

**13.1.2 Joint Notice and Request for Comment - Mutual Fund Dealers Association of Canada Application for Amendment and Restatement of Its Recognition Orders and Application to Amend the Definition of "Public Director" in its By-law No. 1**

Published May 23, 2008  
Effective May 23, 2008

The Mutual Fund Dealers Association of Canada (the MFDA) has submitted an application to the securities regulatory authority in each of Alberta, British Columbia, Manitoba, Ontario, Saskatchewan, New Brunswick and Nova Scotia (the Recognizing Jurisdictions) to amend and restate the orders of each of the Recognizing Jurisdictions recognizing the MFDA as a self-regulatory organization (the Recognition Orders). The MFDA requested the amendments in order to:

- (a) remove the definition of "Public Director" from the terms and conditions of the Recognition Orders; and
- (b) make housekeeping amendments to correct inconsistencies and typographical errors in the current Recognition Orders.

The MFDA's application to the Recognizing Jurisdictions includes proposed amendments to the definition of "Public Director" in its By-law No. 1. The Recognizing Jurisdictions are publishing for comment the application of the MFDA and the related documents, all of which can be found on the Recognizing Jurisdictions' websites or in their bulletins, where applicable.

We are seeking comments on all aspects of the application and related documents.

**A. CHANGES TO THE RECOGNITION ORDERS**

The MFDA proposes removing the definition of "Public Director" from the terms and conditions of the Recognition Orders because it is included in section 1 of the MFDA's By-law No. 1. Having the definition in both places is unnecessarily duplicative. The MFDA would prefer to have the definition in its By-law No. 1, changes to which are subject to prior approval of the Recognizing Jurisdictions pursuant to the terms and conditions to the Recognition Orders.

**B. CHANGES TO THE DEFINITION OF PUBLIC DIRECTOR IN BY-LAW No. 1**

The MFDA proposes amending the definition of "Public Director" in its By-law No. 1 to permit individuals currently ineligible to act as public directors to qualify where appropriate. The proposed amendments also change the terms of office and maximum tenure for all MFDA directors. The MFDA proposes these changes in order to align its governance structure with current practices of other SROs and required regulatory policy, as well as to increase the number of qualified individuals who meet the requirements to act as public directors.

**C. HOUSEKEEPING AMENDMENTS TO THE TERMS AND CONDITIONS OF RECOGNITION**

In its application for amendment and restatement of its Recognition Orders, the MFDA has also proposed correcting inconsistencies and typographical errors in the terms and conditions to the Recognition Orders.

**D. COMMENT PROCESS**

You are asked to provide your comments in writing and to send them on or before June 23, 2008, to:

c/o Sarah Corrigan-Brown  
British Columbia Securities Commission  
701 West Georgia Street  
Vancouver, BC V7Y 1L2

Email: [scorrigan-brown@bcsc.bc.ca](mailto:scorrigan-brown@bcsc.bc.ca)

We cannot keep submissions confidential. We will publish a summary of written comments we receive during the comment period.

If you have questions, you may contact:

Paige Ward, Director of Policy and Regulatory Affairs  
Mutual Fund Dealers Association of Canada  
(416) 943-5838

**SRO Notices and Disciplinary Proceedings**

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Sarah Corrigan-Brown  
British Columbia Securities Commission  
(604) 899-6738

Megan Quek  
Alberta Securities Commission  
(403) 297-6454

Curtis Brezinski  
Saskatchewan Financial Services Commission  
(306) 787-5876

Paula White  
Manitoba Securities Commission  
(204) 945-5195

Jonathan Sylvestre  
Ontario Securities Commission  
(416) 593-2378

Kelly Turcotte  
New Brunswick Securities Commission  
(506) 658-3116

Neil Sandler  
New Brunswick Securities Commission  
(506) 643-7857

Nick Pittas  
Nova Scotia Securities Commission  
(902) 424-6859

May 23, 2008

March 18, 2008

The Secretary to the Commission  
British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
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  
M4S 3S8

