



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

February 14, 2012

Katharine Tummon
Superintendent of Securities
Prince Edward Island Office of the Superintendent
of Securities
Consumer, Corporate and Insurance Services Division
Department of Justice and Public Safety
P.O. Box 2000
Charlottetown, PE
Canada C1A 7N8

Dear Ms. Tummon:

Re: Application for Recognition as a Self-Regulatory Organization

The Mutual Fund Dealers Association of Canada (the "**MFDA**") is applying to the Prince Edward Island Office of the Superintendent of Securities (the "**Superintendent**") to be recognized as a Self-Regulatory Organization ("SRO") pursuant to sections 71 and 72 of the *Securities Act* (Prince Edward Island).

The MFDA is the national SRO for the Canadian mutual fund dealer industry. It is a non-profit corporation.

As a national SRO, the MFDA regulates the activities of mutual fund dealers in terms of their capital adequacy and conduct of business. Members are subject to ongoing supervision by the MFDA. The MFDA has responsibility to conduct investigations and initiate proceedings before impartial Regional Councils – which have authority to suspend or terminate the registration of an MFDA Member. The MFDA presently relies on the securities commissions for registration matters respecting Member firms and their approved persons.

The MFDA is formally recognized as an SRO by securities regulators in the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan (collectively, the "Recognizing Jurisdictions"). Under the Recognition Orders, the securities regulators imposed terms and conditions on the recognition of the MFDA. In 2004, securities regulators in the Recognizing Jurisdictions approved an application by the MFDA to amend and restate its Recognition Orders. The amendment and restatement was made to reflect changes in the MFDA corporate governance structure implemented by the MFDA in 2003. Further variation and restatement of the Recognition Orders, deleting the definition of "Public Director" from the Terms and Conditions of Recognition and making several housekeeping amendments, were approved by the securities regulators in the Recognizing Jurisdictions in 2008.

Section 14 of the Terms and Conditions of Recognition of the MFDA provides for the suspension of MFDA Rule 2.4.1 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 ("Applicable Jurisdictions"). The suspension of the Rule, originally to expire on December 31, 2004, was extended by these securities commissions until March 31, 2010, with a requirement for the MFDA to submit proposed amendments to Rule 2.4.1 by May 31, 2009. The securities commissions in Manitoba and New Brunswick extended the suspension of MFDA Rule 2.4.1 until such time as a decision or legislative amendments have been made with respect to the payment of commissions to non-registered entities. The MFDA has amended Rule 2.4.1, effective March 29, 2010, to permit remuneration to be directed to unregistered corporations, provided that certain conditions are satisfied, in all Recognizing Jurisdictions other than Alberta. Please consider the issue of the payment of remuneration in respect of Approved Persons while reviewing this application.

The amended and restated Recognition Orders and the amended Terms and Conditions of Recognition for each of the Recognizing Jurisdictions are substantially similar. We have enclosed a draft Recognition Order based on the original Nova Scotia Recognition Order, together with draft Terms and Conditions of Recognition. The attached draft Terms and Conditions of Recognition do not contain provisions providing for the suspension of Rule 2.4.1, as the Rule has been amended as discussed above.

In May 2005, the MFDA Investor Protection Corporation ("IPC") was approved by the securities commissions in Alberta, British Columbia, Nova Scotia and Ontario and by the Financial Services Commission in Saskatchewan as a protection plan for customers of mutual fund dealers that are Members of the MFDA. The MFDA IPC commenced offering coverage of customer accounts on July 1, 2005. Please find enclosed a copy of the Approval Order (British Columbia) and the Terms and Conditions of Approval. The Approval Order for each of the Recognizing Jurisdictions is substantially similar. The Terms and Conditions of Approval are identical in each jurisdiction.

As you are aware, the MFDA is not recognized or approved as an SRO in Quebec and is not able to conduct its regulatory activities in respect of its Members in Quebec on the same basis as it does in other provinces and territories. On May 20, 2005, the Recognizing Jurisdictions issued a formal Order consenting to the MFDA entering into a Cooperative Agreement with the Autorité des marchés financiers ("AMF") and the Chambre de la sécurité financière ("CSF") in Quebec ("Cooperative Agreement"). The Cooperative Agreement sets out general principles on which the MFDA, AMF and CSF will cooperate in the regulation of MFDA Members and their Approved Persons both in Quebec and the rest of Canada. The original Consent Orders provided that the consent was valid for three years, expiring on May 20, 2008. In 2008, the Recognizing Jurisdictions consented to the MFDA's continued participation in the Cooperative Agreement and amended their respective Consent Orders to provide that their consent not contain a definite expiry date. Please find enclosed a copy of the Approval Order (British Columbia).

The MFDA's By-laws, Rules, Policies and Notices are posted on our website at www.mfda.ca, which is kept up-to-date with rules and policies approved by the securities commissions that have recognized the MFDA as an SRO. Our website also contains a variety of information about the MFDA and industry issues that may be of interest to the Commission.

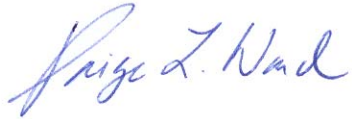
We note that, under section 76 of the *Securities Act* (Prince Edward Island), the Superintendent may authorize a recognized entity to exercise certain powers, as enumerated in the section.

Accordingly, we request that the Superintendent issue an order under section 76 to allow the MFDA, once recognized by the Superintendent, to exercise these powers.

We would consider recognition by the Prince Edward Island Office of the Superintendent of Securities an important addition to our regulatory mandate.

Please feel free to call me regarding any issues raised in this application.

Yours truly,

A handwritten signature in blue ink, reading "Paige L. Ward". The signature is written in a cursive, flowing style.

