

29 February 2008

Office of the Clerk of Committees,  
Room 224, Parliament Buildings,  
Victoria, BC  
V8V 1X4

E-mail: [PIPACommittee@leg.bc.ca](mailto:PIPACommittee@leg.bc.ca)

Re: **REVIEW OF THE PERSONAL INFORMATION PROTECTION ACT**

Dear Sir/Madam,

I make this submission because I am concerned that the protection of personal information of Canadian investors is severely threatened when they are forced to provide that information to private associations. I have provided a brief introduction to the Canadian securities industry landscape in order to better illustrate my concerns.

**Background Information:**

Each provincial and territorial government in Canada has formally delegated, through legislation, the responsibility of administration of the respective Securities Act(s) and Commodity Futures Act(s) to provincial securities commissions/administrators. These commissions/administrators collectively referred to as the Canadian Securities Administrators ("CSA") require access to personal information for the purpose of carrying out their duties and exercising their powers under their respective acts.

The CSAs have required all Canadian investment and mutual fund dealers to be members of either the Mutual Fund Dealers Association ("MFDA") or the Investment Dealers Association of Canada ("IDA").

These two self-regulatory organizations ("SROs") regulate their members by contract. Their rules, by-laws, policies and constitution, are the terms of the contract. Neither the MFDA nor the IDA has legislated authority to administer any act in any province. They are private contractual bodies and the public is not a party to that contract.

Each administrator *may* 'recognize' these SROs by issuing an Order made under the respective provincial securities Act. The Recognition Order of the MFDA in British Columbia has been appended to this document.<sup>1</sup>

The Recognition Order of the MFDA in B.C. states that "... (A) The MFDA shall enforce, as a matter of contract between itself and its members..." The British Columbia Securities Commission ("BCSC") MFDA Recognition Order also requires that the MFDA "represents registrants and [that] it plans to regulate the standards of practice and business conduct of its members".

Some of the members of the CSA rely upon SROs to perform a registration function as specified in the Securities Act(s).

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<sup>1</sup> [http://investorvoice.ca/MFDA/Recognition/MFDA\\_BCSC\\_RO\\_15Feb01.pdf](http://investorvoice.ca/MFDA/Recognition/MFDA_BCSC_RO_15Feb01.pdf) (PDF Bookmark 1)

The IDA stated the following in an article in the *National Post* entitled "Penalties needed" dated 01 November 2004. (PDF Bookmark #2)

*"First, let's get the facts straight. The only legislative power the provincial governments "delegate" to the IDA is registration of brokers -- and even that is only delegated in B.C., Alberta and Ontario. The provincial governments do not "delegate" securities industry compliance and enforcement."<sup>2</sup>*

- Paul Bourque, SVP Member Regulation, IDA

However, nowhere in the Recognition Order nor in the BC *Securities Act* does it stipulate that the MFDA/IDA is to required to protect the public nor does the BC *Securities Act* contemplate requiring the public to provide personal and private information for purposes other than a "Know Your Client" requirement.

Mr. Shaun Devlin, Vice President of Enforcement at the MFDA wrote in his submission to your committee, dated Feb.12, 2008, with respect to 18(1)(j) of *PIPA*;

*...some third parties may consider that the MFDA's Rules may not fall within the scope of "the laws of Canada or a province".*

and further that,

*"Third parties may also contest the MFDA's standing as a "public body" or "law enforcement agency", or at least not have sufficient certainty that they feel they can rely upon this exception."*

And lastly,

*"...the MFDA generally operates through delegated authority from its recognition as an SRO."*

Other than for purposes of registration in some jurisdictions, neither the MFDA nor the IDA have any other delegated authority. "***Delegatus Non Potest Delegare***".

I would strongly suggest to this Committee that those 'Third Parties', referred to by Mr. Devlin, includes all consumer/retail investors across Canada.

## **Personal Information for Securities Regulation Purposes**

Canadians are generally aware that personal information for the purpose of investigations is necessary as outlined in the provincial securities acts and that they may be compelled by the administrators, in the course of an investigation, to provide certain information. The SROs are not public bodies and thereby the public is not afforded those protections normally associated when dealing with government; eg. the BC *Freedom of Information and Protection of Privacy Act*, the *Evidence Act*, the *Charter*, the *Administrative Tribunals Act*, the *Ombudsman Act*, etc.....

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<sup>2</sup>"Penalties Needed" <http://investorvoice.ca/PI/1388.htm>

*Freedom of Information and Protection of Privacy Act*

[RSBC 1996] CHAPTER 165

Part 3 — Protection of Privacy

Division 1 — Collection, Protection and Retention of Personal Information by Public Bodies

Purpose for which personal information may be collected

26 No personal information may be collected by or for a public body unless

- (a) the collection of that information is expressly authorized under an Act,
- (b) that information is collected for the purposes of law enforcement, or
- (c) that information relates directly to and is necessary for an operating program or activity of the public body.

Canadians are generally aware of the need to assist the Government of Canada in its effort to prevent actions contrary to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Canadians are generally aware that personal information is necessary to open an account with a registered securities dealer for purposes of the "Know Your Client" ("KYC") requirements as stipulated under the rules of the CSAs.

An example of this is found in the *B.C. Securities Act*.

B.C. Reg. 194/97      British Columbia Securities Commission

*Securities Act*

SECURITIES RULES

[includes amendments up to B.C. Reg. 269/2005, June 1, 2006]

**Know your client and suitability rules**

48 (1) A registrant, except an underwriter or a securities adviser, must make enquiries concerning each client

(a) to learn the essential facts relative to every client, including the identity and, if applicable, credit worthiness of the client and the reputation of the client if information known to the registrant causes doubt as to whether the client is of good business or financial reputation, and

(b) to determine the general investment needs and objectives of the client, the appropriateness of a recommendation made to that client and the suitability of a proposed purchase or sale for that client.

(2) If a registrant considers that a proposed purchase or sale is not suitable for the investment needs and objectives of a client that is an individual, the registrant must make a reasonable effort to so advise the client before executing the proposed transaction.

and the Ontario *Securities Act*.

ONTARIO SECURITIES COMMISSION RULE 31-505  
CONDITIONS OF REGISTRATION  
PART 1 NEW ACCOUNTS AND SUPERVISION

1.5 Know your Client and Suitability

(1) A person or company that is registered as a dealer or adviser and an individual that is registered as a salesperson, officer or partner of a registered dealer or as an officer or partner of a registered adviser shall make such enquiries about each client of that registrant as

(a) subject to section 1.6, enable the registrant to establish the identity and the creditworthiness of the client, and the reputation of the client if information known to the registrant causes doubt as to whether the client is of good reputation; and

(b) subject to section 1.7, are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to ascertain the general investment needs and objectives of the client and the suitability of a proposed purchase or sale of a security for the client.

(2) Despite paragraph (1)(a) a registrant is not required to make enquiries as to the creditworthiness of a client if the registrant is not financing the acquisition of securities by the client.<sup>3</sup>

The suggested personal information required for "KYC" purposes is outlined in a document entitled "Investment Planning Worksheet" available on the Canadian Securities Administrators web site.<sup>4</sup>

The following is an excerpt from the *Regulatory Burden Task Force Report*<sup>5</sup> assigned by the Ontario Securities Commission to critique Ontario securities regulation and submitted 12 December 2003.

