

Draft: February 14, 2005

EXHIBIT D

MFDA PROPOSED AMENDMENTS TO RULE 2.7 – ADVERTISING AND SALES COMMUNICATIONS AND PROPOSED MFDA POLICY NO. 4 ("ADVERTISING RELATING TO MFDA IPC PARTICIPATION")

1. OVERVIEW

(a) Current Rules

MFDA Rule 2.7 sets out restrictions and requirements for advertising and sales communications issued by Members and their Approved Persons. Rule 2.7 is based closely on the form and substance of By-Law 29.7 of the Investment Dealers Association of Canada ("IDA") and was approved by the relevant securities commissions which have recognized MFDA as a self-regulatory organization.

(b) The Issue

The MFDA Investor Protection Corporation ("IPC") will provide protection to eligible clients of MFDA Members if client property held by such Members is unavailable as a result of the insolvency of the Member. Client property eligible for protection under the MFDA IPC will generally comprise securities, cash and other investment products such as segregated insurance funds held by the Member. Securities or financial investment products acquired or held through and by affiliated or related organizations of a Member or an Approved Person in respect of a Member shall not be covered. Clear disclosure is required to ensure that customers are not misled into believing that protection is available when in fact it is not.

(c) The Objective

The objectives of the proposed amendments to MFDA Rule 2.7 and proposed MFDA Policy 4 ("Advertising Relating to MFDA IPC Participation") are to ensure that customers of Members and the public are:

- (i) made aware of the nature and extent of the coverage available to them; and
- (ii) not misled into believing that MFDA IPC protection is applicable to them in circumstances where it is not, such as dealings by a customer with financial intermediary groups in which customers of some but not all of the group Members are entitled to MFDA IPC protection.

(d) Effect of the Proposed Rule

The proposed amendments and policy are intended to minimize the risk that the public and customers of MFDA Members may not accurately understand the scope of MFDA IPC coverage.

2. DETAILED ANALYSIS

(a) Relevant History and Proposed Amendments

At the time of the enactment of MFDA Rule 2.7 and the recognition of MFDA as a self-regulatory organization by the relevant securities commissions, the nature and extent of the customer protection by MFDA IPC had not been determined. In November 2002 MFDA IPC made an initial application to the relevant members of the Canadian Securities Administrators on the basis that coverage would be limited to \$100,000 per customer account in respect of losses of mutual fund securities and cash related to the purchase, sale and redemption of mutual funds. Since that time, the MFDA and the directors of MFDA IPC have determined that customer protection by MFDA IPC should be expanded to \$1,000,000 per customer account in respect of the loss of securities, cash and other property held by an MFDA Member for a customer suffered in the event of the insolvency of the Member. Losses caused by other reasons such as the change in market value of mutual fund securities, unsuitable investments or default of an issuer of mutual funds are not covered. In addition, investments which are held by any person other than a Member, including directly by a customer, are not covered. The coverage provided by MFDA IPC is intended to be similar to the coverage provided by Canadian Investor Protection Fund to customers of insolvent securities dealers, subject to certain customers of MFDA members not being entitled to MFDA IPC protection and the exercise of the discretion of the Board of Directors of MFDA IPC.

There are a number of reasons for the scope of coverage provided. First, MFDA Members and their approved representatives may be involved in a wide range of financial services and the scope of protection to customers must be limited. In particular, individual salespersons who are approved as representatives of a Member may also distribute a wide range of financial products (insurance, GICs, financial planning, tax advice, etc.) directly in their personal capacity or through associated enterprises. Second, the financial resources of MFDA IPC in its first years of operation are to be increased from its initial proposal and the restriction of coverage to relatively low risk mutual fund securities held by a Member is no longer necessary. Third, MFDA and MFDA IPC intend to pursue the possibility of MFDA Members participating in CIPF and similar protection parameters between the two protection funds are desirable. Notwithstanding the foregoing, there is no reliable data available to MFDA or MFDA IPC to accurately measure and assess the risks associated with the various kinds of financial products and services that

MFDA Members may deal in. MFDA and MFDA IPC will continue to monitor the businesses of their Members to ensure that coverage is appropriate for the range of products and risks covered.

It is important that the terms and extent of MFDA IPC coverage be communicated clearly to customers of MFDA Members. MFDA IPC does not have direct jurisdiction over Members of MFDA and, accordingly, the basis on which MFDA IPC and MFDA impose advertising and sales communication restrictions on Members in respect of coverage must be through Rules made by MFDA itself.

The proposed amendments and policy require Members to make disclosure to their customers of protection by the MFDA IPC and regulate the manner in which such disclosure is made. In particular, Members will be required to use the prescribed MFDA IPC official symbol together with the MFDA IPC official explanatory statement on account statements and confirmations. The MFDA explanatory statement advises customers of the fact that the MFDA IPC protects losses within specified limits and directs customers to the website and the MFDA IPC brochure.