Paige L. Ward
General Counsel & Vice-President, Policy

DOCs#284703

**IN THE MATTER OF
THE *SECURITIES ACT*, R.S.P.E.I. 1988, Cap. S-3.1 AS AMENDED (the “Act”)**

AND

**IN THE MATTER OF
MUTUAL FUND DEALERS ASSOCIATION OF CANADA/
ASSOCIATION CANADIENNE DES COURTIERES DE FONDS MUTUELS**

**RECOGNIZATION OF SELF-REGULATORY ORGANIZATION
(Sections 71 and 72)**

WHEREAS:

- (1) In February 2012 the Mutual Fund Dealers Association of Canada/Association canadienne des courtiers de fonds mutuels (the “MFDA”) applied to the Prince Edward Island Office of the Superintendent of Securities (the “Superintendent”) for recognition as a self-regulatory organization for mutual fund dealers (“Recognition”) under sections 71 and 72 of the Act;
- (2) On * 201*, the Superintendent published a Notice and Request for comments in connection with the MFDA’s application;
- (3) The Superintendent has considered the comments it has received on the Notice;
- (4) The Superintendent has considered the application of the MFDA for recognition as a self-regulatory organization for mutual fund dealers;
- (5) The Superintendent is satisfied that the MFDA will regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices; and
- (6) The Superintendent is satisfied that the recognition of the MFDA as a self-regulatory organization for mutual fund dealers on the terms and conditions set out in this Recognition is in the public interest.

THE SUPERINTENDENT HEREBY RECOGNIZES the MFDA as a self-regulatory organization for mutual fund dealers pursuant to sections 71 and 72 of the Act on the terms and conditions attached to this Recognition as Schedule “A”, which recognition shall continue until revoked by the Superintendent. In the event that a term or condition is, in the view of the Superintendent, breached by the MFDA, the Superintendent shall give notice to the MFDA of its intention to revoke this Recognition and shall give the MFDA a reasonable opportunity to be heard prior to revoking this Recognition.

DATED at Charlottetown, Prince Edward Island, this * day of * 201*.

Katharine Tummon

SCHEDULE A

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

1. DEFINITIONS

For the purposes of this Schedule:

"Approved Person" has the same meaning as that under the MFDA rules, as amended by the MFDA and approved by the Superintendent 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 as defined in By-law No. 1 of the MFDA.

(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 Superintendent 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 Superintendent 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 Superintendent 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 Superintendent 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 Superintendent 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 Superintendent or its staff. The MFDA shall provide notice to staff of the Superintendent 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 Superintendent in the conduct of reviews of its members and the members' Approved Persons as requested by the Superintendent 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 Superintendent 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 Superintendent 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 Superintendent 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 Superintendent 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 Superintendent 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 Superintendent 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 Superintendent under paragraphs 8 (D) and (E).
- (G) The information given to the Superintendent under paragraphs 8 (D) and (E) will be published by the Superintendent unless the Superintendent 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 Superintendent, 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 Superintendent 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 Superintendent 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 Superintendent, 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 Superintendent. 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 Superintendent 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 Superintendent.
- (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 Superintendent.
- (E) The MFDA shall, wherever practicable, document its interpretations of its rules and distribute copies of that documentation to its members and the Superintendent.

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 Superintendent, 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 Superintendent'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 Superintendent, 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 Superintendent'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 Superintendent. In addition, in the

event that the Superintendent 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 Superintendent, undergo an independent third party review on terms and by a person or persons satisfactory to or determined by the Superintendent, 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 Superintendent. In addition, in the event that the Superintendent 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 Superintendent undergo an independent third party review on terms and by a person or persons satisfactory to or determined by the Superintendent, 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 Superintendent.
- (H) The MFDA shall comply with reporting requirements set out in Appendix A, as amended from time to time by the Superintendent or its staff. The MFDA shall also provide the Superintendent with other reports, documents and information as the Superintendent or its staff may reasonably request.

13. INFORMATION SHARING

The MFDA shall cooperate, by sharing information and otherwise, with IPPs, the Superintendent 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 Superintendent and its staff shall have unrestricted access to the books and records, management, staff and systems of the MFDA.

APPENDIX A

Reporting Requirements

1. Prior Notification

- 1.1 The MFDA shall advise the Superintendent 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 Superintendent 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 Superintendent:

- 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 Superintendent or its staff; and
- 3.3 The MFDA's budget and audited financial statements.

2005 BCSECCOM 411

Approval Order

MFDA Investor Protection Corporation

Section 23 of the *Securities Rules*, B.C. Reg. 194/97

The Mutual Fund Dealers Association of Canada (MFDA) and the MFDA Investor Protection Corporation (MFDA IPC) have applied for approval, under section 23 of the Rules, of the MFDA IPC as a compensation fund for customers of mutual fund dealers that are members of the MFDA.

The MFDA IPC is established by the MFDA.

Members of the MFDA must contribute to the MFDA IPC by way of assessments under MFDA by-laws.

The MFDA IPC intends to provide protection to eligible customers of MFDA members on a discretionary basis to prescribed limits if securities, cash and other property held by any such member are unavailable as a result of the member's insolvency.

The MFDA IPC intends to commence coverage of customer accounts on July 1, 2005 (the Coverage Date).

The MFDA IPC will enter into an agreement with the MFDA prior to the Coverage Date, under which the MFDA IPC will receive all information it deems necessary to ensure that the MFDA IPC can fulfil its mandate and manage risks to the public and MFDA IPC assets on a reasonable basis.

The MFDA IPC and the MFDA have agreed to the terms and conditions set out in Schedule A.

The Executive Director considers it not prejudicial to the public interest to approve the MFDA IPC as a compensation fund under section 23 of the Rules, subject to the terms and conditions set out in Schedule A.

May 13, 2005

Brenda M. Leong
Executive Director

2005 BCSECCOM 411

Schedule A

Terms and Conditions

1. Corporate Structure and Purpose of the MFDA IPC

The MFDA IPC has, and will continue to have, the appropriate legal authority to carry out its objective of providing compensation, in accordance with established by-laws, rules, regulations or policies of the MFDA IPC, to eligible customers of members of the MFDA on a discretionary basis to prescribed limits if customer property comprising securities, cash and other property held by such members (Customer Property) is unavailable as a result of the insolvency of such members.