3.4 Know Your Client Rule (KYC) and Suitability  
Comments Received From Market Participants:

Many investor complaints are related to matters dealing with KYC and suitability.

Dealing with these complaints can be difficult due to deficiencies in the KYC forms that contain many vague terms. In addition, there is no mandated form. The forms used vary from one financial institution to another. There are no standard practices and procedures for the use of the form.

Many customers are not given a copy of the form and some institutions do not even require them to be signed by the investor.

As of January 01, 2004 amendments to *PIPEDA* came into force.

The "Regulations Amending the Regulations Specifying Investigative Bodies" does not include either the MFDA or the IDA within the list.

<sup>3</sup> ([http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part3/rule\\_19990129\\_31-505fr.jsp](http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part3/rule_19990129_31-505fr.jsp))

<sup>4</sup> ([http://www.csa-acvm.ca/pdfs/investment\\_worksheet\\_english.pdf](http://www.csa-acvm.ca/pdfs/investment_worksheet_english.pdf)) PDF Bookmark 4

<sup>5</sup> ([http://www.osc.gov.on.ca/About/Governance/Accountability/ga\\_20031212\\_rbtfrpt.pdf](http://www.osc.gov.on.ca/About/Governance/Accountability/ga_20031212_rbtfrpt.pdf))

REGULATORY IMPACT

ANALYSIS STATEMENT

Description

Part 1 of the *Personal Information Protection and Electronic Documents Act* establishes rules to govern the collection, use and disclosure of personal information by organizations in the course of commercial activity. The legislation requires an organization, which discloses personal information, to obtain the individual's consent in most circumstances. An exception to this rule is found in paragraphs 7(3)(d) and (h.2) of Part 1 of the Act, which permit the disclosure of personal information to and by a private investigative body, without the knowledge or consent of the individual, if the investigative body is specified by the Regulations. The purpose of this amendment to the Regulations is to name additional investigative bodies for the purposes of paragraphs 7(3)(d) or (h.2) of Part 1 of the Act.<sup>6</sup>

Neither one of the SROs applied for relief under *PIPEDA*.

The IDA issued a notice to its members (MR-0256) on 03 December 2003, attached as **PDF Bookmark 7**, which states the following:

**"Regulated Persons must also decline to accept or administer an account in respect of which an individual does not consent to such intended collection, use or disclosure of personal information to SROs and the use and disclosure of that information by SROs."**

The Canadian public is now forced to consent to provide this information to the dealers or be precluded from participating in Canada's capital markets. Mutual funds, RESPs, RRSPs, stocks, bonds etc... can only be bought through registered dealers who are compelled by legislation to become a member of the IDA/MFDA.

The registrants (dealers-members) are then forced by contract to provide this information to the SRO or face possible disciplinary action.

The IDA's and MFDA's Examination and Investigation By-Laws, 19 and 21 respectively are attached as **PDF Bookmark #8**. These are the rules that the member firms must follow. The IDA even goes so far as to say that investors must also abide by their rules.

IDA BY-LAW NO. 1  
INTERPRETATION AND EFFECT

"Investor" means any person who has an interest in an investment;<sup>7</sup>

<sup>6</sup> (<http://canadagazette.gc.ca/partI/2003/20031108/pdf/g1-13745.pdf>)

<sup>7</sup> <http://ida.knotia.ca/Knowledge/View/Document.cfm?Ktype=445&linkType=toc&dbID=210711341&tocID=11>

#### IDA By-Law 19.5.

For the purpose of any examination or investigation pursuant to this By-law 19, a Member, registered representative, investment representative, sales manager, branch manager, assistant or co branch manager, partner, director, officer, **investor**... may be required by the Senior Vice-President, Member Regulation, his or her staff, or any other person designated by the Board of Directors:

(b.) to produce for inspection and provide copies of any books, records, accounts and documents, that are in the possession or control of the Member or the person, that the Association determines may be relevant to a matter under examination or investigation and such information, books, records and documents shall be provided in such manner and form, including electronically, as may be required by the Association; and...

Furthermore, the IDA, as a private contractual body, unilaterally determines what is relevant to their investigation.

#### Our Concerns

- What is the benefit for the provision of such information to a self-regulatory organization that has no enabling legislation or exemption relief under *PIPEDA* or *PIPA* and has no private law duty of care to the individual investor?
- Are all British Columbians presumed to be under investigation by these dealer associations and thereby required to provide this information to them, just because they have an account with an investment firm?
- What authority do these SROs rely upon to make such a request of private citizens?
- Do IDA By-Laws supersede legislation?
- Should citizens in B.C. expect less protection and privacy of their personal information by watering down legislation in favour of SROs?
- Is there any current policy or procedure followed by the IDA/MFDA in protecting access to this information? I have attached, as exhibits, their examination & investigation by-laws.<sup>7</sup>
- Do Canadian citizens understand the difference(s) between an SRO with enabling legislation and a "recognized" SRO operating as private contractual body not constrained by public law? In other words, do Canadians/B.C. residents provide "informed consent"?
- When completing a non-standardized KYC form what information is necessary and what is subsequently provided to the SROs?
- What legislated checks and balances are in place for the use of this information by SROs?
- If the SROs are performing a government function, should the public not be afforded those protections that should otherwise be present when dealing with government?
- Are the MFDA/IDA member employees permitted to take their client information home? This is common industry practice as many "satellite" offices or branches are in the home of the registrant.

- Identity theft is becoming a more common occurrence. How many KYC forms does a bankers box hold? KYCs must be kept on hand for quick reference for suitability.

The SROs are neither "public bodies" nor "law enforcement agencies". However, the BCSC is both. We would rather see the BCSC exercising its' authority and mandate, utilizing the power it currently has to collect, use, and disclose personal information as opposed to weakening existing legislation, in favour of private organizations with private interests and undermining the spirit and intent of the existing legislation.

I have appended excerpts (**PDF Bookmark #9**) from four randomly chosen account application forms, specific to privacy policies, from different securities dealers. There is no consistency to their content since there is no standardized form.

I believe all of the above are critical issues and ask that these concerns be carefully considered prior to making any revisions to *PIPA*.

*Quis custodiet ipsos custodes?*

Respectfully,



Robert Kyle  
Executive Director  
Investorvoice.ca  
60 Pleasant Blvd. #2501  
Toronto, Ontario  
M4T 1K1



## MEMBER REGULATION

# notice



*Contact:*

P. Bourque: (416) 865-3038 – [pbourque@ida.ca](mailto:pbourque@ida.ca)

**MR-0256**

*December 3, 2003*

ATTENTION:  
Ultimate Designated Persons  
Chief Financial Officers  
Panel Auditors

**Distribute internally to:**

- Corporate Finance
- Credit
- Institutional
- Internal Audit
- Legal & Compliance
- Operations
- Registration
- Regulatory Accounting
- Research
- Retail
- Senior Management
- Trading desk
- Training

### **Joint Regulatory Notice on Federal and Provincial Privacy Legislation**

This joint regulatory notice has been prepared by the Investment Dealers Association of Canada, Market Regulation Services Inc., the Mutual Fund Dealers Association of Canada, Bourse de Montreal Inc., and the Canadian Investor Protection Fund (collectively, the self-regulatory organizations or "SROs").

