(f) such terms and conditions on Membership of the Member as may be considered appropriate by the Regional Council;

if, in the opinion of the Regional Council, the Member:

(g) has failed to carry out any agreement with the Corporation;

(h) has failed to meet any liabilities to another Member or to the public;

(i) has engaged in any business conduct or practice which the Regional Council in its discretion considers unbecoming a Member or not in the public interest;

(j) has ceased to be qualified as a Member by reason of the ownership, integrity, solvency, training or experience of the Member or any of its Approved Persons or other employees or agents, or any person having an ownership interest in the capital or indebtedness of the Member;

(k) has failed to comply with or carry out the provisions of any of the By-laws, Rules or Policies of the Corporation; or

(l) has failed to comply with or carry out the provisions of any applicable federal or provincial statute relating to its business or of any regulation or policy made pursuant thereto.

25.1.3 ***Continuation of Liability*.** If the rights, privileges or Membership of a Member are suspended or terminated or a Member is expelled from the Corporation, the Member or former Member shall remain liable to the Corporation for all amounts due to the Corporation by it.

25.2 **Regional Council Disciplinary Hearings.**

25.2.1 ***Composition and Quorum*.** For a hearing of a Regional Council held pursuant to Sections 25.3 or 25.16.3, the quorum shall be two members, at least one of whom shall be a member of the Regional Council and at least one of whom shall be a public member selected from the roster of available public members appointed under Section 19.6. At least two and not more than five members of the Regional Council shall be appointed to conduct such hearing and it shall not be required to give notice of such hearing to all members of the Regional Council. The Chair of the Regional Council may appoint the members to conduct such hearing and may, from time to time, delegate to the Vice-Chair or to any public member of the Regional Council the authority to appoint such members. In the event that more than three persons are appointed to conduct such hearing, public members shall constitute not less than one-third of the panel appointed and one such public member shall be or have been, qualified to practice law in Canada. Where the respondent in the hearing is an approved individual, the members appointed to conduct such hearing shall reside in a region or community other than the region or community in which the respondent is resident.

25.2.2 ***Chair and Voting.*** A public member shall serve as the chair of such hearing and shall have a vote. At any such hearing any action affirmed by a vote of the majority of those members present and entitled to vote shall constitute the action of the Regional Council. In the event of a tie vote, the chair of the hearing shall have a casting vote.

25.2.3 ***Deemed Regional Council Member.*** Where a hearing is commenced before a Regional Council and the term of office on the Regional Council of a member sitting for the hearing expires or is terminated before the

proceeding is disposed of but after any evidence has been heard, the member shall be deemed to remain a member of the Regional Council for the purpose of completing the disposition of the proceeding in the manner as if his or her term of office had not expired or been terminated.

25.2.4 ***Assistance.*** A Regional Council may employ such legal, secretarial or other assistance as it may require.

25.3 **Notice of Hearing.** Before a Regional Council may impose any of the penalties provided for in Section 25.1 hereof (other than pursuant to the approval of a settlement agreement pursuant to Section 25.15), the Member, Approved Person or other person, as the case may be, shall have been summoned before a hearing of such Regional Council, of which at least 14 days' notice shall be given, by way of Notice of Hearing, to the Member or person concerned. Such Notice of Hearing shall be in writing, shall be signed by an officer of the Corporation and contain:

(a) the date, time and place of the hearing;

(b) the purpose of the hearing;

(c) the authority pursuant to which the hearing is held;

(d) a summary of the facts alleged and intended to be relied upon by the Corporation and the conclusions drawn by the Corporation based on the alleged facts; and

(e) the provisions of Sections 25.6 to 25.8 inclusive and a description of the penalties and costs which may be imposed pursuant to Sections 25.1 and 25.5, respectively.

25.3.1 ***Notice Addressed to Corporation.*** Any notice to a Regional Council must be in writing and addressed to the Corporation in care of the office of the Corporation having responsibility for the applicable Regional Council.

25.3.2 ***Notice to Members in the Case of an Individual.*** In the case of an individual summoned before a hearing of a Regional Council, the Member or Members concerned shall be served with a copy of the Notice of Hearing.

25.3.3 ***Publication of Notices.*** A Notice of Hearing shall be published in the same manner as a notice of penalty pursuant to Section 25.16.

25.4 **Right to be Heard.** The Member or person summoned pursuant to Section 25.3 and the Corporation shall be entitled to appear and be heard at the hearing and shall be entitled to be represented by counsel or an agent and to call, examine and cross-examine witnesses.

25.5 **Costs.** The Regional Council may in any case in its discretion require that the Member or person pay the whole or part of the costs of the proceedings before the Regional Council and any investigation relating thereto.

25.6 **Reply.** A Member or person summoned before a hearing of a Regional Council pursuant to a Notice of Hearing shall, within ten days from the date of service of the Notice of Hearing, serve on the Corporation a reply that either:

25.6.1 specifically denies (with a summary of the facts alleged and intended to be relied upon by the Member or person, and the conclusions drawn by the Member or person based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the Corporation in the Notice of Hearing; or

25.6.2 admits the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing and pleads circumstances in mitigation of any penalty to be assessed.

25.7 **Acceptance of Facts and Conclusions.** The Regional Council may accept as having been proven any facts alleged or conclusions drawn by the Corporation in the Notice of Hearing that are not specifically denied in the reply.

25.8 **Failure to Reply or Attend.** If a Member or person summoned before a hearing of a Regional Council by way of a Notice of Hearing fails to:

(a) serve a reply in accordance with Section 25.6; or

(b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a reply may have been served;

the Regional Council may proceed with the hearing of the matter on the date and at the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without further notice to and in the absence of the Member or person, and the Regional Council may accept the facts alleged by the Corporation in the Notice of Hearing as having been proven by the Corporation and may impose any of the penalties described in Section 25.1.

25.9 **Prior Involvement.** Members of a Regional Council participating in a hearing pursuant to Section 25.3 shall not have taken part before the hearing in any investigation of the subject matter of the hearing.

25.10 **Open to the Public.** A hearing pursuant to Section 25.3 shall be open to the public except where the Regional Council 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, in which case the Regional Council may hold the hearing *in camera.*

25.11 **Jurisdiction.**

25.11.1 ***Former Members.*** For the purposes of Sections 21 to 25 inclusive, any Member, Approved Person or other person subject to the jurisdiction of the Corporation shall remain subject to the jurisdiction of the Corporation notwithstanding that such Member has ceased to be a

Member, Approved Person or other person subject to the jurisdiction of the Corporation.

25.11.2 ***Limitation.*** No proceedings shall be commenced pursuant to Section 25.3 against a former Member or person referred to in Section 25.11.1 unless a Notice of Hearing has been served upon such Member or person no later than five years from the date upon which such Member or person ceased to be a Member or held the relevant position with the Member, respectively.

25.12 **Parties to Proceedings and Witnesses.**

25.12.1 ***Parties to Proceedings.*** The parties to proceedings before a Regional Council are:

(a) the Corporation, which shall be represented by the Corporation, or any person designated by it; and

(b) in the case of:

(i) an individual, the individual and, in the discretion of the Council, the Member concerned;

(ii) a Member, the Member.

25.12.2 ***Required Attendance or Production.*** Every Member, Approved Person and other person under the jurisdiction of the Corporation may be required by a Regional Council:

(a) to attend before it at any of its proceedings and give information respecting any matter involved in the proceeding; and

(b) to produce for inspection and provide copies of any books, records and accounts of such person, or within such person's possession and control, relevant to the matters being considered.

25.12.3 ***Required Attendance of Employee or Agent of Member.*** In the event that a Regional Council requires the attendance before it of any employee or agent of a Member who is not under the jurisdiction of the Corporation, the Member shall direct such employee or agent to attend and to give information or make such production as could be required of a person referred to in Section 25.13.2.

25.13 **Reasons.** Any decision of a Regional Council at a hearing held pursuant to Section 25.3 shall be in writing and shall contain a concise statement of the reasons for the decision. Notice of a decision shall be delivered to the Secretary who shall then promptly give notice, in the case of an individual, to the individual and to the Member concerned, or in the case of a Member, to the Member. A copy of the decision shall accompany the notice.

25.14 **Suspensions in Certain Circumstances.**

25.14.1 ***Power to Suspend.*** Notwithstanding anything in this Section 25, in the event that:

(a) the registration of a Member as a mutual fund dealer under any securities legislation of any province or territory in which the Member is carrying on business is suspended or cancelled, or a Member fails to renew any such registration which has lapsed; or

(b) a Member makes a general assignment for the benefit of its creditors or is declared bankrupt or makes an authorized assignment or a proposal to its creditors under the *Bankruptcy and Insolvency Act*, or a winding-up order is made in respect of a Member or a receiver or other officer with similar powers is appointed in respect of all or any part of the undertaking and property of a Member; or

(c) a stock exchange, securities commission, self-regulatory organization or other securities regulatory authority suspends the membership or privileges thereof of a Member who is a member of such exchange or self-regulatory organization;

then the applicable Regional Council shall have the power and, with respect to an event referred to in Section 25.14.1(b) above, shall be obliged, forthwith upon receiving notice of such event, to suspend the rights and privileges of the Member for such period and on such terms and conditions as such Regional Council may in its discretion determine.

25.14.2 ***Further Suspension, Termination of Rights and Privileges, Expulsion.*** In any of the events referred to:

(a) in Sections 25.14.1(a) or (c), if the Member fails to take appropriate proceedings within the time provided for by the legislation or stock exchange, securities commission, self-regulatory organization or regulatory authority rules for a review of or by way of appeal from such suspension or cancellation of registration or membership, or fails within such period as the Regional Council may prescribe to renew any such registration which has lapsed, or if, notwithstanding such review and appeal, such suspension or cancellation of registration or membership, is confirmed and becomes final, the Regional Council may, either with or without notice to the Member, suspend the Member for a further period, terminate the rights, privileges and Membership of the Member or expel the Member from the Corporation, and such suspension, termination or expulsion shall take immediate effect and there shall be no review or appeal therefrom. If upon review or appeal the registration or membership of a Member under the legislation, stock exchange, self-regulatory organization or regulatory authority rules is reinstated, the Regional Council may reinstate the Member and cancel any suspension imposed by it upon the Member.

(b) in Section 25.14.1(b), if the Member fails within such period as the Regional Council may prescribe to satisfy the claims of its creditors and/or obtain a discharge under the *Bankruptcy and Insolvency Act* or cause the winding-up order or receivership to be discharged or terminated, the Regional Council may, either with or without notice to the Member, suspend the Member for a further

period, terminate the rights, privileges and Membership of the Member or expel the Member from the Corporation, and such suspension, termination or expulsion shall take immediate effect. If the Member satisfies its creditors and/or obtains a discharge under the *Bankruptcy and Insolvency Act* or causes the winding-up order or receivership to be discharged or terminated within such period as the Regional Council may determine, the Regional Council may reinstate the Member upon such terms and conditions as the Regional Council may determine and cancel any suspension imposed by it upon the Member.

25.14.3 ***Cause of Financial Loss to the Public.*** Notwithstanding anything in Section 25, if, as a result of information received by the Chair or any Vice-Chair of the applicable Regional Council, such Chair or Vice-Chair after consultation with the President or one or more members of the Executive Committee of the Board of Directors is of the opinion that a Member has breached any By-law, Rule or Policy of the Corporation and that such breach or breaches is likely to result in financial loss to the public, the Chair or Vice-Chair may immediately suspend the rights and privileges of such Member and direct such Member to immediately cease dealing with the public. If the Chair or Vice-Chair of the Regional Council acts under the provisions of this Section 25.14.3, he or she shall summon the Member to appear before a hearing of the applicable Regional Council to be held within 15 days upon notice to the Member, with such notice and hearing to be in accordance with the provisions of this Section 25, as applicable.

25.14.4 ***Failure to Pay Fine or Comply with Condition.*** In the event that a fine or condition imposed by a Regional Council pursuant to Section 25.1 is not paid or complied with, respectively, within the time prescribed by the Regional Council, the applicable Regional Council may, upon application by the Corporation, and without further notice to the Member or person concerned, suspend the authority of such person to conduct securities related business or the rights and privileges of such Member, respectively, until such fine is paid or condition fulfilled.

25.14.5 ***Other Proceedings.*** Nothing contained in Section 25.15 shall prevent any other proceedings being taken against a Member, Approved Person or other person pursuant to any other provisions of Section 25.

25.15 **Settlement Agreements.**

25.15.1 ***Power to Enter into Settlement Agreement.*** The Corporation or any other person designated by it or the Board of Directors may negotiate a settlement agreement with a Member, Approved Person or other person under the jurisdiction of the Corporation, in respect of any matters for which the Member or person could be penalized on the exercise of the discretion of a Regional Council pursuant to Section 25.1.

25.15.2 ***Contents of Settlement Agreement.*** A settlement agreement shall be in writing and be signed by or on behalf of the Member or person and shall contain:

(a) a statement of facts sufficient to identify the matter to which the settlement agreement relates;

(b) a reference to any statutes or regulations thereto, By-law, Rules or Policies of the Corporation with which the Member or person has not complied and a statement as to future compliance therewith;

(c) the consent and agreement of the Member or person to the terms of the settlement agreement;

(d) the acceptance of the penalty to which the Member or person could be subject pursuant to Section 25.1;

(e) the waiver of the rights of the Member or person to a hearing pursuant to the By-laws and all rights of review thereunder; and

(f) such other matters not inconsistent with Section 25.15.2(a) to (e), inclusive, which may be agreed upon including, without limitation, the agreement by the Member or person to pay the whole or part of the costs of the investigation and any proceedings relating to the matters which are the subject of the settlement agreement.

25.15.3 ***Review and Determination by Regional Council.*** Such settlement agreement shall, on the recommendation of:

(a) the Corporation; and

(b) the Regional Director for the applicable Region,

be referred to the applicable Regional Council which shall:

(c) accept the settlement agreement;

(d) reject it.

A Regional Council shall not consider a settlement agreement pursuant to this Section unless at least 14 days' notice of the meeting of the Council has been given in accordance with Section 25.16 specifying:

(e) the date, time and place of the meeting; and

(f) the purpose of the meeting with sufficient information to identify the Member or Approved Person involved and the general terms of the settlement agreement.

25.15.4 ***Binding Upon Acceptance or Imposition.*** A settlement agreement shall only become binding in accordance with its terms upon such acceptance and, in such event, the Member or person shall be deemed to have been penalized by the applicable Regional Council for the purpose of giving notice thereof.

25.15.5. ***Rejection of Settlement Agreement by Regional Council.*** If a Regional Council rejects a settlement agreement pursuant to Section 25.15.3, the provisions of Sections 25.1 to 25.13, inclusive, shall apply, provided that no member of the Regional Council who participated in the deliberations of the Regional Council rejecting the settlement agreement shall participate in any hearing conducted by the Regional Council with respect to the same matters which are the subject of the agreement.

25.15.6. ***Without Prejudice.*** All negotiations of a settlement agreement shall be without prejudice and the negotiations may not be used as evidence or referred to in any hearing.

25.16 **Publication of Notice and Penalties.**

25.16.1 ***Notice Requirements.*** If and whenever:

(a) a Member (except as provided by Section 25.16.1(b) hereof), Approved Person or other person is penalized by a Regional Council, notice of the penalty shall be given by the Corporation forthwith;

(b) the rights and privileges of a Member are suspended or terminated, or a Member is expelled from the Corporation, notice of the penalty and notice of the disposition of any review from the imposition thereof shall be given forthwith by the Corporation. If such penalty is subject to review the notice shall so indicate;

25.16.2 ***Content of Notice.*** A notice of penalty given pursuant to Section 25.16.1 shall include a summary of the facts, shall specify the By-law or Rules violated and the penalty assessed, and shall include the name of the Member or person upon which the penalty is imposed and, in the case of a penalty imposed upon an Approved Person or other person, shall include the name of the Member employing or retaining such person at the relevant time.

25.16.3 ***Method of Giving Notice.*** A notice of penalty given pursuant to Section 25.16.1 shall be given:

(a) by publication in a Corporation bulletin;

(b) by delivery of the notice to a news service or newspaper having national distribution;

(c) by delivery of the notice to any securities commission, stock exchange, self-regulatory organization or other securities regulatory authority having jurisdiction over the Member or individual concerned, and

(d) to such other persons, organizations or corporations, and in such other manner as the Regional Council imposing the penalty, and/or as the Corporation from time to time, deems advisable.

25.17 **Effect and Review of Regional Council Decisions**

25.17.1 ***Effect Only in Applicable Region.*** Any decision of a Regional Council by which a Member's rights and privileges are suspended or terminated or a Member is expelled from the Corporation shall have effect only in the Region where such Regional Council has jurisdiction, unless and until otherwise ordered by the Board of Directors.

25.17.2 ***Review.*** Subject to the provisions of Section 25.17.3, in the event of a decision by a Regional Council:

(a) by which a Member's rights and privileges are suspended or terminated or a Member is expelled from the Corporation, the Board of Directors shall, upon the application of either the Corporation or the Member concerned made within 21 days of receiving notice of the decision of the Regional Council, review the decision; and:

(i) confirm or modify the decision of the Regional Council in its application to that Region; or

(ii) confirm or modify the decision of the Regional Council and extend its application and effect to all Regions of the Corporation; or

(b) by which it imposes a fine or conditions upon a Member, the Board of Directors shall, upon the application of either the Corporation or the Member concerned made within 21 days of receiving notice of the decision of the Regional Council, review the said decision and confirm or modify the decision of the Regional Council.

25.17.3 ***Restrictions on Determination by the Board of Directors.*** The Board of Directors shall not, pursuant to Section 25.17.2:

(a) modify any decision of a Regional Council in its application to the

Region where such Regional Council has jurisdiction; or

(b) extend the application and effect of a decision of another Regional Council to a Region,

if the securities commission having jurisdiction in such Region directs that such decisions shall not be modified, or extended into the Region where it has jurisdiction, as the case may be.

