



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

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MFDA Bulletin

Policy

For Distribution to Relevant Parties within your Firm

Amendments to MFDA By-law No. 1 – Section 24.3 (Suspensions in Certain Circumstances)

The MFDA Board of Directors and the recognizing securities commissions have approved amendments to MFDA By-law No.1. Members confirmed the amendments at the Annual General and Special Meeting of MFDA Members on December 1, 2006. The amended By-law, attached as Schedule “A”, is effective immediately.

The amendments to section 24.3 were developed to enhance the current procedures that provide MFDA staff with the ability to bring summary applications before a Hearing Panel for interim and permanent relief against both Members and Approved Persons and to increase the range of situations in which such applications may be brought and the types of penalties that the Hearing Panel may impose. The amendments also clarify procedures with respect to these applications.

SCHEDULE "A"

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

APPLICATIONS IN EXCEPTIONAL CIRCUMSTANCES (Section 24.3 of By-law No.1)

and Related Provisions of By-law No.1

1. DEFINITIONS

"monitor" means a person or company appointed to oversee and report on a Member's activities and to act in furtherance of powers granted by a Hearing Panel;

19.13 Procedures Regarding Hearing Panels

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:

- (a) an application under Section 24.3 except a review of an application pursuant to Section 24.3.6; and
- (b) 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.

24.1.2 Members

A Hearing Panel of the applicable Regional Council shall have power to impose upon a Member any one or more of the following penalties:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by the Member as a result of committing the violation;
- (c) suspension of the rights and privileges of the Member (and such suspension may include a direction to the Member to cease conducting securities related business) for such specific period and upon such terms as such Hearing Panel may determine,

or, if the rights and privileges have already been suspended under Section 24.3, the continuation of such suspension (including a prohibition on the Member conducting securities related business) for such specified period and upon such terms as such Hearing Panel may determine;

- (d) termination of any and all of the rights and privileges and of Membership of the Member;
- (e) expulsion of the Member from the Corporation;
- (f) such terms and conditions on Membership of the Member as may be considered appropriate by the Hearing Panel;
- (g) ~~imposition~~ appointment of a monitor ~~to oversee and/or report on the Member's activities in accordance with Section 24.7;~~ and
- (h) directions for the orderly transfer of client accounts from the Member;

if, in the opinion of the Hearing Panel, the Member:

- (i) has failed to carry out any agreement with the Corporation;
- (j) has failed to meet any liabilities to another Member or to the public;
- (k) has engaged in any business conduct or practice which the Hearing Panel in its discretion considers unbecoming a Member or not in the public interest;
- (l) has ceased to be qualified as a Member by reason of the ownership, integrity, solvency, training or experience of the Member or any of its Approved Persons or other employees or agents, or any person having an ownership interest in the capital or indebtedness of the Member;
- (m) has failed to comply with or carry out the provisions of any of the By-laws, Rules or Policies of the Corporation; or
- (n) has failed to comply with or carry out the provisions of any applicable federal or provincial statute relating to its business or of any regulation or policy made pursuant thereto.

24.2 Costs

A Hearing Panel may in any case in its discretion require that the Member or Approved Person pay the whole or part of the costs of the proceedings before the Hearing Panel pursuant to Section 20 and Section 24.1 or Section 24.3 and any investigations relating thereto.

~~24.3 Suspensions in Certain Circumstances~~

~~24.3.1 Power to Suspend~~

~~Notwithstanding anything in this Section 24 or in Section 20, in the event that:~~

- ~~(a) the registration of a Member as a mutual fund dealer under any securities legislation of any province or territory in which the Member is carrying on business is suspended or cancelled, or a Member fails to renew any such registration which has lapsed; or~~
- ~~(b) a Member makes a general assignment for the benefit of its creditors or is declared bankrupt or makes an authorized assignment or a proposal to its creditors under the Bankruptcy and Insolvency Act, or a winding-up order is made in respect of a Member or a receiver or other officer with similar powers is appointed in respect of all or any part of the undertaking and property of a Member; or~~
- ~~(c) a stock exchange, securities commission, self regulatory organization or other securities regulatory authority suspends the membership or privileges thereof of a Member who is a member of such exchange or self regulatory organization;~~

