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# MFDA Bulletin

## Policy

### **For Distribution to Relevant Parties within your Firm**

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#### Amendments to MFDA By-law No. 1 – Section 11 (Member Approval Process)

The MFDA Board of Directors and the recognizing securities commissions have approved amendments to section 11 of MFDA By-law No. 1. Members confirmed the amendments at the Annual General and Special Meeting of MFDA Members on November 30, 2007. The amended By-law, attached as Schedule “A”, is effective immediately.

Amendments to section 11 of By-law No. 1 streamline and clarify the MFDA Member approval process and the appeal process where membership has been or is proposed to be denied or granted conditionally and make it consistent with the process used by the Investment Industry Regulatory Organization of Canada.

The objective of the revised process is to ensure that the following issues are addressed in the membership application process to be followed by prospective MFDA Members:

- to be fair and appropriately address issues related to due process (i.e. an opportunity for an applicant to be heard);
- to clarify who the appropriate decision-makers are; and
- to be practical and efficient in terms of procedural and administrative matters.

## SCHEDULE "A"

### MUTUAL FUND DEALERS ASSOCIATION

#### APPROVAL PROCESS (Section 11 of MFDA By-law No. 1)

#### 11. APPROVAL PROCESS

##### 11.1 Preliminary Review by the Corporation

An application for Membership with any accompanying documents shall be submitted to the Corporation, which shall make a preliminary review of the same and either:

11.1.1. if such review discloses substantial compliance with the requirements of the By-laws and Rules, transmit a copy to the Chair of the Board or a director or committee of directors authorized for that purpose; or

11.1.2. if such review discloses any substantial non-compliance with the requirements of the By-laws and Rules, notify the applicant as to the nature of such non-compliance and request that the application for Membership be amended in accordance with the notification of the Corporation and refiled or be withdrawn. If the applicant declines to amend or withdraw the application for Membership, the Corporation shall forward the same to the Chair of the Board or a director or committee of directors authorized for that purpose, together with any accompanying material and a copy of the notification to the applicant.

##### 11.2 Submission of Financial Information

The application shall be accompanied by:

11.2.1 financial statements of the applicant as of a date not more than 90 days prior to the date of application for Membership (or as of such other date as the Corporation may require), prepared in accordance with Form 1 and audited by an auditor acceptable to the Corporation;

11.2.2 interim unaudited monthly financial statements, prepared in accordance with Form 1, for the period following the date of the audited financial statement submitted under Section 11.2.1 up to the most recent month prior to the date of the Membership application;

11.2.3 a report by the applicant's auditor to the effect that, based on his examination of the affairs of the applicant, the applicant keeps a proper system of books and records; and

11.2.4 such additional financial information, if any, relating to the applicant as the Corporation may in its discretion request.

### 11.3 Notification to the Board of Directors

If and when the Corporation has received the financial statements and report referred to in Section 11.2, and is satisfied with respect to all relevant matters, then the Corporation shall so notify the Board of Directors.

### 11.4 Determination of the Board of Directors

Upon receipt of the application for Membership from the Corporation and the notification from the Corporation pursuant to Section 11.3, the Board of Directors may:

11.4.1 ~~at the expiration of a period of six months or such lesser period as the Board of Directors may in any particular case determine,~~ approve the application;

11.4.2 approve the application subject to such terms and conditions as may be considered appropriate by the Board of Directors if, in the opinion of the Board of Directors, such terms and conditions are necessary in order to ensure that the By-laws and Rules will be complied with by the applicant; or

11.4.3 refuse the application if, in the opinion of the Board of Directors, having regard to such factors as it may consider relevant including, without limitation, the past or present conduct, business or condition of the applicant;

- (a) it is not satisfied that the By-laws and Rules will be complied with by the applicant;
- (b) the applicant is not qualified by reason of the ownership, integrity, solvency, training or experience of the applicant or any of its partners, directors, officers, employees or agents, or any person having an ownership interest in the capital or indebtedness of the applicant; or
- (c) such approval is not in the public interest.

11.4.4 If, pursuant to the provisions of this Section 11.4, the Board of Directors approves an application subject to terms and conditions or refuses an application, the Board of Directors may order that the applicant may not apply for removal or variation of terms and conditions or reapply for approval, for such period as the Board of Directors provides.

### 11.5 ~~Right to be Heard~~ Power to Vary or Remove Terms and Conditions

The Board of Directors shall have the power to vary or remove any such terms and conditions as may have been imposed on an applicant that may be considered appropriate by the Board of Directors, if such terms and conditions are or are no longer, as the case may be, necessary to ensure that the By-laws and Rules will be complied with by the applicant.

~~If the Board of Directors proposes to approve an application subject to terms and conditions pursuant to Section 11.4.2 or to refuse an application pursuant to Section 11.4.3:~~

~~11.5.1 the applicant shall be provided with a statement of the grounds upon which the Board of Directors proposes to approve the application subject to terms and conditions or to refuse the application, and the particulars of those grounds;~~

~~11.5.2 the applicant shall be provided with a summary of the facts and evidence which are to be considered by the Board of Directors;~~

~~11.5.3 the Board of Directors shall permit the applicant to appear before it on 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.~~

## **11.6 Hearing Notice**

~~11.6.1 A hearing held pursuant to Section 11.5 shall be open to the public except where the Board of Directors determines that all or any part of the hearing should be held in camera in accordance with the principles set out in Section 20. To the extent not otherwise specified in this Section 11, the procedures applicable to proceedings under Section 20 shall be applicable to a hearing under this Section 11, mutatis mutandis.~~

