



July 16, 2008

Executive Director
British Columbia Securities Commission
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Vancouver, B.C.
V7Y 1L2

The Secretary to the Commission
Ontario Securities Commission
20 Queen Street West
Suite 1900, P.O. Box 55
Toronto, Ontario
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The Secretary to the Commission
Saskatchewan Financial Services Commission
1919 Saskatchewan Drive
6th Floor
Regina, Saskatchewan
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The Secretary to the Commission
Nova Scotia Securities Commission
2nd Floor, Joseph Howe Building
P.O. Box 468
1690 Hollis Street
Halifax, Nova Scotia
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Dear Sirs/Mesdames:

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

1. APPLICATION

(a) Summary

This application is made by the Mutual Fund Dealers Association of Canada ("MFDA") concurrently to each of the British Columbia Securities Commission, the Ontario Securities Commission, the Saskatchewan Financial Services Commission and the Nova Scotia Securities Commission (respectively, the "BCSC", "OSC", "SFSC" and "NSSC" and, together, the "Commissions") for an amendment and restatement of the terms and conditions of the Order of each such Commission recognizing the MFDA as a self-regulatory organization ("SRO") pursuant to section 24(a) of the *Securities Act* (British Columbia), section 21.1(1) of the *Securities Act* (Ontario), section 21(2) of the *Securities Act, 1998* (Saskatchewan) and section 30(1) of the *Securities Act* (Nova Scotia), (respectively, the "OSA", "BCSA", "SSA" and "NSSA" and together, the "Legislation"). In 2004, the BCSC, OSC, SFSC and NSSC approved an application by the MFDA to amend and restate its Orders in respect of recognition of the MFDA. The date of the amended and restated Orders in respect of recognition of the MFDA referred to above by each of the BCSC, OSC, SFSC and NSSC are, respectively, June 3, 2004, March 30, 2004, April 16, 2004, and April 8, 2004. Further variation orders amending s. 14 of Schedule "A" to the Orders were made by the BCSC, OSC, SFSC and NSSC on November 17, 2006, November 17, 2006, November 9, 2006 and November 8, 2006, respectively. The Orders

of the respective Commissions recognizing the MFDA as an SRO are referred to individually and collectively in this application as an "Order" or the "Orders" and the terms and conditions attached as Schedule A to each such order are referred to individually and collectively as "Terms and Conditions".

(b) Authority for Application

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

(c) Terms and Conditions to be Amended

The Term and Condition of the BCSC, OSC, SFSC and NSSC Orders to be amended is Section 14 (Suspension of MFDA Rule 2.4.1).

2. THE APPLICANT

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

3. BASIS OF APPLICATION

Section 14 of the Terms and Conditions provides for the suspension of MFDA Rule 2.4.1 (the "Rule") relating to the payment of remuneration in respect of Approved Persons by Members of the MFDA in the Provinces of British Columbia, Saskatchewan, Ontario and Nova Scotia. The suspension of the Rule, originally to expire on December 31, 2004 has been extended by the Commissions to December 31, 2008. The MFDA is requesting that the suspension period for the Rule be extended until December 31, 2010. The extension is being requested to allow the MFDA time to develop proposed amendments to Rule 2.4.1 that will allow Approved Persons to direct remuneration in respect of business conducted by them on behalf of a Member to a non-registered corporation, subject to conditions.

Over the course of the suspension period for the Rule, the MFDA has had the opportunity to review the effect of the suspension on the application of other MFDA Rules and its potential effect on other investor protection issues. MFDA staff estimates that of the approximately 75,000 registered Approved Persons, approximately 35,000 are those of bank-owned Members that do not rely on the suspension of the Rule and that a high proportion of the approximately 40,000 Approved Persons that remain are likely to rely on its suspension. Despite these large numbers and the fact that the suspension has been in place for several years, the MFDA has not experienced any effect on the regulatory liability of Approved Persons arising from the payment of commissions to corporations and is unaware of any changes in the industry that might increase the risk of negative impacts since the last suspension was granted. In addition, the payment of commissions to non-registered corporations is a long-standing business practice that predates the establishment of the MFDA and concerns have been expressed that it would be disruptive to industry to disallow it. Based on this information, the MFDA is satisfied that the arrangements currently in place do not raise investor protection concerns and that allowing them to continue would not be contrary to the public interest.