2. Corporate Governance

- (a) To ensure diversity of representation, the MFDA IPC will ensure that:
 - (i) its board of directors (Board) is comprised of individuals that represent the size, diversity, nature and regional distribution of the businesses of MFDA members and the interests of investors in order to provide a proper balance between the differing interests among MFDA members and investors; and
 - (ii) in recognition that the protection of the public interest is a primary goal of the MFDA IPC, its Board is comprised of an odd number of directors, the majority of which will be public directors.
- (b) For greater certainty, a public director is a director
 - (i) who is not a current director (other than a public director of the MFDA IPC), officer or employee of, or of an associate or affiliate of:
 - (A) the IPC,
 - (B) the MFDA, or
 - (C) the Investment Funds Institute of Canada or the Investment Dealers Association of Canada;

2005 BCSECCOM 411

- (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, or
 - (B) 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 IPC, the MFDA 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.
- (c) For the purposes of the above definition of public director:
- (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;

2005 BCSECCOM 411

- (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.
- (d) Notwithstanding 2(b)(i)(A), above, the Chair shall be eligible as a public director as long as he or she
 - (i) holds no other office with the MFDA IPC;
 - (ii) is not an employee of the MFDA IPC; or
 - (iii) performs no management or executive functions on behalf of the MFDA IPC in respect of its operations after the earlier of
 - (A) the third anniversary of the date of approval of the MFDA IPC as a compensation fund; and
 - (B) the date the MFDA IPC first hires its own executive officers or management employees.
- (e) The MFDA IPC’s governance structure will provide for:
 - (i) fair and meaningful representation on its Board and any committees of its Board, having regard to the differing interests among MFDA members and investors;
 - (ii) appropriate representation of persons independent of the MDFA or any of its members or of any affiliated or associated company of such member on MFDA IPC committees and on any executive committee or similar body;
 - (iii) appropriate qualification, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of the MFDA IPC generally; and
 - (iv) an audit committee, the majority of which will be made up of directors that are public directors.

2005 BCSECCOM 411

- (f) The MFDA IPC Board or MFDA IPC members will appoint independent auditors for the MFDA IPC, for the purpose of conducting an audit of the MFDA IPC's annual financial statements.

3. Funding and Maintenance of MFDA IPC

- (a) The MFDA IPC will have a fair, transparent and appropriate process for setting fees, levies and assessments (collectively, the Assessments) for each MFDA member's contribution. The Assessments will:
 - (i) be allocated on an equitable basis among MFDA members; and
 - (ii) balance the need for the MFDA IPC to have sufficient revenues to satisfy claims in the event of an insolvency of an MFDA member and to have sufficient financial resources to satisfy its operations costs against the goal that there be no unreasonable financial barriers to becoming a member of the MFDA.
- (b) The MFDA IPC has provided the Commission with a current copy of the method of assessing MFDA members and will notify the Commission 30 days prior to making any changes to the method of assessment.
- (c) The MFDA IPC will make all necessary arrangements for the notification to MFDA members of the Assessments and the collection of the Assessments either directly from MFDA members or indirectly through the MFDA.
- (d) The MFDA IPC Board has determined that \$30 million, comprised of cash and credit facilities from institutional lenders, is an adequate initial fund size. The MFDA IPC Board will conduct an annual review, the first to be completed twelve months after approval and thereafter on a calendar year basis, of the adequacy of the level of assets, Assessment amounts and Assessment methodology and will ensure that the level of assets remains adequate to cover potential customer claims pursuant to section 4.
- (e) The MFDA IPC will immediately report to the Commission any actual or potential material adverse change in the level of MFDA IPC assets.
- (f) Any increases in fund size or changes to Assessments or Assessment methodology will be determined by the MFDA IPC Board after consultation with the MFDA. If the MFDA does not agree with the MFDA IPC's proposed changes, the MFDA IPC will immediately report such disagreement to the Commission. However, this will not prevent the

2005 BCSECCOM 411

IPC from imposing Assessments in order to permit the MFDA IPC to meet its obligations to its lenders or to satisfy claims incurred from eligible customers of MFDA members that exceed the assets available to the MFDA IPC.

- (g) Moneys in the MFDA IPC will be invested in accordance with rules, regulations and policies (collectively, the Investment Policies) approved by the MFDA IPC Board, who will be responsible for regular monitoring of the investments. The general parameters of the Investment Policies shall include safety of principal and a reasonable income while at the same time ensuring that sufficient liquid funds are available at any time to pay customer claims. The MFDA IPC shall provide the Commission with its current Investment Policies and will inform the Commission of any changes to the Investment Policies within thirty days of such changes.
- (h) The MFDA IPC will implement an appropriate accounting system, including a system of internal controls for maintaining MFDA IPC assets.

4. Customer Protection

- (a) The MFDA IPC will provide, on a discretionary basis, fair and adequate coverage, for all eligible customers of MFDA members, for customer losses of Customer Property resulting from the insolvency of an MFDA member.
- (b) Without limiting the foregoing, the MFDA IPC will provide, at a minimum, coverage of \$1,000,000 per separate account (as defined in the MFDA IPC Coverage Policy) of an eligible customer for Customer Property, where customer losses result from the insolvency of an MFDA member.
- (c) The MFDA IPC will offer coverage in a jurisdiction only if the requirements relating to risk management, prudent business conduct and practices and firm solvency that apply in that jurisdiction are not materially different from the requirements established by the MFDA IPC and/or the MFDA and the MFDA and the MFDA IPC are able to monitor and enforce their requirements in this regard.
- (d) The MFDA IPC has established and will maintain by-laws, rules, regulations and policies (collectively, the Coverage Policies) relating to customer coverage including, but not limited to:
 - (i) a definition of eligible customer and ineligible customer;

2005 BCSECCOM 411

- (ii) types of products covered and amount of coverage per eligible customer account;
 - (iii) a process for the review of claims that will be based on fairness to customers, expediency and cost efficiency and that will ensure that decisions by the MFDA IPC will be objective and consistent with prior decisions according to the Coverage Policies; and
 - (iv) a fair and reasonable internal appeals or review process whereby customer claims that are not accepted for payment by the initial reviewer(s) will be reconsidered by directors, either individually or in a sub-committee, who were not involved in the initial decision under review.
- (e) The Coverage Policies will not prevent a customer from taking legal action against the MFDA IPC in a court of competent jurisdiction in Canada, nor will the MFDA IPC contest the jurisdiction of such a court to consider a claim where the claimant has exhausted the MFDA IPC's internal appeals or review process.
- (f) The MFDA IPC will provide a current copy of the Coverage Policies to the Commission and the MFDA IPC will inform the Commission 30 days prior to implementing any changes to its Coverage Policies.
- (g) The MFDA IPC will adequately inform customers of MFDA members, either directly or indirectly through the MFDA, of the principles and policies on which coverage will be available, including, but not limited to, the process for making a claim and the maximum coverage available per customer account.
- (h) In the event of an insolvency of a member of the MFDA, the MFDA IPC will respond quickly and decisively, in accordance with its Coverage Policies, in assessing claims.
- (i) The MFDA IPC and the MFDA will co-operate and provide reasonable assistance to each other when a member firm is in or is approaching financial difficulty, or when either the MFDA IPC or the MFDA is administering an insolvency.