This notice describes, in relation to federal and provincial privacy legislation, the expected standard to be met by all persons under the jurisdiction of the SROs (collectively, "**Regulated Persons**") for the collection, use and disclosure of personal information of clients and others for SRO regulatory purposes.

#### **Privacy Law and the Collection, Use and Disclosure of Personal Information by Regulated Persons**

Canada's federal privacy law, the Personal Information Protection and Electronic Documents Act ("**PIPEDA**"), will come fully into effect on January 1, 2004. It has provisions relating to the collection, use and disclosure of personal information by organizations in the course of commercial activity. In addition, Regulated Persons are reminded that Quebec has a provincial privacy law in place, that British Columbia has enacted a privacy law which will come into force on January 1, 2004, and that Alberta has a bill pending which, if enacted, would also come into force on January 1, 2004. Because one or more of these laws will apply, Regulated Persons will need to determine the privacy legislation applicable to their particular circumstances.

A common principle underlying PIPEDA and provincial privacy requirements is knowledgeable consent by an individual to the collection, use or disclosure of his or her personal information. Personal information is identifiable data about an individual. It can include, without limitation, information contained in:

- New client account forms and related account opening documentation,
- Account statements and records of trading and account activity, and
- Cheques and financial records of all in relation to trading in securities.

Organizations, including Regulated Persons, that collect, use or disclose personal information of clients and others must ensure that they have policies and procedures in place to comply with applicable federal and provincial privacy law requirements. These include a requirement that an organization must identify to an individual the purposes for which that individual's personal information may be collected, used or disclosed by the organization. Further information respecting privacy law requirements can be obtained from web sites maintained by the SROs and the federal and provincial privacy commissions.

### **SRO Access to Personal Information of Clients and Others for Regulatory Purposes**

Regulated Persons have obligations to produce or make available for inspection documents and information to SROs, from time to time, for regulatory purposes.

In order to comply with such obligations Regulated Persons must, at a minimum, ensure that the documentation they provide to individuals from whom they collect personal information includes notification describing the purposes of their collection, use and disclosure of personal information, including its disclosure to SROs and its use and disclosure by SROs. **Regulated Persons must also decline to accept or administer an account in respect of which an individual does not consent to such intended collection, use or disclosure of personal information to SROs and the use and disclosure of that information by SROs.**

Notification of the collection, use and disclosure of personal information by Regulated Persons and SROs for regulatory purposes may be included in such documents as new client account documentation, client account statements and trade confirmations. As a guide, Regulated Persons may wish to include the following particulars in the text of the notification appropriate to their particular circumstances:

*For regulatory purposes, self regulatory organizations including Market\_Regulation Services Inc., the Investment Dealers Association of Canada, the Mutual Fund Dealers Association of Canada, Bourse de Montreal Inc., and the Canadian Investor Protection Fund (collectively, "SROs") require access to personal information of current and former clients, employees, agents, directors, officers, partners and others that has been collected or used by Regulated Persons. SROs collect, use or disclose such personal information obtained from Regulated Persons for regulatory purposes, including:*

- *Surveillance of trading-related activity,*
- *Sales, financial compliance, trade desk review and other regulatory audits,*
- *Investigation of potential regulatory and statutory violations,*
- *Regulatory databases,*
- *Enforcement or disciplinary proceedings,*
- *Reporting to securities regulators, and*

- *Information-sharing with securities regulatory authorities, regulated marketplaces, other self-regulatory organizations and law enforcement agencies in any jurisdiction in connection with any of the foregoing.*

Regulated Persons who maintain a website should include a privacy notice on that website which should include the fact that personal information may be disclosed to SROs and used and disclosed by the SROs in the manner described above.

A Regulated Person may be subject to disciplinary proceedings by an applicable SRO if it:

- Fails to provide notification to individuals from whom it collects personal information sufficient to ensure that the Regulated Person can comply with its obligations to produce or make available for inspection documents and information to SROs for regulatory purposes, or
- Accepts or administers an account in respect of which the Regulated Person is unable to comply with its obligations to produce or make available for inspection documents and information to SROs for regulatory purposes, including circumstances in which the client of such Regulated Person does not consent to the disclosure of personal information to SROs and the use and disclosure of that information by SROs.

For further information please contact:

Investment Dealers Association of Canada	- Paul Bourque	(416) 865-3038
Market Regulation Services Inc.	- Gerry Halischuk	(604) 643-6529
Mutual Fund Dealers Association of Canada	- Gregory Ljubic	(416) 943-5836
Bourse de Montréal Inc.	- Jacques Tanguay	(514) 871-3518
Canadian Investor Protection Fund	- Barbara Love	(416) 643-7106

**BY-LAW NO. 19****EXAMINATIONS AND INVESTIGATIONS**

19.1

 19.1 The Senior Vice-President, Member Regulation, his or her staff or any other person designated by the Board of Directors shall make such examinations of and investigations into the conduct, business or affairs of any Member, **registered representative**, **investment representative**, **sales manager**, branch manager, assistant or co-branch manager, partner, director or officer, **investor** or employee of a Member or any other person approved or seeking approval or under the jurisdiction of the Association pursuant to the By-laws and Regulations as he or she considers necessary or desirable in connection with any matter relating to compliance by such person with (i) the By-laws, Regulations, Rulings or Policies of the Association, (ii) any legislation applicable to such person concerning trading in securities or commodity contracts, including any rulings, policies, regulations or directives of any **securities commission**, or (iii) the by-laws, rules, regulations and policies of any **self-regulatory organization**.

The Member shall require all employees to comply with By-law 19.

19.2

19.2 Any examination or investigation made pursuant to **By-law 19.1** may be instituted upon the basis of (i) a complaint received by or directed to the Association, (ii) the direction of the Board of Directors, (iii) the request of a **securities commission** having jurisdiction, or (iv) any information received or obtained relating to the conduct, business or affairs of the Member or person involved.

**Complaints**

19.3

19.3 Any complaint made to the Association against a Member or a person approved or seeking approval pursuant to the By-laws or Regulations may be required to be put in writing and signed by the person making the complaint.

19.4

19.4 Each Member shall keep an up-to-date record in a central place of all written complaints received by it relating to the conduct, business and affairs of the Member, any **registered representative**, **investment representative**, branch manager, assistant or co-branch manager, **sales manager**, partner, director or officer, or any person employed by the Member, for a period of 24 months from the date of receipt of the complaint.

**Investigatory Powers**

19.5

 19.5 For the purpose of any examination or investigation pursuant to this By-law 19, a Member, **registered representative**, **investment representative**, **sales manager**, branch manager, assistant or co-branch manager, partner, director, officer, **investor** or employee of a Member or any other person approved or seeking approval or under the jurisdiction of the Association pursuant to the By-laws and Regulations, may be required by the Senior Vice-President, Member Regulation, his or her staff, or any other person designated by the Board of Directors:

- (a) To submit a report in writing with regard to any matter involved in any such investigation;
- (b) To produce for inspection and provide copies of any books, records, accounts and documents, that are in the possession or control of the Member or the person, that the Association determines may be relevant to a matter under examination or investigation and such information, books, records and documents shall be provided in such manner and form, including electronically, as may be required by the Association; and
- (c) To attend and give information respecting any such matters;

And the person shall be obliged to submit such report, to permit such inspection,

provide such copies and to attend, accordingly. Any person subject to an investigation conducted pursuant to this By-law 19 shall be advised in writing of the matters under investigation and may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.