Executive Director  
Alberta Securities Commission  
300 – 5<sup>th</sup> Avenue S.W.  
4<sup>th</sup> Floor  
Calgary, Alberta  
T2P 3C4

The Secretary to the Commission  
Nova Scotia Securities Commission  
2nd Floor, Joseph Howe Building  
P.O. Box 468  
1690 Hollis Street  
Halifax, Nova Scotia  
B3J J39

The Secretary to the Commission  
Saskatchewan Financial Services Commission  
1919 Saskatchewan Drive  
6<sup>th</sup> Floor  
Regina, Saskatchewan  
S4P 3V7

The Secretary to the Commission  
Manitoba Securities Commission  
500-400 St. Mary Avenue  
Winnipeg, Manitoba  
R3C 4K5

The Secretary to the Commission  
New Brunswick Securities Commission  
85 Charlotte Street, Suite 300  
Saint John, New Brunswick  
E2L 2J2

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

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 COURTIER DE FONDS MUTUELS  
(THE "MFDA")

AMENDMENT AND RESTATEMENT  
OF RECOGNITION ORDER  
(Section 144)

**WHEREAS** the Commission issued an order dated February 6, 2001, recognizing the MFDA as a self-regulatory organization for mutual fund dealers pursuant to section 21.1 of the Act ("Original Order");

**AND WHEREAS** the Commission issued an order dated March 30, 2004, amending and restating the terms and conditions of the Original Order;

**AND WHEREAS** the Commission issued an order dated November 3, 2006, varying the terms and conditions of the Original Order, as amended by the order dated March 30, 2004 ("Previous Order");

**AND WHEREAS** the Commission has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order to amend Schedule A to this order to delete the definition of "Public Director";

**IT IS ORDERED** pursuant to section 144 of the Act that the Previous Order be amended and restated as follows:

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 COURTIER DE FONDS MUTUELS  
(the "MFDA")

RECOGNITION ORDER  
(Section 21.1)

**WHEREAS** the Commission recognized the MFDA as a self-regulatory organization for mutual fund dealers on February 6, 2001 ("Previous Original Order"), subject to terms and conditions;

**AND WHEREAS** the Commission issued an order dated March 30, 2004, amending and restating the terms and conditions of the Original Order;

**AND WHEREAS** the Commission issued an order dated November 3, 2006, varying the terms and conditions of the Original Order, as amended by order dated March 30, 2004 ("Previous Order");

**AND WHEREAS** the MFDA has requested in an application dated ~~October 24, 2003~~ March 18, 2008, that certain changes be made to the Previous Order to remove the definition of public director;

**AND WHEREAS** the Board of Directors of the MFDA has passed amendments to the MFDA's by laws to change the MFDA's governance structure in order to provide for a proper balance among the interests of MFDA members and appropriate representation of individuals who represent the public interest on the MFDA Board of Directors and its committees and bodies;

**AND WHEREAS** the MFDA intends to enter into arrangements with other parties, subject to the consent of the Commission, for such other parties to perform the function of enforcing compliance by MFDA members, who conduct securities related business in Quebec, with the MFDA's or such other parties' substantially similar by laws, rules, regulations, policies, forms, and other similar instruments;

~~**AND WHEREAS** certain terms and conditions of the Previous Order were transitional in nature and the Commission is satisfied that the MFDA has met those terms and conditions;~~

**AND WHEREAS** the MFDA will continue to regulate, in accordance with its Rules, the operations and the standards of practice and business conduct of its members and their Approved Persons as defined under its Rules;

**AND WHEREAS** the Commission has considered the application and related submissions of the MFDA for continued recognition as a self-regulatory organization for mutual fund dealers;

**AND WHEREAS** the Commission has received certain representations and acknowledgements from the MFDA in connection with the MFDA's continued recognition as a self-regulatory organization;

**AND WHEREAS** the Commission considers it appropriate to set out in an order the terms and conditions of MFDA's continued recognition as a self-regulatory organization for mutual fund dealers, which terms and conditions are set out in Schedule A attached;

**AND WHEREAS** the MFDA has agreed to the terms and conditions set out in Schedule A;

**AND WHEREAS** the Commission is satisfied that MFDA recognition continues to be in the public interest;

**THE COMMISSION HEREBY AMENDS AND RESTATES** the MFDA's recognition as a self-regulatory organization so that the recognition pursuant to section 21.1 of the Act continues, subject to the terms and conditions attached as Schedule A.