25.17.4 ***Review Hearing.*** With respect to a review pursuant to Section 25.17.2:

(a) the provisions of Sections 25.1 apply *mutatis mutandis* to any review by the Board of Directors;

(b) the Board of Directors:

(i) shall consider the record of the proceedings before the Regional Council;

(ii) shall permit the parties to appear before it on reasonable notice, with counsel or by agent, to make submissions and the provisions of Section 25.13 apply *mutatis mutandis*; and

(c) Members of the Board of Directors participating in a review hearing pursuant to this Section 25.17.4 shall not have taken part before the hearing in any proceedings with respect to the decision which is being reviewed. Subject to the provisions of Section 27, decisions of the Board of Directors pursuant to this Section 25.17.4 are final and there shall be no further review of such decisions within the Corporation.

25.17.2 ***Prohibition Against Review By Court or Tribunal.*** Except as provided in Section 27, no proceedings shall be taken in any court or other tribunal to question or review any decision, order, direction, declaration or ruling of a Regional Council or the Board of Directors or to prohibit or restrain any Regional Council or the Board of Directors or their proceedings.

26. **Rules, Forms and Other Instruments**

26.1 **Power to Make, Amend or Repeal Rules.** The Board of Directors may make and from time to time amend or repeal such Rules not inconsistent with the Letters Patent or By-laws, as in its discretion may be advisable for carrying out the provisions of the By-laws or generally for the purposes of the Corporation, and all such Rules for the time being in force, unless expressly otherwise provided, shall be binding upon all Members.

26.2 **Forms.** Where pursuant to any By-law, Rule or Policy, a Form may be prescribed or adopted, any such Form (including any instructions, directions or notes in such Forms) so prescribed or adopted shall have the same force and effect as the By-law, Rule or Policy pursuant to which it is prescribed or adopted. Any reference in the By-laws, Rules or Policies to compliance with the By-laws, Rules or Policies shall be deemed to include a reference to any Forms.

26.3 **Force and Effect.** The Rules made in accordance with Section 26.1 shall be effective and remain in force until the Annual Meeting next following the date of the making of such Rules and, if confirmed by such Annual Meeting, shall continue in force thereafter unless and until amended or repealed.

26.4 **Other Instruments**. The Corporation may develop and issue to Members such guidelines, policies, bulletins, notices and other communications relevant to the By-laws and Rules or the business and activities of Members, their Approved Persons or other employees or agents to assist in the interpretation, application of and compliance with the By-laws, Rules and legislation relevant to such business and activities. The Board of Directors and a Regional Council may refer to such instruments in the interpretation and application of the By-laws and Rules.

REVIEW BY APPLICABLE SECURITIES COMMISSION

27. **Review of Decisions.**

27.1 Any Member, Approved Person or other person directly affected by a decision of the Board of Directors, a Regional Council or the Corporation in respect of which no further review or appeal is provided in the By-laws may request any securities commission given jurisdiction in the matter under its enabling legislation to review such decision and notice in writing of such review shall be given forthwith to the Corporation.

GENERAL ADMINISTRATION

28. **Head Office.** The head office of the Corporation shall be in the City of Toronto in the Province of Ontario.

29. **Seal.** The seal, an impression of which is stamped in the margin hereof, shall be the seal of the Corporation.

30. **Execution of Instruments.** Contracts, documents or any instruments in writing requiring the signature of the Corporation may be signed by

30.1 any one of the Chair of the Board, the Vice-Chair of the Board, the President and Chief Executive Officer, the Chief Operating Officer or a Vice-President together with any one of the Secretary or the Treasurer;

30.2 any two directors; or

30.3 any one of the aforementioned officers together with any one director;

and all contracts, documents and instruments in writing so signed shall be binding upon the Corporation without any further authorization or formality. The Board of Directors shall have power from time to time by resolution to appoint any officer or officers or any person or persons on behalf of the Corporation either to sign contracts, documents and instruments in writing generally or to sign specific contracts, documents or instruments in writing.

The term "contracts, documents or instruments in writing" as used in this By-law shall include but not be limited to deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments of property real or personal, immovable or movable, agreements, releases, receipts and discharges for the payment of money or other obligations, conveyances, transfers and assignments of shares, share warrants, stocks, bonds, debentures or other securities and all paper writings.

The seal of the Corporation when required may be affixed to any instruments in writing signed as aforesaid or by any officer or officers appointed by resolution of the Board of Directors.

31. **Cheques, Drafts, Notes, Etc.** All cheques, drafts or orders for the payment of money and all notes and acceptances and bills of exchange shall be signed by such officer or officers or person or persons, whether or not officers of the Corporation, and in such manner as the Board of Directors may from time to time designate by resolution.

32. **Notices.**

32.1 **Service**. Any notice or other document required by the Act, the Regulations, the Letters Patent or the By-laws to be sent to any Member, director or Approved Person or to the auditor shall be delivered personally or sent by prepaid mail or by facsimile to any such Member, director or Approved Person at their latest address as shown in the records of the Corporation and to the auditor at its business address, or if no address be given therein then to the last address of such Member, director or Approved Person known to the Secretary; provided always that notice may be waived or the time for the notice may be waived or abridged at any time with the consent in writing of the person entitled thereto.

32.2 **Signature to Notices**. The signature of any director or officer of the Corporation to any notice or document to be given by the Corporation may be written, stamped, typewritten or printed or partly written, stamped, typewritten or printed.

32.3 **Computation of Time**. Where a given number of days' notice or notice extending over a period is required to be given under the By-laws or Letters Patent of the Corporation the day of service or posting of the notice shall not, unless it is otherwise provided, be counted in such number of days or other period.

32.4 **Proof of Service**. With respect to every notice or other document sent by post it shall be sufficient to prove that the envelope or wrapper containing the notice or other document was properly addressed as provided in Section 32.1 and put into a post office or into a letter box. A certificate of an officer of the Corporation in office at the time of the making of the certificate as to facts in relation to the sending or delivery of any notice or other document to any Member, director, officer or auditor or publication of any notice or other document shall be conclusive evidence thereof and shall be binding on every Member, director, officer or auditor of the Corporation as the case may be.

33. **By-laws**. The Board of Directors may from time to time enact By-laws relating in any way to the Corporation or to the conduct of its affairs, including, but not limited to, By-laws providing for applications for supplementary letters patent, and may from time to time by by-law amend, repeal or re-enact the By-laws but no By-law shall be effective until sanctioned by at least 2/3 of the votes cast at a meeting of the Members duly called for the purpose of considering same, and the repeal or amendment of By-laws not embodied in the Letters Patent shall not be enforced or acted upon until the approval of the Minister under the Act in respect thereof has been obtained.

34. **Auditors.** The Members shall at each annual meeting appoint an auditor to audit the accounts of the Corporation for report to Members who shall hold office until the next following annual meeting; provided, however, that the directors may fill any casual vacancy in the office of the auditor. The remuneration of the auditor shall be fixed by the Board of Directors.

35. **Financial Year.** The financial year of the Corporation shall terminate on the 30th day of June in each year or on such other date as the directors may from time to time by resolution determine.

36. **No Actions Against the Corporation.** No Member (including in all cases a Member whose rights and privileges have been suspended or terminated and a Member who has been expelled from the Corporation or whose Membership has been forfeited) and Approved Person or any other person who is subject to the jurisdiction of the Corporation, shall be entitled, subject to the provisions of Section 27, to commence or carry on any action or other proceedings against the Corporation or against the Board of Directors, the Executive Committee, any Regional Council, any Committee thereof, or against any officer, employee or agent of the Corporation or member or officer of any such Board of Directors, Committee or Council or against any Member's auditor, in respect of any penalty imposed or any act or omission done or omitted under the provisions of and in compliance with or intended compliance with the provisions of any By-law, Rule or Policy.

37. **Use of Name: Liabilities: Claims.**

37.1 **Use of Name.** No Member shall use the name of the Corporation on letterheads or in any circulars or other advertising or publicity matter, except to the extent and in such form as may be authorized by the Board of Directors.

37.2 **Liabilities.** No liability shall be incurred in the name of the Corporation by any Member, officer or committee without the authority of the Board of Directors.

37.3 **Claims.** Whenever the Membership of a Member ceases for any reason whatsoever, neither the former Member nor its heirs, executors, administrators, successors, assigns or other legal representatives, shall have any interest

in or claim on or against the funds and property of the Corporation.

38. **Exemptions**

The Board of Directors may exempt any Member, Approved Person, or any other person subject to the jurisdiction of the Corporation, or any group or class of the foregoing persons, from the requirements of any provision of the By-laws, Rules and Forms where it is satisfied that to do so would not be prejudicial to the interests of the Members, their clients or the public, and in granting such an exemption the Board of Directors may impose such terms and conditions as are considered necessary or desirable. The Board of Directors shall, in its discretion, determine whether it is appropriate for notice of the exemption to be given by all or any of the means specified in Section 25.16.3.

39. **Transition Periods for By-laws and Rules**

The Board of Directors may suspend or modify the application of any By-law or Rule, or provision thereof, which has been enacted, made, sanctioned or confirmed, as the case may be, and is effective, for such period of time as it may determine in its sole discretion in order to facilitate the orderly application of and compliance with such By-law or Rule to or by all or any number or class of Members, Approved Persons or other persons subject to the jurisdiction of the Corporation. Any such suspension or modification may be made either before or after the relevant By-law or Rule has become effective, and notice of the suspension or modification shall be given promptly to all Members and the securities commission in any jurisdiction where such By-law or Rule would otherwise be in effect with respect to Members, Approved Persons and other persons subject to the jurisdiction of the Corporation. No such suspension shall unfairly discriminate between Members, Approved Persons or other persons subject to the jurisdiction of the Corporation, and no such modification shall impose on all or any of the Members, Approved Persons or other persons subject to the jurisdiction of the Corporation a requirement that is more onerous or stricter than the requirements of the By-law or Rule that is subject to the suspension or modification.

President and Chief Executive Officer Secretary

Draft: January 31, 2000

MUTUAL FUND DEALERS ASSOCIATION OF CANADA/ ASSOCIATION CANADIENNE DES COURTIERS DE FONDS MUTUELS

RULES

NOTE TO READER: These draft Rules of the Mutual Fund Dealers Association of Canada / Association canadienne des courtiers de fonds mutuels (MFDA) have been prepared in connection with the application of MFDA for recognition as a self-regulatory organization pursuant to applicable provincial securities legislation. The draft Rules, together with the By-laws, Forms and Policies of MFDA are based on statutory requirements, the recommendations of the Board of Directors of the MFDA and various MFDA Industry Committees, current industry practices, the standards of other industry and self-regulatory organizations and the announced requirements of securities regulators. Further amendments may be made as the MFDA develops and regulatory policy for MFDA Members is determined. The application of some of the draft Rules may be delayed or modified for limited periods of time to permit orderly transition and compliance by Members and Approved Persons.

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MUTUAL FUND DEALERS ASSOCIATION OF CANADA

1 RULE NO. 1 - BUSINESS STRUCTURES AND QUALIFICATIONS

1.1 BUSINESS STRUCTURES

1.1.1 **Members** . No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:

(a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member;

(b) all revenues, fees or consideration in any form relating to any business engaged in by the Member is paid or credited directly to the Member and is recorded on the books of the Member;

(c) the relationship between the Member and any person conducting securities related business on account of the Member is that of:

(i) an employer and employee, in compliance with Rule 1.1.4,

(ii) a principal and agent, in compliance with Rule 1.1.5, or

(iii) an introducing dealer and carrying dealer, in compliance with Rule 1.1.6;

(d) the business or trade or style name under which such securities related business is conducted is in accordance with Rule 1.1.7.

1.1.2 **Compliance by Approved Persons** . Each Approved Person who conducts or participates in any securities related business in respect of a Member in accordance with Rule 1.1.1.(c)(i) or (ii) shall comply with the By-laws and Rules as they relate to the Member or such Approved Person.

1.1.3 **Service Arrangements** . A Member or Approved Person may engage the services of a person who is not a Member or an Approved Person to provide services to the Member or Approved Person, as the case may be, provided that:

(a) the services do not in themselves constitute securities related business or duties or responsibilities that are required to be performed by the Member or Approved Person itself or him\herself pursuant to the By-law, Rules or applicable securities legislation;

(b) any remuneration or compensation in any form in respect of such services shall only be paid or credited by the Member or Approved Person engaging the services, as the case may be, directly to the person providing the services and the payment or credit of such remuneration or compensation shall be recorded in the books and records required to be maintained in accordance with the By-laws and Rules by the Member or Approved Person engaging such services;

(c) the Member or Approved Person engaging the services shall remain responsible for compliance with the By-laws and Rules and any applicable legislation;

(d) any person preparing and maintaining books and records as a service in respect of the business of the Member or Approved Person shall do so in accordance with the requirements of Rule 5, and such books and records shall be available for review by the Member or Approved Person during normal business hours and by the Corporation in accordance with the By-laws and Rules; and

(e) all material terms of the services to be engaged that relate to requirements of the Member or Approved Person under the By-laws, Rules, Policies or Forms shall be evidenced in writing and a copy of such terms, together with any amendments thereto from time to time or termination, shall be provided by the Member or Approved Person promptly to the Corporation upon request, together with any other information relating thereto as may be requested by the Corporation.

1.1.4 **Employees** . A Member may conduct its business by Approved Persons employed as employees by it provided that:

(a) any such employee is registered or licensed, in the manner necessary, and is in good standing, under the applicable legislation in the province or territory where the employee proposes to act;

(b) the Member shall be responsible for, and shall supervise, the conduct of the employee as an Approved Person in respect of the business including compliance with applicable legislation and the By-laws and Rules;

(c) the Member shall be liable to third parties (including clients) for the acts and omissions of the employee relating to the Member's business;

(d) the employee is in compliance with the legislation, By-laws and Rules applicable to the employee as an Approved Person; and

(e) where the Member and the Approved Person employed as an employee have entered into a written agreement, it shall not contain provisions

which are inconsistent with an employment relationship or with the requirements set out in paragraphs (a) to (d) inclusive, of Rule 1.1.4.

1.1.5 **Agents** . A Member may conduct its business by Approved Persons retained or contracted by it as agents provided that:

(a) any such agent is registered or licensed in the manner necessary, and is in good standing, under the applicable legislation in the province or territory where the agent proposes to act;

(b) the Member shall be responsible for, and shall supervise, the conduct of the agent in respect of the business including compliance with applicable legislation and the By-laws and Rules;

(c) the Member shall be liable to third parties (including clients) for the acts and omissions of the agent relating to the Member's business;

(d) the agent is in compliance with the legislation, By-laws and Rules applicable to the agent;

(e) the financial institution bonds and insurance policies required to be maintained by the Member pursuant to Rule 4 cover and relate to the conduct of the agent;

(f) all books and records prepared and maintained by the agent in respect of such business of the Member shall be in accordance with Rule 5 and applicable legislation, shall be the property of the Member and shall be available for review by and delivery to the Member during normal business hours;

(g) all such business conducted by the agent is in the name of the Member subject to the provisions of Rule 1.1.7;

(h) the agent shall not conduct securities related business with or in respect of any person other than the Member;

(i) if the agent is engaged in or carrying on any business or activity other than business conducted on behalf of the Member, including any business or activity which is subject to regulation by any regulatory authority other than a securities commission, compliance with the terms of the agreement referred to in paragraph (k) shall be monitored and enforced directly by the Member and not by or through any other person including another employer or principal of the agent;

(j) the terms or basis on which the agent may be engaged in or carry on any business or activity other than business conducted on behalf of the Member shall not prevent or impair the ability of the Member or the Corporation from monitoring and enforcing compliance by the agent with the terms of the agreement referred to in paragraph (k) or the By-laws or Rules; and

(k) the Member and the agent shall have entered into an agreement in writing, which shall be provided promptly to the Corporation upon request, containing terms which include the provisions of paragraphs (a) to (j), inclusive, and which do not include provisions which are inconsistent with paragraphs (a) to (j), and shall provide the Corporation with a certificate signed by an officer or director of such Member and, upon request by the Corporation, shall provide an opinion of counsel, confirming the agreement is in compliance with such provisions.

1.1.6 **Introducing and Carrying Arrangement**

(a) **Permitted Arrangements** . A Member may enter into an arrangement with another Member pursuant to which the accounts of one Member (the "introducing dealer") are carried by the other Member (the "carrying dealer") provided that:

(i) the arrangement shall satisfy the requirements of a carrying arrangement described in Rule 1.1.6(b);

(ii) an introducing dealer shall not introduce accounts to any person who is not a Member;

(iii) an introducing dealer may not introduce accounts to more than one Member, except that a Level 2, 3 or 4 Member may introduce to another Member accounts of clients which are self-directed plans registered for income tax purposes;

(iv) the Members shall enter into a written agreement in a form prescribed by the Corporation evidencing the arrangement and reflecting the requirements of Rule 1.1.6(b) and such other matters as may be required by the Corporation;

(v) the arrangement (including the form of agreement referred to in Rule 1.1.6(b)) and any amendment to or termination of the arrangement or agreement, shall have been approved by the Corporation before it is to become effective; and

(vi) the arrangement shall be in compliance with the By-laws and Rules and the securities legislation applicable to either of the Members.