MFDA is not recognized in the Province of Quebec and assessments for MFDA IPC funding are not made in respect of assets under administration of Members in Quebec. Accordingly, customers with accounts at MFDA Members in Quebec, whose assets held by MFDA Members in Quebec are not subject to such assessment, will not be entitled to protection by MFDA IPC, except as the Board of Directors of MFDA IPC shall otherwise in its discretion determine. Advertising and sale communications requirements and restrictions are intended to ensure that customers in jurisdictions where they may not be entitled to MFDA IPC protection are aware of such limitation on coverage.

The proposed amendments also require Members to use the prescribed MFDA IPC official symbol together with the MFDA IPC referral statement

- (i) at their business premises to which customers have access; and
- (ii) on advertisements.

The referral statement directs customers to a prescribed brochure (the "MFDA IPC official brochure") describing MFDA IPC coverage which the Members will be required to make available to customers.

The proposed amendments prohibit the use of the MFDA IPC official symbol, explanatory statement or referral statement in circumstances in which a Member is identified with a corporate group including affiliates or related persons, or other entities associated or affiliated with an Approved Person, which are not Members of the MFDA.

(b) Issues and Alternatives Considered

Other alternatives to the proposed amendments and policy were considered including the restricted coverage contemplated in the initial application for approval of MFDA IPC. The customer protection available to Members of the IDA through Canadian Investor Protection Fund ("CIPF") is intended as the model for MFDA IPC coverage. In the United States, customers of mutual fund dealers (which are not Securities Investor Protection Corporation (SIPC) dealers) acquiring mutual fund securities are not provided insolvency protection.

Public Interest Objective

The MFDA believes that the proposed amendments and policy are in the public interest in that they will make customers and the public aware of the nature and extent of protection applicable to them and minimize the potential for confusion regarding MFDA IPC coverage.

3. COMMENTARY

(a) Filing in Other Jurisdictions

The proposed amendments will be filed for approval with the Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Saskatchewan and Ontario Securities Commissions.

(b) Effectiveness

The proposed amendments are simple and effective.

(c) Process

The proposed amendments to MFDA Rule 2.7 were developed by MFDA staff and have been approved by the MFDA's Board of Directors.

4. SOURCES

MFDA Rule 2.7 (Advertising and Sales Communications).

5. OSC REQUIREMENT TO PUBLISH FOR COMMENT

The MFDA is required to publish for comment the proposed Rule so that the issue referred to above may be considered by **Ontario Securities Commission** staff.

The MFDA has determined that the entry into force of this Rule would be in the public interest and is not detrimental to the capital markets. Comments are

sought on the proposed Rule. Comments should be made in writing. One copy of each comment letter should be delivered on or prior to March 28, 2005, addressed to the attention of the Corporate Secretary, Mutual Fund Dealers Association of Canada, 121 King St. West, Suite 1600, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of the Manager of Market Regulation, Ontario Securities Commission, 20 King Street West, Toronto, Ontario M5H 3S8. The MFDA will make available to the public on request all comments received unless an author specifically requests confidentiality. Access to confidential comments will not be permitted except as may be required by law.

Questions may be referred to: Director of Policy
Mutual Fund Dealers Association of Canada
(416) 943-5836

Proposed Amended MFDA Rule Relating to Advertising

2.7 ADVERTISING AND SALES COMMUNICATIONS

2.7.1 Definitions

For the purposes of the By-laws and Rules:

- (a) "advertisement" includes television or radio commercials or commentaries, billboards, internet websites, newspapers and magazine advertisements or commentaries and any published material promoting the business of a Member and any other sales literature disseminated through the communications media;
- (b) "sales communication" includes records, video tapes and similar material, market letters, research reports, and all other published material, except preliminary prospectuses and prospectuses, designed for or use in presentation to a client or a prospective client whether such material is given or shown to them and which includes a recommendation in respect of a security.

2.7.2 General Restrictions

No Member or Approved Person shall issue to the public, participate in or knowingly allow its name to be used in respect of any advertisement or sales communication in connection with its business which:

- (a) contains any untrue statement or omission of a material fact or is otherwise false or misleading, including the use of a visual image such as a photograph, sketch, drawing, logo or graph which conveys a misleading impression;
- (b) contains an unjustified promise of specific results;
- (c) uses unrepresentative statistics to suggest unwarranted or exaggerated conclusions, or fails to identify the material assumptions made in arriving at these conclusions;
- (d) contains any opinion or forecast of future events which is not clearly labelled as such;
- (e) fails to fairly present the potential risks to the client;
- (f) is detrimental to the interests of the public, the Corporation or its Members;

- (g) if applicable, does not clearly disclose that organizations associated legally or in business with the Member or using a similar name may not be covered by MFDA IPC; or
- (h) does not comply with any applicable legislation or the guidelines, policies or directives of the Corporation or any regulatory authority having jurisdiction over the Member.

2.7.3 Review Requirements

No advertisement or sales communication shall be issued unless first approved by a partner, director, officer, compliance officer or branch manager who has been designated by the Member as being responsible for advertisements and sales communications.