~~11.6.2 If within 14 days of being notified of a proposal to approve an application subject to terms and conditions or to refuse an application, the applicant fails to request a hearing, the Board of Directors may approve the application subject to the proposed terms and conditions or refuse the application. If the applicant requests a hearing, the Board of Directors may, after permitting the parties to be heard, exercise any of its powers in accordance with Section 11.4.~~

~~11.6.3 Any decision of the Board of Directors at a hearing held pursuant to Section Sections 11.4 or 11.5 shall be in writing and shall contain a concise statement of the reasons for the decision. Notice of a decision shall be delivered to the Corporation which shall then promptly give notice to the applicant. A copy of the decision shall accompany the notice.~~

## **~~11.7 — Power to Vary or Remove Terms and Conditions~~**

~~11.7.1 The Board of Directors shall have the power to vary or remove any such terms and conditions as may have been imposed on an applicant that may be considered appropriate by the Board of Directors, if such terms and conditions are or are no longer, as the case may be, necessary to ensure that the By laws and Rules will be complied with by the applicant. In the event that the Board of Directors proposes to vary terms and conditions in a manner which would be more burdensome to the applicant, the provisions of Sections 11.5 and 11.6, inclusive, shall apply in the same manner as if the Board of Directors was exercising its powers thereunder in regard to the applicant.~~

~~11.7.2 If, pursuant to the provisions of Section 11.4, the Board of Directors approves an application subject to terms and conditions or refuses an application, the Board of~~

~~Directors may order that the applicant may not apply for removal or variation of terms and conditions or reapply for approval, for such period as the Board of Directors provides.~~

11.7 ~~11.8~~ **Review**

11.7.1 ~~11.8.1~~ In the event of a decision of the Board of Directors

- (a) to approve an application subject to terms and conditions pursuant to Section 11.4.2;
- (b) to refuse an application pursuant to Section 11.4.3; ~~or~~
- (c) to order a period of time in which an applicant may not apply or reapply pursuant to Section 11.4.4; or
- (d) to vary terms and conditions in a manner that would be more burdensome to an applicant pursuant to Section ~~11.7.1, 11.5,~~

the Board of Directors shall, upon application ~~of either the Corporation or~~ by the applicant, made ~~within 21 days of receiving notice of the decision of the Board on notice in accordance with the rules of procedure adopted by the Corporation,~~ review the decision and either (i) confirm the decision, or (ii) make such other decision as the Board of Directors considers proper.

11.7.2 ~~11.8.2~~ If the Board of Directors is required to review a decision pursuant to Section ~~11.8.1,~~ the Board of Directors shall 11.7.1, the applicant and the Corporation shall be entitled to be heard at a hearing conducted in accordance with the rules of procedure adopted by the Corporation in respect of such hearings including the right to:

- (a) ~~consider the record of the proceeding in which the decision was made~~ receive a summary of the facts and evidence to be relied on by the applicant and the Corporation, as the case may be; and
- (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~~
- (b) appear on reasonable notice, with counsel or agent, to call evidence and cross-examine witnesses in order to show cause why (i) in the case of a decision referred to in Section 11.7.1(a) or (b), the application should not be subject to terms and conditions or should not be refused, or (ii) in the case of a decision referred to in Section 11.7.1(c) and (d), the period of time for reapplying or the variation of terms and conditions should not be imposed.
- (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.~~

11.7.3 To the extent not otherwise specified in this Section 11, the procedures under Section 20 shall be applicable to a hearing under Section 11.7.1, mutatis mutandis.

## **11.8 Board of Directors**

11.8.1 ~~11.8.3~~The authority of the Board under this Section ~~11.811~~ may be exercised by the Executive Committee or a committee of the Board appointed pursuant to Section ~~3.6.43.6.4~~ and, notwithstanding the provisions of Section 3.6.4, such committee may consist in whole or in part of persons who are not members of the Board including, without limitation, persons who are eligible to sit on a Hearing Panel. Any reference in this By-law or any rules of procedure made in respect of membership applications shall be deemed to include a reference to the Executive Committee or such other appointed committee. No member of the Board of Directors or any such committee who has participated in a decision in respect of an application or proceeding pursuant to Section 11.4.2, 11.4.3, 11.4.4 or ~~11.7.111.5~~ shall subsequently participate in a hearing pursuant to Section ~~11.8.111.7.1~~ regarding that decision.

11.8.2 ~~11.8.4~~Subject to ~~Sections 11.7 and~~Section 26, decisions of the Board ~~of Directors~~ pursuant to ~~this~~ Section ~~11.811.7~~ are final and there shall be no further review of such decisions within the Corporation.

## **11.9 Actions Upon Approval of Application**

11.9.1 If and when the application is approved by the Board of Directors, the Corporation shall compute the amount of the Annual Fee to be paid by the applicant pursuant to Section 14.

11.9.2 Subject to the provisions of Section 10.3, the Corporation shall advise at the next meeting of the Board of Directors the amount of the Annual Fee to be paid by the applicant, less the amount of the deposit submitted by the applicant pursuant to Section 10.2

11.9.3 If and when the application has been approved by the Board of Directors, and the applicant has been duly licensed or registered to carry on business as a mutual fund dealer under the applicable law of the province or provinces or territories in which the applicant carries on or proposes to carry on business, and upon payment of the balance of the Annual Fee, the applicant shall become and be a Member.

11.9.4 Notwithstanding the foregoing, if an applicant qualifies for exemption from payment of the Annual Fee and if the Board of Directors approves of such exemption and gives its approval to the application for Membership, the applicant shall be admitted to Membership if all other conditions relating to an application for Membership have been duly complied with except such conditions, if any, as the Board of Directors may deem appropriate to be waived under the circumstances of any particular case.

11.9.5 The Corporation shall keep a register of the names and business addresses of all Members and of their respective Annual Fees. The Annual Fees of Members shall not be made public by the Corporation.

~~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.~~