(b) **Terms of Arrangement** . A Member may enter into an agreement with another Member in accordance with Rule 1.1.6(a) if it satisfies the following requirements:

(i) Minimum Capital. The carrying dealer shall maintain at all times minimum capital of a Level 4 Dealer, and the introducing dealer shall maintain at all times minimum capital of a Level 1, 2, 3 or 4 Dealer, as the case may be;

(ii) Reporting of Client Balances. In calculating the risk adjusted capital required pursuant to Rule 3.1.1 and Form 1, the carrying dealer shall report all accounts of the clients (introduced by the introducing dealer to the carrying dealer and for whom assets are held in nominee name) on the carrying dealer's Form 1 and Monthly Financial Report;

(iii) Comfort Deposit. Any deposit (other than deposits on behalf of clients) provided to the carrying dealer by the introducing dealer pursuant to the terms of the agreement between them shall be segregated in accordance with Rule 3.3 by the carrying dealer and shall be held by the carrying dealer in a separate designated trust account for the introducing dealer;

The deposit provided by the introducing dealer to the carrying dealer shall be reported by the introducing dealer as an allowable asset on its Form 1 and Monthly Financial Report;

(iv) Segregation of Client Cash and Securities. The carrying dealer shall be responsible for holding and segregating in accordance with the requirements of Rule 3.3 all cash and securities held for clients introduced to it by an introducing dealer, provided that a Level 3 introducing dealer may hold cash, and a Level 4 introducing dealer may hold cash and securities, for the accounts of clients to the extent to which such functions are not part of the services to be provided by the carrying dealer;

(v) Trust Accounts. The carrying dealer shall be responsible for and shall maintain in its name any trust accounts established in respect of cash received for the account of clients introduced to it by the introducing dealer, provided that a Level 3 or 4 introducing dealer may hold cash in such trust accounts to the extent to which such functions are not part of the services to be provided by the carrying dealer;

(vi) Insurance. The introducing dealer and carrying dealer shall each maintain minimum insurance in the amounts required and in accordance with Rule 4;

(vii) Amount of Insurance. The carrying dealer shall include all accounts introduced to it by the introducing dealer that are held in nominee name in its calculation of the "base amount" asset measurement for minimum Financial Institution Bond coverage for Clauses (A) through (E) under Rule 4;

(viii) Disclosure and Acknowledgement on Account Opening. At the time of opening each client account, the introducing dealer shall obtain from the client an acknowledgement in writing that the introducing dealer has advised the client of the introducing dealer's relationship to the carrying dealer and of the relationship between the client and the carrying dealer;

(ix) Contracts, Account Statements, Confirmations and Client Communications. The name and role of the carrying dealer shall, and the name and role of the introducing dealer may in equal or lesser size, be shown on all contracts, account statements, confirmations and, in the case of a Level 1 Dealer, all client communications (as defined in Rule 2.8.1) and advertisements and sales communications (as defined in Rule 2.7.1) sent by either the introducing dealer or the carrying dealer in respect of accounts carried by the carrying dealer. The use of business or trade or style names shall be in accordance with Rule 1.1.7 as applicable. The carrying dealer shall be responsible for sending account statements and confirmations to clients introduced to it by the introducing dealer as required by the By-laws and Rules to the extent such statements and confirmations relate to trading or account positions in respect of which the carrying dealer has provided services;

(x) Clients Introduced to the Carrying Dealer. Each client introduced to the carrying dealer by the introducing dealer shall be considered a client of the carrying dealer for the purposes of complying with the By-laws and Rules to the extent of the services provided by the carrying dealer; and

(xi) Responsibility for Compliance. Unless otherwise specified in Rule 2 or in this Rule 1.1.6, the introducing dealer which is a Level 1 Dealer and its carrying dealer shall be jointly and severally responsible for compliance with the By-laws and Rules for each account introduced to the carrying dealer by the introducing dealer, and in all other cases the introducing dealer shall be responsible for such

compliance, subject to the carrying dealer being also responsible for compliance with respect to those functions it agrees to perform under the arrangement entered into under this Rule 1.1.6.

1.1.7 **Business Names, Styles, Etc.**

(a) Except as permitted pursuant to Rule 1.1.6 with respect to introducing dealers and carrying dealers and subject to Rule 1.1.7(b), all business carried on by a Member or by any person on its behalf shall be in the name of the Member or a business or trade or style name owned by the Member, an Approved Person in respect of the Member or an affiliated corporation of either of them, and the Member shall notify the Corporation prior to the use of any business or trade or style name other than the Member's legal name;

(b) No Approved Person shall conduct any business in accordance with (a) in a business or trade name or style name that is not that of, or owned by, the Member or its affiliated corporation unless:

(i) the Member has given its prior written consent; and

(ii) the name is used together with the Member's legal name or a business or trade name or style of the Member in at least equal size in all materials communicated to clients or the public (other than contracts, account statements or confirmations in accordance with (c)).

(c) Notwithstanding the provisions of paragraph (b), only the legal name of the Member shall appear on any contracts, account statements or confirmations of the Member.

(d) No Member or Approved Person shall use any business or trade or style name that is used by any other Member, unless the relationship with such other Member is that of an introducing dealer and carrying dealer, in compliance with Rule 1.1.6;

(e) No Member or Approved Person shall use any business or trade or style name that is deceptive, misleading or likely to deceive or mislead the public;

(f) The Corporation may prohibit a Member or an Approved Person from using any business or trade or style name in a manner that is contrary to any provision of this Rule 1.1.7 or that is objectionable or contrary to the public interest.

1.2 **INDIVIDUAL QUALIFICATIONS**

1.2.1 **Salespersons**

(a) **Course Requirements** . Each Approved Person who is a salesperson and who trades or deals in securities for the purposes of any applicable legislation in respect of a Member shall have successfully completed any one of the following courses:

(i) the Canadian Securities Course offered by the Canadian Securities Institute;

(ii) the Canadian Investment Funds Course offered by the Investment Funds Institute of Canada;

(iii) the Investment Funds in Canada Course offered by the Institute of Canadian Bankers;

(iv) the Principles of Mutual Funds Course formerly offered by the Trust Companies Institute; or

(v) to the extent the Approved Person trades or deals in securities in the Province of Quebec only, the courses entitled Placements des particuliers (CEGEP) and Cours sur les fonds distincts et fonds communs de placement offered by the Canadian Securities Institute.

(b) **Compliance with MFDA Requirements** . Each Member shall ensure that any Approved Person who conducts any business on behalf of the Member executes and delivers to the Member an agreement in a form as prescribed from time to time by the Corporation agreeing, among other things, to be subject to, comply with and be bound by the By-laws and Rules.

(c) **Training and Supervision** . Upon commencement of trading or dealing in securities for the purposes of any applicable legislation on behalf of a Member, all Approved Persons who are salespersons shall complete a training program within 90 days of such commencement and a concurrent six month supervision period in accordance with such terms and conditions as may be prescribed from time to time by the Corporation, unless he or she has completed a training program and supervision period in accordance with this Rule with another Member or was licensed or registered in the manner necessary, and is in good standing, under applicable securities legislation to trade in mutual fund securities prior to the date of this Rule becoming effective.

(d) **Dual Occupations** . An Approved Person may have, and continue in, another gainful occupation, provided that:

(i) *Permitted by legislation*. The securities commission in the jurisdiction in which the Approved Person carries on or proposes to carry on business specifically permits him or her to devote less than his or her full time to the business of the Member for which he or she acts on behalf of;

(ii) *Not prohibited*. The securities commission in the jurisdiction in which the Approved Person carries on or proposes to carry on business does not prohibit an Approved Person from engaging in such gainful occupation;

(iii) *Member approval*. The Member for which the Approved Person carries on business either as an employee or agent is aware and approves of the Approved Person engaging in such other gainful occupation;

(iv) *Member procedures*. Such Member establishes and maintains procedures to ensure continuous service to clients and to address potential conflicts of interest;

(v) *Conduct unbecoming*. Any such gainful occupation of the Approved Person must not be such as to bring the Corporation, its Members or the mutual fund industry into disrepute;

(vi) *Disclosure*. Clear disclosure is provided to clients that any activities related to such other gainful occupation are not business of the Member and are not the responsibility of the Member; and

(vii) *Financial planning*. Any Approved Person that engages in financial planning services otherwise than through or on behalf of a Member must:

(A) Regulations - provide such services through another person that is either regulated by a governmental authority or statutory agency other than a securities commission or subject to the rules and regulations of a widely-recognized professional association;

(B) Legislation - comply with the requirements of any applicable legislation in connection with the services;

(C) Access - ensure that, subject to any applicable legislation, the Member and the Corporation have access to financial plans prepared on behalf of the clients of the Member by its Approved Persons; and

(D) Proficiency - have satisfied any applicable proficiency requirements by securities regulatory authorities having jurisdiction.

(e) **Business Titles** . No Approved Person shall hold him or herself out to the public in any manner including, without limitation, by the use of any business name or designation of qualifications or professional experience that deceives or misleads, or could reasonably be expected to deceive or mislead, a client or any other person as to the proficiency or qualifications of the Approved Person under the Rules or any applicable legislation.

1.2.2 **Branch Managers**

(a) **Proficiency Requirements** . An individual may not be designated by the Member as a branch manager pursuant to Rule 2.5.2(a) or an alternate branch manager pursuant to Rule 2.5.2(c) unless the individual has:

(i) been licensed or registered previously under applicable securities legislation as a trading partner, director, officer or compliance officer of a mutual fund dealer; or

(ii) has successfully completed any one of the following courses:

(A) the Canadian Securities Course offered by the Canadian Securities Institute,

(B) the Canadian Investment Funds Course offered by the Investment Funds Institute of Canada, or

(C) the Investment Funds in Canada Course offered by the Institute of Canadian Bankers,

and, any one of the following courses:

(D) the Branch Managers' Course offered by the Canadian Securities Institute,

(E) the Mutual Fund Branch Managers' Course offered by the Investment Funds Institute of Canada, or

(F) the Branch Compliance Officers Course offered by the Institute of Canadian Bankers.

(b) **Experience Requirements** . In addition to the requirements set out in Rule 1.2.2(a), each branch manager, except alternate branch managers, in respect of a Member shall:

(i) have acted as a salesperson, trading partner, director, officer or compliance officer registered under the applicable securities legislation for a minimum of two years; or

(ii) have a minimum of two years of equivalent experience to that of an individual described in Rule 1.2.2(b)(i).

(c) **Registration** . Each Branch Manager, in addition to the requirements in Rule 1.2.2(a) shall be registered, licensed or approved as a branch manager under the applicable securities legislation and comply with the requirements of such legislation in connection therewith.

1.2.3 **Trading Partners, Directors, Officers and Compliance Officers**

(a) **Definition**. In this Rule, **"trading partner, director or officer"** means each partner, director or officer who is required to be registered and/or licensed under applicable securities legislation.

(b) **Course Requirements**. Each trading partner, director, officer and designated compliance officer of a Member shall have successfully completed any one of the following courses:

(i) the Canadian Securities Course offered by the Canadian Securities Institute;

(ii) the Canadian Investment Funds Course offered by the Investment Funds Institute of Canada; or

(iii) the Investment Funds in Canada Course offered by the Institute of Canadian Bankers;

and, any one of the following:

(iv) the Partners', Directors' and Senior Officers' Qualifying Examination offered by the Canadian Securities Institute; or

(v) the Mutual Fund Officers', Partners' and Directors' Course offered by the Investment Funds Institute of Canada.

(c) **Registration**. Each trading partner, director, officer and compliance officer of a Member shall be registered and/or licensed in the appropriate category under applicable securities legislation and shall comply with the requirements of such legislation in connection therewith.

1.2.4 **Currency of Courses**. An individual shall be exempt from taking any of the courses or writing the examinations required under Rules 1.2.1(a), 1.2.2(a) or 1.2.3(b) if the individual:

(a) was registered/licensed under applicable securities legislation in the same category within three years of the relevant time for qualification; or

(b) successfully completed the course or examination within three years of the relevant time for qualification;

provided that despite subsections (a) and (b), if an individual completes a course for which another course is a prerequisite, the course which is a prerequisite need not have been completed within the three year period.

1.2.5 **Notification of Changes in Registration Information**. Every Member must notify the Corporation within five business days, and immediately in the case of the events in (c), of:

(a) any change in address for service in a province or territory in which it carries on business;

(b) material changes in any other information previously filed by or on behalf of the Member with the Corporation, including a charge or an indictment against such Member pursuant to any criminal laws or securities legislation; and

(c) the Member being declared bankrupt or making a voluntary assignment in bankruptcy or a proposal under any legislation relating to bankruptcy or insolvency, being subject to or instituting any proceedings, arrangement or compromise with creditors or having a receiver and/or manager appointed to hold its assets.

2 RULE NO. 2 - BUSINESS CONDUCT

2.1 GENERAL

2.1.1 **Standard of Conduct**. Each Member and each Approved Person of a Member shall:

(a) deal fairly, honestly and in good faith with its clients;

(b) observe high standards of ethics and conduct in the transaction of business;

(c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and

(d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

2.1.2 **Member Responsible**. Each Member shall be responsible for the acts and omissions of each of its Approved Persons and other employees and agents relating to its business for all purposes under the By-laws and Rules.

2.1.3 **Confidential Information**

(a) All information received by a Member relating to a client or the business and affairs of a client shall be maintained in confidence by the Member and its Approved Persons and other employees and agents. No such information shall be disclosed to any other person or used for the advantage of the Member or its Approved Persons or other employees or agents without the prior written consent of the client or as required or authorized by legal process or statutory authority or where such information is reasonably necessary to provide a product or service that the client has requested.

(b) Each Member shall develop and maintain written policies and procedures relating to confidentiality and the protection of information held by it in respect of clients.

2.1.4 **Conflicts of Interest**

(a) Each Member and Approved Person and other employee and agent of a Member shall be aware of the possibility of conflicts of interest arising in connection with business conducted by them for a client. In the event that such a conflict or potential conflict of interest arises, the Member shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(b) and (c).

(b) Any conflict of interest that arises or can reasonably be expected to arise as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing by the Member to the client prior to the Member, or any person acting on its behalf in connection with its business, conducting business for the client.

(c) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a) and (b).

2.2 **CLIENT ACCOUNTS**

2.2.1 **"Know-Your-Client"**. Each Member shall use due diligence:

(a) to learn the essential facts relative to each client and to each order or account accepted;

(b) to ensure that the acceptance of any order for any account is within the bounds of good business practice; and

(c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and in keeping with the client's investment objectives.

2.2.2 **New Account Application Form**. A New Account Application Form must be completed for each new account of a client. If the New Account Application Form does not include know-your-client information, this must be documented on a separate Know-Your-Client form. Such form or forms shall be duly completed to conform with the requirements of Rule 2.2.1 and shall be signed by the client and dated. Account numbers must not be assigned unless they are accompanied by the proper name and address for the client and such name and address must be supported by the New Account Application Form.

2.2.3 **New Account Approval**. Each Member shall designate a partner, director or officer or, in the case of a branch office, a branch manager reporting directly to the designated partner, director or officer, who shall be responsible for approval of the opening of new accounts and the supervision of account activity. The designated person shall prior to or promptly after the completion of any initial transaction specifically approve the opening of such account in writing and a record of such approval shall be maintained in accordance with Rule 5.

2.2.4 **Updating Know-Your-Client Information**

(a) The Form documenting know-your-client information must be updated to include any material change in client information whenever a Member or Approved Person or other employee or agent becomes aware of such change including pursuant to Rule 2.2.4(b).

(b) Without reducing the responsibility of Members in Rule 2.2.1, all Members must at least annually, in writing, request each client to notify the Member if the know-your-client information previously provided to the Member or the client's circumstances have materially changed. The date of such request and the date upon which any such client information is received and recorded or amended must be retained.

(c) Written authorization must be obtained from the client for any change in a client name.

2.3 **POWER OF ATTORNEY/LIMITED TRADING AUTHORIZATION**

2.3.1 **Prohibition**. No Member or Approved Person shall accept or act upon a general power of attorney or other similar authorization from a client in favour of the Member or Approved Person.

2.3.2 **Limited Trading Authorization**. A Member or Approved Person may accept a limited trading authorization from a client for the express purpose of facilitating trade execution. In such circumstances a form of limited trading authorization as prescribed by the Corporation must be completed and approved by the compliance officer or branch manager, and retained in the client's file.

2.3.3 **Designation**. Each trade made pursuant to a limited trading authorization and its corresponding account must be identified as such in the books and records of the Member and on any order documentation.

2.3.4 **No Discretionary Trading**. A limited trading authorization shall not in any way confer general discretionary trading authority upon a Member, an Approved Person or any person acting on behalf of the Member.

2.4 **REMUNERATION, COMMISSIONS AND FEES**

2.4.1 **Payable by Member Only**. Any remuneration in respect of business conducted by an Approved Person on behalf of a Member must be paid by the Member (or its affiliates or its related Members which have received it from the Member) directly to and in the name of the Approved Person.

No Approved Person in respect of a Member shall accept or permit any associate to accept directly or indirectly, any remuneration, gratuity, benefit or any other consideration from any person other than the Member or its affiliates or its related Members, in respect of the business carried out by such Approved Person on behalf of the Member or its affiliates or its related Members.

2.4.2 **Referral Arrangements**

(a) **Definitions**. For the purpose of this Rule 2.4.2

(i) a "referral arrangement" is an arrangement whereby a Member is paid or pays a fee, including fees based on commissions or sharing a commission, for the referral of a client to or from another person; and

(ii) a referral arrangement does not include any payment to a third party service provider where the service provider has no direct contact with clients and where the services do not constitute securities related business.

(b) **Permitted Arrangements**. Referral arrangements may only be entered into on the following basis:

(i) the referral arrangement is only between a Member and another Member or between a Member and an entity that is (A) licensed or registered in another category pursuant to applicable securities legislation, (B) a Canadian financial institution for the purposes of National Instrument 14-101, (C) insurance agents or brokers, or (D) subject to such other regulatory system as may be prescribed by the Corporation;

(ii) there is a written agreement governing the referral arrangement prior to implementation;

(iii) all fees or other form of compensation paid as part of the referral arrangement, to or by the Member, must be recorded on the books and records of the Member; and

(iv) written disclosure of referral arrangements must be made to clients prior to any transactions taking place. The disclosure document must include an explanation or an example of how the referral fee is calculated, the name of the parties receiving and paying the fee, and a statement that it is illegal for the party receiving the fee to trade or advise in respect of securities if it is not duly licensed or registered under applicable securities legislation to so trade or advise.

2.4.3 **Service Fees or Charges**. No Member shall impose on any client or deduct from the account of any client any service fee or service charge relating to services provided by the Member in connection with the client's account unless written notice shall have been given to the client on the opening of the account or not less than 60 days prior to the imposition or revision of the fee or charge. For the purposes of this Rule, service fees or charges shall not include any commissions charged for executing trades.

2.5 **MINIMUM STANDARDS OF SUPERVISION**

2.5.1 **Member Responsibilities.** Each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.

2.5.2 **Compliance Officer**

(a) **Designation**. Each Member must designate a trading officer as a "compliance officer" who shall be or report to a member of senior management such as the Member's chief executive officer, chief operating officer or chief financial officer.