2.7.4 MFDA Investor Protection Corporation

- (a) **Definitions.** For the purposes of the By-laws and Rules:

"MFDA IPC" means the MFDA Investor Protection Corporation and "l'ACFM IPC" means Corporation de protection des investisseurs de l'ACFM;

"MFDA IPC official brochure" means any brochure or publication prescribed as such by the MFDA IPC for use by Members;

"MFDA IPC official explanatory statement" means the following statement in English or in French:

"Customers' accounts are protected by MFDA Investor Protection Corporation within specified limits. For details, see www.* or the MFDA IPC's brochure."

"[to come]"

"MFDA IPC official symbol" means the symbol, mark, logo or other designation prescribed or designated by Policy as such by the MFDA or the MFDA IPC for use by Members with the word "Member" appearing on top of the official symbol;

"MFDA IPC referral statement" means the following statement in English or French:

**"Member MFDA Investor Protection Corporation
See official brochure for details"
"Corporation de protection des investisseurs**

des membres de l'ACFM
Voir la brochure officielle pour plus de détails”

- (b) **Premises.** Each Member shall conspicuously display in a prominent place at each of its locations to which customers have access the MFDA IPC official symbol accompanied by the MFDA IPC referral statement. Each decal used shall contain the exact name of the Member and affiliates or related companies which are also Members of the MFDA IPC.
- (c) **Account Statements and Confirmations.** Each Member shall include on the front of each confirmation and account statement sent to a customer the MFDA IPC official symbol, accompanied by the MFDA IPC official explanatory statement in a print size not less prominent than the general text of the confirmation or statement, as the case may be.
- (d) **MFDA IPC Official Brochure.** Each Member shall provide the current version of the MFDA IPC official brochure in either English or French to:
 - (i) all new customers together with the New Account Application Form required pursuant to MFDA Rule 2.2.2; and
 - (ii) all customers of the Member at any time (including customers of the Member at the time this Rule comes into force) on request and by advising such customers in writing at least annually that the MFDA IPC official brochure is available to them on request or on the MFDA IPC website;
- (e) **Advertising.** Each Member shall include in any advertisement the words "Member MFDA IPC" and the MFDA IPC referral statement, together with, at the option of the Member, a reproduction of the MFDA IPC official symbol. Except as provided for in this paragraph (e), no Member shall display any symbol relating to the MFDA IPC other than the MFDA IPC official symbol or include any symbol, statement or explanation relating to the MFDA IPC or the Member's membership in the MFDA IPC in any advertisements other than the MFDA IPC official symbol together with the MFDA IPC referral statement. Use of the MFDA IPC official symbol in printed or visual materials or media shall be in a manner and size such that the visual impact of the official symbol shall not be greater than that of the Member's name, logo or identifying symbol where used in the same materials or medium or in the same location within the Member's premises.

- (f) **Jurisdictions Where Coverage Not Available.** The requirements of paragraphs (b), (c), (d) and (e) of this Rule 2.7.4 shall not apply in respect of customers with accounts at Members in Quebec, except as may be determined otherwise by the Board of Directors of MFDA IPC. Members with customers with accounts in Quebec shall use their best efforts to ensure that the manner in which they comply with this Rule 2.7.4 does not, or could not reasonably be expected to, mislead such customers into believing that MFDA IPC protection is available to them in circumstances where it is not.
- (g) **Members of MFDA IPC.** For the purposes only of complying with this Rule 2.7.4 and to the extent permitted by MFDA IPC from time to time, Members shall identify themselves as Members of the MFDA IPC.
- (h) **Corporate Groups.** The MFDA IPC official symbol, explanatory statement, or referral statement is prohibited in respect of any materials or circumstances in which a Member is identified with a corporate group including affiliates or related persons, or any entities associated or affiliated with an Approved Person, which are not Members of the MFDA IPC. This prohibition is applicable to, without limitation,
- (i) consolidated reports and statements of a Member and its parent or affiliates (other than subsidiaries);
 - (ii) promotion or trade show booths or displays for more than one organization and not all participants named or identified in the booths or displays are not Members of MFDA IPC; and
 - (iii) the use by Approved Persons together with trade or business names which relate to businesses in respect of which there is no MFDA IPC coverage;
- (i) **English / French Language.** Subject to applicable laws, a Member may comply with the requirements of this Rule in either the French or English language.
- (j) **Termination of Membership.** Upon the termination or suspension of its membership, each Member shall immediately cease using the MFDA IPC official explanatory statement, the MFDA IPC referral statement, the MFDA IPC official brochure or the MFDA IPC official symbol, and shall cease identifying itself as a Member of the MFDA IPC.

(k) **Exemptions.** A Member or Approved Person may be exempted from all or part of the requirements of this Rule 2.7.4 to the extent prescribed by MFDA from time to time if, in the opinion of the MFDA in consultation with MFDA IPC, compliance with the requirements by the Member or Approved Person would be misleading or result in confusion as to the availability of coverage.