



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels
121 King Street West, Suite 1000, Toronto, Ontario, M5H 3T9
TEL: 416-361-6332 FAX: 416-943-1218 WEBSITE: www.mfda.ca

Contact: Paige L. Ward
Director of Policy and Regulatory Affairs
Phone: 416-943-5838
E-mail: pward@mfda.ca

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MFDA Bulletin

Policy

For Distribution to Relevant Parties within your Firm

Amendments to MFDA By-law No.1 (Enforcement Process)

The MFDA Board of Directors enacted By-law No. 10 which sets out certain amendments to MFDA By-law No.1, on September 23, 2004. These amendments have received the requisite approval of MFDA Members and the recognizing securities commissions and are now in effect.

By-law No. 10 sets out amendments to Sections 11, 19, 20, 24 and 26 of By-law No. 1 which are required to clarify procedural aspects of the enforcement process so that Hearings may be conducted in a more cost-effective, efficient and flexible manner that better serves the interests of the Corporation, the parties and the public.

A summary of the amendments is as follows:

- (a) With respect to *Membership Application Hearings*, the amendments to section 11 will:
 - (i) provide that the review hearing by the Board is in the nature of an appeal confined to the record of the original hearing;
 - (ii) permit the Corporation to prescribe rules of procedure in respect of membership application proceedings; and
 - (iii) provide that the Board's decision on a review of a membership application hearing is final.
- (b) With respect to *Disciplinary Hearings before a Regional Council Hearing Panel*, the amendments will:

- (iv) replace certain fixed notice and time requirements with a general requirement that the notice or time to be given is that which is provided for in the Corporation's Rules of Procedure (sections 11.5.3, 20.1.1, 20.2 and 24.4.3); and
 - (v) permit a single public representative of a Regional Council to act on behalf of a Hearing Panel for the purpose of presiding over preliminary motions and other procedural matters relating to the conduct of a disciplinary proceeding.
- (c) With respect to *Board Reviews of Disciplinary Hearings*, the amendments to section 24.6 will:
- (vi) permit the Board to review any outcome of a disciplinary proceeding against a Member, including those cases where a Hearing Panel has imposed no penalty;
 - (vii) require that the Board panels assigned to conduct the review hearings must include one public representative of a Regional Council (i.e. a lawyer, legal academic or retired judge); and
 - (viii) provide that the Board has the discretion to award any or all of the costs of a review against the Member.
- (d) With respect to *Commission Reviews of Disciplinary Hearings*, the amendments to section 26 will:
- (ix) confirm that the Corporation may seek review of a disciplinary decision before the securities commissions; and
 - (x) provide that the decision of the Board on a review of a disciplinary hearing takes effect immediately but the Board (or a securities commission) may grant a stay of the order pending review by a securities commission.

A copy of By-law No. 10, setting out the blacklined amendments to By-law No. 1, is attached as **Schedule "A"**.

(doc #48774)

SCHEDULE "A"

BY-LAW NO. 10

being a by-law amending the General By-law No. 1 of

MUTUAL FUND DEALERS ASSOCIATION OF CANADA/
ASSOCIATION CANADIENNE DES COURTIERES DE FONDS MUTUELS
(hereinafter referred to as the "Corporation")

By-law No. 1 of the Corporation is hereby amended as follows:

1. SECTION 11.5.3:

11.5.3 The Board of Directors shall permit the applicant to appear before it on ~~reasonable notice, as is provided~~ for in the Corporation's rules of procedure and with counsel or other representative, to call evidence and cross-examine witnesses in order to show cause why the application should not be subject to terms and conditions or should not be refused.

2. SECTION 11.8.2:

11.8.2 If the Board of Directors is required to review a decision pursuant to Section 11.8.1, ~~the provisions of Sections 11.5 and 11.6 shall apply in the same manner as if the Board of Directors was exercising its powers thereunder in regard to the applicant.~~ the Board of Directors shall:

- (a) consider the record of the proceeding in which the decision was made;
- (b) permit the Corporation and the applicant to appear before it on notice as is provided for in the Corporation's rules of procedure, with counsel or by agent, to make submissions; and
- (c) provide written reasons for decision of the review to the Secretary who shall then promptly give the applicant notice and a copy of the decision.

