FAIR | Canadian Foundation *for* Advancement *of* Investor Rights

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RE: Request for Comment on Proposed Amendments to MFDA Rule 1.2 (Individual Qualifications) regarding Outside Business Activities including Financial Planning

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FAIR Canada is pleased to offer comments on the amendments proposed by the Mutual Fund Dealers Association of Canada ("MFDA") intending to conform the MFDA's Rules to similar requirements under securities legislation in respect of requirements pertaining to proficiency and outside business activities, and to clarify the scope of Members obligations to disclose outside business activities (including financial planning related activities) to their clients.

FAIR Canada is a national, non-profit organization dedicated to putting investors first. As a voice of Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

FAIR Canada Comments and Recommendations – Executive Summary:

1. The current proficiency framework was designed, many decades ago, around the sales process, for salespeople. The educational and professional standards for registrants need to be reviewed and revised. They are structured around the particular products representatives are permitted to sell, not the overall quality of advice provided to retail investors. The standards must be raised to align with the image of professionalism that registrants and their firms portray, as well as with the expectations investors have regarding regulatory requirements.

2. FAIR Canada believes there is a need for a thorough, public review of proficiency standards for individuals and firms offering advice to retail investors. This review should include not only any MFDA proficiency standards, but also those set by the Canadian Securities Administrators ("CSA"), the Investment Industry Regulatory Authority of Canada ("IIROC"), and other financial service regulators as well.

3. FAIR Canada also questions whether existing requirements are adequate in light of the trust and reliance placed in Approved Persons by ordinary investors. In FAIR Canada's view, in addition to increased proficiency standards, a higher, overarching standard – a best interest duty – must be imposed upon registrants who provide advice to investors.

4. FAIR Canada opposes the proposed amendments to the MFDA requirements regarding outside business activities. FAIR Canada believes that Members' concerns about required breadth of disclosure of outside business activities to clients is misplaced, and the resulting proposal to narrow this requirement is inappropriate. The proposed changes are not in the interests of investors or in the broader public interest. The proposed amendments should be shelved.

5. Instead, Members and the MFDA itself should examine and address the continuing high incidence of Members being unaware of Approved Persons' outside "securities related" business activities that are not conducted through the Member. These activities have led to enforcement actions and serious harm to investors, including financial losses. In addition, Members and the MFDA should be concerned about other outside business activities that pose serious conflicts of interest. The MFDA's existing rules and the proposed amendments need to be reworked and strengthened to conform to existing CSA NI 31-103 and its Companion Policy and related CSA Staff Notices (including CSA Staff Notice 31-326 and any related Guidance).

6. In addition, FAIR Canada believes the MFDA should go further and make some fundamental reforms to the rules governing outside business activities in order to ensure that investors are adequately protected and in order to fulfil the MFDA's purpose as set out in its various Recognition Orders. Such reforms include:

    (i) Requiring Members to conduct reasonably thorough investigations regarding Approved Persons' outside business activities, and requiring Members to report unauthorized outside business activities to the MFDA.

    (ii) Requiring Members to notify any affected clients and the public about unauthorized outside business activities, in order to minimize harm such activities might cause.

    (iii) Prohibiting the authorization of any activity as an outside business if such activity would be expected to be viewed by clients or by the public as being part of the Member's business (based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered as an outside business activity). Rather, such activity should have to be conducted through the Member.

    (iv) Making Members liable for harm resulting from the acts and omissions of their Approved Persons through all outside business activities, except where the Member (a) has reasonably determined that the activity could not be expected to be viewed by clients or by the public as being part of the Member's business, and (b) has made it explicitly clear to its clients, in an effective manner, that the outside business activity is not part of the Member's business and that the Member will not

be responsible for those activities.

(v) Imposing a duty on all registrants to report breaches or suspected breaches of securities regulation with appropriate protections for those who do so.

(vi) Determining whether the MFDA, IIROC and provincial securities regulators should impose requirements that financial firms obtain fidelity or some other form of insurance to protect investors from unauthorized outside business activities.

(vii) Requiring that all approved outside business activities be listed and be made publicly available, as recommended by Kenmar Associates, on the National Registration Database; and requiring that database to be made user friendly for investors, which it currently is not.