~~March 30, 2004.~~

~~"Susan Wolburgh Jenah"~~

~~"David A. Brown"~~



SCHEDULE A

TERMS AND CONDITIONS OF RECOGNITION OF  
THE ~~MUTUAL~~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" has the same meaning as that under the MFDA rules, as amended by the MFDA and approved by the Commission from time to time;

"member" means a member of the MFDA;

"rules" means the by-laws, rules, regulations, policies, forms, and other similar instruments of the MFDA; and

"securities legislation" has the same meaning as that defined in National Instrument 14-101.

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 Public Directors and a Public Director is a director as defined in By-law No. 1 of the MFDA.

~~(i) who is not a current director (other than a Public Director), officer or employee of, or of an associate or affiliate of:~~

~~(a) the MFDA;~~

~~(b) any protection or contingency fund in which Members (at the time the director holds the relevant office) are required to participate, or~~

~~(c) the Investment Funds Institute of Canada or the Investment Dealers Association of Canada;~~

~~(ii) who is not a current director, partner, significant shareholder, officer, employee or agent of a Member, or of an associate or affiliate of a Member, of:~~

~~(a) the MFDA;~~

~~(b) any protection or contingency fund in which Members (at the time the director holds the relevant office) are required to participate, or~~

~~(c) the Investment Funds Institute of Canada or the Investment Dealers Association of Canada;~~

~~(iii) who is not a current employee of a federal, provincial or territorial government or a current employee of an agency of the Crown in respect of such government;~~

~~(iv) who is not a current member of the federal House of Commons or member of a provincial or territorial legislative assembly;~~

~~(v) who has not, in the two years prior to election as a Public Director, held a position described in (i)-(iv) above;~~

~~(vi) who is not:~~

~~(a) an individual who provides goods or services to and receives direct significant compensation from, or~~

~~(b) an individual who is a director, partner, significant shareholder, officer or employee of an entity that receives significant revenue from services the entity provides to, if such individual's compensation from that entity is significantly affected by the services such individual provides to,~~

~~the MFDA or any protection or contingency fund in which Members are required to participate, or a Member of the MFDA; and~~

~~(vii) who is not a member of the immediate family of the persons listed in (i) - (vi) above.~~

For the purposes of this definition:

~~(a) "significant compensation" and "significant revenue" means compensation or revenue the loss of which would have, or appear to have, a material impact on the individual or entity, and~~

~~(b) "significant shareholder" means an individual who has an ownership interest in the voting securities of an entity, or who is a director, partner, officer, employee or agent of an entity that has an ownership interest in the voting securities of another entity, which voting securities in either case carry more than 10% of the voting rights attached to all voting securities for the time being outstanding.~~

(B) The MFDA's governance structure shall provide for:

(i) at least 50% of its directors, other than its President and Chief Executive Officer, shall be Public Directors;

(ii) the President and Chief Executive Officer of the MFDA is deemed to be neither a Public Director nor a non-Public Director;

(iii) appropriate representation of Public Directors on committees and bodies of the Board, in particular:

(a) at least 50% of directors on the governance committee of the Board shall be Public Directors,

(b) a majority of directors on the audit committee of the Board shall be Public Directors,

(c) at least 50% of directors on the executive committee of the Board, if any, shall be Public Directors,

(d) meetings of the Board shall have a quorum requirement of a reasonable number and proportion of Public Directors and non-Public Directors, with at least two Public Directors, and