3. SECTION 11.8.4:

11.8.4 Subject to Sections 11.7 and 26, decisions of the Board of Directors pursuant to this Section 11.8 are final and there shall be no further review of such decisions within the Corporation. (New)

4. SECTION 11.10

11.10 The Corporation may prescribe rules of procedure (which may be Policies) in respect of all matters relevant to the conduct of proceedings under Section 11. (New)

5. SECTION 19.13

19.13 Despite Section 19.9, one public representative of a Regional Council may be designated to act on behalf of a Hearing Panel for the purpose of hearing and determining any procedural matter or motion relating to the conduct of a disciplinary hearing under Sections 20 and 24 including, without limitation, granting adjournments, setting dates for hearings, and making any other orders or directions that a Hearing Panel is authorized to make under the Corporation's rules of procedure, except a final determination of a disciplinary proceeding. (New)

6. SECTION 20.1.1:

20.1.1 Before a Hearing Panel may impose any of the penalties provided for in Section 24.1 hereof (other than pursuant to the approval of a settlement agreement pursuant to Section 24.4.3), the Member, Approved Person or other person, as the case may be, shall have been summoned before a hearing of such Hearing Panel, of which ~~at least 14 days~~ notice shall be given in accordance with such period of time as is provided for in the Corporation's rules of procedure, by way of a Notice of Hearing, to the Member or person concerned. Such Notice of Hearing shall be in writing, shall be signed by an officer of the Corporation and contain,

7. SECTION 20.2:

20.2 A Member or person summoned before a hearing of a Hearing Panel pursuant to a Notice of Hearing shall, within ~~ten days from the date of service of the Notice of Hearing~~, such period of time as is provided for in the Corporation's rules of procedure, serve on the Corporation a reply that either:

8. SECTION 24.4.3:

24.4.3 Such settlement agreement shall, on the recommendation of the Corporation, be referred to a Hearing Panel of the applicable Regional Council which shall:

- (a) accept the settlement agreement; or
- (b) reject it.

A Hearing Panel shall not consider a settlement agreement pursuant to this Section unless ~~at least 14 days'~~ notice of the hearing ~~of the Hearing Panel~~ has been given in accordance with such period of time as is provided for in the Corporation's rules of procedure and Section 24.5 specifying:

- (c) the date, time and place of the hearing; and
- (d) the purpose of the hearing with sufficient information to identify the Member or Approved Person involved and the general terms of the settlement agreement.

9. SECTION 24.6.2:

24.6.2 ~~In the event of a decision by a Hearing Panel:~~

- (a) ~~by which a Member's rights and privileges are suspended or terminated or a Member is expelled from the Corporation;~~
- (b) ~~by which it imposes a fine or conditions upon a Member;~~

~~The~~ Board of Directors shall, upon application of either the Corporation or the Member ~~concerned~~ made within 30 days of receiving notice of the decision of the Hearing Panel, review the said decision and confirm or modify the decision of the Hearing Panel.

10. SECTION 24.6.3:

24.6.3 (d) For the purposes of a review hearing conducted pursuant to this Section 24.6.3, the authority of the Board of Directors may be exercised by a committee of the Board of Directors appointed pursuant to Section 3.6.4, provided that such committee shall include one public representative of a Regional Council who has not taken part in any proceedings with respect to the decision which is being reviewed, which public representative shall be entitled to participate in the review as if he or she was a member of the Board of Directors. (New)

24.6.3(e) The Board of Directors may in any case in its discretion require that a Member pay the whole or part of the costs of a review hearing pursuant to this Section 24.6.3. (New)

11. SECTION 26.1:

26.1. The Corporation or Any Member, Approved Person or other person directly affected by a decision of the Board of Directors, a Regional Council, or the Corporation in respect of which no further review or appeal is provided in the By-laws may request any securities commission given jurisdiction in the matter under its enabling legislation to review such decision and notice in writing of such review shall be given forthwith to the Corporation.

12. SECTION 26.2:

26.2 An order of the Board of Directors takes effect upon its issuance and remains in effect pending a review under Section 26.1, unless the Board of Directors or a securities commission given jurisdiction in the matter under its enabling legislation directs otherwise. (New)