(viii) Requiring Members and Approved Persons to avoid conflicts of interest wherever possible, and where conflicts are unavoidable, to manage them in a manner that benefits their clients and not themselves. Outside business activities may give rise to conflicts of interest for which disclosure may be needed and expected by a reasonable investor. However, generally FAIR Canada is of the view that conflicts of interest are all too often not avoided (when they should be) and instead are *inadequately* managed through disclosure. Disclosure can often have unexpected and perverse effects and should not be viewed as a panacea. FAIR Canada calls on securities regulators, including the two SROs (IIROC and the MFDA) to institute a statutory best interest standard so that conflicts of interest are addressed in a manner that is in the best interests of the client.

1. Proficiency, Education, Training and Experience

1.1. FAIR Canada supports the inclusion of a rule requiring Approved Persons to meet applicable proficiency and other registration requirements set out in securities legislation and established by the securities regulatory authority having jurisdiction as reflected in proposed Rule 1.2.2.

1.2. The current proficiency framework was designed, many decades ago, around the sales process, for salespeople. The educational and professional standards for registrants need to be reviewed and revised. They are structured around the particular products representatives are permitted to sell, not the overall quality of advice provided to retail investors. The standards must be raised to align with the image of professionalism that registrants and their firms portray, as well as with the expectations investors have regarding integrity and regulatory requirements.

1.3. Most investors do not seek out an individual for a simple sales transaction or for a recommendation that falls within the representative's regulatory licence; they seek out advice for their particular financial needs. The appropriate minimum level of proficiency must take into account investors' needs and expectations.

1.4. FAIR Canada believes there is a need for a thorough, public review of proficiency standards for individuals and firms offering advice to retail investors. This review should include not only any MFDA proficiency standards, but also those set by the Canadian

Securities Administrators ("CSA"), the Investment Industry Regulatory Authority of Canada ("IIROC"), and other financial service regulators as well. Such a review could be undertaken in conjunction with the introduction of a statutory best interest standard but should not be dependent upon such an initiative.

1.5. National Instrument 31-103 provides that "[a]n individual must not perform an activity that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently." This language is reflected in the MFDA's proposed Rule 1.2.3 which also adds the following language: "...including understanding the structure, features and risks of each security that the Approved Person recommends".

1.6. In light of investor needs, expectations, and confusion about titles and designations, it is essential that proficiency standards be reworked and set to meet the basic needs and expectations of retail investors. While we appreciate and support changes to the MFDA's Rules designed to address the ability of Members and Approved Persons to trade in investment products such as exchange traded funds, the MFDA and other securities regulators need to look at whether existing and proposed proficiency requirements address the realities of investor expectations and needs. FAIR Canada questions whether Approved Persons who are only dealing in mutual funds (and even those who may also acquire the ability to sell ETFs), truly have sufficient education, training and experience to "perform the activity competently" that is expected by "reasonable" investors as reflected in National Instrument 31-103 and proposed Rule 1.2.3.

Current Proficiency Standards for MFDA Approved Persons

1.7. According to MFDA Staff Notice MSN-0077 dated December 7, 2010, Approved Persons must have:

(i) Passed the Canadian Investment Funds Course Exam (administered by IFIC and approximately 60- 90 hours of study and one 3-hour exam; passing grade of 60%); the Canadian Securities Course Exam (approximately 135-200 hours of study and two 2-hour multiple choice exams; passing grade of 60%); or the Investment Funds in Canada Course Exam (administered by CSI Global Education Inc. and previously The Institute of Canadian Bankers (approximately 90-140 hours of study and one 3-hour exam; passing grade of 60%); or

(ii) Earned a CFA charter and have 12 months of relevant investment management experience in the 36-month period before applying for registration; or

(iii) Received the Canadian Investment Manager designation and have 48 months of relevant investment management experience, 12 months of which was in the 36-month period before applying for registration.

1.8. We note that at present, the MFDA's proficiency requirements do not require a high school diploma (or its equivalent).

Continuing Education Requirements

1.9. At present, the MFDA does not have any continuing education requirements for its members but has put out a discussion paper seeking comments on implementing them.[1] FAIR Canada will provide its comments on the MFDA discussion paper in a separate submission.

Increased Proficiency and Best Interest Standard Needed

1.10. Given the proliferation of investment products and the growing complexity of both investment product features and investor needs, in evaluating proficiency assurance it is essential to ask whether current proficiency standards are adequate. As noted above, we believe that a thorough review of the proficiency framework is needed.

1.11. FAIR Canada also questions whether the foregoing minimum requirements are adequate in light of the trust and reliance placed in Approved Persons by ordinary investors. In FAIR Canada's view, in addition to increased proficiency standards, a higher, overarching standard – a best interest duty – must be imposed upon registrants who provide advice to investors.