2005 BCSECCOM 411

5. Financial and Operational Viability

- (a) The MFDA IPC has, and will maintain, sufficient financial and human resources for the proper performance of its functions including, but not limited to,
 - (i) assessing and managing risks to the public and to MFDA IPC assets;
 - (ii) administering any insolvencies, including the processing of customer claims;
 - (iii) setting and collecting of Assessments, including conducting reviews of the Assessment methodology;
 - (iv) maintaining an adequate fund size, including assessing the fund size on a regular basis; and
 - (v) day-to-day administrative work, including required reporting to the Commission.
- (b) The MFDA IPC will ensure that it has sufficient funds set aside and allocated to operating costs within 90 days of this order being granted.

6. Risk Management

- (a) The MFDA IPC will ensure it identifies and requests all necessary information from the MFDA, and the MFDA will provide such information, in order for the MFDA IPC to:
 - (i) fulfil its mandate and manage risks to the public and to MFDA IPC assets;
 - (ii) assess whether the prudential standards and operations of the MFDA are appropriate for the coverage provided and the risks incurred by the MFDA IPC; and
 - (iii) identify and deal with MFDA members that may be in financial difficulty.
- (b) While the MFDA IPC will usually rely on the MFDA to conduct reviews of MFDA members for MFDA IPC purposes, the MFDA IPC will reserve the right to conduct reviews of MFDA members in particular situations

2005 BCSECCOM 411

where the MFDA IPC has concerns about the integrity of the fund or possible claims.

- (c) The MFDA IPC will monitor risk management issues and will report to the Commission, on an annual basis, on how the MFDA IPC evaluated risks, what risk management issues were identified and how the MFDA IPC dealt with these issues. The annual report will also include an assessment by the MFDA IPC Board of the need for additional risk management tools.
- (d) As part of the first annual risk management review, the MFDA IPC will include a review of the different risks posed by different types of products and assess the appropriateness of offering coverage for all Customer Property.

7. Reporting to the Commission

- (a) The MFDA IPC will provide to the Commission any reports, documents or information requested by the Commission or Commission staff. The Commission or Commission staff and the MFDA IPC may review and revise such reporting requirements as necessary on an on-going basis.
- (b) The MFDA IPC will immediately notify the Commission where it has knowledge of:
 - (i) any conditions which in the opinion of the MFDA IPC could give rise to payments being made out of the MFDA IPC, including any conditions which have contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to:
 - (A) inhibit an MFDA member from promptly completing securities transactions, promptly segregating customers' securities as required or promptly discharging its responsibilities to customers, other MFDA members or other creditors,
 - (B) result in material financial loss,
 - (C) result in material misstatements of an MFDA member's financial statements, or

2005 BCSECCOM 411

- (D) result in violations of the minimum record requirements to an extent that could reasonably be expected to result in the conditions described in paragraphs (A), (B) or (C) above;
 - (ii) misconduct or apparent misconduct by an MFDA member or its registered or approved employees and others where investors, customers, creditors, MFDA members, or the MFDA IPC may reasonably be expected to suffer serious damage as a consequence thereof, including where the solvency of an MFDA member is at risk, fraud is alleged or there is a concern of deficiencies in supervision or internal controls; and
 - (iii) the withdrawal or expulsion of any MFDA member from the MFDA.
- (c) The MFDA IPC will provide to the Commission a report detailing any action taken with respect to an MFDA member in relation to the member's insolvency. The report shall describe the circumstances of the insolvency, including a summary of the actions taken by the MFDA member, the MFDA and the MFDA IPC and any committee or person acting on behalf of such parties.
- (d) The annual audited financial statements of the MFDA IPC, prepared in accordance with generally accepted accounting principles, will be delivered to the Commission promptly after being approved by the MFDA IPC Board and no later than 120 days after the close of the MFDA IPC fiscal year.
- (e) The MFDA IPC shall provide a written report to, and will meet with, the Canadian Securities Administrators (CSA) or their representatives at least once a year to report on the MFDA IPC's operations and activities including, but not limited to:
 - (i) the MFDA IPC Board's annual review of the adequacy of the level of assets in the fund, Assessment amounts and the Assessment methodology;
 - (ii) MFDA IPC resources;
 - (iii) MFDA member firm failures and any resulting customer claims;
 - (iv) risk management issues; and

2005 BCSECCOM 411

- (v) the results of any reviews of MFDA members.

8. Rules

- (a) The MFDA IPC will establish by-laws, rules, regulations, policies, procedures, practices and other similar instruments (Rules) that:
 - (i) are not contrary to the public interest; and
 - (ii) are necessary or appropriate to govern all aspects of its business and affairs.
- (b) More specifically, the MFDA IPC will ensure that:
 - (i) the Rules are designed to:
 - (A) ensure the continued business viability of MFDA members,
 - (B) ensure reasonable funding of the MFDA IPC through Assessments to MFDA members, without creating unreasonable barriers to the mutual fund industry and without compromising investor protection,
 - (C) ensure the maintenance of a reasonable level of MFDA IPC assets to afford protection for eligible customers of MFDA members, and
 - (D) ensure that its business is conducted in an orderly manner so as to afford protection to investors;
 - (ii) the Rules shall not:
 - (A) be contrary to securities legislation,
 - (B) permit unreasonable discrimination among customers of MFDA members and among MFDA members, or
 - (C) impose any burden on competition that is not necessary or appropriate in furtherance of securities legislation.

2005 BCSECCOM 411

9. Agreement between the MFDA IPC and the MFDA

The MFDA IPC and the MFDA will, prior to the Coverage Date, enter into an agreement, approved by the Commission or the Executive Director, where applicable, pursuant to which the MFDA IPC will, among other things, receive all information it deems necessary to ensure that the MFDA IPC can fulfil its mandate and manage risks to the public and to MFDA IPC assets on a reasonable basis. Such agreement, as may be amended from time to time, shall continue to be in force at all times. All amendments will be subject to prior approval by the Commission or the Executive Director, where applicable.