~~then a Hearing Panel of the applicable Regional Council shall have the power and, with respect to an event referred to in Section 24.3.1(b) above, shall be obliged, forthwith upon receiving notice of such event, to suspend the rights and privileges of the Member for such period and on such terms and conditions as such Hearing Panel may in its discretion determine.~~

24.3 Applications in Exceptional Circumstances

24.3.1 Approved Persons

Notwithstanding anything in Section 20 or Section 24,

- (a) a Hearing Panel of the applicable Regional Council may, upon application by the Corporation made with or without notice to an Approved Person or any other person under the jurisdiction of the Corporation, impose any of the penalties provided for in Section 24.3.3 upon the person in the event that:
 - (i) the registration of the person under any securities legislation in any jurisdiction inside or outside Canada is cancelled, suspended, terminated, subjected to terms and conditions or the person fails to renew any such registration which has lapsed;

- (ii) a securities commission, self-regulatory organization, securities regulatory authority, financial services regulator or professional licensing or registration body in any jurisdiction inside or outside Canada cancels, suspends or terminates the rights and privileges of the person;
 - (iii) the person fails to cooperate with an examination or investigation conducted pursuant to Section 21;
 - (iv) the person has failed to carry out any written agreement with the Corporation to take action to comply with any By-law, Rule or Policy of the Corporation;
 - (v) the person has failed to comply with the provisions of any By-law, Rule or Policy of the Corporation;
 - (vi) the person has been charged with a criminal or regulatory offence relating to theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or unauthorized trading and the Hearing Panel determines that such charge likely brings the capital markets into disrepute;
 - (vii) the Corporation receives information regarding the incapacity of the person, by reason of mental or physical illness, other infirmity or addiction to or excessive use of alcohol or drugs; or
 - (viii) the person has failed to comply with any penalties, other than the payment of a fine or costs, imposed on the person pursuant to Section 24.1.1, Section 24.3 or Section 24.4.
- (b) A Hearing Panel may impose a penalty under section 24.3.3 on an Approved Person or any other person under the jurisdiction of the Corporation on an application made under Section 24.3.1(a) without notice only if the Hearing Panel determines that proceeding without notice is, in the circumstances, in the public interest, including but not limited to where:
- i. providing notice to the Approved Person or any other person under the jurisdiction of the Corporation, would be likely to result in financial loss or imminent harm to the public, to other Approved Persons or Members, or to the Corporation; or
 - ii. the length of time required to arrange for and conduct a hearing pursuant to Section 20 and Section 24.1 would be prejudicial to the public interest.

24.3.2 — Further Suspension, Termination of Rights and Privileges, Expulsion

In any of the events referred to:

- ~~(a) in Sections 24.3.1(a) or (c), if the Member fails to take appropriate proceedings within the time provided for by the legislation or stock exchange, securities commission, self regulatory organization or regulatory authority rules for a review of or by way of appeal from such suspension or cancellation of registration or membership, or fails within such period as the Hearing Panel may prescribe to renew any such registration which has lapsed, or if, notwithstanding such review and appeal, such suspension or cancellation of registration or membership, is confirmed and becomes final, the Hearing Panel may, either with or without notice to the Member, suspend the Member for a further period, terminate the rights, privileges and Membership of the Member or expel the Member from the Corporation, and such suspension, termination or expulsion shall take immediate effect and there shall be no review or appeal therefrom. If upon review or appeal the registration or membership of a Member under the legislation, stock exchange, self-regulatory organization or regulatory authority rules is reinstated, the Hearing Panel may reinstate the Member and cancel any suspension imposed by it upon the Member.~~
- ~~(b) in Section 24.3.1(b), if the Member fails within such period as the Hearing Panel may prescribe to satisfy the claims of its creditors and/or obtain a discharge under the Bankruptcy and Insolvency Act or cause the winding up order or receivership to be discharged or terminated, the Hearing Panel may, either with or without notice to the Member, suspend the Member for a further period, terminate the rights, privileges and Membership of the Member or expel the Member from the Corporation, and such suspension, termination or expulsion shall take immediate effect. If the Member satisfies its creditors and/or obtains a discharge under the Bankruptcy and Insolvency Act or causes the winding up order or receivership to be discharged or terminated within such period as the Hearing Panel may determine, the Hearing Panel may reinstate the Member upon such terms and conditions as the Hearing Panel may determine and cancel any suspension imposed by it upon the Member.~~