MFDA Rule 1.1 provides that, in general, no Member or Approved Person may, directly or indirectly, engage in any securities related business unless it is carried on for the account of the Member, through its facilities and in accordance with the By-laws and Rules. Each Approved Person who conducts or participates in any securities related business in respect of a Member must comply with the By-laws and Rules as they relate to the Member or such Approved Person.

Rule 1.1.4 and Rule 1.1.5 set out the required terms for the Member/Approved Person employment or agency relationships permitted under the MFDA Rules, including the Member's obligation to supervise the activity of the Approved Person and the Approved Person's responsibility to comply with MFDA requirements and conduct business through the Member. Rule 1.2.1(d) sets out a number of limitations on non-securities related business that Approved Persons may conduct outside the Member and disclosure requirements where Approved Persons engage in such activity. MFDA Member Regulation Notice MR-0002 sets out the conditions for reliance on relief from Rule 2.4.1. The sample form agreement contained in Schedule "A" to MR-0002 (or an equivalent agreement) must be executed by any Approved Person that seeks to rely on the relief from Rule 2.4.1. This agreement provides for access by regulators, the MFDA and the Member to books and records of the corporation to which commissions have been directed and requires the corporation to cooperate in the event of any review for compliance with regulatory requirements.

The Rules noted above have been implemented to ensure that all securities related business conducted by Members and Approved Persons is done through the Member firm and in accordance with MFDA By-laws and Rules. The MFDA is of the view that the requirements and regulatory oversight built into Rule 1 address any concerns that might arise in connection with registrants somehow escaping regulatory liability by directing commissions to non-registered corporations. The MFDA is satisfied that the existing provisions properly address the issue as it has not faced challenges to its jurisdiction and there are no cases where clients have been at risk based on the entity to which commissions are paid.

In each compliance review that is completed, MFDA staff test to ensure that Members and Approved Persons comply with the requirements of all MFDA By-laws, Rules and Policies through a variety of interviews and substantive testing methods. Along with other requirements, MFDA staff looks at compliance with Rule 1.1.1 in all compliance reviews regardless of the relationship between the Member and the Approved Person (e.g. employer/employee or principal/agent) or how the Approved Person receives commissions. Where Approved Persons rely on the suspension of Rule 2.4.1, staff test to ensure that the requirements set out in Member Regulation Notice MR-0002 have been satisfied and that contracts are in place allowing access to MFDA and commission staff to the corporate books and records of all entities to which commissions have been directed.

As noted, the MFDA historically has not observed issues related to the avoidance of regulatory or civil liability for securities related activities or other issues resulting from the suspension of the Rule. On occasion, MFDA staff does detect evidence that Approved Persons have conducted registerable activities through an unlicensed corporation outside of the Member. Approved Persons engaging in such conduct, irrespective of whether they do so as individuals or through a

personal corporation, are acting in contravention of Rule 1 and any such instances that are discovered during compliance reviews are referred to Enforcement for appropriate action. In any case where an Approved Person fails to provide access to books and records (corporate or personal), the MFDA considers such refusal to be a failure to cooperate and enforcement action is taken in all instances where Approved Persons fail to provide access to such records.

The MFDA is aware that commission payment structures employed by Members and Approved Persons have been permitted by tax authorities in some cases and disallowed in others. The outcomes of each particular tax ruling appear to be extremely fact specific. On the basis that the history of such arrangements does not show a significant risk to Member solvency, the MFDA does not believe the potential for negative tax rulings poses any great significance from an investor protection perspective. Negative tax rulings would, in any event, be addressed in a manner similar to any other negative ruling under the requirements of applicable legislation. Similar to any other lawsuit/potential financial liability that a Member might face, the MFDA would require the Member to record information in respect of any negative tax ruling on the Member's Financial Questionnaire and Report ("FQR") as a contingent liability.

The MFDA does not monitor Member or Approved Person compliance with tax legislation and this position is consistent for both Approved Persons that receive their commissions directly and those that have commissions directed to corporations. As compliance with tax legislation is subject to independent regulatory oversight, the MFDA is of the view that it is unnecessary to exercise jurisdiction in this area and has not, to date, seen the need to implement tax compliance requirements in the existing principal-agent rule.

(a) Supporting Documentation

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

- (i) a draft order amending and restating the Terms and Conditions of the Order on the basis described herein; and
- (ii) draft revised Terms and Conditions contained in Schedule A to the Orders reflecting the amendments described herein.

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

Yours very truly,

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

“Larry Waite”
By: _____
President and Chief Executive Officer

By: "Mark T. Gordon"
Executive Vice-President

Doc #145668