Summary of Public Comments Respecting Proposed Amendments to Sections 1 (Definitions) and 3 (Directors) of MFDA By-law No. 1 and Responses of the MFDA

On November 4, 2011, the British Columbia Securities Commission published proposed amendments to Sections 1 (Definitions) and 3 (Directors) of MFDA By-law No. 1 (the "**Proposed Amendments**") for a 90-day public comment period that expired on February 2, 2012.

Four submissions were received during the public comment period:

1. Canadian Foundation for Advancement of Investor Rights ("FAIR")
2. Independent Financial Brokers of Canada ("IFB")
3. IGM Financial Inc. ("IGM")
4. Kenmar Associates ("Kenmar")

Copies of the comment submissions may be viewed on the MFDA website at http://www.mfda.ca/regulation/comments.html#Sec1_3.

The following is a summary of the comments received, together with the MFDA's responses.

1. General Comments

Three commenters did not support eliminating many of the restrictions on individuals that qualify as Public Directors. These commenters expressed the view that the restrictions on who can become a Public Director are not unduly restrictive and are still warranted today.

FAIR expressed the opinion that the current definition of "Public Director" does not appear to overly narrow the field of potential candidates, but properly restricts persons associated with, involved in, or representing the interests of the investment industry rather than investors. FAIR expressed the view that allowing currently disqualified individuals to act as Public Directors will not further the MFDA's public interest mandate, enhance the reputation of the MFDA, or increase stakeholder confidence in the Board's ability to discharge its oversight responsibilities.

One commenter expressed support for the key underlying goals of the Proposed Amendments regarding the relaxation of the restrictions on persons eligible to act as Public Directors.

MFDA Response

In the experience of the MFDA and its Governance Committee, the definition of Public Director, which was adopted back in 2003, is too prescriptive and restrictive and has not served its intended purpose. It is not possible to discuss particular candidates in a public forum but, as an example, the MFDA has in the past identified potential candidates who

were entirely appropriate and could act without any real or perceived conflict of interest, but who were disqualified as a result of being technically a Crown employee or having a family relationship with other ineligible persons. The Proposed Amendments are intended to permit a better balance of prescribed restrictions and appropriate flexibility, which will allow the Governance Committee to identify and recommend as Public Directors a wider range of persons. In the case of all selections of Public Directors, the Governance Committee, the Board and, ultimately, the Members have the opportunity to assess the circumstances of each individual and exercise discretion to ensure that appropriate selections are made.

The MFDA also believes that it is in order that there be some consistency in the Director qualification standards for Canadian self-regulatory organizations ("SROs") and other industry organizations and, therefore, adopting criteria similar to those of the Investment Industry Regulatory Organization of Canada ("IIROC") is in the public interest.

2. Proposed Removal of Restrictions for Candidates for Public Directors

(a) Restrictions for Employees of Government or Crown Agency

FAIR expressed the view that removal of the current prohibitions regarding employees of a federal, provincial, or territorial government or Crown agency from the definition of "Public Director" would not compromise the interests of investors, as there is little potential for conflicts of interest for such individuals, provided they are not associated with or involved in the financial services sector.

MFDA Response

We acknowledge the comment.

(b) Restrictions for Individuals Associated with IFIC

FAIR, IFB and Kenmar expressed the view that the proposed removal of restrictions relating to persons associated with the Investment Funds Institute of Canada ("IFIC") for consideration for Public Director positions is not appropriate. In Kenmar's opinion, IFIC is the primary reason that certain mutual fund investor protection initiatives have been delayed or otherwise adversely impacted. IFB expressed the opinion that adding a person from IFIC to the MFDA Board of Directors would duplicate the representation of major financial institutions, such as the banks, on the Board.

FAIR expressed the view that, while the Governance Committee of the Board of Directors, using principles-based criteria as to who would qualify as a Public Director, would likely exclude persons associated with IFIC from being a Public Director, the current general prohibition is preferable. FAIR expressed the opinion that removing this prohibition would leave the door open for the argument that there may be circumstances where a person from or associated with IFIC could be put forth as a Public Director by the Governance Committee.

MFDA Response

The current reference to persons associated with either IFIC or the Investment Dealers Association of Canada (now IIROC) being ineligible as Public Directors of the MFDA is historical and is now irrelevant. The only reason why such prohibitions were included in MFDA's By-laws originally related to the role such organizations had in the establishment of the MFDA in 2001. The MFDA Board representation rights for IFIC (and IIROC) were eliminated in 2003 pursuant to the requirements of the MFDA's Recognizing Regulators. The MFDA is now well established as an independent SRO without influence from either IFIC or IIROC and reference to such organizations – or any other industry organizations – is unnecessary and inappropriate. In the activities of the Governance Committee to date, the Committee is aware of and has developed views on how to assess the suitability of Board candidates who may be seen as representative of organizations whose interests may not coincide with those of the MFDA.