10. Establishment of a Working Group

- (a) The MFDA IPC will establish a working group consisting, at a minimum, of representatives of the MFDA IPC, the MFDA and mutual fund dealers (including representatives from both mutual fund dealers that hold client investments primarily in client name and mutual fund dealers that do not hold client investments primarily in client name), with representatives of the CSA as observers, to review various aspects of the MFDA IPC, including, but not limited to, the following:
 - (i) identification of the risks of mutual fund dealer failures leading to potential investor losses;
 - (ii) consideration of the size of fund that is appropriate having regard to:
 - (A) identified risks,
 - (B) amounts of Customer Property held in client name,
 - (C) amounts of Customer Property held in nominee name,
 - (D) average size of customer accounts,
 - (E) average cash flow of customer monies through the dealer, and
 - (F) other non-mutual fund products being covered under the fund;
 - (iii) the type of products that should be covered;

2005 BCSECCOM 411

- (iv) the appropriate coverage amount per customer account;
 - (v) assessment methodology, including whether it should be risk based;
 - (vi) the appropriate long term methods of funding the MFDA IPC;
 - (vii) the types of risk management tools required by the MFDA IPC;
and
 - (viii) the appropriate MFDA IPC advertising requirements.
- (b) A written report of the working group's findings will be submitted to the MFDA IPC Board and to the Commission within one year from the date of Commission approval of the MFDA IPC.
- (c) The MFDA IPC Board will evaluate the working group's findings and will provide a written report of its evaluation to the Commission and to the working group within 30 days of receipt of the working group's report.

2008 BCSECCOM 390

COR# 08/150

Consent Order

Mutual Fund Dealers Association of Canada (MFDA)

Section 171 of the *Securities Act*, RSBC 1996, c. 418

- ¶ 1 The Commission recognized the MFDA as a self-regulatory organization for mutual fund dealers on February 15, 2001 under section 24 of the Act.
- ¶ 2 The Commission continued its recognition of the MFDA under amended terms and conditions on June 3, 2004 (Recognition Order).
- ¶ 3 The Commission issued an order to vary the Recognition Order on November 14, 2006.
- ¶ 4 Under the Recognition Order, the MFDA may, with the consent of the Commission, make arrangements with another body or person to perform the functions of monitoring and enforcing compliance with the MFDA's rules (the Rules), and investigating complaints against MFDA members and their Approved Persons (as defined in the Rules).
- ¶ 5 The MFDA entered into an agreement with l'Autorité des marchés financiers du Québec (the Autorité) (known as l'Agence Nationale d'encadrement du secteur financier prior to December 17, 2004) and the Chambre de la sécurité financière (the Chambre) to co-ordinate the regulation of MFDA members with operations in Québec (Co-operative Agreement), attached as Schedule A.
- ¶ 6 The Commission issued an order consenting to the Co-operative Agreement on May 20, 2005.
- ¶ 7 The MFDA has applied to the Commission for an order consenting to the Co-operative Agreement that does not include a definite expiry date.
- ¶ 8 The MFDA has represented to the Commission as follows:
 - 1. the Rules and the laws, regulations, orders or other regulatory directions or instruments which the Autorité and/or the Chambre administer or enforce from time to time including, without limitation, the *Securities Act* (Québec) and the regulations made under it (the Regulations), relating to business conduct and sales practices, are substantially similar or have the same regulatory objectives;

2008 BCSECCOM 390

2. MFDA members will, by complying with the Regulations relating to business conduct and sales practices in Québec, be considered by the MFDA to comply with its Rules relating to the same subject matter;
 3. the MFDA, the Autorité and the Chambre have similar public interest mandates;
 4. the MFDA and the Autorité together with the Chambre are performing similar regulatory activities;
 5. the MFDA has sufficient access to its members' books, records and operations to be able to conduct prudential compliance reviews of its members operating in Québec;
 6. the MFDA and the Autorité have struck a coordination committee to develop similar approaches to conducting inspections, a similar inspection program and schedule of inspections to ensure substantially consistent monitoring and enforcement of requirements;
 7. the MFDA is of the opinion that members in Québec will be subject to a similar or equivalent regulatory regime;
 8. the MFDA is not recognized as a self-regulatory organization in the Province of Quebec and assessments for MFDA Investor Protection Corporation (MFDA IPC) funding are not made in respect of assets under administration of members in Quebec. Accordingly, customers with accounts in Quebec at MFDA members, and whose assets held by MFDA members in Quebec are not subject to such assessment (Quebec Customers), are not entitled to protection by the MFDA IPC except as the Board of Directors of the MFDA IPC shall otherwise in its discretion determine;
 9. the MFDA will provide prior notification to the Commission if it becomes aware that the MFDA IPC intends to provide coverage to Quebec Customers.
- ¶ 9 Considering it is not prejudicial to the public interest, the Commission orders under section 171 of the Act that the Recognition Order is varied to provide the Commission's consent to the Co-operative Agreement, subject to the terms and conditions attached as Schedule B.
- ¶ 10 July 8, 2008

Douglas M. Hyndman
Chair

2008 BCSECCOM 390

Schedule A

CO-OPERATIVE AGREEMENT

made as of December 15, 2004

BETWEEN:

L'AGENCE NATIONALE D'ENCADREMENT DU SECTEUR FINANCIER

(a) ("Autorité")

CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

(b) ("Chambre")

and

ASSOCIATION CANADIENNE DES COURTIERES DE FONDS MUTUELS

(c) ("ACCFM")

INTRODUCTION:

1. The Autorité is a regulatory organization in respect of mutual fund brokerage firms and their representatives pursuant to *An Act respecting the distribution of financial products and services* (R.S.Q., c. D-9.2) (the "Act"), and its Regulations and carries out other activities in respect thereof pursuant to that Act and other applicable legislation including, without limitation, the *Securities Act* of Quebec (R.S.Q., c. V-1.1) (the "QSA").
2. Pursuant to the Act, the Chambre is a self-regulatory organization responsible for protecting the public in maintaining discipline and ethics among its members who carry on activities in the sectors of insurance of persons, group

2008 BCSECCOM 390

insurance of persons, financial planning, group savings plan brokerage, investment contracts brokerage and scholarship plan brokerage, all through a syndic and a discipline committee. It regulates the compulsory continuing education, supervises its application and professional development of representatives within its jurisdiction.