24.3.2 Members

Notwithstanding anything in Section 20 or Section 24,

- (a) a Hearing Panel of the applicable Regional Council may, upon application by the Corporation made with or without notice to a Member, impose any of the penalties provided for in Section 24.3.3 upon the Member in the event that:
- i. the registration of the Member as a mutual fund dealer under any securities legislation in any jurisdiction inside or outside Canada is cancelled, suspended, terminated, subjected to terms and conditions or the Member fails to renew any such registration which has lapsed;
 - ii. the Member makes a general assignment for the benefit of its creditors or is declared bankrupt or makes an authorized assignment or a proposal to its

- creditors under the Bankruptcy and Insolvency Act, or a winding-up order is made in respect of the Member or a receiver or other officer with similar powers is appointed in respect of all or any part of the undertaking and property of the Member;
- iii. a securities commission, self-regulatory organization, financial services regulator or other securities regulatory authority inside or outside Canada cancels, suspends or terminates the rights and privileges of the Member;
 - iv. the Member has failed to maintain the minimum capital required under any By-law, Rule, Form or Policy of the Corporation;
 - v. the Member has failed to file with the Corporation a copy of a financial report of the Member as at the end of each fiscal month as required under any By-law, Rule or Policy of the Corporation;
 - vi. the Member has failed to file with the Corporation copies of the annual audited financial statements of the Member as required under any By-law, Rule or Policy of the Corporation;
 - vii. the Member has failed to maintain a Financial Institution Bond or mail insurance as required under any By-law, Rule or Policy of the Corporation;
 - viii. the Member has failed to rectify the circumstances causing the Member to be designated in early warning by the Corporation or has failed to comply with terms and conditions imposed on the Member after it was designated in early warning by the Corporation;
 - ix. the Member has failed to cooperate with an examination or investigation conducted pursuant to Section 21; or
 - x. the Member has failed to carry out any written agreement with the Corporation to take action to comply with any By-law, Rule or Policy of the Corporation;
 - xi. the Member has failed to comply with the provisions of any By-law, Rule or Policy of the Corporation;
 - xii. the Member is in such financial or operating difficulty that a Hearing Panel determines that the Member cannot be permitted to continue to operate without risk of imminent harm to the public, to other Members or Approved Persons, or to the Corporation;
 - xiii. the Member has been charged with a criminal or regulatory offence relating to theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or

unauthorized trading and the Hearing Panel determines that such charge likely brings the capital markets into disrepute;

xiv. the Member has given notice of its intention to resign or is not carrying on business as a mutual fund dealer; or

xv. the Member has failed to comply with any penalties, other than the payment of a fine or costs, imposed pursuant to Section 24.1.2, Section 24.3 or Section 24.4.

(b) A Hearing Panel may impose a penalty under section 24.3.3 on a Member on an application made under Section 24.3.2(a) without notice only if the Hearing Panel determines that proceeding without notice is, in the circumstances, in the public interest, including but not limited to where:

i. providing notice to the Member would be likely to result in financial loss or imminent harm to the public, to other Members or Approved Persons, or to the Corporation; or

ii. the length of time required to arrange for and conduct a hearing pursuant to Section 20 and Section 24.1 would be prejudicial to the public interest.