(e) meetings of any committee or body of the Board shall have a quorum requirement of a reasonable number and proportion of Public Directors and non-Public Directors, provided that if the committee or body has Public Directors then the quorum must require at least one Public Director be present;

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

(v) 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

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

#### 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 REQUIREMENTS**

(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 Approved Persons of members;

(iii) consideration of disciplinary history, including breaches of applicable securities legislation, 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 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 legislation, 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 WITH MFDA RULES**

(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 provide notice to staff of the Commission of any material violations of securities legislation of which it becomes aware in the ordinary course operation of its business. 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, or others, 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 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, and

(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-à-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 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) 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 and enforcement may make provision for the following:

- (i) one or more parts of those functions to be performed (and without affecting its responsibility) by another body or person that is able and willing to perform it; and
- (ii) its members and their Approved Persons to be deemed to be in compliance with its rules by complying with the substantially similar rules of such other body or person.

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 another 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) 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 representatives within the meaning of the current section 19.5 of the MFDA's By-Law No. 1 together with member representatives.

(E) The MFDA shall cooperate and assist with any reviews, scheduled or unscheduled, 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.

(F) The MFDA shall cooperate and assist with any reviews, scheduled or unscheduled, 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.

(G) The MFDA shall not make material changes to its organizational structure, which would affect its self-regulatory functions, without prior approval of the Commission.

(H) The MFDA shall comply with reporting requirements set out in Appendix A, as amended from time to time by the Commission or its staff. The MFDA shall also provide the Commission with other reports, documents and information as the Commission or its staff may reasonably request.

### 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. SUSPENSION OF MFDA RULE 2.4.1

MFDA Rule 2.4.1 is suspended and will continue to be suspended until December 31, 2008, in the Provinces of British Columbia, Saskatchewan, Manitoba, Ontario and Nova Scotia, and during such period the MFDA shall comply with the following conditions:

(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 ensure in connection with the suspension of Rule 2.4.1 that members and Approved Persons comply with the remaining ~~Rules~~rules, with specific reference to Rule 1 Business Structures and Qualifications, Rule 1.2.1(d) Dual Occupations and the requirement noted above in paragraph (B);

(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 its Notice MR-0002; 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.

## APPENDIX A

### Reporting Requirements

#### 1. Prior Notification

1.1 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 programs, including as to procedures or scope, or any proposed changes in its external audit instructions and of any proposed material changes or reductions in the operation of its investigation or enforcement programs.

#### 2. Immediate Notification

2.1 The MFDA shall give the Commission notice of new directors, officers and committee chairpersons, including a 5 year employment history and information as to the 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.

#### 3. Annual Reporting

The MFDA shall within 120 days of its fiscal year end file the following information and reports to the Commission:

3.1 The MFDA's self-regulatory staff complement, by function, and of any material changes or reductions in self-regulatory staff, by function;



3.2 Copy or summary of self-assessment by management of the MFDA's performance of its self-regulatory responsibilities and any proposed actions arising therefrom. The self-assessment 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; and

3.3 The MFDA's budget and audited financial statements.

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

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

On February 7, 2008, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to sections 1 and 3 of MFDA By-law No.1:

1. DEFINITIONS

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

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

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

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

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

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

- (a) ~~who is not a current director (other than a Public Director), officer or employee of, or of an associate or affiliate of:~~
  - (i) ~~the MFDA;~~
  - (ii) ~~any protection or contingency fund in which Members (at the time the director holds the relevant office) are required to participate; or~~
  - (iii) ~~the Investment Funds Institute of Canada or the Investment Dealers Association of Canada;~~