3. The ACCFM is a self-regulatory organization which is recognized as such in certain provincial jurisdictions other than Quebec in respect of mutual fund dealers and their approved persons, and which is empowered under the legislation of such jurisdictions to supervise or regulate matters similar to those within the jurisdiction of the Autorité or the Chambre as contemplated by section 189 of the Act.
4. The Fonds d'indemnisation des services financiers provides compensation to victims of fraud, fraudulent tactics or embezzlement that takes place within the context of the distribution of financial products and services covered by the Act in Quebec by, among others, mutual fund brokerage firms and their representatives including Members of the ACCFM and their representatives.
5. The Corporation de protection des investisseurs de l'ACCFM has been established to provide protection to eligible clients.
6. In order to protect the public, avoid regulatory inefficiencies and preserve and enhance the respective separate mandates of the Autorité, Chambre and ACCFM, the parties wish to enter into this co-operative agreement in accordance with section 189 of the Act relating to the specific subjects set out below.
7. These recitals are an integral part of this Agreement.

2008 BCSECCOM 390

1. INTERPRETATION

1.1 GENERAL PRINCIPLES

This Agreement is intended to set out the general principles on which the parties will co-operate with respect to the regulation of Member Firms of the ACCFM with operations and activities as mutual fund firms in Quebec and elsewhere. It is acknowledged that many aspects of the implementation of this Agreement will be by practices and protocols between the parties as experience develops, and this Agreement, and policy and administrative matters under it, may be the subject of amendments or supplementary protocols and understandings. In all respects, this Agreement is to be implemented in a manner that preserves the respective jurisdiction of the parties (as set out in Section 1.3).

1.2 DEFINITIONS

The following terms as used in this Agreement or any document of the parties contemplated hereby shall have the meanings indicated, except as defined otherwise or the context requires:

“ACCFM IPC” means the Corporation de protection des investisseurs de l’ACCFM, a corporation created under Part II of the *Canada Corporations Act* by ACCFM;

"Approved Person" means an individual who is an Approved Person of a Member of the ACCFM under the Rules;

"Firm" means a legal person registered with the Autorité to pursue mutual fund brokerage activities in Quebec;

“FISF” means the Fonds d’indemnisation des services financiers established pursuant to the Act;

“Head Office” means:

2008 BCSECCOM 390

- (i) the principal or registered office of the Member Firm according to the legislation under which the Member Firm is incorporated; and
- (ii) any office listed in Appendix A as may be amended from time to time by the Coordination Committee referred to in Section 3.5.

"Information" means all information, including personal information, recorded in writing on any storage medium whatsoever, in particular of the kinds referred to in Sections 2.1 and 2.2;

"Inspection" means, if carried out by the Autorité, an inspection in the sense of the Act or *An Act respecting the Agence nationale d'encadrement du secteur financier* (the "Agency Act"), and if carried out by the ACCFM, means an examination or investigation in the sense of the Rules;

"Investigation" done by the Autorité or the Chambre means an investigation within the meaning of the Agency Act;

"Members" means mutual fund dealers which are Members of the ACCFM but, for greater certainty, shall not include individuals or representatives who are Approved Persons;

"Member Firm" means a Firm which is a Member;

"Prudential Matters" means in respect of a Member those aspects of its structure and operations that affect its financial integrity including, without limitation,

- (i) capital, margin, segregation, filing, reporting and audit matters which are the subject of ACCFM Rule 3;

2008 BCSECCOM 390

- (ii) insurance requirements which are the subject of ACCFM Rule 4;
- (iii) systems and operations matters including internal controls and procedures and trading processing which are the subject of ACCFM Policy 4; and
- (iv) systems and procedures relating to compliance and supervision requirements of Members with respect to operations outside Quebec;

"Regulations" means in respect of either the Autorité or the Chambre, the laws, regulations, orders or other regulatory directions or instruments which they (or either of them) administer or enforce from time to time including, without limitation, the Act, the QSA, the Agency Act and the Regulations made thereunder.

"Representatives" means individuals authorized pursuant to the Act to carry on mutual-related fund activities in Quebec;

"Rules" means the By-laws, Rules, Policies, Forms, orders, or other regulatory directions or instruments which the ACCFM administers or enforces from time to time.

1.3 JURISDICTION

1.3.1 Autorité and Chambre.

The authority, capacity and jurisdiction of both the Autorité and Chambre are subject to the provisions of the Act, the QSA and other legislation and principles of law applicable in Quebec and the rights and obligations of each of the Autorité and Chambre pursuant to this Agreement are subject to such legislation and laws.

2008 BCSECCOM 390

1.3.2 ACCFM

ACCFM is a self-regulatory organization, recognized as such in certain provincial jurisdictions other than Quebec, to which its Members belong and submit to self-regulation, subject to the laws in the applicable provinces of Canada.

1.3.3 Agreement

This Agreement is entered into pursuant to Section 189 of the Act and the entering into of this Agreement shall not constitute the recognition of the ACCFM as a self-regulatory organization in Quebec.

1.4 PREMISE

It is a premise of this Agreement that:

- (a) the Rules of the ACCFM and Regulations of the Autorité and Chambre relating to business conduct and sales practices of Members and their Approved Persons are substantially similar and/or have the same regulatory objectives. Thus, Member Firms will, by complying with the Regulations of the Autorité relating to business conduct and sales practices in Quebec, comply with ACCFM Rules relating to the same subject matter;
- (b) Prudential Matters of Member Firms related to Head Offices located in Quebec affect clients of Member Firms and the public both inside and outside Quebec;
- (c) the Autorité, Chambre and the ACCFM have similar public interest mandates;
- (d) the Autorité, Chambre and the ACCFM are performing similar regulatory activities; and

2008 BCSECCOM 390

- (e) it is in the respective interests of the parties to this Agreement and the public interest including Quebec clients of Member Firms that (i) the protection to clients and (ii) the administration of insolvent Member Firms be co-ordinated by separate agreement between the Autorité, the ACCFM, the ACCFM IPC and FISF as may be relevant, such agreement to be settled prior to the date the ACCFM IPC commences offering coverage.

Given the foregoing, the ACCFM considers that its mandate with respect to its Member Firms and Approved Persons registered under the Act can be satisfied by the performance of the Autorité and Chambre of their existing mandates under the Act and in accordance with the provisions of this Agreement.

1.5 LAWS OF QUEBEC

This Agreement is to be construed and governed by the laws of Quebec.