~~24.3.3 Cause of Financial Loss to the Public~~

~~Notwithstanding anything in Sections 20 to 24, inclusive, if, as a result of information received by the Chair or any Vice Chair of the applicable Regional Council, such Chair or Vice Chair after consultation with the President or one or more members of the Board of Directors is of the opinion that a Member has breached any By-law, Rule or Policy of the Corporation and that such breach or breaches is likely to result in financial loss to the public, the Chair or Vice Chair may immediately suspend the rights and privileges of such Member and direct such Member to immediately cease dealing with the public. If the Chair or Vice Chair of the Regional Council acts under the provisions of this Section 24.3.3, he or she shall summon the Member to appear before a hearing of the Hearing Panel of the applicable Regional Council to be held within 15 days upon notice to the Member, with such notice and hearing to be in accordance with the provisions of Section 20, as applicable.~~

24.3.3 Powers of a Hearing Panel

A Hearing Panel shall have the power to impose any of the following penalties upon a Member, Approved Person or other person under the jurisdiction of the Corporation in an application made pursuant to Section 24.3.1 or Section 24.3.2:

(a) suspension of any or all of the rights and privileges of Membership or authority of the person to conduct securities related business on such terms and conditions as the Hearing Panel considers appropriate;

- (b) terms and conditions on Membership or the authority of the person to conduct securities related business;
- (c) direction to immediately cease dealing with the public;
- (d) direction for the orderly transfer of client accounts from the Member;
- (e) for events other than those referred to in Sections 24.3.1(a)(vi) and (vii) and Section 24.3.2(a)(xiii), termination of Membership or prohibition of the authority of the person to conduct securities related business;
- (f) for events other than those referred to in Section 24.3.2(a)(xiii), expulsion of the Member from the Corporation; and
- (g) appointment of a monitor in accordance with Section 24.7.

24.3.4 Failure to Pay Fine or Comply with Condition

~~In the event that a fine or condition imposed by a Hearing Panel pursuant to Section 24.1 is not paid or complied with, respectively, within the time prescribed by the Hearing Panel, the Hearing Panel may, upon application by the Corporation, and without further notice to the Member or person concerned, suspend the authority of such person to conduct securities related business or the rights and privileges of such Member, respectively, until such fine is paid or condition fulfilled.~~

24.3.4 Notice in Certain Circumstances

At any stage of an application pursuant to Section 24.3, a Hearing Panel may in its discretion require notice of the application to be given to a Member, Approved Person, or other person on such terms and conditions as it considers appropriate, including terms and conditions respecting the timing of notice and any abridging of ordinary hearing processes that the Panel considers fit.

24.3.5 Other Proceedings

Nothing contained in Section 24.3 shall prevent any other proceedings being taken against a Member, Approved Person or other person under the jurisdiction of the Corporation pursuant to any other provisions of Section 24.

24.3.6 Review of an Application

A Member or person may request a review of any decision made pursuant to Section 24.3 within 30 days of notice of the penalty being given in accordance with Section 24.5.3.

24.3.7 Timing of a Review

A review of an application pursuant to Section 24.3.6 shall be held before a Hearing Panel of the applicable Regional Council no later than 21 days after the request for the review, unless a Hearing Panel directs or the parties agree otherwise.

24.3.8 Review Panel

No member of a Hearing Panel who participated in an application pursuant to Section 24.3 shall sit on a Hearing Panel constituted for the review of that decision.

24.3.9 Decision is Final Where no Review

If a Member or person does not request a review of an application within the time prescribed in Section 24.3.6, then the decision of the Hearing Panel is final and there shall be no further review or appeal of the decision within the Corporation.

24.3.10 Stay Pending Review of an Application

An order of a Hearing Panel made pursuant to Section 24.3 takes effect upon its issuance and remains in effect pending a review under Section 24.3.6, unless a Hearing Panel directs otherwise.

24.3.11 Powers of a Hearing Panel on a Review of an Application

A Hearing Panel presiding over the review of an application pursuant to Section 24.3.6 may affirm, quash or vary the decision under review and may make any decision that could have been made by a Hearing Panel under Section 24.3.

24.3.12 Open to the Public

An application pursuant to Section 24.3 and the review of an application pursuant to Section 24.3.6 shall be open to the public except where:

- (a) the application proceeds without notice to the Member or person;
- (b) the application or review of the application is conducted in writing or the Hearing Panel determines that it is not practical to conduct the application or review of the application in a manner that is open to the public; or
- (c) the Hearing Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case the Hearing Panel may conduct the application or review of the application in camera.

