



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

March 18, 2008

The Secretary to the Commission
British Columbia Securities Commission
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701 West Georgia Street
Vancouver, B.C.
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The Secretary to the Commission
Ontario Securities Commission
20 Queen Street West
Suite 1900, P.O. Box 55
Toronto, Ontario
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Executive Director
Alberta Securities Commission
300 – 5th Avenue S.W.
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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
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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
Manitoba Securities Commission
500-400 St. Mary Avenue
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The Secretary to the Commission
New Brunswick Securities Commission
85 Charlotte Street, Suite 300
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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 Alberta Securities Commission, the Manitoba Securities Commission, the New

Brunswick Securities Commission, the Saskatchewan Financial Services Commission and the Nova Scotia Securities Commission (respectively, the "BCSC", "OSC", "ASC", "MSC", "NBSC", "SFSC" and "NSSC" and, together, the "Commissions") for

- (i) an amendment and restatement of the terms and conditions of the Order of each such Commission recognizing the MFDA as a self-regulatory organization ("SRO") pursuant to section 24(a) of the *Securities Act* (British Columbia), section 21.1(1) of the *Securities Act* (Ontario), section 64(1) of the *Securities Act* (Alberta), section 31.1 of the *Securities Act* (Manitoba), section 35(1)(b) of the *Securities Act* (New Brunswick), section 21(2) of the *Securities Act, 1998* (Saskatchewan) and section 30(1) of the *Securities Act* (Nova Scotia) (respectively, the "BCSA", "OSA", "ASA", "MSA", "NBSA", "SSA" and "NSSA" and together, the "Legislation") respecting the definition of the term "Public Director"; and
- (ii) approval for corresponding amendments to such definition in the by-law (rules) of the MFDA.

In 2004, the BCSC, OSC, ASC, SFSC and NSSC approved an application by the MFDA to amend and restate its Orders in respect of recognition of the MFDA. The dates of the amended and restated Orders in respect of recognition of the MFDA referred to above by each of the BCSC, OSC, ASC, SFSC and NSSC are, respectively, June 3, 2004, March 30, 2004, May 18, 2004, April 16, 2004 and April 8, 2004. In 2006, the BCSC, OSC, SFSC and NSSC issued an order varying the Order of each such Commission to extend the suspension of MFDA Rule 2.4.1 until December 31, 2008. The dates of the variation Orders in respect of the recognition of the MFDA are, respectively, November 14, 2006, November 3, 2006, November 20, 2006 and November 8, 2006. 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 (i) in respect of the Orders pursuant to Section 171 of the BCSA, Section 144 of the OSA, Section 214(1) of the ASA, Section 31.5(3) of the MSA, Section 206(1) of the NBSA, Section 158(3) of the SSA and Section 151 of the NSSA, and (ii) in respect of the by-laws pursuant to the Terms and Conditions of the Orders.

(c) Terms and Conditions to be Amended

The Terms and Conditions of the BCSC, OSC, ASC, MSC, NBSC, SFSC and NSSC Orders to be amended are: Section 3(A) (Corporate Governance). It is proposed that the definition of "Public Director" be deleted from the Orders and the amendments to such definition be included in the corresponding definition in the by-laws of the MFDA. In addition, the MFDA is proposing certain housekeeping amendments, as reflected in the attached copies of the Terms and Conditions and described in section 3 below.

Reference is also made to (i) a joint application made by the Investment Dealers Association of Canada ("IDA") and Market Regulation Services Inc. ("RS") as published by certain of the Commissions dated February 8, 2008, and (ii) a joint application made by the IDA and the Canadian Investor Protection Fund ("CIPF") as published by certain of the Commissions dated March 7, 2008. The amendments to the Orders and approval for rule amendments requested herein are consistent with, and reflect the same regulatory policy considerations discussed with staff of the Commissions in respect of, the foregoing joint applications of the IDA and RS as SROs recognized in the same manner as MFDA as an SRO, and of the IDA and CIPF. These applications are collectively referred to as the "IDA/RS/CIPF Applications".

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

(a) Corporate Governance – Definition of "Public Director" and Terms of Office

The Orders recognizing the MFDA as an SRO pursuant to the provisions of the Legislation are made subject to the Terms and Conditions that are contained in Schedule A to the respective Orders. Section 3(A) of the Terms and Conditions of the Orders of the Commissions relates to the corporate governance of the MFDA and defines the term "Public Director". The definition disqualifies certain individuals from acting as Public Directors on the MFDA Board of Directors. These individuals include:

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

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

On February 7, 2008, the Board of Directors of the MFDA approved amendments to MFDA By-law No.1 relating to the definition of "Public Director" to permit individuals currently ineligible as Public Directors on the basis described above to qualify as Public Directors where appropriate

in accordance with MFDA's nominating procedures. In addition and in a manner that is consistent with the "IDA/RS/CIPF Applications" amendments to MFDA By-law No. 1 were passed to change the terms of office of all Directors of MFDA (i.e. Industry and Public Directors) to 2 years with a maximum tenure of 4 terms (i.e. 8 years). Currently, the terms of office for Industry Directors of the MFDA are 2 years with a maximum of 3 terms (i.e. 6 years); and for Public Directors the terms are 3 years with a maximum of 2 terms (i.e. 6 years).

Apart from the substantive changes to the definition of "Public Director" and the terms of office for Directors described above, it is proposed that the definition be deleted from the Terms and Conditions on the basis that it is included in the rules of the MFDA – being Section 1 of By-law No. 1. Any changes to the rules of the MFDA are subject to the prior approval of the Commissions pursuant to the Terms and Conditions and it is unnecessarily duplicative and inefficient as a matter of regulatory cost and administration to require the same provision to be included in both instruments. The proposed approach has been endorsed by the Commissions in respect of the joint "IDA/RS/CIPF Applications" referenced above and it is fair and reasonable that the same regulatory approach be taken for all recognized SROs.

The purpose of the changes to the definition of "Public Director" and the terms of office is to align MFDA governance standards with current SRO practices and required regulatory policy and increase the number of qualified individuals who meet the requirements to act as Public Directors.

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

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

The proposed amendments to the definition of "Public Director" in the Terms and Conditions are a result of such review and based on the actual experience of the MFDA's Public Director nomination process.

(b) Other Housekeeping Matters

In addition to the amendment to delete the definition of "Public Director" and changes to the terms of office for Directors (and to make the amendments described above to the By-law of the MFDA), certain housekeeping amendments will be made to correct inconsistencies and typographical errors in the Terms and Conditions.

The Terms and Conditions of BCSC, OSC, ASC, MSC, SFSC and NSSC Orders reflect the fact that the MSC suspended MFDA Rule 2.4.1 until December 31, 2008.

(c) Supporting Documents

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

- (i) draft orders amending and restating the Terms and Conditions of the Orders on the basis described herein;
- (ii) draft revised Terms and Conditions contained in Schedule A to the Orders reflecting the amendments described herein; and
- (iii) amendments to MFDA By-law No.1 as passed by the Board of Directors of the MFDA and submitted to each of the Commissions for approval.

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

By: "Larry Waite"

President and Chief Executive Officer

By: "Mark T. Gordon"

Executive Vice-President