(b) **Responsibilities**. The compliance officer shall be responsible for monitoring adherence by the Member and any person conducting business on account of the Member to the By-laws, Rules

and Policies, including, without limitation, standards of business conduct under Rule 2 and applicable securities legislation requirements. The compliance officer or the individual to whom the compliance officer reports is required to report on the status of compliance at the Member to the board of directors or partners of the Member as necessary, and at least on an annual basis. It shall be the responsibility of the board of directors or partners of the Member to act on the annual report and to rectify any compliance deficiencies noted in the report.

(c) **Alternates**. In the event that a compliance officer is temporarily absent or unable to perform his or her responsibilities, a Member shall designate one or more alternates who must be qualified as compliance officers pursuant to Rule 1.2.3 and who shall carry out the responsibilities of the compliance officer.

2.5.3 **Branch Manager**

(a) **Designation**. Each Member shall designate a person qualified as a branch manager pursuant to Rule 1.2.2 for each branch office (as defined in By-law 1.1) of the Member. The Member is not required to designate a branch manager for a sub-branch office who is normally present at the office, provided that a branch manager who is not normally present at such sub-branch office, or a trading partner, director or officer or a compliance officer designated as the branch manager for such sub-branch office, supervises its business at the sub-branch office in accordance with the By-laws and Rules.

(b) **Responsibilities**. It is the responsibility of a branch manager to:

(i) ensure that the business conducted on behalf of the Member by an Approved Person and other employees and agents at the branch is in compliance with applicable securities legislation and the By-laws and Rules;

(ii) supervise the opening of new accounts and trading activity at the branch office.

(c) **Alternates**. In the event that a branch manager is temporarily absent or unable to perform his or her responsibilities, a Member shall designate one or more alternate branch managers who must be qualified as branch managers pursuant to Rule 1.2.2(a) and who shall carry out the responsibilities of the branch manager, but are not required to be normally present at the branch office.

2.5.4 **Maintenance of Supervisory Review Documentation**. The Member must maintain records of all compliance and supervisory activities undertaken by it and its partners, directors, officers, compliance officers and branch managers pursuant to the By-laws and Rules.

2.5.5 **No Delegation**. No Member or director, officer, partner, compliance officer, branch manager or alternate branch manager shall be permitted to delegate any supervision or compliance responsibility under the By-laws or Rules in respect of any business of the Member, except as expressly permitted pursuant to the By-laws and Rules.

2.6 **BORROWING FOR SECURITIES PURCHASES**

Each Member shall provide to each client a risk disclosure document containing the information prescribed by the Corporation when

(a) a new account is opened for the client, and

(b) when an Approved Person makes a recommendation for purchasing securities by borrowing, or otherwise becomes aware of a client borrowing monies for the purpose of investment,

provided that a Member is not required to comply with paragraph (b) if such a risk disclosure document has been provided to the client by the Member within the six month period prior to such recommendation or becoming so aware.

2.7 **ADVERTISING AND SALES COMMUNICATIONS**

2.7.1 **Definitions**. For the purposes of the By-laws and Rules:

(a) "advertisement" includes television or radio commercials or commentaries, billboards, internet websites, newspapers and magazine advertisements or commentaries and any published material promoting the business of a Member and any other sales literature disseminated through the communications media; and

(b) "sales communication" includes records, video tapes and similar material, market letters, research reports, and all other published material, except preliminary prospectuses and prospectuses, designed for or use in presentation to a client or a prospective client whether such material is given or shown to them and which includes a recommendation in respect of a security.

2.7.2 **General Restrictions**. No Member shall issue to the public, participate in or knowingly allow its name to be used in respect of any advertisement or sales communication in connection with its business which:

(a) contains any untrue statement or omission of a material fact or is otherwise false or misleading, including the use of a visual image such as a

photograph, sketch, drawing, logo or graph which conveys a misleading impression;

(b) contains an unjustified promise of specific results;

(c) uses unrepresentative statistics to suggest unwarranted or exaggerated conclusions, or fails to identify the material assumptions made in arriving at these conclusions;

(d) contains any opinion or forecast of future events which is not clearly labelled as such;

(e) fails to fairly present the potential risks to the client;

(f) is detrimental to the interests of the public, the Corporation or its Members; or

(g) does not comply with any applicable legislation or the guidelines, policies or directives of any regulatory authority having jurisdiction over the Member.

2.7.3 **Review Requirements**. No advertisement or sales communication shall be issued unless first approved by a partner, director, officer, compliance officer or branch manager who has been designated by the Member as being responsible for advertisements and sales communications.

2.8 **CLIENT COMMUNICATIONS**

2.8.1 **Definition.** For the purposes of the By-laws and Rules "client communication" means any written communication by a Member or an Approved Person to a client of the Member, including trade confirmations and account statements, other than an advertisement or sales communication.

2.8.2 **General Restrictions.** No client communication shall:

(a) be untrue or misleading or use an image such as a photograph, sketch, logo or graph which conveys a misleading impression;

(b) make unwarranted or exaggerated claims or conclusions or fail to identify the material assumptions made in arriving at these conclusions;

(c) be detrimental to the interests of clients, the public, the Corporation or its Members;

(d) contravene any applicable legislation or any guideline, policy, rule or directive of any regulatory authority having jurisdiction over the Member; or

(e) be inconsistent or confusing with any information provided by the Member or Approved Person in any notice, statement, confirmation, report, disclosure or other information either required or permitted to be given to the client by a Member or Approved Person under the By-laws, Rules, Policies or Forms.

2.8.3 **Rates of Return.** In addition to complying with the requirements in Rule 2.8.2, any client communication containing or referring to a rate of return regarding a specific account or group of accounts must be based on an annualized rate of return and explain the methodology used to calculate such rate of return in sufficient detail and clarity to reasonably permit the client to understand the basis of the rate of return.

2.9 **INTERNAL CONTROLS**. Every Member shall establish and maintain adequate internal controls as prescribed by the Corporation from time to time.

2.10 **POLICIES AND PROCEDURES MANUAL**. Every Member shall establish and maintain written policies and procedures (that have been approved by senior management of the Member) for dealing with clients and ensuring compliance with the Rules, By-laws and Policies of the Corporation and applicable securities legislation.

2.11 **COMPLAINTS**. Every Member shall maintain a log of client complaints and shall establish written policies and procedures for dealing with client complaints which ensure that such complaints are dealt with promptly and fairly.

2.12 **TRANSFERS OF ACCOUNT**

2.12.1 **Definitions.** For the purposes of the By-laws and Rules:

(a) "account transfer" means the transfer in whole or in part of an account of a client with a Member to another Member at the request or with the authority of the client;

(b) "delivering Member" means in respect of an account transfer the Member from which the account of the client is to be transferred; and

(c) "receiving Member" means in respect of an account transfer the Member to which the account of the client is to be transferred.

2.12.2 **Transfers**. No account transfer shall be effected by a Member without the written authorization of the client holding the account. If an account transfer is authorized by a client, the delivering Member and receiving Member shall act diligently and promptly in order to facilitate the transfer of the account in an orderly and timely manner.

3 RULE NO. 3 - FINANCIAL AND OPERATIONS REQUIREMENTS

3.1 **CAPITAL**

3.1.1 **Minimum Levels**. Each Member shall have and maintain at all times risk adjusted capital greater than zero, and minimum capital in the amounts referred to

below for the Level in which the Member is designated, as calculated in accordance with Form 1 and with such requirements as the Corporation may from time to time prescribe:

Level 1 $25,000 for a Member which is an introducing dealer and which satisfies the requirements of Rule 1.1.6(a) and (b) and is not a Level 2, 3 or 4 Member.

Level 2 $50,000 for a Member which does not hold client cash, securities or other property.

Level 3 $75,000 for a Member which does not hold client securities or other property, except client cash in a trust account.

Level 4 $200,000, for any other Member, including a Member which acts as a carrying dealer in accordance with Rule 1.1.6.

For the purposes of the By-laws, Rules, Policies and Forms, a Member which is required to maintain minimum capital at an amount referred to above is referred to as a Level 1, 2, 3 or 4 Dealer or Member, as the case may be.

3.1.2 **Notice**. If at any time the risk adjusted capital of a Member is, to the knowledge of the Member, less than zero, the Member shall immediately notify the Corporation.

3.2 **CAPITAL AND MARGIN**

3.2.1 **Client Lending and Margin**. No Member shall lend or extend credit to a client or permit the purchase of securities by a client on margin, except as provided for in Rule 3.2.3.

3.2.2 **Member Capital**. Each Member shall maintain capital in respect of its firm business in accordance with the requirements set out in Form 1.

3.2.3 **Advancing Mutual Fund Redemption Proceeds**. No Member shall advance funds or extend credit to or on behalf of a client, directly or indirectly, in connection with the receipt of funds on the redemption of mutual fund securities unless:

(a) the Member has received prior confirmation of the redemption order from the issuer of the securities;

(b) the redemption proceeds to be received (excluding any fees or commissions) are equal to or greater than the amount of funds or credit to be provided;

(c) the client has authorized payment to and retention by the Member of redemption proceeds;

(d) the Member maintains a copy of the confirmation of the redemption order and the client's authorization; and

(e) the Member is designated as being in Level 2, 3 or 4 for the purposes of Rule 3.1.1.

3.2.4 **Related Member Guarantees**

(a) Each Member shall be responsible for and shall guarantee the obligations to clients incurred by each of its related Members (as defined in By-law 1), and each related Member shall be responsible for and shall guarantee the obligations of the Member to its clients on the following basis:

(i) where a Member holds an ownership interest in a related Member, the Member shall provide a guarantee in an amount equal to 100% of the Member's total financial statement capital (as determined in accordance with Form 1);

(ii) where a Member holds an ownership interest in a related Member, the related Member shall provide a guarantee of the Member in an amount equal to the percentage of the related Member's total financial statement capital (as determined in accordance with Form 1) that corresponds to the percentage of ownership interest the Member holds in the related Member; and

(iii) where two related Members are related because of a common ownership interest held by the same person(s), each related Member shall provide a guarantee of the other in an amount equal to the percentage of its total financial statement capital (as determined in accordance with Form 1) that corresponds to the percentage ownership interest held by the person(s) who holds the common ownership interest.

(b) A guarantee shall not be required at all or in the amount prescribed in accordance with Rule 3.2.4(a) where the Corporation in its discretion determines that a guarantee is not appropriate.

(c) A guarantee shall be required in such greater or lesser amount as prescribed in Rule 3.2.4(a) where the Corporation in its discretion determines that such greater or lesser guarantee amount is appropriate.

(d) A guarantee required pursuant to this Rule 3.2.4 shall be in the form prescribed from time to time by the Corporation.

3.3 **SEGREGATION OF CLIENT PROPERTY**

3.3.1 **General**. Each Member that holds cash, securities or other property of its clients shall hold such cash, securities or property separate and apart from its own property and in trust for its clients in accordance with this Rule 3.3.

3.3.2 **Cash**

(a) **Trust Account**. All cash held by a Member on behalf of clients shall be held separate and apart from the property of the Member in a designated trust account with a financial institution (which is an acceptable institution for the purposes of Form 1).

(b) **Determination**. Each Member shall determine on a daily basis the amount of cash it holds for clients and that is required to be held in segregation pursuant to this Rule 3.3.

(c) **Deficiency**. In the event of a deficiency in the amount of cash required to be held in trust for a client, the Member shall immediately provide from its own funds an amount necessary to correct the deficiency and any unsatisfied obligation to do so shall be immediately charged to the capital of the Member.

(d) **Notice to Institution**. The Member must advise the financial institution in writing that:

(i) the account is established for the purpose of holding client funds in trust and the account shall be designated as a "trust account";

(ii) money may not be withdrawn, including by way of electronic transfer, by any person other than authorized employees of the Member; and

(iii) the money held in trust may not be used to cover shortfalls in any other accounts of the Member.

(e) **Commingling**. The Member shall not commingle money for mutual fund transactions with money held in trust for the purchase or sale of other securities or financial products (such as deposit instruments or segregated funds). The Member must maintain separate accounts, which may be designated as trust accounts, for the purchase and sale of such other securities or financial products.

(f) **Interest Bearing**. The trust account bears interest at rates equivalent to comparable accounts of the financial institution.

(g) **Use of Funds**. The Member shall not use any money received for the investment of mutual funds or other securities to finance its own operations.

(h) **Distributions**. The Member must have a system in place to properly distribute on a cash basis interest earned in the mutual fund trust account to either the mutual fund companies for reinvestment or to clients directly.

3.3.3 **Securities**

(a) **Internal Locations**. For the purposes of Rule 3.3.1, a Member may hold securities or other investment products within the physical possession or control of the Member segregated and held in trust for clients of the Member, provided that all internal storage locations are designated in the Member's ledger of accounts and the Member has adequate internal accounting controls and systems for safeguarding of securities held for clients.

(b) **External Locations**. For the purposes of Rule 3.3.1, securities or other investment products held beyond the physical possession of the Member must be segregated and held in trust for clients of a Member, or segregated and held by or for a Member, as the case may be, in acceptable securities locations, provided that the written terms upon which such securities or other investment products are deposited and held beyond the physical possession of the Member include provisions to the effect that:

(i) no use or disposition of the securities or products shall be made without the prior written consent of the Member;

(ii) certificates representing the securities or products can be delivered to the Member promptly on demand or, where certificates are not available and the securities are represented by book entry at the location, the securities or products can be transferred either from the location or to another person at the location promptly on demand; and

(iii) the securities or products are held in segregation for the Member or its clients free and clear of any charge, lien, claim or encumbrance of any kind in favour of the depository or institution holding such securities or products.

(c) **Bulk Segregation**. A Member, which holds securities or property of clients in segregation in accordance with Rule 3.3.1 may hold securities or property in bulk segregation provided that the Member identifies in its records the amount and kind of each security or property held for each client. The Member shall determine, for all accounts of each client the market value and number of all securities to be held for the client.

(d) **General Restrictions**. In complying with its obligation to segregate client securities in accordance with Rule 3.3.1, each Member shall ensure that:

(i) a segregation deficiency is not knowingly created or increased; and

(ii) all securities of clients received by the Member are segregated.

(e) **Correction of Segregation Deficiencies**. In the event that a segregation deficiency exists, the Member shall expeditiously take the most appropriate action required to settle the segregation deficiency. If for any reason the deficiency has not been settled within 30 days of being discovered, the Member shall immediately purchase the securities or property for the account of the client.

3.4 **EARLY WARNING**

3.4.1 **Definitions**. The terms and definitions used in this Rule 3.4 shall have the same meanings as used in Form 1, unless otherwise defined in the By-laws or Rules or the context requires.

(a) **Designation** . A Member shall be designated in early warning according to its capital, profitability and liquidity position from time to time and frequency of designation or at the discretion of Corporation as provided in this Rule 3.4 if at any time:

(i) *Capital*
Its risk adjusted capital is less than zero; or

(ii) *Liquidity*
Its early warning excess is less than zero; or

(iii) *Profitability*
Its risk adjusted capital at the time of calculation is less than the net loss (before bonuses, income taxes and extraordinary items) for the most recent quarter.

(iv) *Frequency*
It has been designated in early warning more than two times in the preceding twelve months.

(v) *Discretionary*
The condition of the Member, in the sole discretion of the Corporation, is not satisfactory for any reason including, without limitation, financial or operating difficulties, problems arising from record keeping conversion or significant changes in clearing methods, the fact that the Member is a new Member or the Member has been late in any filing or reporting required pursuant to the By-laws and Rules.

(b) **Requirements**. If a Member is designated in early warning then, notwithstanding the provisions of any By-law or Rule, the following provisions shall apply:

(i) the chief executive officer and chief financial officer of the Member shall immediately deliver to the Corporation a letter containing the following:

(A) advice of the fact that any of the circumstances in Rule 3.4.2 are applicable,

(B) an outline of the problems associated with the circumstances referred to in (A),

(C) an outline of the proposal of the Member to rectify the problems identified, and

(D) an acknowledgement that the Member is in early warning category and that the restrictions contained in Rule 3.4.2(b)(iv) apply,

a copy of which letter shall be provided to the Member's auditor;

(ii) the Corporation shall immediately designate the Member as being in early warning and shall deliver to the chief executive officer and chief financial officer a letter containing the following:

(A) advice that the Member is designated as being in early warning,

(B) a request that the Member file its next monthly financial report required pursuant to Rule 3.5.1(a) no later than 15 business days or, in the discretion of the Corporation if considered to be practicable, such earlier time following the end of the relevant month,

(C) a request that the Member respond to the letter as required under Rule 3.4.2(b)(iii) and confirmation that such response, together with the notice received pursuant to Rule 3.4.2(b)(i), will be forwarded to MFDA Investor Protection Fund and may be forwarded to any securities commission having jurisdiction over the Member,

(D) advice that the restrictions referred to in Rule 3.4.2(b)(iv) shall apply to the Member,

(E) such other information as the Corporation shall consider relevant;

(iii) the chief executive officer and the chief financial officer of the Member shall respond by letter signed by them both within five business days of receipt of the letter referred to in Rule 3.4.2(b)(ii), with a copy to be sent to the auditor of the Member, containing the information and acknowledgement required pursuant to Rule 3.4.2(b)(i)(B), (C) and (D), to the extent not previously provided, or an update of such information if any material circumstances or facts have changed;

(iv) if and so long as the Member remains designated as being in early warning, it shall not without the prior written consent of the Corporation:

(A) reduce its capital in any manner including by redemption, re-purchase or cancellation of any of its shares,

(B) reduce or repay any indebtedness which has been subordinated with the approval of the Corporation,

(C) directly or indirectly make any payments by way of loan, advance, bonus, dividend, repayment of capital or other distribution of assets to any director, officer, partner, shareholder, related company, affiliate or associate,

(D) increase its non-allowable assets (as specified by the Corporation) unless a prior binding commitment to do so exists or enter into any new commitments which would have the effect of materially increasing the non-allowable assets of the Member,

(v) if and so long as the Member remains designated as being in early warning, it shall continue to file its monthly financial reports within the time specified pursuant to Rule 3.4.2(b)(ii)(B),

(vi) as soon as practicable after the Member is designated as being in an early warning category, the Corporation shall conduct an on-site review of the Member's procedures for monitoring capital on a daily basis and prepare a report as to the results of the review, or

(vii) the Corporation may request and the Member shall provide in such time as the Corporation considers practicable, such reports or information, on a daily or a less frequent basis, as may be necessary or desirable in the opinion of the Corporation to assess and monitor the financial condition or operations of the Member.