19.6

19.6 For the purpose of any examination or investigation pursuant to this By-law 19, the Senior Vice-President, Member Regulation, his or her staff or any person designated by the Board of Directors shall be entitled to free access to, and to make and retain copies of, all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person concerned, and no such person shall withhold, destroy or conceal any information, documents or thing reasonably required for the purpose of such examination or investigation.

19.7

19.7 The Senior Vice-President, Member Regulation, his or her staff, or any other person designated by the Board of Directors, may, in accordance with any information received:

- (a) Refer a matter to the applicable District Council for consideration in accordance with the provisions of [By-law 20](#); or
- (b) Take such other action under the By-laws, Regulations, Rulings or Policies which he or she considers appropriate in the circumstances.

19.8

 19.8 A Member or any person approved by, or under the jurisdiction of, the Association, that is requested by The Canadian Venture Exchange, The Montreal Exchange or The Toronto Stock Exchange to provide information in connection with an investigation of trading of a security listed on that exchange shall submit the requested information, books, records, reports, filings and papers to the exchange making the request in such manner and form, including electronically, as may reasonably be prescribed by such exchange.

## **EXAMINATIONS AND INVESTIGATIONS**

### **21. POWER TO CONDUCT EXAMINATIONS AND INVESTIGATIONS**

The Corporation shall make such examinations of and investigations into the conduct, business or affairs of any Member, Approved Person of a Member or any other person under the jurisdiction of the Corporation pursuant to the By-laws and/or the Rules as it considers necessary or desirable in connection with any matter relating to compliance by such person with:

- 21.1 the By-laws, Rules or Policies of the Corporation;
- 21.2 any securities legislation applicable to such person including any rulings, policies, regulations or directives of any securities commission; or
- 21.3 the by-laws, rules, regulations and policies of any self-regulatory organization.

### **22. INVESTIGATORY POWERS**

22.1 For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

- (a) to submit a report in writing with regard to any matter involved in any such investigation;
- (b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated; and
- (c) to attend and give information respecting any such matters;
- (d) to make any of the above information available through any directors, officers, employees, agents and other persons under the direction or control of the Member, Approved Person or other person under the jurisdiction of the Corporation;

and the Member or person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any Member or person subject to an investigation conducted pursuant to this By-law may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any Member or person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.

22.2 For the purpose of any examination or investigation pursuant to this By-law, the Corporation shall be entitled to free access to, and to make and retain copies of, all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the Member or person concerned, and no such Member or person shall withhold, destroy or conceal any information, documents or thing reasonably required for the purpose of such examination or investigation.

22.3 The Corporation, may, with respect to any information received:

- (a) refer a matter to the applicable Regional Council for consideration in accordance with the provisions of Section 24; or
- (b) refer a matter to the appropriate securities regulatory authority, self-regulatory organization or law enforcement agency; or
- (c) take such other action under the By-laws or Rules which it considers appropriate in the circumstances.

## **23. CO-OPERATION WITH OTHER AUTHORITIES**

### **23.1 Request for Information**

Any Member, Approved Person or any person under the jurisdiction of the Corporation, that is requested by any securities commission or regulatory authority, law enforcement agency, self-regulatory organization, stock exchange, other trading market, customer or investor protection or compensation fund or plan or other organization regulating or providing services in connection with securities trading located in Canada or any other country to provide information in connection with an investigation of trading in securities shall submit the requested information, books, records, reports, filings and papers to the commission, authority, organization, exchange or market making the request in such manner and form, including electronically, as may reasonably be prescribed by such commission, authority, organization, exchange or market.

### **23.2 Agreements**

The Corporation may enter into in its own name agreements or arrangements with any securities commission or regulatory authority, law enforcement agency, self-regulatory organization, stock exchange, other trading market, customer or investor protection or compensation fund or plan or other organization regulating or providing services in connection with securities trading located in Canada or any other country for the exchange of any information (including information obtained by the Corporation pursuant to the By-laws or Rules or otherwise in its possession) and for other forms of mutual assistance for market surveillance, investigation, enforcement and other regulatory purposes.

### **23.3 Assistance**

The Corporation may provide to any securities commission or regulatory authority, law enforcement agency, self-regulatory organization, stock exchange, other trading market,

customer or investor protection or compensation fund or plan or other organization regulating or providing services in connection with securities trading located in Canada or any other country any information obtained by the Corporation pursuant to the By-laws or Rules or otherwise in its possession and may provide other forms of assistance for surveillance, investigation, enforcement and other regulatory purposes.

**ALL CURRENT AS OF 29 February 2008**

**Assante Wealth Management**

<http://www.assante.com/privacy.shtml>

**5. Limiting Use, Disclosure and Retention**

Assante will use or disclose personal information only for the purpose(s) it was collected, unless the client consents to use or disclosure for another purpose, or if the requires it. Client information on file will be kept for the standard period of seven years from the final closing of the client file, or the date the last service was provided to the client.

The type of information collected is limited to the following:

- the fundamental "know your client" information contained in the Assante New Client Application Form
- information required for tax reporting purposes
- information required to meet anti-money laundering and suppression of terrorism requirements
- other information required to meet obligations imposed by securities regulations, SRO rules or other laws

This information may be made available to related companies or third-party service providers to fulfil the purposes for which it has been collected. The information may also be disclosed to SROs, which may use the information to review, monitor, audit or investigate Assante's compliance with securities rules. The information provided to the SROs may, in turn, be reported to other securities regulators, regulated marketplaces, other SROs or law enforcement agencies.

**Dundee Wealth Management**

<http://www.dundeewealth.com/en/public/privacy.htm>

**CONSENT NOT REQUIRED:**

In certain circumstances, your personal information is made available without your consent when required by a court of law or by a regulatory or self-regulatory organization or to our legal advisors in order to protect the interests of Dundee. Regulatory authorities include, without limitation, provincial securities commissions, Canada Customs and Revenue Agency, provincial insurance regulators and provincial mortgage regulators. Self-regulatory authorities include, without limitation, the Investment Dealers Association of Canada, the Mutual Fund Dealers Association of Canada and Market Regulation Services Inc.

### **Client Information**

All client information under the control of Savoy Capital Management Ltd. will be kept confidential except where disclosure is required by law, securities regulation, or the regulations of a self-regulatory organization.

### **Procedures**

Savoy Capital Management Ltd. will identify the purpose for which information is being collected from clients either before the information is requested or as it is being requested.

Unless not required by law, securities regulation, or the regulations of a self-regulatory organization Savoy Capital Management Ltd. will obtain the client's consent to the collection, use, or disclosure of client information.

Savoy Capital Management Ltd. will only collect client information by lawful means and only to the extent required to satisfy the purpose for which the information is being collected was identified.