24.3.13 Failure to Pay Fee, Levy, Assessment, Fine or Costs

In the event that:

- (a) a Member fails to pay a fee pursuant to Section 14 or Section 15 within the time prescribed in Section 14.3 or Section 15.2 respectively;
- (b) a Member fails to pay a fee, levy or assessment pursuant to any By-law, Rule or Policy of the Corporation within the time prescribed; or
- (c) a Member or person fails to pay a fine or costs imposed by a Hearing Panel within the time prescribed by the Hearing Panel;

the Corporation may summarily, without further notice, suspend the rights and privileges of the Member or the authority of the person to conduct securities related business until such fee, levy, assessment, fine or costs is paid.

24.5 Publication of Notice and Penalties

24.5.1 Notice Requirements

If and whenever:

- ~~(a) a Member (except as provided by section 24.5.1(b) hereof), Approved Person or other person is penalized by a Hearing Panel, notice of the penalty shall be given by the Corporation forthwith; or~~
- ~~(b) the rights and privileges of a Member are suspended or terminated, or a Member is expelled from the Corporation, notice of the penalty and notice of the disposition of any review from the imposition thereof shall be given forthwith by the Corporation. If such penalty is subject to review the notice shall so indicate.~~

24.7 Monitor

24.7.1 Powers of a Monitor

A monitor appointed pursuant to Section 24.1.2(g) or Section 24.3.3(g) shall oversee and report on the Member's activities in accordance with any of the following terms and conditions and for such specified period as the Hearing Panel may determine:

- (a) to enter and re-enter the Member's premises and to remain on site to conduct day-to-day monitoring of all of the Member's activities, including but not limited to, monitoring and review of accounts receivable, accounts payable, client accounts, the Member's banking, any books or records of the Member, trading conducted by or on behalf of the Member for its own account or the account of its clients,

- payment of any debts or the creation of new debt and any reconciliation required to be completed by the Member;
- (b) to make copies of information and to provide copies of such information to the Corporation or any other agency the Hearing Panel determines appropriate;
 - (c) to provide ongoing reporting of the monitor's findings or observations to the Corporation or any other agency the Hearing Panel determines appropriate;
 - (d) to monitor compliance by the Member with any terms or conditions which have been imposed on the Member by the Corporation or any other regulator, including but not limited to, compliance with early warning terms and conditions;
 - (e) to verify and assist with the preparation of any regulatory filings, including but not limited to, the calculation of risk adjusted capital;
 - (f) to conduct or have conducted an appraisal of the Member's net worth or valuation of any part of the Member's assets;
 - (g) to assist the Member with the orderly transfer of client accounts;
 - (h) to pre-authorize any issuance of cheques or payments made by or on behalf of the Member or distribution of any of the Member's assets;
 - (i) to assist the Member in formulating a process to address deficiencies identified by the Corporation;
 - (j) to assist the Member in developing and implementing procedures and internal controls to ensure the Member's compliance with any By-law, Rule or Policy of the Corporation;
 - (k) to test and report on the adequacy of the Member's procedures and internal controls; and
 - (l) any other terms or conditions that the Hearing Panel may determine.

24.7.2 Expenses of the Monitor

A Hearing Panel may in its discretion require that the Member pay the whole or part of the expenses related to a monitor appointed pursuant to Section 24.1.2(g) or Section 24.3.3(g).

24.8 Suspended Members

Subject to any penalties imposed pursuant to Section 24.1 or Section 24.3, during the period of suspension a suspended Member shall not be entitled to exercise the rights and

privileges of Membership and without limiting the generality of the foregoing, the suspended Member:

- (a) shall not be entitled to attend or vote at meetings pursuant to Section 12.2 and Section 12.3;
- (b) shall remove from its premises any reference to its Membership in the Corporation;
- (c) shall no longer use reference to its Membership in the Corporation in its advertisements, letterhead or other material;
- (d) shall be designated as “Suspended” in the Corporation's directory of Members; and
- (e) shall continue to be liable for the payment of its Annual Fee pursuant to Section 14, other fees pursuant to Section 15 and any other fees, levies or assessments pursuant to any By-law, Rule or Policy of the Corporation.

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