(c) **Prohibited Transactions**. No Member shall enter into any transaction or take any action, as described in Rule 3.4.2(b)(iv), which, when completed, would have or would reasonably be expected to have the effect on the Member as described in Rule 3.4.2(a), without first notifying the Corporation in writing of its intention to do so and receiving the written approval of the Corporation prior to implementing such transaction or action.

3.4.2 **Restrictions**. The Corporation may in its discretion, without affording the Member a hearing, prohibit a Member which is designated as being in early warning from opening any new branch offices, hiring any new Approved Persons, opening any new client accounts or changing in any material respect the inventory positions of the Member. Any such prohibitions which have been imposed shall continue to apply until the Member is no longer designated as being in early warning, as demonstrated by the latest filed monthly financial report of the Member.

3.4.3 **Duration**. A Member shall remain designated as being in early warning and subject to the provisions in this Rule 3.4 as are applicable, until the latest filed monthly financial reports of the Member demonstrate, in the opinion of the Corporation that the Member no longer is required to be designated as being in early warning and the Member has otherwise complied with this Rule 3.4.

3.5 **FILING REQUIREMENTS**

3.5.1 **Monthly and Annual**. Each Member shall:

(a) file monthly with the Corporation within 20 business days of the month's end a copy of a financial report of the Member as at the end of each fiscal month. Such monthly financial reports shall contain or be accompanied by such information as may be prescribed by the Corporation from time to time; and

(b) file annually with the Corporation two copies of the audited financial statements of the Member as at the end of the Member's fiscal year or as at such other fixed date as may be agreed with the Corporation. Such statements shall be in such form, shall contain such information and shall be supplemented by such additional schedules as the Corporation may from time to time prescribe, and shall be filed through the Member's auditor

within 90 days of the date as of which such statements are required to be prepared;

3.5.2 **Consolidated Financial Statements**. In calculating the risk adjusted capital of a Member, the financial position of the Member may, with the prior approval of the Corporation, be consolidated (in a manner as set out below) with that of any related Member provided that:

(a) the Member has guaranteed the obligations of such related Member and the related Member has guaranteed the obligations of the Member (such guarantee to be in a form acceptable to the Corporation and unlimited in amount).

(b) inter-company accounts between the Member and the related Member shall be eliminated;

(c) any minority interests in the related Member shall be eliminated from the capital calculation; and

(d) calculations with respect to the Member and the related Member shall be as of the same date.

3.5.3 **Related Members**. In addition to the statements under Rule 3.5.1, each Member shall file annually with the Corporation through the Member's auditor, particulars of the name and relationship to the Member of each related Member and such financial statements and reports with respect to the affairs of any such related Member as the Corporation considers necessary or advisable.

3.5.4 **Members' Auditors**

(a) *Examination*. Every Member's auditor shall examine the accounts of the Member as at the date referred to in Rule 3.5.1 and shall make a report thereon in such form as the Corporation may from time to time prescribe. Each Member's auditor shall also make such additional examinations and reports as the Corporation may from time to time request or direct.

(b) *Standards*. The Member's auditor shall conduct his or her examination of the accounts of the Member in accordance with generally accepted auditing standards and the scope of his or her procedures shall be sufficiently extensive to permit him or her to express an opinion on the Member's financial statements in the form prescribed. Without limiting the generality of the foregoing, the scope of the examination shall, where applicable, include at least the procedures set out in Rule 3.6.

(c) *Access to Books and Records*. Every Member's auditor for the purpose of any such examination shall be entitled to free access to all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the Member being examined or its affiliates or its related Members, and no Member, affiliate or related company, as the case may be, shall withhold, destroy or conceal any information, document or thing reasonably required by the Member's auditor for the purpose of such examination.

3.5.5 **Assessments**

(a) **Excessive Attention**. If at any time the Corporation is of the opinion that the financial condition or conduct of the business of any Member has required excessive attention from the Corporation and that it would be in the interests of the Corporation that the Corporation be reimbursed by such Member, the Corporation shall have the power to impose an assessment against such Member.

(b) **Late Filing**. Each Member shall be liable for and pay to the Corporation levies or assessments in the amounts prescribed from time to time by the Corporation for the failure of the Member, its auditors or any person acting on its behalf, to file any report, form, financial statement or other information required under this Rule 3 within the times prescribed by this Rule 3, the Corporation or the terms of such report, form, financial statement or other information, as the case may be.

3.6 **AUDIT REQUIREMENTS**

3.6.1 **Standards**. The audit under Rule 3.5 shall be conducted in accordance with generally accepted auditing standards and shall include a review of the accounting system, the internal accounting control and procedures for safeguarding assets. It shall include all audit procedures necessary under the circumstances to support the opinions which must be expressed in the Member's auditor's reports of Parts I and II of Form 1. Because of the nature of the industry, the substantive audit procedures relating to the financial position must be carried out as of the audit date and not as of an earlier date, notwithstanding that the audit is otherwise conducted in accordance with generally accepted auditing standards.

3.6.2 **Scope**

(a) *Tests*. The scope of the audit shall include the following procedures, but nothing herein shall be construed as limiting the audit or permitting the omission of any additional audit procedure which any Member's auditor would deem necessary under the circumstances. For purposes of this Rule tests fall into two basic categories (as described in CICA Handbook sections 5300.11 to 5300.21):

(i) specific item tests, whereby the auditor examines individual items which he or she considers should be examined because of their size, nature or method of recording (CICA Handbook Section 5300.13); and

(ii) representative item tests, whereby the auditor's objective is to examine an unbiased selection of items (Section 5300.13).

The determination of an appropriate sample on a representative basis may be made using either statistical or non-statistical methods (CICA Handbook Section 5300.14).

In determining the extent of the tests appropriate in sub-sections (i), (ii) and (iii) of (b) below, the Member's auditor should consider the adequacy of the system of internal control and the level of materiality appropriate in the circumstances so that in the auditor's professional judgement the risk of not detecting a material misstatement, whether individually or in aggregate is reduced to an appropriately low level (e.g. in relation to the estimated risk adjusted capital and early warning reserves).

(b) *Audit Procedures*. The Member's auditor shall as of the audit date:

(i) compare ledger accounts with the trial balances obtained from the general and subsidiary ledgers and prove the subsidiary ledger totals with their respective control accounts (see Rule 3.6.4 below relating to Electronic Data Processing);

(ii) account for, by physical examination and comparison with the books and records, all securities in the physical possession of the Member;

(iii) review the reconciliation of all mutual funds where a Member operates a nominee name account and review the balancing of all security positions. Where a position or account is not in balance according to the records, ascertain that an adequate provision has been made in accordance with the Notes and Instructions for out of balance positions embodied in Statement B of Form 1 for any potential loss;

(iv) review bank reconciliations. After allowing at least ten business days to elapse, obtain bank statements, cancelled cheques and all other debit and credit memos directly from the banks and by appropriate audit procedures substantiate on a test basis the reconciliations with the ledger control accounts as of the audit date;

(v) where a Member operates a nominee name account, ensure that all custodial agreements are in place for securities lodged with acceptable locations;

(vi) obtain written confirmation with respect to the following:

(A) bank balances and other deposits;

(B) cash, security positions and deposits with clearing houses and like organizations and cash and security positions with mutual fund companies;

(C) cash and securities loaned or borrowed (including subordinated loans) together with details of collateral received or pledged, if any;

(D) accounts with brokers or dealers;

(E) accounts of directors, partners or officers of the Member held by the Member where the Member operates a nominee name account;

(F) accounts of clients where a Member operates a nominee name account;

(G) statements from the Member's lawyers as to the status of lawsuits and other legal matters pending which, if possible, should include an estimate of the extent of the liabilities so disclosed; and

(H) all other accounts which in the opinion of the Member's Auditor should be confirmed.

Compliance with the confirmation requirements shall be deemed to have been made if positive requests for confirmation have been mailed by the Member's auditor in an envelope bearing the auditor's return address and second requests are similarly mailed to those not replying to the initial request. Appropriate alternative verification procedures must be used where replies to second requests have not been received. For accounts mentioned in (E) and (F) above, the Member's auditor shall (1) select specific accounts for positive confirmation based on their size (all accounts with equity exceeding a certain monetary amount, with such amount being related to the

level of materiality) and other characteristics such as accounts in dispute and nominee name accounts, and (2) select a representative sample from all other accounts of sufficient extent to provide reasonable assurance that a material error, if it exists, will be detected. For accounts in (E) and (F) above that are not confirmed positively, the Member's auditor shall mail statements with a request that any differences be reported directly to the auditor. Clients' accounts without any balance whatsoever and those closed since the last audit date shall also be confirmed on a test basis using either positive or negative confirmation procedures, the extent to be governed by the adequacy of the system of internal control;

(vii) subject the Statements in Part I and Schedules in Part II of Form 1 to audit tests and/or other auditing procedures to determine that the margin and capital requirements, which are used in the determination of the excess (deficiency) of risk adjusted capital are calculated in accordance with the Rules and Form 1 in all material respects in relation to the financial statements taken as a whole;

(viii) obtain a letter of representation from the senior officers of the Member with respect to the fairness of the financial statements including among other things the existence of contingent assets, liabilities and commitments.

(ix) complete and report on the results of applying the prescribed procedures contained in the Report on Compliance for Segregation of Securities in Form 1.

3.6.3 **Insurance and Subsequent Events**. In addition, the Member's auditor shall:

(a) complete and report on the results of applying the prescribed procedures contained in the Report on Compliance for Insurance in Form 1; and

(b) report on any subsequent events, to date of filing, which have had a material adverse effect on the excess (deficiency) of risk adjusted capital.

3.6.4 **Systems Review**. The Member's auditors' review of the accounting system, the internal accounting control and procedures for safeguarding securities prescribed in the above Audit Requirements should encompass any in-house or service bureau EDP operations. (This may include reliance on CICA Handbook Section 5900 report "Opinions on Control Procedures at a Service Organization"). As a result of such review and evaluation the Member's auditor may be able to reduce the extent of detailed checking of clients and other account statements to trial balances and security position records.

3.6.5 **Retention**. Copies of Form 1 and all audit working papers shall be retained by the Member's auditor for seven years. The two most recent years shall be kept in a readily accessible location. All working papers shall be made available for review by the Corporation and the MFDA Investor Protection Plan and the Member shall direct its auditor to provide such access on request.

3.6.6 **Report to Corporation**. If the Member's auditor observes during the regular conduct of his or her audit any material breach of the By-laws or Rules pertaining to the calculation of the Member's financial position, handling and custody of securities and maintenance of adequate records he or she shall make a report to the Corporation.

3.6.7 **Reliance**. The reports and audit opinions required in respect of a Member under this Rule 3.6 shall be addressed to the Corporation and the MFDA Investor Protection Plan in conjunction with the Member who shall be entitled to rely on them for all purposes.

3.6.8 **Qualification**. The reports and audit opinions referred to in this Rule 3.6 shall be signed by an engagement partner on behalf of the Member's auditor who shall (i) be authorized to do so in accordance with applicable legislation in the jurisdiction in which the principal office of the Member is located, (ii) be acceptable to the Corporation in accordance with By-law 11.2.1, and (iii) have acknowledged in writing to the Corporation and the Member that it is familiar with the then current By-laws, Rules, Policies and Forms as they relate to the matters required to be reported on therein.

4 RULE NO. 4 - INSURANCE

4.1 **FINANCIAL INSTITUTION BOND**. Every Member shall, by means of a Financial Institution Bond or Bonds (with Discovery Rider attached or Discovery Provisions incorporated in the Bond) and/or mail insurance, effect and keep in force insurance against losses arising as follows:

Clause (A) - Fidelity - Any loss through any dishonest or fraudulent act of any of its employees or agents, committed anywhere and whether committed alone or in collusion with others, including loss of property through any such act of any of the employees;

Clause (B) - On Premises - Any loss of cash and securities or other property through robbery, burglary, theft, hold-up or other fraudulent means, mysterious disappearance, damage or destruction while within any of the insured's offices, the offices of any banking institution or clearing house or within any recognized

place of safe-deposit, as more fully defined in the Standard Form of Financial Institution Bond (herein referred to as the "Standard Form");

Clause (C) - In Transit and Mail - Any loss of cash and securities or other property through robbery, burglary, theft, hold-up, misplacement, mysterious disappearance, damage or destruction, while in transit or in the mail;

Clause (D) - Forgery or Alterations - Any loss through forgery or alteration of any cheques, drafts, promissory notes or other written orders or directions to pay sums in cash, excluding securities, as more fully defined in the Standard Form;

Clause (E) - Securities - Any loss through having purchased or acquired, sold or delivered, or acted upon securities or other written instruments which prove to have been forged, counterfeited, raised or altered, or lost or stolen, or through having guaranteed in writing or witnessed any signatures upon any transfers, assignments or other documents or written instruments, as more fully defined in the Standard Form.

4.2 **NOTICE OF TERMINATION** . Each Financial Institution Bond maintained by a Member shall contain a rider requiring the underwriter to notify the Corporation at least 30 days prior to the termination or cancellation of the Bond, except in the event of termination of the Bond due to:

(a) the expiration of the Bond period specified;

(b) cancellation of the Bond as a result of the receipt of written notice from the insured of its desire to cancel the Bond;

(c) upon the taking over of the insured by a receiver or other liquidator, or by provincial, federal or state officials; or

(d) upon taking over of the insured by another institution or entity.

In the event of termination of the Bond, the underwriter shall, upon becoming aware of such termination, give immediate written notice of the termination to the Corporation. Such notice shall not impair or delay the effectiveness of the termination.

4.3 **TERMINATION OR CANCELLATION**. In the event of the take-over of a Member by another institution or entity as described in Rule 4.2(d) the Member shall ensure that there is bond coverage which provides a period of twelve months from the date of such take-over within which to discover the losses, if any, sustained by the Member prior to the effective date of such take-over and the Member shall pay, or cause to be paid, any applicable additional premium.

4.4 **AMOUNTS REQUIRED**

4.4.1 **Minimum**. The minimum amount of insurance to be maintained for each Clause under Rule 4.1 shall be the greater of:

(a) in the case of a Member designated as a Level 1, 2 or 3 Dealer, $50,000 for each Approved Person up to a maximum of $200,000; and for a Level 4 Dealer, $500,000; and

(b) 1% of the base amount (as defined herein);

provided that for each Clause such minimum amount need not exceed $25,000,000.

4.4.2 **Base Amount**. For the purposes of this Rule 4.4, the term "base amount" shall mean the greater of:

(a) the net value of cash and securities held by the Member on behalf of clients; and

(b) the total allowable assets of the Member determined in accordance with Statement A of Form 1.

4.5 **PROVISOS**. Rules 4.1, 4.2 and 4.4 shall be subject to the following:

(a) the amount of insurance required to be maintained by a Member shall as a minimum be by way of a Financial Institution Bond with a double aggregate limit or a provision for full reinstatement;

(b) should there be insufficient coverage, a Member shall be deemed to be complying with this Rule 4 provided that any such deficiency does not exceed 10 percent of the insurance requirement and that evidence is furnished within two months of the dates of completion of the monthly operations questionnaires and the annual audit that the deficiency has been corrected. If the deficiency is 10% or more of the insurance requirement, action must be taken by the Member to correct the deficiency within 10 days of its determination and the Member shall immediately notify the Corporation;

(c) a Financial Institution Bond maintained pursuant to Rule 4.1 may contain a clause or rider stating that all claims made under the bond are subject to a deductible.

4.6 **QUALIFIED CARRIERS**. Insurance required to be effected and kept in force by a Member pursuant to this Rule 4 may be underwritten directly by either (i) an insurer registered or licensed under the laws of Canada or any province of Canada or (ii) any foreign insurer approved by the Corporation. No foreign insurer shall be approved by the Corporation unless the insurer has the minimum net worth required of $75 million on the last audited balance sheet, provided acceptable financial information with respect to such corporation is available for inspection and the Corporation is satisfied

that the insurer is subject to supervision by regulatory authorities in the jurisdiction of incorporation of the insurer which is substantially similar to the supervision of insurance companies in Canada.

4.7 **GLOBAL FINANCIAL INSTITUTION BONDS**. Where the insurance maintained by a Member in respect of any of the requirements under this Rule 4 names as the insured or benefits the Member, together with any other person or group of persons, whether within Canada or elsewhere, the following must apply:

(a) the Member shall have the right to claim directly against the insurer in respect of losses, and any payment or satisfaction of such losses shall be made directly to the Member; and

(b) the individual or aggregate limits under the policy may only be affected by claims made by or on behalf of

(i) the Member, or

(ii) any of the Member's subsidiaries whose financial results are consolidated with those of the Member,

without regard to the claims, experience or any other factor referable to any other person.

5 RULE NO. 5 - BOOKS, RECORDS & REPORTING

5.1 **REQUIREMENT FOR RECORDS**. Every Member shall keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others and shall keep such other books, records and documents as may be otherwise required by the Corporation. Such books and records shall contain as a minimum the following:

(a) blotters, or other records, containing an itemized daily record of:

(i) all purchases and sales of securities;

(ii) all receipts and deliveries of securities, including certificate numbers;

(iii) all receipts and disbursements of cash;

(iv) all other debits and credits, the account for which each transaction was effected;

(v) the name of the securities;

(vi) the class or designation of the securities;

(vii) the number or value of the securities;

(viii) the unit and aggregate purchase or sale price; and

(ix) the trade date and the name or other designation of the person from whom the securities were purchased or received or to whom they were sold or delivered;

(b) an adequate record of each order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such record shall show:

(i) the terms and conditions of the order or instructions and of any modification or cancellation thereof;

(ii) the account for which entered or received; and

(iii) the time of entry or receipt, the price at which executed and, to the extent feasible, the time of execution or cancellation;

(c) where the order or instruction is placed by an individual other than the person in whose name the account is operated, or an individual duly authorized to place orders or instructions on behalf of a client that is a company, the name, sales number or designation or the individual placing the order or instruction shall be recorded;

(d) copies of confirmations of all purchases and sales of securities and copies of all other debits and credits for securities, cash and other items for the account of clients;

(e) a record of the proof of cash balances of all ledger accounts in the form of trial balances and a record of calculation of minimum capital, adjusted liabilities and risk adjusted capital required;

(f) all cheque books, bank statements, cancelled cheques and cash reconciliations;

(g) all bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the Member;

(h) all limited trading authorizations in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation;

(i) all written agreements (or copies thereof) entered into by such Member relating to their business as such, including leveraging documentation, disclosure materials and agreements relating to any account; and

(j) all documentation relating to an advance of funds or extension of credit to or on behalf of a client, directly or indirectly, in connection with the receipt of funds on the redemption of mutual fund securities, including the prior written confirmation referred to in Rule 3.2.3.