(c) Restrictions for Family Members

FAIR expressed the view that an objective prohibition regarding immediate family increases confidence in the governance of the MFDA and is preferable to allowing the MFDA Governance Committee to assess in each instance whether a particular family relationship gives rise to a conflict. As an alternative, FAIR recommended a more robust definition of "immediate family member" to provide transparency and objectivity, while not disqualifying "remote" family members who would not have a potential or actual conflict of interest. Kenmar also expressed opposition to narrowing the restriction on family members and expressed the view that this will lead to conflicts of interest.

MFDA Response

The MFDA proposes to replace its specific reference to candidates being members of the immediate family of ineligible persons with the prohibition for "associates", which is used in most Canadian securities legislation. The practical result of the "immediate family" exclusion is very broad, having regard to: the nature of the ownership in the mutual fund industry, which includes many large integrated financial groups across Canada, and the current work and social environment where many families include two spouses working in different or related businesses. The adoption of the standard exclusion in securities legislation in respect of "associated" family members is a better and more consistent test.

As noted above, the removal of the particular restrictions on qualification would not prevent the Governance Committee from applying any such restrictions in appropriate cases.

(d) Cooling-off Period

IFB, Kenmar and FAIR expressed opposition to the proposed removal of the two-year cooling-off period for currently unqualified applicants. FAIR expressed the view that an objective two-year cooling-off period would be preferable to the proposed one-year

cooling-off period with flexibility being provided to the Governance Committee to extend the period in some cases.

MFDA Response

The MFDA believes that the existence or perception of conflicts of interest is most likely to arise in respect of persons directly involved with MFDA Members, their associates and affiliates, and regulators. The MFDA has amended the terms of reference of the Governance Committee to refer to a general one-year cooling-off period with flexibility, in some cases, to extend the period. Having regard to the objectives of the Proposed Amendments, the MFDA is of the view that this is a balanced and appropriate way to address actual or perceived conflicts.

3. Investor Representation

IFB, FAIR and Kenmar recommended that there be more investor representation on the MFDA Board.

Noting the success of the Investor Advisory Panel of the Ontario Securities Commission, Kenmar recommended that the MFDA establish a similar panel in order to assist the MFDA in focusing attention on the most pressing investor issues.

MFDA Response

The MFDA is an SRO that conducts its activities in the public interest. All Directors (Industry and Public) must assess both the public interest and the interests of MFDA Members, but, in the final analysis, the public interest is paramount. We note that the Proposed Amendments permit and do not preclude participation by investors as Public Directors.

With respect to soliciting and obtaining investor views, the MFDA seeks input from all stakeholders through our public comment process and has received submissions from individual investors and investor associations on proposed policy instruments. In addition, MFDA staff meets with investor associations to obtain input and comment on specific concerns and will continue to do so.

4. Advisor Representation

IFB expressed the view that the majority of the MFDA Board members represent large, bank-owned dealers and fund manufacturers, rather than the smaller financial services firms, which results in the MFDA Board lacking representation from the advisor community and investors. IFB recommended direct representation on the MFDA Board of Directors for all those under its authority, including IFB members, many of whom are independent mutual fund advisors or Approved Persons. IFB commented that Approved Persons have no voice other than through their dealer, which may not always share the same perspective. IFB also expressed the view that, since advisors deal directly with

clients, they are aware of current customer concerns and how MFDA Board and management decisions will directly affect them.

MFDA Response

The MFDA is the SRO for mutual fund dealers in Canada and, as noted, is required, under its Recognition Orders, to ensure that the diversity of its membership is reflected on the MFDA Board. Individual advisors are not Members of the MFDA but are subject to its jurisdiction. The interests of advisors are served through their Members and their own industry organizations.

5. Evergreen List of Candidates

FAIR recommended that the MFDA develop and maintain a pool of potential candidates that meet or could meet its Director eligibility criteria in the short run (an "evergreen list"), as recommended by the British Columbia Securities Commission in the CSA's Oversight Review of the MFDA: Corporate Governance Report issued on July 4, 2011.

MFDA Response

The MFDA agrees it is necessary to fill Board vacancies promptly. However, it does not believe that a formal pool or "evergreen list" of candidates is practical in view of continuously changing circumstances and required Director competencies. The Governance Committee and individual Directors are mindful, on an ongoing basis, of identifying potential candidates, and previously considered candidates are included. In addition, the MFDA has had recourse to professional search firms who have potential candidate lists at hand.

6. Specific Comments

IGM recommended defining "substantial beneficial interest" used in paragraph (c) of the definition of "Associate" in a manner similar to "Significant Interest", with the threshold being 10% or more of the beneficial interest in trust. IGM also suggested that the term "relative" be defined and that paragraphs (d) and (e) of the definition of "Associate" be combined if "relative" is defined to include a spouse.

IGM recommended that paragraph (c) of the definition of "Public Director" be amended to insert the word "or" in front of the words "the holder of a Significant Interest in".

MFDA Response

The definition of "associate" in the MFDA By-law is the same definition used in the *Securities Act* (Ontario) and other provincial securities legislation and the MFDA does not wish to introduce variations in the definition.

We have amended paragraph (c) to correct the typographical error and included the word “or” in front of the words “the holder of a Significant Interest in”.

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