Savoy Capital Management Ltd. will only use or disclose the information collected for the purpose identified unless the client consents or where disclosure or use is required by law, securities regulation, or the regulations of a self-regulatory organization.

Savoy Capital Management Ltd. will only retain the information collected for so long as is required to satisfy the purpose identified or as required by law, securities regulation, or the regulations of a self-regulatory organization.

The client information collected by Savoy Capital Management Ltd. will be accurate and complete and as up-to-date as is necessary to fulfill the purpose for which it was collected.

Savoy Capital Management Ltd. will protect client information with such safeguards as are appropriate to the sensitivity level of the information.

Savoy Capital Management Ltd. will make available to clients the copies of the policies and practices that apply to the management of client information by Savoy Capital Management Ltd.

Upon request and unless prohibited by law, securities regulation, or the regulations of a self-regulatory organization, clients will be given access to their client information and will be informed of any use made of the information or disclosure of the information to any third parties.

Upon review of the information by a client, the client may request that information be updated or revised. Savoy Capital Management Ltd. may, if there are reasonable grounds to do so, decline to make the requested revisions. In such case the client may request that requested revisions be attached to the existing client information be managed by Savoy Capital Management Ltd.

## **The Ethical Funds Company**

<https://www.ethicalfunds.com/en/Advisor/Pages/Privacy.aspx>

We may be required to release your personal information by a court of law, or other legal or regulatory authority. Our policy is to release personal information only to the extent that we are reasonably required to do so by law or regulation. We may also disclose your personal information to assist us with collecting a debt that you owe to EFC. We may also disclose information to an investigative body as required by law. In addition, the law permits us to collect, use, and disclose personal information without your consent in certain circumstances, such as to assist investigative authorities or the courts, to protect the public interest (e.g. to combat fraud or money laundering), to protect our interests, and to protect your interests when your consent cannot be obtained in a timely manner. Details of these exceptions are provided in your application materials.

We may also share your information with self-regulatory authorities when EFC is so required. These self-regulatory organizations, (such as the Investment Dealers Association, Market Regulation Services Inc., the Mutual Fund Dealers Association, Bourse de Montreal Inc., and the Canadian Investor Protection Fund) require access to personal information for regulatory purposes. This includes:

- surveillance of trading-related activity, sales, financial compliance, trade-desk review and other regulatory audits;
- investigation of potential regulatory and statutory violations;
- regulatory databases;
- enforcement or disciplinary proceedings;
- reporting to securities regulators; and
- information sharing with other authorities.

**Salman Partners Inc.**

[http://www.salmanpartners.com/index.cfm?page=privacy\\_policy](http://www.salmanpartners.com/index.cfm?page=privacy_policy)

**Disclosure for Regulatory Requirements**

Self-regulatory organizations such as Market Regulation Services Inc., the Investments Dealers Association of Canada, the Toronto Stock Exchange, the TSX Venture Exchange, Bourse de Montreal Inc., and the Canadian Investor Protection Fund (collectively, "SROs") may require access to the personal information of current and former clients, employees, agents, directors, officers, partners and others that has been collected or used by SPI. SROs may collect, use and disclose personal information obtained from SPI for regulatory purposes, including:

- (a) surveillance of trading-related activity;
- (b) sales, financial compliance, trade desk review and other regulatory audits;
- (c) investigations, enforcement, or disciplinary proceedings related to regulatory and statutory violations;
- (d) maintenance of regulatory databases;
- (e) reporting to securities regulators; and
- (f) information sharing with securities regulatory authorities, regulated marketplaces, other SROs and law enforcement agencies in any jurisdiction in connection with any of the above.

**Disclosure to the United States Internal Revenue Service**

Pursuant to its legal obligations to the United States Internal Revenue Service, SPI may collect additional personal information from clients who are United States beneficial owners or who own United States securities in SPI accounts. The additional personal information disclosed to the United States Internal Revenue Service with respect to these clients may include:

- (a) United States taxpayer identification numbers;
- (b) citizenship information;
- (c) residential identification information; and
- (d) certain account information.

**Salman Partners (USA) Inc.**

Salman Partners (USA) Inc. may be required by law to disclose the personal information of its clients to regulatory or government authorities in the United States.

**Disclosure of Business Transfers**

SPI may be involved in the sale, transfer or reorganization of some or all of its business at some time in the future. As part of that sale, transfer or reorganization, SPI may disclose personal information to the acquiring organization, but will require the acquiring organization to agree to protect the privacy of that personal information in a manner that is consistent with this Policy, and in accordance with relevant federal or provincial law.

**Disclosure to Service Providers**

SPI may transfer personal information to a third party for processing. In that regard, SPI will use contractual or other means to provide a comparable level of protection while the information is being processed by a third party. For example, currently, SPI out-sources its computer data processing to a third party.

# WorkSheet

## Your Investment Planning Worksheet

This worksheet complements other publications in this series:

### Getting Started

encourages readers to develop a personal investment strategy and explains some of the key steps along the way - like identifying your objectives, reviewing your financial resources, and assessing your investment knowledge and tolerance for risk.

### Choosing Your Financial Advisers

guides readers in selecting their financial advisers and explains why they should make their choices carefully. It also explains why the law requires financial advisers to "know their client".

### GETTING STARTED

Whether you're planning your financial future for the first time, or reviewing your present plan, it's important to establish clear financial goals. You'll also want to identify the resources you have to achieve your goals and think very carefully about how much risk you are prepared to take with your money.

Completing this worksheet will not tell you which investments are right for you, but it will help you work through information that is important to your overall investment strategy. Fill it out carefully, discuss it with your financial advisers in detail, and update it at least annually or whenever your personal circumstances change significantly.

*Make copies of this worksheet before you fill it out so you can update it from time to time or pass it on to friends.*

#### PERSONAL DATA

#### STEP 1

! NAME: \_\_\_\_\_

! ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

! *Okay, you know this information already, but your advisers will find it helpful if it's right up front.*

PHONE: (        ) \_\_\_\_\_ BUS. PHONE: (        ) \_\_\_\_\_

FAX: (        ) \_\_\_\_\_ E-MAIL: \_\_\_\_\_

BIRTH DATE: \_\_\_\_\_ SOCIAL INSURANCE #: \_\_\_\_\_

EMPLOYER: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

SPOUSE'S NAME: \_\_\_\_\_

BIRTH DATE: \_\_\_\_\_

EMPLOYER: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

NUMBER OF DEPENDENTS: \_\_\_\_\_ AGES: \_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_

! Have you prepared a will? (Yes/No) Last updated: \_\_\_\_\_

Do you feel you have adequate insurance? (Yes/No) Last reviewed: \_\_\_\_\_

Do you have an accountant? (Yes/No) Name: \_\_\_\_\_

Do you have a financial adviser? (Yes/No) Name: \_\_\_\_\_

! *Life and property insurance and estate planning are, for most people, important parts of a sound financial plan. If you aren't sure what your needs are, consult your financial advisers.*

CONTINUED.....