5.2 **STORAGE MEDIUM**. All records and documents required to be maintained by a Member in writing or otherwise may be kept by means of mechanical, electrical, electronic or other devices provided:

(a) such method of record keeping is not prohibited under any applicable legislation;

(b) there are appropriate internal controls in place, to guard against the risk of falsification of the information recorded;

(c) such method provides a means to furnish promptly to the Corporation upon request legible, true and complete copies of those records of the Member which are required to be preserved; and

(d) the Member has suitable back-up and disaster recovery programs.

5.3 **CLIENT REPORTING**

5.3.1 **Delivery of Account Statement**. Each Member shall send an account statement to each client in accordance with the following minimum standards:

(a) once every 12 months for a client name account;

(b) once a month for nominee name accounts of clients where there is an entry during the month and a cash balance or security position; and

(c) quarterly for nominee name accounts where no entry has occurred in the account and there is a cash balance or security position at the end of the quarter.

A Member may not rely on any other person (including an Approved Person) to send account statements as required by this Rule.

5.3.2 **Automatic Payment Plans.** Notwithstanding the provisions of Rule 5.3.1(a), where a Member holds client assets in nominee name and the only entry in the client's account in a month relates to the client's participation in:

(a) any automatic payment plan that provides for systematic trading in the securities of a mutual fund on a monthly or more frequent basis, or

(b) other automatic entries such as dividends and reinvested distributions,

the Member shall send an account statement to the client quarterly.

5.3.3 **Content of Account Statement**. Each account statement must contain the following information:

(a) for nominee name accounts or accounts where the Member acts as an agent for the trustee for the purposes of administering a self-directed registered retirement savings or similar plan:

(i) the opening balance;
(ii) all debits and credits;
(iii) the closing balance;
(iv) the quantity and description of each security purchased, sold or transferred and the dates of each transaction, and;
(v) the quantity, description and market value of each security position held for the account;

(b) for client name accounts:

(i) all debits and credits;
(ii) the quantity and description of each security purchased, sold or transferred and the dates of each transaction; and
(iii) for automatic payment plan transactions, the date the plan was initiated, a description of the security and the initial payment amount made under the plan.

(c) for all accounts:

(i) the type of account;
(ii) the account number;
(iii) the date the statement was issued;
(iv) the period covered by the statement;
(v) the name of the Approved Person(s) servicing the account, if applicable; and
(vi) the name, address and telephone number of the Member.

6.3.4 **Member Business Only**. Only transactions executed by the Member may appear on the statement of account required pursuant to Rule 5.3.3, provided that a Member may comply with its obligations under Rules 5.3.1, 5.3.2 and 5.3.3 by sending to its client a consolidated statement in accordance with Rule 5.3.5 at the times required.

6.3.5 **Consolidated Statements**. No Member shall provide to a client any account statement or other document (in any form) which includes the information referred to in Rule 5.3.3 as well as other information relating to financial services products held by the client or with the Member or any other person unless the statement or document:

(a) discloses clearly which transactions were effected by the Member;

(b) contains a statement to the effect that the Member or Approved Person is not responsible for the accuracy of information relating to such other financial services products;

(c) contains a statement to the effect that only the security positions referred to in Rule 5.3.3(a) described in the statement may be eligible for coverage by the [Mutual Fund Dealers Investor Protection Plan]; and

(d) is in compliance with any other applicable legislation.

5.4 **TRADE CONFIRMATIONS**

5.4.1 **Delivery of Confirmations**. Every Member who has acted as principal or agent in connection with any trade in a security shall promptly send by prepaid mail or deliver to the client a written confirmation of the transaction containing the information required under Rule 5.4.3. The Member need not send to its client a written confirmation of a trade in a security of a mutual fund where the manager of the mutual fund sends the client a written confirmation containing the information required to be sent under Rule 5.4.3.

5.4.2 **Automatic Payment Plans.** Where a transaction relates to a client's participation in an automatic payment plan that provides for systematic trading in the securities of a mutual fund on a monthly or more frequent basis, and the Member registers the mutual funds pursuant to the plan, the Member is required to send a trade confirmation for the initial purchase only.

5.4.3 **Content**. Every confirmation of trade sent to a client must set forth the following information:

(a) the quantity and description of the security;

(b) the price per share or unit at which the trade was effected;

(c) the consideration;

(d) the name of the Member;

(e) whether or not the Member is acting as principal or agent;

(f) if acting as agent, the name of the person or company from or to or through whom the security was bought or sold;

(g) the type of the account through which the trade was effected;

(h) the commission, if any, charged in respect of the trade;

(i) the amount deducted by way of sales, service and other charges;

(j) the amount, if any, of deferred sales charges;

(k) the name of the Approved Person, if any, in the transaction;

(l) the date of the trade; and

(m) the settlement date.

5.5 **ACCESS TO BOOKS AND RECORDS**. All books, records, documentation and other information required to be kept and maintained by a Member or Approved Person shall be available for review by the Corporation and the Corporation shall be entitled to make copies thereof and retain them for the purposes of carrying out its objects and responsibilities under the applicable securities legislation, the By-laws or the Rules.

5.6 **RECORD RETENTION**. Each Member shall retain copies of the records and documentation referred to in this Rule 5 for seven years or such other time as may be prescribed by the Corporation.

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MFDA Notice

Transition Periods

Draft: February 5, 2001

MFDA NOTICE NO. *

TRANSITION PERIODS

Section 39 of MFDA By-law No. 1 provides that the Board of Directors may suspend or modify the application of any By-law, Rule or provision thereof for such period of time as it may determine in its sole discretion in order to facilitate the orderly application of, and compliance with, such By-law or Rule to or by all or any number or class of Members, Approved Persons or other persons subject to the jurisdiction of the MFDA. In the MFDA's application for recognition as a self-regulatory organization, published for public comment by the Alberta, British Columbia and Ontario Securities Commissions on June 16, 2000, transition periods were proposed in the Description of the Structure and Self-Regulatory activities of the MFDA to provide Members with time to comply with certain proposed Rules.

In response to the public comments, the MFDA has extended some of the originally proposed transition periods and will also defer the application of certain other Rules and By-law provisions. These revised transition periods, which will commence as of the date of recognition of the MFDA, are as follows:

(1) Individual Qualifications

- Two-year transition period for experience requirement for branch managers where not already required under securities legislation. *(Rule 1.2.2(b))*

- One-year transition period for course requirements for all branch managers, including alternates where not already required under securities legislation. *(Rule 1.2.2(a))*

- One-year transition period for course requirements for trading partners, officers and directors of Introducing Dealers. *(Rule 1.2.3(b))*

Notwithstanding the MFDA transition periods outlined above, the proficiency requirements imposed by provincial securities legislation with respect to the above categories of registered individuals remain in effect. Therefore, to the extent that provincial securities legislation imposes higher proficiency standards, Members who wish to rely on the above MFDA transition periods must first apply to the relevant provincial securities commission for an exemption from the applicable securities legislation.

(2) Minimum Capital

- One-year transition period for Level 1 dealers to meet capital requirement of $25,000. *(Rule 3.1.1)*

- Three-year transition period for Levels 2, 3 and 4 dealers to meet capital requirements of $50,000, $75,000 and $200,000, respectively. *(Rule 3.1.1)*

Please refer to Appendix "A" for more detailed information with respect to these transition periods, including the interim minimum capital levels required for each year.

(3) Financial Reporting Requirements of Members

Two-year transition period to allow Members to comply with the MFDA monthly financial reporting requirement. During this transition period, the MFDA will require Members to file with the MFDA financial reports on a quarterly basis, but retains the right to require more frequent financial reporting at any time during this period if a Member's circumstances deem it necessary. *(Rule 3.5.1(a))*

(4) Delivery of Account Statements

Two-year transition period to provide Members who operate in client name to comply with the account statement requirement provided the Member satisfies itself with respect to each mutual fund security held by its clients that the mutual fund companies are sending out account statements. *(Rule 5.3.1)*

Members who wish to rely on this transition period may need to apply for an exemption from the delivery requirements for account statements that are imposed by provincial securities legislation in certain jurisdictions.

Members should also note that the MFDA has suspended the operation of Rule 5.3.5, which permits the delivery of consolidated statements, until such time as it has been published for comment and approved by the relevant securities commissions.

(5) Remuneration, Commissions and Fees

Three-year transition period for implementation of Rule *2.4.1*, which requires commissions to be paid by a dealer directly to a salesperson. This transition period will only be available on condition that: (¡) Members and Approved Persons comply with the remaining MFDA Rules, with specific reference to Rule 1 entitled "Business Structures and Qualifications" and Rule 1.2.1(d) entitled "Dual Occupations"; and (ii) the recipient of commissions on behalf of an Approved Persons that is not registered as a dealer or salesperson agrees to provide to the MFDA, the relevant securities commission and the applicable Member access to its books and records for the purpose of determining compliance with the rules of the MFDA and applicable securities legislation.

(6) Submission of Financial Information

One-year transition period to permit applicants for Membership to submit most recently audited financial statements as opposed to audited financial information not more than 90 days old as required by section *11.2.1* of the MFDA By-law. The most recent audited financial information must be supplemented with unaudited financial information. *(Please refer to the MFDA Membership Application Package for further details regarding the financial information that must be submitted when applying for MFDA membership.)*

(7) Early Warning Requirements

Two-year transition period for the implementation of automatic early warning sanctions This will allow Members to become familiar with the new capital and early warning requirements prior to becoming subject to the sanctions set out in the MFDA Rules. Notwithstanding this transition period, the MFDA reserves the right to request financial information from a Member and implement the sanctions set out under the Rules. *(Rule 3.4)*

(8) Transfer of Accounts

Two-year transition period with respect to the provisions of Rule 2.12 to permit "bulk transfers" of accounts by way of negative confirmation for those sales representatives that establish their own dealership, provided the Member and the agent have agreed to such a transfer and the securities are in "client name". "Bulk transfers" are transfers of client accounts that are effected without the prior written approval of clients. Clients must be advised of the transfer in advance however, and informed that if they do not wish to have their account transferred they must contact the agent and/or dealer to confirm this.

Appendix A

MINIMUM CAPITAL LEVELS

Rule 3.1.1 requires Members to maintain minimum capital levels in the following amounts:

Level 1 - $25,000
Level 2 - $50,000
Level 3 - $75,000
Level 4 - $200,000

There is a one-year transition period for Level 1 Dealers (or Introducing Dealers) and a three-year transition period for all other MFDA Members to achieve the above minimums.***** Members and applicants will be expected to maintain the following minimum capital levels as at the following dates:

	Recognition Date	1st Year After Recognition	2nd Year After Recognition	3rd Year After Recognition
Level 1	$15,000	$25,000	$25,000	$25,000
Level 2	$25,000	$35,000	$45,000	$50,000
Level 3	$25,000	$40,000	$55,000	$75,000
Level 4	$25,000	$85,000	$145,000	$200,000

***** Existing and potential mutual fund dealers operating in the province of British Columbia should be aware that, notwithstanding the MFDA's transition periods outlined above, the British Columbia Securities Commission will not provide an exemption from their minimum capital requirements. The *British Columbia Securities Act* requires a minimum capital level of $25,000 for mutual fund dealers that do not hold client funds in trust and $75,000 for mutual fund dealers that hold client funds in trust. Therefore in British Columbia, notwithstanding the MFDA transition period, there will be no transition period for Level 1 dealers or Level 3 dealers. Level 4 dealers operating a trust account will be required to maintain minimum capital of $75,000 at recognition.

MFDA

Overview of Public Comments

OVERVIEW OF PUBLIC COMMENTS ON MFDA APPLICATION FOR RECOGNITION AND MFDA RESPONSE

December 15, 2000

Note: This Overview was prepared as at December 15, 2000.

Accordingly, some of the MFDA responses to the public comments set out in this Overview have been superseded by subsequent discussions with staff of the Recognizing Jurisdictions. In particular, please note the requirements of the Ontario Securities Commission contained in paragraphs 14 and 15 of the Terms and Conditions of its Recognition Order have superseded the information set out in the following paragraphs of the Overview:

1) **paragraph 6 - "Ownership of Members";**
2) **paragraph 9 - "Commission Flow/Personal Corporations";**
3) **paragraph 15 - "Financial Planning"; and**
4) **paragraph 45.5 - "Consolidated Account Statements".**

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OVERVIEW OF PUBLIC COMMENTS ON MFDA APPLICATION FOR RECOGNITION AND MFDA RESPONSE

THE PUBLIC COMMENT PROCESS

The MFDA's application for recognition as a self-regulatory organization, including the draft Rules and draft By-law, was published for public comment by the Alberta, British Columbia and Ontario Securities Commissions (the "Recognizing Jurisdictions") on June 16, 2000 for a 90-day comment period, which expired on September 14, 2000.

The Recognizing Jurisdictions provided a total of 427 individual comment letters to the MFDA. Comments were received from mutual fund dealers, industry groups and associations, individual salespersons and other members of the public.

During September and October 2000, MFDA staff read and summarized all the comment letters received in order to ensure that the concerns and opinions of all affected parties were fairly considered.

MFDA staff then worked with the MFDA Board Rules Committee to develop recommendations with respect to the comments received. The recommendations and responses to the comments adopted by the MFDA staff and the Board Rules Committee were then presented to and approved by the full MFDA Board on December 8, 2000.

The following is a general overview of the public comments with respect to material topics in the MFDA's draft By-law, Rules, Policies and Forms as well as the MFDA's corresponding response. Please note that many comments which were of a technical nature may not appear in this summary. However, they have been considered and addressed by the MFDA and, where appropriate, changes have been made to the By-law, Rules, Policies and Forms.

Anyone wishing to review the comment letters submitted should contact the relevant securities commission in their jurisdiction.

ANNUAL MEMBERSHIP FEES

1. Method of Assessment

Overview of Comments:
Many commentators were opposed to AUA as the basis for assessing membership fees. Alternative methods for fee assessment were suggested such as revenues, number of salespersons, number of accounts or a blended approach. Some commentators also felt that the minimum membership fee should be less than $3,000.

MFDA Response:
Fees, including the method of assessment, will be reviewed by the MFDA Board on a periodic basis. Initially, the Board has approved the AUA model.

On two previous occasions, the MFDA requested industry input on the method of assessing fees. This subject has been extensively reviewed and discussed by the Board. No issues were raised during the public comment process that had not already been considered by the Board.

The minimum fee was approved by the Board based on information provided by industry participants in the MFDA's Fee Model Workshops.

2. Definition of Assets Under Administration ("AUA")

Overview of Comments:
Numerous comments were received on the proposed definition of AUA. In particular, many commentators felt that the definition of AUA should be restricted to mutual funds, and that other products which are subject to another regulatory regime, such as segregated funds, should be excluded.

A number of investment counsel/portfolio managers ("ICPM's") were of the view that the definition should not include assets that were regulated under their ICPM license.

Several commentators felt that money market funds should be excluded from the definition as they do not attract the same level of revenue as other securities.

There were also general questions as to what other securities were included in the definition.

MFDA Response:
To simplify the definition and recognizing that segregated funds are subject to another regulatory regime, the definition of AUA will be changed to include mutual funds only (including money market funds).

The MFDA understands that the Recognizing Jurisdictions may provide an exemption from their respective rules requiring membership in an SRO to certain ICPM firms that are also licensed as mutual fund dealers. The exemption will not be available to ICPM firms that distribute mutual funds pursuant to a prospectus directly to the public however. For ICPM firms that are not eligible for the exemption and are required to become MFDA Members, the definition of AUA will include all client mutual fund assets under administration.

DRAFT BY-LAW

3. Composition of the MFDA Board

Overview of Comments:
There were numerous comments on the composition of the MFDA Board. A majority of commentators felt that the role of IFIC and the IDA should be limited and/or eventually eliminated. These commentators also requested more representation from mutual fund dealers on the Board. Other commentators also felt that individual salespersons should be represented.

MFDA Response:
The current composition of the MFDA Board was determined by the Recognizing Jurisdictions. Both the IDA and IFIC agreed to the current Board composition at the direct request of the Recognizing Jurisdictions. The Recognizing Jurisdictions must approve any changes to the MFDA Board composition. The MFDA understands that the Recognizing Jurisdictions, as part of their conditions for recognizing the MFDA as an SRO, will require a review of the Board composition after the MFDA is fully operational (i.e. three years after all Members are accepted).

4. Definition of "Dealer Business"

Overview of Comments:
Many commentators requested that the definition of “dealer business” be revised. In particular, the inclusion of financial planning and deposit instruments in the definition was viewed as problematic. There was both opposition to and support for the inclusion of “exempt securities” in the definition. Many commentators expressed confusion as to whether the MFDA Rules applied to all dealer business or only securities related activities.

MFDA Response:
The term "dealer business" will be replaced with "securities related activities" for greater clarity. All securities related activities (including exempt securities) must be conducted through the dealer.

Non-securities related activities which are <u>not</u> part of the business of the dealer, may be performed outside of the dealer by a salesperson provided the "dual occupation" provisions in the Rules are complied with. "Financial planning" is now referred to directly under the "dual occupation" section of the Rules.

Deposit instruments would be included in the definition of "securities related activities" to the extent that they constitute "securities" in some jurisdictions. However, at the request of the Recognizing Jurisdictions, deposit instruments are excluded from the requirements in draft Rule 1.1 relating to business structures.

