

**ALBERTA SECURITIES COMMISSION  
NOTICE**

**Application for Approval of  
Mutual Fund Dealers Association Investor Protection Corporation**

**and**

**Proposed Amendment to Section 28  
of the Alberta Securities Commission Rules (General)**

December 2, 2002

**Background**

In a decision (the “Recognition Order”)<sup>1</sup> dated April 10, 2001, the Commission recognized the Mutual Fund Dealers Association of Canada (the “MFDA”) as a self-regulatory organization for mutual fund dealers, pursuant to section 64(1) (formerly, section 53.1) of the *Securities Act* (Alberta), subject to certain terms and conditions. The Recognition Order contemplated that a compensation fund would be established for customers of members of the MFDA.

The MFDA is proposing to establish the MFDA Investor Protection Corporation/Corporation de Protection des investisseurs de l’ACFM (the “MFDA IPC”) and has submitted an application (the “Application”) for the Commission to approve the MFDA IPC as a compensation fund for customers of members of the MFDA.

**The Application**

We are publishing for comment the Application. Included as exhibits to the Application are the following supporting documents:

1. Draft application of the MFDA IPC for Letters Patent Pursuant to Part II of the *Canada Corporations Act* (Exhibit A),
2. Draft By-law No. 1 of the MFDA IPC submitted with the application for Letters Patent (Exhibit B),
3. Draft policy relating to MFDA IPC customer coverage (Exhibit C),
4. Proposed amended MFDA advertising rule with commentary regarding the proposed amendments (Exhibit D), and
5. Proposed MFDA advertising policy relating to MFDA IPC (Exhibit E).

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<sup>1</sup> See ASC Recognition *In the Matter of Mutual Fund Dealers Association of Canada/Association Canadienne des Courtiers de Fonds Mutuels* dated April 10, 2001.

## **Proposed Amended MFDA Rule and Proposed MFDA Policy Relating to Advertising and Comments on the Amended Rule and Proposed Policy**

In connection with the Application, the MFDA proposes to amend MFDA Rule 2.7 – *Advertising and Sales Communications* and to create a related MFDA Policy Number 4 – *Advertising Relating to MFDA IPC Participation*. Exhibit D to the Application contains the MFDA notice that requests comments on the amended MFDA rule and the related proposed Policy No. 4. (The related proposed policy is exhibit E of the Application).

## **Proposed Approval Order**

We are also publishing for comment the proposed form of approval order (the “Proposed Approval Order”). The Proposed Approval Order is attached as **Schedule 1** to this notice.

In summary, the Proposed Approval Order establishes terms and conditions in the following areas:

1. Corporate Structure and Purpose of MFDA IPC
2. Corporate Governance
3. Funding and Maintenance of MFDA IPC
4. Customer Protection
5. Financial and Operational Viability (Including Risk Management)
6. Reporting to the Commission
7. Rules
8. Agreement with the MFDA

## **Proposed Amendment to Section 28 of the Rules**

Section 28 of the Rules currently provides that the Executive Director has authority to establish a compensation fund or contingency trust fund and may require a dealer or adviser to participate in such a fund.

In conjunction with approval of the Application, we propose to amend section 28 of the Rules to

- add a provision that the Executive Director of the Commission has authority to approve a compensation fund established by a recognized self-regulatory organization, a recognized exchange or a trust company, and
- more clearly mandate every broker, investment dealer and mutual fund dealer to participate in and contribute to such a compensation fund or contingency trust fund.

To effect these amendments we propose to repeal section 28 in full and substitute the following:

- “(1) The Executive Director may
- (a) establish a compensation fund or contingency trust fund with a trust company, or
  - (b) approve a compensation fund or contingency trust fund established by

- (i) a recognized self regulatory organization,
  - (ii) a recognized exchange, or
  - (iii) a trust company.
- (2) Every broker, investment dealer and mutual fund dealer must participate in and contribute to a compensation fund or contingency trust fund approved under subsection (1).
- (3) The Executive Director may require any of the following persons or companies to participate in a fund established or approved under subsection (1):
- (a) a scholarship plan dealer;
  - (b) an adviser, other than a securities adviser.
- (4) Every person or company required pursuant to subsections (2) or (3) to participate in a fund established or approved under subsection (1) must contribute an amount of money to the fund as required by the recognized self regulatory organization, recognized exchange, or, in the case of a fund established by a trust company or by the Executive Director, the Executive Director requires.
- (5) The Executive Director may exempt a broker, investment dealer or mutual fund dealer from the requirements of subsection (2).”

