

**13.1.3 Notice of Commission Approval – Housekeeping Amendments to MFDA By-law No.1, Section 8 – For the Protection of Directors, Officers and Others**

**THE MUTUAL FUND DEALERS ASSOCIATION (MFDA)**

**AMENDMENTS TO MFDA BY-LAW NO. 1, SECTION 8 –  
FOR THE PROTECTION OF DIRECTORS, OFFICERS AND OTHERS**

**NOTICE OF COMMISSION APPROVAL**

The Ontario Securities Commission approved the amendments to MFDA By-law No. 1, Section 8 regarding the protection of directors, officers and other individuals, such as employees and agents. In addition, the Alberta Securities Commission, Nova Scotia Securities Commission and Saskatchewan Financial Services Commission approved, and the British Columbia Securities Commission did not object to the amendments. The amendments clarify that the indemnification and protection provisions of Section 8 of MFDA By-law No. 1 apply to past and present members of the MFDA Board of Directors, its committees and sub-committees, MFDA committees and sub-committees, officers, employees or agents. The amendments would also extend the indemnification and protection provisions to members of a Regional Council, including a Hearing Panel, a committee or sub-committee. The amendments are housekeeping in nature. The description and a copy of the amendments are contained in Appendix "A".

**APPENDIX "A"**  
**MFDA NOTICE – HOUSEKEEPING AMENDMENTS**  
**TO MFDA BY-LAW NO. 1, SECTION 8 -**  
**FOR THE PROTECTION OF DIRECTORS, OFFICERS AND OTHERS**

**Current By-law**

Section 8 of MFDA By-law No. 1 describes the indemnification and protection provisions applicable for directors and officers of the Mutual Fund Dealers Association of Canada (the "Corporation") as well as other individuals, such as employees and agents of the Corporation.

**Reasons for Amendments**

The proposed amendments will clarify that the indemnification and protection provisions of Section 8 apply to Regional Council Members. The inclusion of Regional Council Members is in recognition of the fact that the roles and duties of Regional Council Members contemplated by MFDA By-laws carry with them potential liability and accordingly protection must be afforded to these individuals in the circumstances set out in section 8.

**Description of Amendment**

The existing Section 8 makes a number of references to "directors and officers and other persons", or uses similar wording in describing the application of the indemnity and protection provisions of the By-law. The amended text refers to "past or present members of the Board of Directors, a Regional Council (including a Hearing Panel) or any committee or sub-committee thereof of the Corporation, officers, employees or agents of the Corporation and other persons undertaking liability on behalf of the Corporation", or uses other similar wording to clarify the intended application of the section.

The amendment is housekeeping in nature in that it reflects changes in routine procedures and administrative practices of the MFDA and does not impose any significant burden or any barrier to competition that is not appropriate.

**Comparison with Similar Provisions**

The amendments to section 8 are consistent with the indemnification provisions of By-law 25 of the Investment Dealers Association of Canada.

**Effective Date**

The amended Rule will be effective on a date to be subsequently determined by the MFDA.

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**MFDA By-law No. 1**

On November 10, 2004, the Board of Directors of the Mutual Fund Dealers Association of Canada made and enacted the following amendments to MFDA By-law No. 1:

**1. SECTION 8: FOR THE PROTECTION OF DIRECTORS, OFFICERS AND OTHERS**

**8. FOR THE PROTECTION OF DIRECTORS, ~~AND OFFICERS~~ AND OTHERS**

**8.1 Limitation of Liability**

No ~~director, past or present member of the Board of Directors, a Regional Council (including a Hearing Panel) or any committee or sub-committee thereof or of the Corporation, officer, employee or agent~~ shall be liable for the acts, receipts, neglects or defaults of any other ~~director, officer, employee or agent of such persons~~, or for joining in any receipt or other act for conformity, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or fortuitous acts of any person with whom any of the moneys, securities or effects of the Corporation shall be deposited, or for any loss occasioned by any error of judgment or oversight on his or her part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his or her office or in relation thereto; provided that nothing herein shall relieve any ~~director or officer~~ such person from the duty to act in accordance with the Act and the regulations thereunder or from liability for any breach thereof.

**8.2 Indemnity**

~~Every director or officer~~ Each past and present member of the Board of Directors, a Regional Council (including a Hearing Panel) or any committee or sub-committee thereof or of the Corporation, officer, employee or agent of the Corporation, ~~or and any~~ other person who has undertaken or is about to undertake any liability on behalf of the Corporation or any company controlled by it, and their heirs, executors and administrators, and estate and effects, respectively, shall from time to time and at all times, be indemnified and saved harmless out of the funds of the Corporation, from and against:

8.2.1. all costs, charges, fines and penalties and expenses which such ~~director, Board, Council, Panel, committee or sub-committee member~~, officer, employee, agent or other person sustains or incurs in or about or to settle any action, suit or proceeding which is threatened, brought, commenced or prosecuted against him or her, or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him or her, in or about the execution of the duties of his or her office or in respect of any such liability; and

8.2.2. all other costs, charges and expenses which he or she sustains or incurs in or about or in relation to the affairs thereof, including an amount representing the value of time any such ~~director, Board, Council, Panel, committee or sub-committee member~~, officer, employee, agent or other person spent in relation thereto and any income or other taxes or assessments incurred in respect of the indemnification provided for in this By-law, except such costs, charges or expenses as are occasioned by his or her own  illful neglect or default.

The Corporation shall also indemnify such persons in such other circumstances as the Act permits or requires. Nothing in this By-law shall limit the right of any person entitled to indemnity apart from the provisions of this By-law.

**8.3 Action, Suit or Proceeding Threatened, Brought, etc. by the Corporation**

Where the action, suit or proceeding referred to in Section 8.2.1 above is threatened, brought, commenced or prosecuted by the Corporation against a ~~director, Board, Council, Panel, committee or sub-committee member~~, officer, employee, agent or other person who has undertaken or is about to undertake any liability on behalf of the Corporation or any company controlled by it, the Corporation shall make application at its expense for approval of the court to indemnify such persons, and their heirs, executors and administrators, and estates and effects respectively, on the same terms as outlined in Section 8.2.

**8.4 Insurance**

The Corporation may purchase and maintain insurance for the benefit of any person referred to in Section 8.2 against such liabilities and in such amounts as the Board may from time to time determine and are permitted by the Act.