5. Directors' and Members' Meetings

Overview of Comments:
Directors' and Members' meetings should only be held in Canada.

MFDA Response:
Agree that meetings should only be held in Canada. The draft By-law has been amended accordingly.

6. Ownership of Members

Overview of Comments:
The prohibition against any investor owning greater than 10% of a Member should be deleted. This prohibition is unnecessarily restrictive and does not provide additional investor protection.

MFDA Response:
Section 13.9 of the draft By-law does not prohibit an investor from holding 10% or more of a Member; it simply requires MFDA approval of any investor having 10% or more ownership in a Member. This section has been revised however, to require the MFDA be *notified* of any investor owning 10% or more of a Member (i.e. MFDA approval will not be required).

7. Regional Councils

Overview of Comments:
The role of the Regional Councils is unclear.

The disciplinary process should be clarified.

Public members should not be limited to "legally trained" individuals.

MFDA Response:
Regional Councils will act as the authority for discipline and enforcement matters with respect to Members located in their region and will be representative of the Members in the region. Issues that are relevant to such Members' businesses, such as local business conditions or regulatory requirements, may also be discussed at Regional Council meetings.

Experience with other SRO's has shown that legally trained individuals are necessary for disciplinary hearings. Therefore, at least one legally trained public member should sit on every hearing, although not all public members will be required to have a legal background.

The MFDA is reviewing disciplinary hearing procedures in view of current industry initiatives regarding the creation of "Hearing Committees" and formalized Rules of Procedure regarding the conduct of hearings. If such procedures are approved by the CSA, the MFDA will consider adopting similar procedures to ensure consistency with the disciplinary proceedings of other SROs.

8. Application Process

Overview of Comments:
The MFDA should amend the requirement for audited financial information to be not more than 90 days old when applying for membership.

MFDA Response:
A transition period of one year will be in effect for Section 11.2.1 of the draft By-law. Therefore, for one year after recognition, only the most recently audited financial statements will be required. However, they must be supplemented with unaudited information.

DRAFT RULE 1 – BUSINESS STRUCTURES

9. Commission Flow/Personal Corporations

Overview of Comments:
A significant number of commentators were opposed to the proposed MFDA Rule that requires payment of commissions directly to, and in the name of, the salesperson. These commentators indicated that unless the MFDA draft Rules were revised to allow salespersons' commissions to be paid directly by the dealer to unregistered service corporations, such Rules would be extremely prejudicial to current industry structures and result in significant harm to the industry. Many commentators also noted that such structures have been permitted by securities regulators to exist for many years. Various recommendations were made, including alternative structures, contractual arrangements and amendments to securities regulations, that would permit salespersons to continue to receive commissions through their personal corporations while ensuring that the regulatory concerns of the CSA and MFDA are also addressed.

MFDA Response:
The concept of an "incorporated salesperson" is not contemplated in existing securities legislation. The draft MFDA Rules published for public comment reflect the position of the CSA as outlined in a position paper issued in August 1999, that all commissions earned for the performance of registerable activities be paid directly by the dealer to the individual salesperson.

The CSA recently revised its original position in response to the public comments received. This revised CSA proposal would permit salespersons to direct dealers to pay a portion of their earned commissions directly to unregistered corporations provided that:

1. the portion of commissions paid to an unregistered corporation is related to the services (such services must not require registration) provided by the unregistered corporation to the dealer, and such portion is limited to no more than 25% of the total commissions earned by the relevant salesperson;

2. the services provided and the resulting remuneration must be reflected in an agreement

between the dealer and the salesperson's corporation; and

3. all remaining remuneration, including remuneration resulting from activities for which registration is required, must be paid directly by the dealer to the salesperson.

The MFDA acknowledges that the CSA proposal attempts to accommodate, to a limited degree, current business structures of prospective MFDA Members. However, the MFDA is of the view that the CSA proposal does not adequately address the business concerns of those dealers and salespersons who would be directly affected by the Rule. Therefore, the MFDA Rules have not been amended to reflect the revised CSA proposal.

Instead, draft Rule 2.4.1 requiring all remuneration to be paid by the dealer directly to the salesperson will remain unchanged but will be subject to a three year transition period from the date of recognition. During the transition period, dealers may pay commissions to unregistered corporations provided the unregistered corporation agrees to provide the dealer, the MFDA and the regulators access to its books and records.

The transition period will afford the CSA sufficient time to work with the industry and consider this matter further and will also provide MFDA Members sufficient time to restructure their operations in the event the CSA determines that existing industry structures must be altered.

Furthermore, the MFDA is supportive of the industry's intent to advocate legislative or regulatory change that would accommodate current industry structures.

It is important to note however, that although MFDA Members will have three years to comply with the MFDA's Rule requiring the payment of commissions directly to salespersons, Members will still be required to comply with all of the other MFDA Rules in effect. That is to say, the payment of commissions by a Member to an unregistered corporation does not diminish the Member's obligations under the MFDA's Rules. For instance, Members will still be required to have a written agency agreement with those Approved Persons acting as agents, reflecting the provisions outlined in the Rules. Further, Members will be responsible for supervising all of their Approved Persons in accordance with the requirements in the MFDA Rules and Policies (including registered sales assistants) regardless of the remuneration arrangement in place.

10. Administrative Assistants

Overview of Comments:
Many commentators felt that salespersons should be permitted to compensate their registered sales assistants either directly or through their personal service corporations. Several commentators suggested that a special category of registration should be provided which would allow for proper supervision and compensation through salary and overrides.

MFDA Response:
The MFDA and the CSA are not contemplating the creation of a separate category of registration for registered sales assistants. In any event, developing a separate category of registration would not permit a salesperson to pay a registered sales assistant for a registerable activity. Under draft Rule 2.4.1 commissions must be paid directly to salespersons by the dealer. As noted above however, the MFDA is recommending a three-year transition period before draft Rule 2.4.1 becomes effective. Notwithstanding any remuneration arrangements, the Member is responsible for supervising all persons whose license it sponsors, including registered sales assistants.

11. Introducing/Carrying Arrangement (Alternative Structures)

Overview of Comments:
Several commentators indicated that the introducing/carrying dealer model set out in the draft Rules is not sufficient to meet the needs of the majority of dealers in the mutual fund industry who use the services of intermediaries. The development of an alternative carrier dealer category was suggested in order to accommodate intermediaries who wish to provide services to Level 2, 3 and 4 dealers.

Commentators suggested that draft Rule 2.1.2 be amended to include a provision that requires all Approved Persons to place all trades and conduct all activities in furtherance of a trade through the facilities of the Member only. It was submitted that Approved Persons should not be allowed to place trades directly with mutual fund companies and intermediaries.

MFDA Response:
The MFDA has developed an alternative carrying dealer model for intermediaries providing services to Level 2, 3 and 4 dealers that is reflected in the revised draft Rules. This will permit trade execution and settlement, record keeping, issuing client statements, and custody of cash and securities, as long as the intermediary is registered as a mutual fund dealer with the relevant securities commission and is a Member of the MFDA.

The MFDA has amended draft Rule 1.1.1 (a) to include reference to "through the facilities of the Member" in order to ensure that all trades are placed through the Member only.

12. Trade Names

Overview of Comments:
The MFDA received numerous comments that salespersons should be allowed to use their own trade names. It was submitted that requiring dealers to own the trade names of salespersons would cause a significant loss of identity and goodwill to existing businesses. Various recommendations were made that would permit salespersons to continue to use their own trade names with conditions imposed to ensure that regulatory concerns are addressed.

MFDA Response:
Consistent with the recently announced position of the CSA regarding the use of trade names, the MFDA has amended its draft Rules to permit salespersons to use their own trade names provided certain conditions are met such as prior approval by the dealer, notification to the regulators and using the name in conjunction with the dealer's name. However, only the dealer's name may be used on account statements, contracts and trade confirmations.

13. Proficiency Requirements

Overview of Comments:
Several commentators suggested that there should be a transition period for the experience and course requirements for branch managers. These commentators indicated that many dealers will not likely have individuals currently available with the requisite proficiency or experience requirements when the MFDA is recognized.

Commentators also felt that there should be a transition period for the course requirements for trading partners, officers, directors and compliance officers.

It was also suggested that the course requirements outlined in draft Rule 1.2.1(a) should include predecessor courses such as the Principles of Mutual Fund Investment Course previously provided by the Trust Institute.

MFDA Response:
The MFDA agrees that transition periods should be provided to allow sufficient time for Members to meet the proficiency requirements prescribed under the Rules. The transition periods will be as follows:

- Two-year transition period for experience requirement for branch managers. There will be no experience requirement for alternate branch managers.
- One-year transition period for course requirements for branch managers, including alternates, where branch managers are not already required.
- One-year transition period for course requirements for trading partners, officers and directors of introducing dealers (Level 1).

The MFDA has also revised draft Rule 1.2.1(a) to include predecessor courses.

14. Dual Occupations

Overview of Comments:
Many commentators expressed confusion over what is required to supervise the non- securities related business activities that Approved Persons may carry on outside the dealer, such as insurance. Several commentators expressed the view that the dealer's responsibility for supervision should be limited to "dealer business".

MFDA Response:
Draft Rule 1.2.1(d) on "Dual Occupations" has been clarified to require the dealer to be aware of and approve of Approved Persons engaging in outside business activities, in addition to establishing and maintaining procedures to ensure continuous service to clients and to address potential conflicts of interest. In addition, Rule 1.2.1(d) provides that clear disclosure be given to clients that any such outside activities carried on by the Approved Person are not being offered by the Member.

15. Financial Planning

Overview of Comments:
A large number of comments were received on the topic of financial planning. Many commentators opposed requiring financial planning activities to be conducted only through the dealer. Commentators also requested clarification on the supervisory responsibilities of dealers with respect to financial planning activities. Many commentators were of the view that the role of the MFDA should be limited to regulating financial planning activities that relate directly to securities transactions and to ensuring compliance with the CSA's proposed proficiency requirements.

MFDA Response:
The MFDA is of the view that non-securities related financial planning activities should be treated in the same fashion as any other outside business activity that a salesperson is legally able to engage in outside the dealer. In other words, financial planning activities that do not constitute trading in securities that are not the business of the dealer and are carried on by a salesperson outside the dealer will be subject to the MFDA requirements for "Dual Occupations" (draft Rule 1.2.1(d)) with two additional requirements: (1) the dealer and the MFDA must have access to financial plans that are prepared on behalf of clients of the dealer by its Approved Persons; and (2) the dealer must ensure that the Approved Person has satisfied any applicable proficiency requirements promulgated by securities regulatory authorities having jurisdiction.

Note: The MFDA understands that the Recognizing Jurisdictions may also require that any such non-securities related financial planning activities may be carried on by a salesperson outside the dealer only (i) through an otherwise regulated entity (e.g. insurance agency) or (ii) where the salesperson is a member of a regulated profession (e.g. accounting professionals).

16. Business Titles

Overview of Comments:
Several commentators felt that draft Rule 1.2.1(f) was too vague and that clear guidelines are needed regarding the specific business titles sales representatives may use when holding themselves out to the public. It was suggested that titles and designations be developed that denote not only the educational background but also the product capability of the individual.

MFDA Response:
Specific business title guidelines will not be developed at this time. The MFDA needs more experience with its membership in order to determine if this is an issue appropriate for further consideration.

17. Changes in Registration Information

Overview of Comments:
Several commentators opposed certain notification requirements in draft Rule 1.2.5. Commentators questioned why the MFDA needs to be notified of matters dealing with the registration of salespersons since it will not be handling registration. It was also submitted that the term “any criminal laws” in draft Rule 1.2.5(e) is too broad and that an element of materiality should be included in the Rule, such as requiring notification in the event of a charge with respect to an indictable offence. Commentators also felt that the requirement for immediate notification in the event of being declared bankrupt or making a voluntary assignment in bankruptcy is problematic.

MFDA Response:
Rule 1.2.5 has been amended to require notice of (i) a change in address for service, (ii) a change in information previously filed, and (iii) bankruptcy. The MFDA proposes to enter into information sharing arrangements with the Recognizing Jurisdictions in order to eliminate duplicate filings.

The MFDA agrees with the second comment and has amended the Rule by deleting the reference to “charge”.

With respect to the requirement for immediate notification of bankruptcy, the MFDA feels that immediate notification of such an event is crucial given the potential impact on clients and other MFDA Members through claims against the MFDA Investor Protection Plan.

18. Confidential Information

Overview of Comments:
Commentators expressed concern with the requirements in draft Rule 2.1.3 that client consent to the disclosure of confidential information be "written". It was suggested that the definition of "written" should be included in the Rules and expanded to include electronic, taped or other forms of consent. It was suggested that an exception should be provided where disclosure of the information is reasonable necessary to provide a product or service.

One commentator noted that the second paragraph of Rule 2.1.3(a) as drafted, appeared to permit the Member or an Approved Person to use confidential information for improper advantage, provided the client gave written consent. The commentator suggested that the reference to "improper advantage" should be amended to read "advantage".

MFDA Response:
The MFDA agrees that the consent obtained from the client should not be restricted to "written" consent. It will be left to the dealer to decide how consent will be evidenced. Draft Rule 2.1.3(a) has been amended to delete the reference to "written" consent.

In addition, the MFDA agrees that an exception to the requirement for consent should be made where the disclosure of client information is reasonably necessary to provide a product or service.

Draft Rule 2.1.3 has been revised to delete the reference to "improper" advantage.

19. Conflict of Interest

Overview of Comments:
Some commentators indicated that the MFDA conflict of interest provisions in Rule 2.1.4 are unworkable, as there is no means to determine what types of conflicts need to be disclosed and the comprehensiveness of any required disclosure. These commentators suggested that a companion policy should be drafted with examples of what types of conflicts need to be disclosed and the nature of the disclosure required.

MFDA Response:
The MFDA is of the view that the conflict of interest provisions in draft Rule 2.1.4 are appropriate. Determining whether there is a conflict of interest should be left up to the dealer since it is a question of fact in every case.

DRAFT RULE 2 – BUSINESS CONDUCT

20. Client Accounts

20.1 General Comments:

Numerous comments were received on the topic of client accounts. Several commentators suggested that MFDA Members who qualify as discount mutual fund dealers and do not provide advice to clients should not be subject to suitability obligations.

It was submitted that the requirement for client signatures on new account application forms (“NAAF’s”) should be removed or electronic signatures should be permitted.

Several commentators suggested that clarification is required in the draft Rules regarding the need to obtain "Know-Your-Client" information as part of the NAAF. It was noted that many dealers use separate KYC forms in addition to NAAF's.

MFDA Response:
With respect to the comment that exceptions from suitability obligations should be made for discount mutual fund dealers and unsolicited trades, the MFDA does not have the jurisdiction to exempt its Members from such a requirement. Suitability obligations reflect the current regulatory standard imposed by securities laws and the securities commissions will decide whether to permit an exemption from such requirements for unsolicited trades and discount mutual fund dealers.

The MFDA disagrees with the suggestion that the requirement for a client signature on the NAAF be removed. The MFDA will consider the issue of electronic communications and signatures post-recognition in the context of broader industry initiatives.

The MFDA has revised the draft Rule to reflect the fact that KYC information may be located on documentation other than the NAAF.

20.2 New Account Approval

Overview of Comments:
Rule 2.2.3 should be amended to allow for electronic and online approval of new accounts.

MFDA Response:
Draft Rule 2.2.3 has been amended to require the approval of new accounts and that evidence of such approval be maintained. This should allow sufficient flexibility for electronic approvals in this area.

20.3 Updating the NAAF

Overview of Comments:
Numerous commentators opposed the requirement that the NAAF be updated annually. Several commentators indicated that the requirement in draft Rule 2.2.4 to obtain written authorization for changes in the client's name or address is too restrictive, particularly for address changes.

MFDA Response:
The MFDA has revised draft Rule 2.2.4 to delete the requirement for annual updates. However, draft Rule 2.2.4 requires Members to annually request in writing that clients notify them of any material changes to the client's circumstances or to the know-your-client information previously provided. This is in addition to the existing requirement to update know-your-client information whenever the Member becomes aware of a material change.

The requirement in draft Rule 2.2.4 to obtain written authorization for changes in the client's address has been removed from the draft Rule.

21. Powers of Attorney

Overview of Comments:
Some commentators were opposed to draft Rule 2.3.1, which prohibits dealers from accepting general powers of attorney.

MFDA Response:
The MFDA believes that the prohibition on general powers of attorney should be maintained, as the risk associated with general powers of attorney outweighs the benefits. The use of limited trading authorizations is permitted and this should provide sufficient flexibility.

22. Limited Trading Authorization

Overview of Comments:
Many commentators were opposed to the requirement that every trade that is made under a limited trading authorization be reviewed by a branch manager.

There were also numerous technical comments and recommendations regarding the limited trading authorization form. Commentators requested that the form be shortened, simplified and use plain language. It was also suggested that the informational page should be placed before the form.

MFDA Response:
Draft Rule 2.3.3 has been amended to provide that each trade made pursuant to a limited trading authorization and its corresponding account be identified as such in the books and records of the Member and on any order documentation. The MFDA policy on account supervision has also been revised to require that only a sample of trades made pursuant to a limited trading authorization be reviewed.

Draft Rule 2.3.2 requires a form of limited trading authorization as prescribed by the MFDA. The limited authorization form attached to the draft Rules is identical to IFIC's authorization form released on August 28, 2000. The MFDA will issue a notice advising Members that IFIC's Limited Authorization Form and Guidelines thereto will be the form prescribed by the MFDA for the purpose of complying with Rule 2.3.2.

23. Remuneration, Commissions and Fees

Overview of Comments:
Many commentators were opposed to the requirement in draft Rule 2.4.1 that all remuneration in respect of dealer business conducted by an Approved Person be paid directly to and in the name of the Approved Person.

MFDA Response
The MFDA will provide a three-year transition period before draft Rule 2.4.1 becomes effective. (For further discussion of this issue, please refer to section 9 herein entitled "Commission Flow/Personal Corporations").

24. Referral Arrangements

Overview of Comments:
A number of commentators requested that referral arrangements include lawyers and accountants.