- ~~(b) — who is not a current director, partner, significant shareholder, officer, employee or agent of a Member, or of an associate or affiliate of a Member, of:
  - ~~(i) — the MFDA;~~
  - ~~(ii) — any protection or contingency fund in which Members (at the time the director holds the relevant office) are required to participate; or~~
  - ~~(iii) — the Investment Funds Institute of Canada or the Investment Dealers Association of Canada;~~~~
- ~~(c) — who is not a current employee of a federal, provincial or territorial government or a current employee of an agency of the Crown in respect of such government;~~
- ~~(d) — who is not a current member of the federal House of Commons or member of a provincial or territorial legislative assembly;~~
- ~~(e) — who has not, in the two years prior to election as a Public Director, held a position described in (a)–(d) above;~~
- ~~(f) — who is not:
  - ~~(i) — an individual who provides goods or services to and receives direct significant compensation from, or~~
  - ~~(ii) — an individual who is a director, partner, significant shareholder, officer or employee of an entity that receives significant revenue from services the entity provides to, if such individual's compensation from that entity is significantly affected by the services such individual provides to,~~the MFDA or any protection or contingency fund in which Members are required to participate, or a Member of the MFDA; and~~
- ~~(g) — who is not a member of the immediate family of the persons listed in (a)–(f) above.~~

~~For the purposes of this definition:~~

- ~~(i) — "significant compensation" and "significant revenue" means compensation or revenue the loss of which would have, or appear to have, a material impact on the individual or entity;~~
- ~~(ii) — "significant shareholder" means an individual who has an ownership interest in the voting securities of an entity, or who is a director, partner, officer, employee or agent of an entity that has an ownership interest in the voting securities of another entity, which voting securities in either case carry more than 10% of the voting rights attached to all voting securities for the time being outstanding.~~

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

### **3. DIRECTORS**

#### **3.1 Duties and Number**

The affairs of the Corporation shall be managed by a Board of Directors. The number of persons comprising the Board of Directors shall be 13.

#### **3.2 Composition of the Board of Directors**

The Board of Directors shall be composed of 6 Public Directors, 6 Industry Directors and the President and Chief Executive Officer. The members of the Board of Directors (other than the President and Chief Executive Officer) shall collectively and over time be nominated and elected on the basis that there will be timely and appropriate regional representation on the Board of Directors of Members of the Corporation across Canada, provided that at any time (subject to the occurrence of vacancies) not less than 4 of the directors shall represent regions other than the Provinces of Ontario and Quebec. In addition, at any time (subject to the occurrence of vacancies) five of the Industry Directors shall be officers or

employees of a Member of the Corporation or of an affiliate or ~~associated~~ corporation which is an Associate of a Member. No Member, affiliate or ~~associated~~ corporation which is an Associate of a Member shall have more than 1 director, officer, employee or other representative on the Board of Directors and, if such event should occur, the Board of Directors in its discretion may request the resignation of or remove as a director, any director or directors in order that the requirements of this section are satisfied. Each director shall be at least 18 years of age.

### 3.3 Election and Term

#### 3.3.1 ~~Initial Election~~

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

#### 3.3.2.1 Public Directors

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

#### 3.3.3.2 Industry Directors

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

#### 3.3.3 Transition

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

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

eligible to serve more than 4 consecutive terms inclusive of terms served in whole or in part at such time;

(iii) Industry Directors whose terms expire at such time (having then served 2 consecutive 3 year terms) shall be eligible to be nominated and elected for 1 further 2 year term; and

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

### 3.4 Vacancies

The office of a director shall be automatically vacated:

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

### 3.5 Filling Vacancies

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

### 3.6 Committees

#### 3.6.1 Governance Committee

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

#### 3.6.2 Audit Committee

The Board of Directors shall establish an Audit Committee composed of 2 Public Directors and 1 Industry Director. The Chair of the Audit Committee shall be 1 of the 2 Public Directors as selected by the Board of Directors. The Audit Committee shall review and report to the Board of Directors on the annual financial statements of the Corporation and shall perform such

other duties as the Board of Directors may delegate or direct from time to time. 1 Public Director and 1 Industry Director shall constitute a quorum of the Audit Committee.

**3.6.3** *Executive Committee*

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

**3.6.4** *Other Board Committees*

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

**3.6.5** *Committee Membership and Procedures*

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

**3.7** **Remuneration of Directors**

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