**ASSETS**

**You**

**Spouse**

Cash	\$ _____	\$ _____
Chequing/Savings Accounts	_____	_____
RRSPs/RRIFs	_____	_____
Non-RRSP Investments	_____	_____
Life Insurance (cash value)	_____	_____
Employment Pension Plans	_____	_____
Personal Property		
Vehicles	_____	_____
Real Estate	_____	_____
Jewelry and Collectibles	_____	_____
Other Assets	_____	_____
Business Property	_____	_____
<b>Total:</b>	<b>\$ _____</b>	<b>\$ _____</b>

**Total Household Assets:**

**\$ \_\_\_\_\_**

**LIABILITIES**

Credit Card Balances	\$ _____	\$ _____
Bank Loans	_____	_____
Investment Loans	_____	_____
Taxes Owing	_____	_____
Mortgage Balance	_____	_____
Other Debts	_____	_____
<b>Total:</b>	<b>\$ _____</b>	<b>\$ _____</b>

**Total Household Liabilities:**

**\$ \_\_\_\_\_**

**NET WORTH (TOTAL ASSETS - TOTAL LIABILITIES) = \$ \_\_\_\_\_**

**!** If you have an employment pension plan, your financial advisers or your pension administrator can help you determine its present value.

The answers to these questions will help you and your financial advisers properly assess your financial needs and objectives, as well as your tolerance for risk.

**1** Today, I have \$ \_\_\_\_\_ to invest, and plan to invest an additional \$ \_\_\_\_\_ each (month/year).

**2** My major financial objectives include (e.g. buying a house, paying off a mortgage, buying a car, paying for a child's education, saving for retirement):

Objectives	Estimated Cost	When?
1. _____	• _____	• _____
2. _____	• _____	• _____
3. _____	• _____	• _____
4. _____	• _____	• _____
5. _____	• _____	• _____

**INCOME**

Employment \$ \_\_\_\_\_  
 Self-employment \_\_\_\_\_  
 Investment Income \_\_\_\_\_  
 Rental Income \_\_\_\_\_  
 Private Pension Plans \_\_\_\_\_  
 CPP/OAS/QPP \_\_\_\_\_  
 Child Support \_\_\_\_\_  
 Other Income \_\_\_\_\_  
**Total Monthly Income:** \$ \_\_\_\_\_

**Less Deductions**

Income Tax \$ \_\_\_\_\_  
 EI/ CPP/QPP \_\_\_\_\_  
 Other Deductions \_\_\_\_\_  
**Total Deductions:** \_(\$ \_\_\_\_\_)\_

**NET MONTHLY INCOME =** \$ \_\_\_\_\_

**!** Don't forget to include all expenses. For annual expenses, divide by 12. For irregular expenses (like furniture) try to estimate a monthly average. Many people tend to underestimate expenses. It's a good idea to track them for a few months to check your estimates.

**! EXPENSES**

Rent/Mortgage Payments \$ \_\_\_\_\_  
 Property Insurance \_\_\_\_\_  
 Utilities \_\_\_\_\_  
 Property Taxes \_\_\_\_\_  
 Repairs \_\_\_\_\_  
 Interest on Loans and Credit Cards \_\_\_\_\_  
 Groceries \_\_\_\_\_  
 Clothing \_\_\_\_\_  
 Furniture \_\_\_\_\_  
 Entertainment \_\_\_\_\_  
 Medical/Dental \_\_\_\_\_  
 Education \_\_\_\_\_  
 Personal Care \_\_\_\_\_  
 Gifts and Donations \_\_\_\_\_  
 Subscriptions \_\_\_\_\_  
 Transportation \_\_\_\_\_  
 Life/Disability Insurance \_\_\_\_\_  
 Other Expenses \_\_\_\_\_  
**TOTAL MONTHLY EXPENSES =** \$ \_\_\_\_\_

**! MONTHLY SURPLUS OR SHORTFALL**  
**(NET MONTHLY INCOME – TOTAL MONTHLY EXPENSES) =** \$ \_\_\_\_\_

**!** Think of the monthly surplus as the amount that you could save and invest each month to achieve your long term goals. If you have a monthly shortfall (i.e. you spend more than you make) it's time to think about ways to reduce your expenditures or increase your income.

**3** The likelihood that I will have to withdraw a significant amount of my investment before the times estimated in question 2:

Low       Medium       High

**4** My household income stream is:

very secure       somewhat uncertain  
 reasonably secure       very uncertain

**! 5** I would feel comfortable if I had \$ \_\_\_\_\_ that I could access quickly in case of emergency.

**!** Most people like to have some money set aside for emergencies. That money can still be invested to earn a return for you, but should be invested in securities that can quickly and easily be turned into cash.

**! 6** I would feel distinctly uncomfortable if, over the course of any one year, my overall investment portfolio declined in value by:

1 - 2%       6 - 10%       16 - 20%  
 3 - 5%       11 - 15%       over 20%

**! 7** For my overall investment portfolio, the largest decline in value (even if it was temporary) that I would ever be prepared to accept is:

no decline at all       15% of the total  
 5% of the total       25% or more of the total

**!** If you are not comfortable with fluctuations in the value of your portfolio, you should choose investments that are very low risk. Remember though, that low risk securities almost invariably offer lower rates of return.

8 My priorities when investing are:

	Very Important	Fairly Important	Not a Priority
Preserving my capital:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Earning a regular income:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Having the value of my investments grow over time:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Speculating in high-risk ventures:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9 I plan to retire in \_\_\_\_\_ years, and when I retire my goal is to have an income of \$\_\_\_\_\_ per month (in today's dollars).

10 After retirement, I expect to receive monthly income from the following sources:

Employment Pension	\$_____
RRSP/RRIF	\$_____
Investment Income	\$_____
Other	\$_____
<b>Total</b>	<b>\$_____</b>

**!** Your financial advisers or pension administrator may be able to help estimate the future income you can expect from pension plans and other investments.

11 I have previously invested in:

	Yes	No
GICs	<input type="checkbox"/>	<input type="checkbox"/>
Mutual Funds	<input type="checkbox"/>	<input type="checkbox"/>
Common Shares	<input type="checkbox"/>	<input type="checkbox"/>
Bonds and Debentures	<input type="checkbox"/>	<input type="checkbox"/>
Preferred Shares	<input type="checkbox"/>	<input type="checkbox"/>
Trust Units	<input type="checkbox"/>	<input type="checkbox"/>
Limited Partnerships	<input type="checkbox"/>	<input type="checkbox"/>
Stock Options	<input type="checkbox"/>	<input type="checkbox"/>
Futures	<input type="checkbox"/>	<input type="checkbox"/>

**Your financial advisers will need to know a great deal about you and your financial situation in order to provide you with sound advice and to satisfy their regulatory obligations to "know their client". This worksheet has not been designed to collect all of the data your advisers will need, so you should expect them to ask you for additional information as well.**

**Remember that the quality of the advice you receive will depend on how well your advisers - and you - understand your goals, your financial circumstances and your risk tolerance.**

12 I would rate my investment knowledge of securities:

	None	Some Knowledge	Quite Familiar	Well Informed
GICs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mutual Funds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Common Shares	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bonds and Debentures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Preferred Shares	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trust Units	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Limited Partnership	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stock Options	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Futures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**!** It's never a good idea to invest in securities that you know little or nothing about. Investigate before you invest!