We believe that the Proposed Rule Amendment will clarify the application of section 28 because compensation funds or contingency trust funds are more likely to be established by entities, such as self-regulatory organizations or exchanges, and not by the Executive Director or the Commission. The amendment will also clarify that brokers, investment dealers and mutual fund dealers are required to participate in and contribute to such compensation funds or contingency trust funds. The Proposed Rule Amendment will make the wording of section 28 more consistent with the wording of similar provisions in the securities legislation of Ontario<sup>2</sup> and British Columbia<sup>3</sup>.

### **Request for Comments**

We are seeking comments on all aspects of the Application (including the exhibits to the Application), the Proposed Approval Order and the Proposed Rule Amendment.

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<sup>2</sup> Section 110 of Regulation 1015, as amended made under the *Securities Act* (Ontario).

<sup>3</sup> Section 23 of the Rules of the British Columbia Securities Commission.

Please deliver your comments before **January 24, 2003**, addressed to:

Jo-Anne Bund  
Alberta Securities Commission  
Legal Counsel  
400, 300 – 5<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 3C4  
Fax: (403) 297-6156  
[joanne.bund@seccom.ab.ca](mailto:joanne.bund@seccom.ab.ca)

If you submit your comments by mail we request that you also include a diskette containing an electronic copy of your comments. The confidentiality of submissions cannot be maintained, as a summary of written comments received during the comment period will be published.

Questions may be referred to:

Jo-Anne Bund  
Legal Counsel  
Alberta Securities Commission  
Telephone: (403) 297-7274  
[joanne.bund@seccom.ab.ca](mailto:joanne.bund@seccom.ab.ca)

IN THE MATTER OF the Securities Act, R.S.A., 2000, Chapter S-4  
(the “Act”)

- and -

IN THE MATTER of the Alberta Securities Commission Rules (General)  
(the “Rules”)

- and -

IN THE MATTER OF the Mutual Fund Dealers Association of Canada and the Mutual Fund  
Dealers Association of Canada Investor Protection Corporation

ORDER

(Subsection 28(1)(b)(i) of the Rules)

1. WHEREAS pursuant to section 28(2) of the Rules, every mutual fund dealer must participate in and contribute to a compensation fund or contingency trust fund approved by the Commission and established by, among others, a recognized self -regulatory organization;
2. AND WHEREAS the Mutual Fund Dealers Association of Canada Investor Protection Corporation (the “MFDA IPC”) has applied for approval by the Alberta Securities Commission (the “Commission”) as a compensation fund under section 28(1)(b)(i) of the Rules;
3. AND WHEREAS the MFDA IPC is established by the Mutual Fund Dealers Association of Canada (the “MFDA”);
4. AND WHEREAS the Commission recognized the MFDA as a self-regulatory organization under section 64(1) of the Act on April 10, 2001 (the “MFDA Recognition”);
5. AND WHEREAS the terms and conditions of the MFDA Recognition contemplate the establishment of a compensation fund or a contingency trust fund for mutual fund dealers, as the MFDA IPC has proposed to establish;
6. AND WHEREAS members of the MFDA must contribute to the MFDA IPC as a condition of membership of the MFDA;
7. AND WHEREAS the MFDA IPC intends to provide protection to eligible customers of the MFDA members if customer property comprising mutual fund securities and cash related to the purchase, sale and redemption of mutual fund securities held by such members is unavailable as a result of the insolvency of the member;
8. AND WHEREAS the MDFA IPC intends to commence coverage of customer accounts on July 1, 2003 (the “Coverage Date”);

9. AND WHEREAS the MFDA IPC will enter into an agreement with the MFDA, pursuant to which the MFDA IPC will receive all information it deems necessary to ensure that the MFDA IPC can fulfil its mandate and manage risks to the public and MFDA IPC assets on a reasonable basis;
10. AND WHEREAS the MFDA IPC has agreed to the terms and conditions set out in Schedule "A";
11. AND WHEREAS based on the application of the MFDA IPC and the representations and undertakings the MFDA IPC has made to the Commission, the Commission is satisfied that the approval of the MFDA IPC would not be prejudicial to the public interest;
12. IT IS HEREBY ORDERED that the Commission approves the MFDA IPC as a compensation fund pursuant to section 28(1)(b)(i) of the Rules, subject to the terms and conditions set out in Schedule "A" to this order.

DATED at the City of Calgary )  
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 in the Province of Alberta ) \_\_\_\_\_  
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 this day of , 2002 )  
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