

MUTUAL FUND DEALERS ASSOCIATION OF CANADA**DEFINITION OF PUBLIC DIRECTOR (Sections 1 and 3 of By-law No. 1)**

By-law 15 of the MFDA as amended from proposed By-law 15 which was presented to the 2008 Annual Meeting.

1. DEFINITIONS

"**Associate**", 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;
- (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;
- (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;

"**Public Director**" means a 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.

"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 consisting of an odd number of directors of not less than 13 and not more than 17. The number of directors shall be determined from time to time by a resolution passed at a meeting of directors.

3.2 **Composition of the Board of Directors**

The Board of Directors shall be composed of the same even number of Public Directors and 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 appointed 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) at least 5 of the Industry Directors shall be officers or employees of a Member of the Corporation or of an affiliate or corporation which is an Associate of a Member. No Member, affiliate or 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 *Public Directors*

At each Annual Meeting, 3 or more Public Directors shall be elected to fill the vacancies created by the expiry of the terms of office of the Public Directors whose terms have expired at such meeting or since the last Annual Meeting. The term for each Public 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 Public Director to be elected for a period of less than 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 4 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 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 recommendations for Public Directors provided that such recommendations shall have been received by the Corporation not less than 60 days prior to the relevant Annual Meeting.

3.3.2 Industry Directors

At each Annual Meeting, 3 or more Industry Directors shall be elected to fill the vacancies created by the expiry of the terms of office of the Industry Directors whose terms have expired at such meeting or since the last Annual Meeting. The term for each Industry Director to be elected at an Annual Meeting shall expire at the second Annual Meeting next following such appointment on the appointment 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 4 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 recommendations for Industry Directors provided that such 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 2009,

- (i) Public Directors whose terms were to expire at the Annual Meeting in 2008 and who had then served 2 consecutive 2 or 3 year terms shall be eligible to be nominated and elected for 1 further 1 year term;
- (ii) Public Directors whose terms expire at the Annual Meeting in 2009 and who have then served 2 consecutive 2 or 3 year terms shall be eligible to be nominated and elected for 1 further 2 year term;

- (iii) Public Directors whose terms do not expire at the Annual Meeting in 2009 and who have served less than 2 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;
- (iv) Industry Directors whose terms expire at the Annual Meeting in 2009 and who have then served 3 consecutive 2 year terms shall be eligible to be nominated and elected for 1 further 2 year term; and
- (v) Industry Directors whose terms do not expire at the Annual Meeting in 2009 and who have served less than 3 consecutive 2 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 in no event shall any such Public or Industry Director be eligible to serve in aggregate for more than 8 consecutive years as a 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 or appointment 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 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 or appointment 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.