13 On average, I spend \_\_\_\_\_ (how much time) monitoring my investments and researching other investment opportunities.

**!** The less time you have to monitor your investments, the less risk you will probably be comfortable with.

14 When it comes to making investment decisions:

- I rely entirely on the recommendations of my financial advisers.
- I consider the advice of my financial advisers, but often apply my own judgment and experience.
- I am comfortable making all of my own investment decisions.

**!** If you intend to rely heavily on your financial advisers, your most important investment decision may be choosing the right ones.

15 I think a reasonable annual rate of return for my portfolio of investments would be:

- I don't know       6 - 8%       12 - 15%
- 3 - 5%       9 - 11%       more than 15%

**!** Remember that risk and return are closely related. It is not realistic to expect high rates of return if you are not prepared to take significant risks with your money.

**Be sure to keep a copy of this form for future reference, and ask your financial advisers for a copy of any other forms (like new account application forms) that they use to assess your investment needs and objectives.**

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**Brought to you by the Canadian Securities Administrators**

- Alberta Securities Commission
- British Columbia Securities Commission
- Manitoba Securities Commission

- Office of the Administrator of Securities, New Brunswick
- Securities Division, Department of Government Services and Lands, Government of Newfoundland and Labrador

- Registrar of Securities, Northwest Territories
- Nova Scotia Securities Commission
- Ontario Securities Commission
- Department of Community Affairs & Attorney General, Prince Edward Island

- Commission des valeurs mobilières du Québec
- Saskatchewan Securities Commission
- Registrar of Securities, Government of Yukon

# Policy Documents

## Decisions & Orders

**Document Sub-category:** Exemption Orders (Discretionary)  
**Document No.:** 2001/028  
**Subject:** THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA [COR]  
**Amendments:**  
**Published Date:** 02/16/2001  
**Effective Date:** 02/15/2001

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COR#01/028

IN THE MATTER OF THE SECURITIES ACT  
R.S.B.C. 1996, c. 418

AND

**IN THE MATTER OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Recognition Order Under Section 24(1)

[Para 1]

The Mutual Fund Dealers Association of Canada (the "MFDA") has applied to the Commission for recognition as a self regulatory body for mutual fund dealers under section 24(1) of the *Securities Act*.

[Para 2]

The MFDA has represented to the Commission that:

1. It is a not-for-profit corporation that represents registrants and it plans to regulate the standards of practice and business conduct of its members.
2. It published its draft rules and bylaws for comment on June 16, 2000.
3. It published its responses to the comments received and its amended rules and bylaws on December 18, 2000.

[Para 3]

The Commission proposes to enact rules that will require registered mutual fund dealers to be members of the MFDA.

[Para 4]

The Commission, considering it to be in the public interest, hereby recognizes the MFDA under section 24(1) of the Act as a self regulatory body for mutual fund dealers, on the terms and conditions attached as Schedule "A". Recognition shall continue until the Commission, after giving the MFDA an opportunity to be heard, revokes it.

[Para 5]  
Dated February 15, 2001.

Douglas M. Hyndman  
Chair

## **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" means, in respect of a member of the MFDA, an individual who is a partner, director, officer, compliance officer, branch manager or alternate manager, employee or agent of the member who conducts or participates in the business of the member and who (i) is registered, licensed or approved in the appropriate category, where required by applicable securities legislation, by the Commission and (ii) is designated and qualified as such in accordance with the rules or (iii) is otherwise subject to the jurisdiction of the MFDA;

"member" means a member of the MFDA;

"rules", except where used in the definition of "securities legislation", means the by-laws, rules, regulations, policies, forms, and other similar instruments of the MFDA; and

"securities legislation" means the securities laws, regulations, rules and policies of the Canadian jurisdictions.

#### **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 persons ("Public Directors") who are not members or directors, partners, officers, salespersons or employees of a member, or of an associate, affiliate or related company of a member, of the MFDA, the Investment

Dealers Association of Canada (the "IDA") or The Investment Funds Institute of Canada ("IFIC").

(B) Not later than the third annual meeting after the date of its Recognition, the MFDA shall ensure that:

(i) a reasonable number and proportion of directors serving on the Board, and on each of the governance, executive and audit committee of the Board or similar bodies within the meaning of the MFDA rules, are Public Directors;

(ii) meetings of any committee or body on which there are Public Directors shall have a quorum requirement including at least one Public Director;

(iii) the remaining number of directors serving on the Board and on the above referred to committees and bodies of the Board, consist of directors representing the different members of the MFDA to ensure diversity of representation on the Board in accordance with paragraph (A);

(iv) the IDA and IFIC no longer have rights to nominate and appoint persons to serve as directors on the Board or as members of committees or bodies of the Board;

(v) the Chair of the Board is an individual appointed as such by the Board (constituted as required by (i) and (iii) above) and is not required to be the Chairperson of IFIC;

(vi) the President and Chief Executive Officer of the MFDA is an individual appointed by the Board (constituted as required by (i) and (iii) above) and is not required to be the President of the IDA.

(C) Without limiting the generality of the foregoing, not later than the third annual meeting after the date of its Recognition, the MFDA's governance structure shall provide for:

(i) a proper balance amongst the interests of the members;

(ii) appropriate representation of Public Directors on committees and bodies of the Board;

(iii) 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

(iv) a chief executive officer and other officers, all of whom, except for the chairman of the Board, are independent of any member.

(D) Not later than the second anniversary after the date of its Recognition, the MFDA shall file with the Commission for its approval, a plan for the governance of the MFDA, including a plan for the orderly transition to the governance framework outlined in this paragraph 3.

#### 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 Commission 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 Commission 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

(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 partners, directors, officers, employees and agents of members;

(iii) consideration of disciplinary history, including breaches of applicable securities laws, 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's 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 laws, 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 Commission 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

(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 Commission 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 Commission 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 Commission or its staff. The MFDA shall also cooperate with the Commission in the conduct of reviews of its members and the members' Approved Persons as requested by the Commission 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 Commission 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 Commission 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 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 Commission 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 Commission 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 Commission under securities legislation.

(B) The MFDA's 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 Commission 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;

(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 Commission under paragraphs 8 (D) and (E).

(G) The information given to the Commission under paragraphs 8 (D) and (E) will be published by the Commission unless the Commission 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-a-vis the MFDA or the Commission, 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 Commission 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 Commission 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, having regard to the above purposes, is not appropriate.

(B) Unless otherwise approved by the Commission, 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 Commission. 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 Commission 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 Commission.

(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 Commission.

(E) The MFDA shall, wherever practicable, document its interpretations of its rules and distribute copies of that documentation to its members and the Commission.

## 12. OPERATIONAL ARRANGEMENTS AND RESOURCES

(A) Within one year of the date that the MFDA accepts its first member, the MFDA shall have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules. With the consent of the Commission, the arrangements for monitoring 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 any other body or person that is able and willing to perform it. The Commission'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 Commission, 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 any other body or person that is able and willing to perform it. The Commission'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) Within one year of the date that the MFDA accepts its first member, 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 members within the meaning of the current section 19.6 of the MFDA's By-law No. 1 together with member representatives.

On the first business day after the date that is one year after the MFDA accepts its first member, the MFDA shall report to the Commission on its compliance with paragraphs 12 (A), (B), (C) and (D).