1.6 FRENCH TEXT

An English translation of this Agreement has been prepared for the convenience of the parties. In case of any divergence between the English translation and the French text of this Agreement, the French text shall prevail.

2. INFORMATION SHARING

2.1 SHARING

Each of the Autorité, Chambre and ACCFM receives and maintains Information pertaining to the business, operations and activities of Firms and Members, as the case may be, and their representatives, Approved Persons and employees, as the case may be. Subject to the restrictions set out in this Agreement including, without limitation, the provisions of Sections 2.3 and 2.4, the Autorité, Chambre and ACCFM shall make available to each other Information on the basis provided

2008 BCSECCOM 390

herein. A party may make such Information available to another party (a) on request by such party, (b) voluntarily without request or (c) pursuant to protocols or understandings developed and approved by the parties to be followed as a matter of course. Any Information so provided shall be in a format as agreed by the parties and may be specific as to any Member Firm, all Member Firms or class of Member Firms and as to any subject matter or activity relating to a Member Firm, all Member Firms or class of Member Firms. It is expected that each party shall bear its own expenses in connection with the provision of Information hereunder, except that in any case where the costs of providing Information would be unfairly high or excessive the parties may agree to an appropriate basis of sharing such costs and, if such agreement is not reached, there shall be no obligation to provide Information under this Section 2.1.

2.2 COMPLAINTS

The Autorité or the Chambre, as the case may be, will advise the ACCFM on a periodic basis of the status or conclusion of any complaint described in Section 5.1.1. The ACCFM will advise the Autorité or the Chambre, as the case may be, on a periodic basis of the status or conclusion of any complaint described in Section 5.1.2.

2.3 USE AND CONFIDENTIALITY

All Information provided to a party hereunder shall be used solely in respect of the regulatory and enforcement activities of such party and shall be kept confidential and not disclosed to any other person except as (a) consented to by the party providing the Information, (b) to the extent the Information is in the public domain, or (c) specifically authorized by applicable law or a court or competent regulatory authority.

2008 BCSECCOM 390

2.4 PRIVACY LEGISLATION

The obligations of the parties to provide Information hereunder are subject to the restrictions of any privacy or similar legislation including, without limitation, *An Act respecting access to documents held by public bodies and the protection of personal information*, (R.S.Q., c.A-2.1.) and the Agency Act where applicable.

The parties shall endeavour to administer their affairs and to the extent authorized make and enforce Regulations and Rules which permit the provision of Information hereunder including satisfying the requirement for the consent by Member Firms of the release and use of Information pursuant to this Agreement.

2.5 NOTICE OF AGREEMENT

It is acknowledged that the parties intend to give notice to Member Firms, representatives, governments and other regulators and to the public of the fact that this Agreement has been entered into, and the parties shall co-operate in settling the terms and format of such notices.

3. INSPECTIONS

3.1 PRUDENTIAL MATTERS INSPECTIONS IN HEAD OFFICE

The Autorité, as lead jurisdiction, shall conduct Inspections in Quebec concerning the Prudential Matters of all Member Firms having Head Offices in Quebec. The ACCFM may cooperate with the Autorité in conducting such Inspections pursuant to the provisions of Section 3.5. For the purpose of permitting ACCFM to cooperate with the Inspections contemplated herein and ensuring that any Information relating thereto can be used by the Autorité, the Autorité shall recognize or designate representatives of ACCFM as inspectors of the Autorité. The ACCFM, as lead jurisdiction, shall conduct Inspections of all Member Firms

2008 BCSECCOM 390

having Head Offices outside Quebec. The Autorité may cooperate with the ACCFM in conducting such Inspections pursuant to the provisions of Section 3.5.

3.2 BUSINESS CONDUCT AND SALES PRACTICES COMPLIANCE

Subject to the provisions of Section 3.3, ACCFM acknowledges that it will not conduct Inspections in Quebec relating to the business conduct and sales practices compliance by its Member Firms and their representatives and their operations in Quebec and as they affect clients in Quebec and the Quebec public. In this regard ACCFM understands that the Autorité will conduct such Inspections and that the Chambre will act in a consulting role in audits of the quality and compliance of professional practices, in accordance with the Regulations.

3.3 SPECIAL CIRCUMSTANCES

3.3.1 In this Section, “Special Circumstances” means:

- a) for the ACCFM and the Autorité, in respect of Prudential Matters, an apparent financial problem that can cause insolvency of a Member Firm;
- b) for the ACCFM, in respect of business conduct and sales practices compliance, a situation that occurred outside Quebec that may demonstrate an apparent major compliance failure in respect of such practices;
- c) for the Autorité, in respect of business conduct and sales practices compliance, a situation that occurred in Quebec that may demonstrate an apparent major compliance failure in respect of such practices.

2008 BCSECCOM 390

3.3.2 The ACCFM, when it becomes aware of Special Circumstances, may request that the Autorité or Chambre, as the case may be, conduct an Investigation or Inspection of a Member Firm situated in Quebec or of one of its representatives, in accordance with the Regulations. When it becomes aware of Special Circumstances, the Autorité or the Chambre, as the case may be, may ask the ACCFM to conduct an Investigation or Inspection of a Member Firm situated elsewhere in Canada. The party that has requested the Inspection may cooperate with the other party which becomes the lead jurisdiction. For the purpose of permitting the ACCFM to cooperate with such an Inspection in Quebec and ensuring that any Information relating thereto can be used by the Autorité, the Autorité shall recognize or designate representatives of ACCFM as inspectors of the Autorité.

3.4 INFORMATION

The results of any Inspections provided for in this Section 3 are to be considered Information for the purposes of Section 2.

3.5 COORDINATION COMMITTEE

The ACCFM and the Autorité will use its best efforts to develop a similar Inspection program and similar views and approaches related thereto. A coordination committee composed of Inspections staff of both parties shall be responsible for ensuring the follow-up of the application of the Inspection program. Such coordination committee shall determine the number of Member Firms that must be Inspected in a year and the scheduling of such Inspections.

3.6 INSPECTIONS RELATING TO ENFORCEMENT AND COMPLAINTS

Notwithstanding the provisions of this Section 3, Inspections relating to enforcement and complaints shall be subject to the provisions of Section 5.