MFDA Response:
The MFDA understands that lawyers and accountants are prohibited from entering into referral arrangements by their respective professional associations and, therefore, the draft Rule has not been changed.

25. Minimum Standards of Account Supervision

25.1 Branch Managers

Overview of Comments:
A number of commentators were opposed to the requirement for on-site branch managers and alternate branch managers. It was submitted that the draft Rule was too rigid given that delivery structures are changing rapidly and geographical and office locations are no longer relevant benchmarks.

Several commentators also indicated that the availability of qualified individuals to fill the role of an alternate branch manager is limited. It was suggested that the MFDA waive the two-year experience requirement for alternate branch managers to expand the number of eligible registrants.

MFDA Response:
The MFDA draft Rule requiring branch managers is consistent with current securities law requirements.

The experience requirement for alternate branch managers will be deleted and they will not be required to be on-site. Draft Rule 2.5.3(c) has been clarified by adding the word "temporarily" before the word "absent".

25.2 MFDA Account Supervision Policy

Overview of Comments:
Commentators questioned the amount/degree of supervision and review that should be done at the head office level versus the branch level under the proposed Policy. Some commentators suggested that the policy on account supervision should not prescribe specific elements of supervision programs/compliance reviews, but should state general goals and allow Members to develop their own risk-based program.

MFDA Response:
The MFDA has revised the account supervision policy to provide further clarification regarding branch and head office reviews. Head office reviews should be focused on unusual activity or reviews that cannot be carried out at the branch level. The MFDA is of the view that in order to provide sufficient guidance to Members it should prescribe the minimum elements of a supervision program and not simply state the general goals.

26. Leveraged Securities Trades

Overview of Comments:
Some commentators felt that the requirement to provide a risk disclosure statement to the client upon becoming aware of a client's "intent" to employ borrowed monies is too onerous and subjective.

Several commentators indicated that Members should be able to use alternative forms of their own design in a form approved by the MFDA.

MFDA Response:
The MFDA has amended draft Rule 2.6 to require that disclosure is given to clients on account opening, or when an Approved Person recommends that the client borrow money to purchase securities or otherwise becomes aware of a client actually borrowing money to purchase securities.

The MFDA will allow Members to use their own forms as long as they contain language prescribed by the MFDA. The MFDA has prepared a Notice regarding such prescribed language.

27. Advertising and Sales Communications

Overview of Comments:
An issue raised by several commentators was the responsibility of dealers for materials produced by third parties. It was submitted that Members should only be responsible for advertisements and sales communications produced by them and not for third party materials passed on by Members to clients.

The requirement to have all advertisements approved by a partner, director, officer, compliance officer or by a branch manager designated by the Members, was viewed by some commentators as too restrictive.

MFDA Response:
The general restrictions in draft Rule 2.7 regarding the use of untrue and misleading advertisements will be maintained. There should be some standard of accountability for all materials distributed by Members.

With respect to the review requirement, the MFDA believes that this is a reasonable and necessary control procedure.

28. Personal Rates of Return

Overview of Comments:
Many recommendations were received regarding methods for reporting rates of return. Several commentators suggested that the MFDA endorse specific methods as acceptable for reporting rates of return while other commentators criticized such methods.

MFDA Response:
Rule 2.8.3 continues to require disclosure of the methodology used and does not endorse a particular

methodology. The draft Rule has been revised to require that rates of return provided in a client communication for a specific account or accounts should be an "annualized" rate of return.

29. Policies and Procedures Manual

Overview of Comments:
Several comments were received regarding the requirement under draft Rule 2.10 for Members to establish and maintain a written Policies and Procedures Manual. It was submitted that a Policies and Procedures Manual is an unnecessary expense. Other commentators felt that the dealers should be able to maintain the Policies and Procedures Manual in electronic form. It was also suggested that the MFDA recommend essential policies that should be included in the manual.

MFDA Response:
The requirement to establish and maintain a Policies and Procedures Manual is a necessary internal control to ensure compliance with the Rules, Policies and By-laws of the MFDA and applicable securities legislation. Members may maintain their Policies and Procedures Manual in electronic form. After recognition, the MFDA will consider issuing a notice providing guidelines regarding the topics that should be covered in a Policies and Procedures Manual.

30. Complaints

Overview of Comments:
Many comments were received regarding the definition of "complaint". It was suggested that the term "complaint" be restricted to complaints received in writing or via e-mail regarding dealer business. Another commentator felt that the term "complaint" should not include complaints that have been resolved to the client's satisfaction.

MFDA Response:
The term "complaint" is defined in the MFDA's complaint handling policy. Although the definition of complaint refers to only written complaints, the policy provides that certain verbal complaints based on their nature and severity should be handled in the same manner as written complaints. The MFDA does not agree that the term "complaint" should exclude complaints that have been resolved to the client's satisfaction, as MFDA complaint procedures should be carried out before complaint resolution in any case.

31. Account Transfers

Overview of Comments:
A large number of general as well as detailed comments were received, including specific comments on the flow of account documentation and processing. There was both opposition to and support for "bulk transfers". Those commentators who supported bulk transfers recommended allowing the bulk transfer of accounts by way of negative confirmation. Other commentators suggested that bulk transfers should be allowed only in special circumstances, such as dealer takeovers.

MFDA Response:
In response to the comments, the MFDA has reconsidered its draft Rules on account transfers. The MFDA believes that further industry input on current practices should be obtained in order to develop explicit transfer procedures. An industry committee will be formed after the MFDA is recognized for this purpose. Consequently, the detailed procedural provisions of the draft Rule have been deleted. It is still the view of the MFDA however, that, as a general rule, the transfer of client accounts should be allowed only if the client has authorized the transfer in writing. This general principle has been reflected in the amended Rule.

Exemptions to the general rule requiring client authorization may be permitted under special circumstances. Members may apply to the MFDA for an exemption from the client authorization rule to allow "bulk transfers" in the case of mergers, acquisitions and internal reorganizations. The MFDA will also issue a notice that the CSA intends to allow "bulk transfers" by way of negative confirmation for agents that establish their own dealership within two years after the MFDA is recognized where the dealer and agent have agreed to such a transfer. During this time, an Approved Person may obtain a negative confirmation of a client's intent to transfer provided the accounts are in client name.

DRAFT RULE 3 – FINANCIAL AND OPERATIONS REQUIREMENTs

32. Minimum Capital Levels

Overview of Comments:
Many commentators did not appreciate the difference between risk adjusted capital and working capital. Some commentators that did acknowledge the difference were opposed to a risk adjusted capital approach to the capital calculation as it is too onerous. Commentators generally were also of the view that the minimum capital levels were too high. A majority of commentators supported the MFDA's transition periods.

MFDA Response:
The capital calculation has been amended to an approach more similar to a working capital approach. The minimum capital levels for Levels 2 and 3 dealers have been reduced from $75,000 and $125,000 to $50,000 and $75,000 respectively. The MFDA will provide a one year transition period for Level 1 dealers and a three year transition period for Levels 2, 3, and 4 dealers to attain the required minimum capital levels.

33. Margin Accounts

Overview of Comments:

There was both opposition to and support for allowing MFDA Members to offer margin accounts to clients.

MFDA Response:
The MFDA is not in favour of allowing margin accounts for Members at this time. If the MFDA allowed Members to provide margin accounts, it would necessitate a more onerous capital calculation and higher minimum capital requirements. A number of commentators were of the view that the capital calculation and minimum capital amounts as drafted were too financially onerous. Increasing the capital requirements to allow only a few Members to offer margin accounts would negatively impact a majority of potential Members. In addition, prior to allowing such a practice, the MFDA would have to be satisfied that the industry supports such an initiative and is willing to be financially responsible to the MFDA Investor Protection Plan for all Members offering such accounts.

34. Advancing Mutual Fund Redemption Proceeds

Overview of Comments:
Some commentators were of the view that requiring the client to direct the issuer to pay redemption proceeds to the Member would be problematic for accounts held in nominee name. In addition, some commentators advised that the requirement for prior written confirmation from the issuer in advance of the payment of proceeds did not conform to current industry clearing and settlement practices.

MFDA Response:
To address the issues noted above, the draft Rules no longer require a direction from the client to the issuer. The requirement for prior written confirmation from the issuer has also been deleted. The Member must still, however, receive prior confirmation that the order has been accepted by the issuer. Confirmation may be obtained electronically.

35. Related Company Guarantees

Overview of Comments:
Several commentators misunderstood the definition of "related company" in the draft By-law which defined related companies as MFDA Members. Some commentators assumed that "related companies" included companies that were not MFDA Members.

In addition, commentators submitted that the guarantee should be limited to obligations to clients in the event of insolvency.

There was also some confusion as to what the term "capital employed" referred to.

MFDA Response:
To clarify that guarantees relate only to Members, the term "related company" has been changed to "related Member".

The draft Rules have also been amended to clarify that the guarantee relates to obligations to clients in the event of insolvency.

The term "capital employed" has been replaced with "total financial statement capital" which corresponds to a line item on Statement A of Form 1.

36. Trust Accounts

Overview of Comments:
There was general opposition to the requirement to maintain separate trust accounts for mutual fund securities and other securities or financial products.

There was also opposition to the requirement that the trust account earn a market rate of interest.

Some commentators recommended that a carrying dealer should be able to maintain one trust account for introducing dealers.

MFDA Response:
The requirement to maintain one trust account for mutual funds and separate trust accounts for other financial products reflects the requirements of National Instrument 81-102.

The draft Rule has been amended to require a trust account to bear interest at rates equivalent to comparable accounts of the financial institution.

The comments indicated that there is some confusion regarding trust account requirements for carrying dealers. The draft Rules require a carrying dealer for a Level 1 introducing dealer to maintain a trust account to hold the introducing dealer's client funds. It is not intended that the carrying dealer will have to maintain separate trust accounts for each introducing dealer for the purpose of holding each introducing dealer's client funds. However, carrying dealers are required to hold any deposit provided by an introducing dealer of its own funds that is to be used against any obligations it owes to the carrying dealer (i.e. a comfort deposit), separately and in trust for each introducing dealer. The draft Rules will be amended to clarify the above distinction between comfort deposit requirements and client funds requirements.

37. Financial Reporting

Overview of Comments:
Various recommendations were made regarding the frequency of financial reporting. Many commentators felt that monthly financial reporting was unnecessary and too onerous.

Commentators also recommended the filing deadline for the monthly report and the annual report be extended.

MFDA Response:

The MFDA will provide a transition period of two years relating to the monthly reporting requirement. During this time, the MFDA will require quarterly reporting but will retain the right to require more frequent financial reporting if a Member's circumstances deem it necessary. After the two year transition period, the MFDA will consider whether to continue to allow quarterly reporting to continue.

The draft Rules have been amended to require the monthly financial report to be filed within 20 business days of the month-end and the annual financial report to be filed within 90 days of the Member's financial year-end. During the two year transition period such reports must be prepared quarterly and filed within 20 business days of the end of the quarter.

38. Early Warning Requirements

Overview of Comments:
There was concern that the early warning requirements as set out in the draft Rules would place a number of Members in early warning needlessly and that the tests in the draft Rules were not entirely applicable to mutual fund dealers.

MFDA Response:
The early warning tests have been amended to help ensure Members will only trigger early warning in appropriate circumstances. The MFDA will delay the implementation of the automatic early warning sanctions for two years after recognition in order to allow Members to become familiar with the new capital and early warning requirements. However, the MFDA will retain the ability to impose sanctions if it deems it necessary in certain circumstances. As well, during the two-year transition period, the MFDA will be collecting financial information from its Members and will be able to analyze and assess the early warning requirements using such information to ensure they are appropriate.

39. Auditor Experience

Overview of Comments:
There was a concern that dealers located in smaller communities may not be able to retain an auditor with five years of industry experience. It was submitted that this would force dealers to retain larger accounting firms and could significantly increase audit costs. As well, some commentators felt it would terminate dealers' existing relationships with their auditors.

MFDA Response:
The MFDA has removed the five year industry experience requirement in the draft Rules. The MFDA's objective is to ensure that a Member's auditor is aware of the regulations pertaining to the Member, especially as it relates to the financial position of the Member and the internal controls and procedures that safeguard assets of the Member and its clients. Accordingly, a Member's auditor will be required to sign an Acknowledgement and Agreement to the MFDA. The Acknowledgement and Agreement requires the engagement partner to attest to the fact that he or she has read and understood certain sections of the MFDA's Rules, Policies and Forms and agrees to comply with such Rules, Policies and Forms.

40. Financial Questionnaire and Report

Overview of Comments:
The financial questionnaire and report was generally thought to be too complex and confusing.

MFDA Response:
The definitions in the financial questionnaire and report have been amended with a view to clarifying and simplifying the form. However, the information requested in the questionnaire has not been changed as it is necessary to ensure Members are complying with the MFDA's regulatory requirements.

41. Acceptable Institutions as Registered Account Trustees

Overview of Comments:
Some commentators were of the view that the MFDA should not require a trustee that holds client assets in registered accounts to be an "acceptable institution" that maintains a minimum of $100 million in paid up capital. One commentator supported the $100 million requirement.

MFDA Response:
The definitions in the MFDA Financial Questionnaire and Report have been amended to remove the $100 million paid up capital limitation. It was recognized that adopting the $100 million requirement would cause a significant negative impact to existing arrangements in the industry.

DRAFT RULE 4 - INSURANCE

42. Amount of Financial Institution Bond Coverage

Overview of Comments:
Many comments were received that questioned the need to increase the minimum bonding requirements under securities legislation. It was also suggested that the "base amount" concept be removed.

MFDA Response:
The draft Rules have been amended to provide more flexibility. Instead of simply requiring a flat $200,000 for Level 1 and 2 dealers and $500,000 for Level 3 dealers as one of the factors in determining the minimum requirement, it will be $50,000 per Approved Person up to $200,000.

The "base amount" calculation remains as the other factor in determining the minimum coverage amount because it takes into consideration the value of assets held by the dealer that are at risk.

43. Errors and Omissions Insurance

Overview of Comments:
Many commentators supported mandating errors and omissions (E&O) insurance. Many of these commentators, however, only supported mandating E&O on the presumption that it should replace other prudential requirements, such as minimum capital, bonding and investor protection plan participation.

MFDA Response:
The MFDA generally agrees that E&O coverage would be a positive compliment to the other prudential requirements under the MFDA Rules. Prior to mandating such coverage, however, there are certain issues that must be addressed, such as the definition of coverage, the prospects of every MFDA Member obtaining coverage and the establishment of a group plan. As such, the MFDA proposes to establish a committee after recognition to review E&O issues and develop specific recommendations.

E&O insurance is not however, a suitable replacement for capital, financial institution bonding or contingency fund participation. While each requirement is complimentary, their purpose and objectives are different.

44. General Requirements

Overview of Comments:
Commentators felt that the requirement under draft Rule 5.1.8 for Members to retain “all communications” received was too broadly worded and inconsistent with current industry practice.

MFDA Response:
The MFDA agrees that Rule 5.1.8 was too broad and it has been deleted.

DRAFT RULE 5 – BOOKS AND RECORDS

45. Client Account Statements

45.1 Delivery by Approved Persons

Overview of Comments:
Approved Persons should be prohibited from preparing any *ad hoc* statements to clients that purport to be account statements of the Member or in substitution of the account statement required to be sent by the Member.

MFDA Response:
The draft Rules have been amended to expressly state that Members may not rely on Approved Persons to satisfy their obligation to send client account statements.

45.2 Frequency of Delivery for Client Name Accounts

Overview of Comments:
There was significant opposition to the Recognizing Jurisdictions’ proposal to require monthly and quarterly delivery of client account statements. Several commentators were also of the view that mutual fund dealers operating in client name should be allowed to rely on the fund companies to send client account statements.

MFDA Response:
The requirement for dealers to send an annual account statement is a requirement under existing securities legislation in a number of jurisdictions. Members should be required at a minimum to provide the client with an annual account statement outlining all securities transactions executed by the Member on behalf of the client.

However, the MFDA recognizes that many dealers do not currently send client account statements and would not be able to comply with such a requirement immediately. Therefore, the MFDA will allow a two year transition period for Members to send statements, provided the Member satisfies itself that the mutual fund companies are sending account statements.

45.3 Frequency of Delivery for Nominee Name Accounts

Overview of Comments:
Some commentators opposed the monthly reporting requirement and recommended various other options for frequency of delivery. The suggestion was made to exclude the monthly reporting requirement where the "entry in the month" is automatic in nature, such as dividend reinvestments.

MFDA Response:
Existing delivery requirements for nominee name accounts will be maintained. A Member that holds client assets in its own name should be required to report to clients on a more frequent basis than for client name accounts. The draft Rules will be amended however, to exempt certain automatic transactions from the monthly delivery requirement, such as dividend reinvestments and automatic deposits.

45.4 Content

Overview of Comments:
Several comments were received regarding the content requirements for account statements under draft Rule 5.3.3. Commentators opposed the requirement that the account statement include the name of the Approved Person since many clients do not have one Approved Person managing their account. It was also submitted that the requirement for the “date the statement was issued” is unnecessary since draft Rule 5.3.3(c)(iv) already requires the “period covered by the statement” and timelines are explicitly defined in draft Rule 5.3.1.

MFDA Response:
The MFDA agrees that the requirement to include the name of the Approved Person servicing the account

may not be applicable in all circumstances and has amended Rule 5.3.3 accordingly. With respect to the second comment, the MFDA disagrees that the requirement to include the date the statement was issued is unnecessary. The experience of other self-regulatory organizations has shown that this is relevant and important information that should be included on an account statement.

45.5 Consolidated Account Statements

Overview of Comments:
There was opposition to the requirement that only transactions executed by the Member may appear on the account statement. Generally, commentators were of the view that consolidated statements should be allowed provided adequate disclosure was made to identify which transactions were executed by the Member.

MFDA Response:
The draft Rules have been revised to permit consolidated account statements provided:

- there is clear disclosure of the legal entity through which transactions were executed and which assets are held by the Member;
- there is clear disclosure with respect to which products are, and which products are not, entitled to protection plan coverage;
- there is a disclaimer that the Member cannot verify the accuracy of the information regarding transactions executed or assets held, by other entities; and
- any disclosure is in accordance with other applicable legislation.

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