(E) The MFDA shall advise the Commission at least annually of its self-regulatory staff complement, by function, and of any material changes or reductions in self-regulatory staff, by function.

(F) The MFDA shall advise the Commission in advance of any proposed material changes or reductions in its financial review program or operational and sales compliance review programmes, including as to procedures or scope, of any proposed changes in its external audit instructions and of any proposed material changes or reductions in the operation of its investigation or enforcement programmes.

(G) The MFDA shall cooperate and assist with any surprise, regular or other reviews of its self-regulatory functions by an IPP or the Commission. In addition, in the event that the Commission is of the view that there has been a serious actual or apparent failure in the MFDA's fulfillment of its self-regulatory functions, the MFDA shall, where requested by the Commission, undergo an independent third party review on terms and by a person or persons satisfactory to or determined by the Commission, which review shall be at the expense of the MFDA.

(H) The MFDA shall cooperate and assist with any surprise, regular or other reviews of its corporate governance structure by the Commission. In addition, in the event that the Commission 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 Commission undergo an

independent third party review on terms and by a person or persons satisfactory to or determined by the Commission, which review shall be at the expense of the MFDA.

(I) Management of the MFDA shall at least annually self-assess the MFDA's performance of its self-regulatory responsibilities and report thereon to the executive committee, together with any recommendations for improvements. The executive committee shall be responsible for reporting to the Board as to the MFDA's performance of its self-regulatory responsibilities. The reports 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 Commission or its staff. The MFDA shall, within 120 days of the fiscal year end of the MFDA, provide the Commission with copies or summaries of such reports and advise the Commission of any proposed actions arising therefrom.

(J) The MFDA shall provide its budget and audited financial statements to the Commission on an annual basis following adoption thereof and within 120 days of its fiscal year end, and with such other information as the Commission or its staff may reasonably request.

(K) The MFDA shall not make material changes to its organizational structure, which would affect its self-regulatory functions, without prior approval of the Commission, and shall give the Commission notice of new directors, officers and committee chairpersons, including a 5 year employment history and information as to 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.

(L) The MFDA shall provide the Commission with reports, documents and other information as the Commission or its staff may reasonably request. The Commission or its staff may review and revise such reporting requirements as necessary on an on-going basis.

### 13. INFORMATION SHARING

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

### 14. REQUIRED RULE AMENDMENTS

Prior to the MFDA accepting its first member, the MFDA shall amend its rules as set out below:

(A) Rule 1.2.1(d) - to provide that an Approved Person may only carry on financial planning services through the member or through another entity that is otherwise regulated or that is subject to the rules of a widely recognized professional association.

(B) Rule 5.3.4 and Rule 5.3.5 - to suspend the operation of Rule 5.3.5 until such time as it has been published for comment for a minimum of 30 days and approved by the Commission;

(C) Sections 13.7 and 13.9 of By-Law No. 1 - to provide that the MFDA must approve all reorganizations and acquisitions of significant equity interests of 20 percent or more.

(D) Form 1 - MFDA Financial Questionnaire and Report - to amend the requirements of MFDA Form 1 - MFDA Financial Questionnaire and Report to require a member to provide margin for mutual fund securities held by the member calculated as follows:

(i) 5 percent of the market value of money market mutual funds, as defined by National Instrument 81-102 Mutual Funds

(ii) 50 percent of the market value of all other mutual funds

For this purpose, the MFDA shall amend, before it is issued, its MFDA Notice to Members entitled "Transition Periods" to reflect the rule suspensions noted in this paragraph.

#### 15. SUSPENSION OF MFDA RULE 2.4.1

The MFDA shall comply with the following conditions during the period that MFDA Rule 2.4.1 is suspended as set out in its MFDA Notice to Members entitled "Transition Periods":

(A) the MFDA shall co-operate with the Commission and its staff, including participating on any joint industry and regulatory committee struck by the Commission and its staff, in their efforts to develop amendments to applicable securities legislation that would, among other things, allow an Approved Person to carry on securities related business (within the meaning of the MFDA rules) through a corporation, while preserving that Approved Person's and the member's liability to clients for the Approved Person's actions;

(B) the MFDA shall, as a condition of a member or Approved Person being entitled to rely on the suspension of Rule 2.4.1, require that the member and its Approved Persons agree, and cause any recipient of commissions on behalf of Approved Persons that is itself not registered as a dealer or a salesperson to agree, to provide to the MFDA, the Commission and the applicable member access to its books and records for the purpose of determining compliance with the rules of the MFDA and applicable securities legislation;

(C) the MFDA shall prepare a Notice to Members, which Notice shall be acceptable to the Commission and its staff, describing the effect of the suspension of Rule 2.4.1 and the requirement that members and Approved Persons comply with the remaining Rules, with specific reference to Rule 1 Business Structures and Qualifications, Rule 1.2.1(d) Dual Occupations and the rule noted above in paragraph (B), and shall publish this Notice, once approved by the Commission or its staff, before accepting its first member;

(D) the MFDA shall ensure that members applying for membership are made aware of the requirements of Rule 1 by delivering to each applicant a copy of the Notice referred to above; and

(E) the MFDA shall not accept a member whose relationship with its Approved Persons does not comply with the rules of the MFDA and in particular, Rule 1, unless the MFDA has granted exemptive relief to that applicant under the authority granted to the Board of Directors under section 38 of By-law No. 1.

# NATIONAL POST

## Penalties needed

**Paul C. Bourque**

Financial Post

*November 1, 2004*

Re: "[Investors Need Faith in SROs](#)," Oct. 15.

Diane Urquhart's article deserves a response. Investors should have confidence in the work of self-regulatory organizations, but that confidence must be based on transparent reporting and accountability. There is no securities regulatory organization in Canada that provides more information and is more accountable to provincial governments than the Investment Dealers Association of Canada.

First, let's get the facts straight. The only legislative power the provincial governments "delegate" to the IDA is registration of brokers -- and even that is only delegated in B.C., Alberta and Ontario. The provincial governments do not "delegate" securities industry compliance and enforcement.

Ms. Urquhart suggests that the IDA should not be given more effective tools to collect fines until private investors are provided similar powers. This suggestion confuses penalties for regulatory misconduct with investor compensation for investment losses.

In the past three years, the IDA has completed 165 discipline cases and imposed over \$12 million in fines. If investors are to have faith in SROs, there must be an effective way to collect penalties imposed for misconduct. The IDA already has the power to file its discipline decisions as orders of the court in Alberta. We need this power to more effectively collect fines in the rest of Canada. However, more effective fine collection for SROs will not assist investors in obtaining compensation.

Discipline fines are imposed for regulatory wrongdoing and misconduct. There may be no financial loss, but penalties may still be appropriate. Or the loss may have been made good by the firm before the matter is resolved by discipline. The fact a client may have been compensated, however, does not mean wrongdoing should not be punished.

By all means, let's improve the remedies available to investors to obtain compensation where appropriate, but it's just as important for investors that SROs have the powers they need to fulfill their public-interest mandate to protect investors.

*Paul C. Bourque, senior vice-president, member regulation, Investment Dealers Association of Canada.*