2008 BCSECCOM 390

4. REGULATIONS AND RULES

4.1 HARMONIZATION

The parties acknowledge that, subject to applicable laws, public policy and their respective mandates, substantially similar Regulations and Rules applicable to Member Firms, and their consistent application, is in the interests of the public, Member Firms and their clients. The manner in which the parties pursue the foregoing objective will be determined according to the particular Regulations and Rules identified and may include, without limitation, the procedures referred to in Sections 4.2 and 4.3. It is acknowledged that the Autorité or the Chambre may not have the power to make or amend such Regulations, or be responsible for initiating such actions by other authorities. It is acknowledged that under the terms of the legislation in certain provinces of Canada, or the terms on which ACCFM is recognized or authorized to operate, ACCFM may require the approval of other authorities to make or amend its Rules.

4.2 DEVELOPMENT

The parties shall keep each other advised as to the development or proposed development of new or amended Regulations and Rules. Where the subject matter permits and it would otherwise be helpful, the parties will consult with each other, provide information to each other and/or engage in forums or committees to assist in the objective of substantially similar Regulations and Rules.

4.3 NOTICES OF REGULATIONS AND RULES

The parties will use their best efforts to provide to each other in advance of publication any proposed notices, directions or other regulatory communications relating to the application or interpretation of their respective Regulations and Rules. The purpose of this process is to permit the party having received such information to comment on the proposed publication and/or to amend or co-

2008 BCSECCOM 390

ordinate the publication of its own such notices, directions or communications to assist the public, clients and Member Firms in understanding and complying with the Regulations and Rules.

5. ENFORCEMENT AND COMPLAINTS

5.1 COMPLAINTS

5.1.1 ACCFM

ACCFM shall refer any complaint it receives relating to the conduct of its Member Firms and Approved Persons in Quebec to the Autorité or Chambre, as appropriate. The Inspection related to any such complaint shall be carried out by the Autorité and the Chambre will act in a consulting role in audits of the quality and compliance of professional practices, in accordance with the Regulations in accordance with their respective practices and mandates.

5.1.2 Autorité and Chambre

The Autorité or Chambre shall refer any complaint it receives relating to the conduct of Member Firms and Approved Persons outside Quebec to ACCFM. The Inspection related to any such complaint shall be carried out by the ACCFM according to its practices and mandates.

5.2 ENFORCEMENT REGARDING MEMBER FIRMS

5.2.1 Business Conduct and Sales Practices Compliance

Enforcement actions in respect of Member Firms and Approved Persons in respect of or arising out of matters referred to in Section 3.2, shall be undertaken by the Autorité or Chambre, as the case may be, and not by the ACCFM.

2008 BCSECCOM 390

5.2.2 Prudential Matters and Special Circumstances

Enforcement actions in respect of Member Firms in respect of or arising out of Prudential Matters referred to in Section 3.1 or the subject of an Inspection under Section 3.3 may be undertaken by the ACCFM.

5.2.3 General

The parties acknowledge that in order that enforcement actions apply everywhere in Canada, both the ACCFM and the Autorité must exercise their respective jurisdictions. Nothing in Section 5.2. shall preclude the Autorité or Chambre, as the case may be, from taking enforcement action pertaining to the same circumstances referred to in the preceding sentence.

5.3 CO-OPERATION

The parties shall co-operate to the extent reasonable and practicable in co-ordinating and providing mutual assistance to each other in enforcement actions involving Member Firms and Approved Persons. Such co-operation shall include the provision of Information pursuant to Section 2, advance notice of proposed proceedings, joint settlement discussions where appropriate and the avoidance of double jeopardy in respect of Member Firms and Approved Persons.

6. GENERAL

6.1 TERMINATION

This Agreement may be terminated on the delivery of not less than 180 days' prior written notice to the other parties.

6.2 NOTICES

Any notice or communication required under this Agreement shall be delivered in writing by courier or electronic means as set out below and, if given accordingly,

2008 BCSECCOM 390

shall be effective on receipt or, if by electronic means, on transmission and receipt by the sender of electronic confirmation of such successful transmission:

- (a) if sent to the Autorité:
Place de la Cité, Tour Cominar
2640, Laurier Boulevard
4th Étage, Sainte-Foy (Québec)
G1V 5C1

Attention: Jean St-Gelais, President and Chief Executive Officer
Facsimile: (418) 528-2791
e-mail: jean.stgelais@lautorite.qc.ca

- (b) if sent to the Chambre:

500, Rue Sherbrooke O.
7e Étage
Montréal, Québec
H3A 3C6

Attention: Yves Gagné, Executive Vice-President
Facsimile: (514) 282-2225
e-mail: ygagne@chambresf.com

- (c) if sent to ACCFM:

121 King Street West
Suite 1600
Toronto, Ontario
M5H 3T9

Attention: Larry Waite, President and Chief Executive Officer
Facsimile: (416) 943-1218
e-mail: lwaite@mfa.ca

2008 BCSECCOM 390

(1) AGREED by the parties under the hands of their authorized representatives as of the date set out above.

**AUTORITÉ DES MARCHÉS
FINANCIERS**

Per: _____

Per: _____

**CHAMBRE DE LA SÉCURITÉ
FINANCIÈRE**

Per: _____

Per: _____

**ASSOCIATION CANADIENNE DES
COURTIERS DE FONDS MUTUELS**

Per: _____

Per: _____

2008 BCSECCOM 390

Schedule B

Terms and Conditions of Consent

1. The MFDA must regulate its members on the basis that its members will, by complying with the Regulations relating to business conduct and sales practices in Québec, be deemed to be complying with Rules relating to the same subject matter.
2. Management of the MFDA must assess the effectiveness of the Co-operative Agreement every two years, including (a) the performance of the Autorité and the Chambre in monitoring and enforcing compliance by MFDA members in Québec with Regulations relating to business conduct and sales practices, and in investigating complaints against its members and their Approved Persons, and (b) whether the Rules and the Regulations continue to be harmonized. Management of the MFDA must report to the MFDA Board of Directors their assessment together with any recommendations for improvements. The MFDA must provide the Commission with a copy of these reports by June 15 following each biennial assessment (starting on June 15, 2010), and advise the Commission of any proposed actions arising from the reports.
3. The MFDA IPC does not provide coverage to Quebec Customers.
4. This consent expires on the earliest of (a) the termination date of the Co-operative Agreement, (b) the date on which the MFDA IPC amends its coverage with respect to Quebec Customers, and (c) a date determined by the Commission.