1.12. We note also that the Ministry of Finance has appointed an Expert Committee to provide advice and recommendations to the Ontario government regarding whether and to what extent financial planning and the giving of financial advice should be regulated in Ontario, and the appropriate scope of such regulation. The Expert Panel's review is expected to include an examination of education, training and proficiency as well as ethics and enforcement requirements. FAIR Canada will provide input to the Expert Committee and we look forward to its recommendations.

2. Outside Business Activities

2.1. In its request for comments, the MFDA indicates that its Members have sought clarification in respect of the scope of their obligation to disclose outside business activities to clients. According to the consultation document, it is the Members' view that the disclosure requirements are "unduly broad" and staff therefore drafted the proposed amendments to address this concern. MFDA Staff are of the view that there may be situations where disclosure to the client of any outside business activities may not be necessary, "as the potential for client confusion is minimal."[2]

2.2. **FAIR Canada opposes the proposed amendments to the MFDA requirements regarding outside business activities. FAIR Canada believes that Members' concerns about disclosure requirements being overbroad, and MFDA staff's view about client confusion risk being minimal, are both misplaced.** The proposed changes are not in the interests of investors or in the broader public interest.

2.3. **Instead, Members and the MFDA should be concerned about, and should be addressing, the continuing high incidence of Members being unaware of Approved Persons' outside**

[1] MFDA Bulletin #0644-P (June 22, 2015), online: http://www.mfda.ca/regulation/bulletins15/Bulletin0644-P.pdf.

[2] MFDA Proposed Amendments to MFDA Rule 1.2 (Individual Qualification), online: http://www.osc.gov.on.ca/documents/en/Marketplaces/srr-mfda_20150618_amd-individual-qualifications.pdf.

"securities related" business activities that are not conducted through the Member. These activities have led to enforcement actions and serious harm to investors, including financial losses.

2.4. **In addition, Members and the MFDA should be concerned about other outside business activities that pose serious conflicts of interest – especially where those activities are neither disclosed to the Member (and therefore are not approved) nor disclosed to the regulator in order to assess fitness for registration.** Rather than propose amendments to narrow the requirements for making disclosure to investors about outside business activities, **the MFDA should be strengthening its existing Rules** to conform to existing CSA NI 31-103 and its Companion Policy and related CSA Staff Notices (including CSA Staff Notice 31-326 and any related Guidance). We provide recommended changes to the proposed amendments (including the MFDA's draft Staff Notice) below at section 2.13 and 2.14.

2.5. **Further, we believe more significant changes are needed to the Rule to protect investors. We provide recommended changes to the existing securities framework for outside business activities at section 2.15 and 2.16 below**.

2.6. Currently MFDA Rules (specifically Rule 1.1.) require that all "securities related business" must be carried on for the account of the Member and through the facilities of the Member and all revenue must be paid or credited to the Member and recorded on the books of the Member.[3] Unfortunately, violations of the requirement to conduct "securities related business" through the Member are all too common[4].

2.7. The situation is made more perilous by the fact that some activities in the financial services arena, involving what investors would commonly consider to be investment products, are not caught by the existing definition of "securities related business". For example, segregated funds are carved out of the definition of "security" in the various provincial securities acts. Likewise, due to the constitutional division of powers, banking products are not classified as "securities" and therefore the sale of such products is not "securities related business". As a result, investors are at risk of serious harm and harm to investors occurs all too frequently.

2.8. **FAIR Canada observes that there continues to be a significant incidence of non-compliance with the rules for outside business activities including the conduct of securities related business "off book" or not through the Member. This often results in actual serious harm or the risk of serious harm to investors.** MFDA Enforcement Reports highlight that the regulator continues to see a high incidence of cases involving undisclosed outside business activities"[5]. **It is clear that more fundamental reform to strengthen protections for investors is overdue**.

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[3] See MFDA's Bylaw 1 and MFDA Rule 1.1.1

[4] See paragraph 2.8 and footnote 5 for a discussion of incidence of violations of the rules regarding outside business activities as noted in recent MFDA Enforcement Reports.

[5] The MFDA's 2014 Enforcement Report notes that there were 15 cases opened at the Case Assessment stage where the primary allegation related to outside business activities/dual occupation. There were 17 in 2013 and 23 in 2012. The Enforcement Report notes that in 2014, 48 proceedings were commenced by Notice of Hearing or Notice of Settlement Hearing. Thirteen of those proceedings involved the allegation of outside business activities. The Enforcement Report also indicates that there were 17 hearings concluded by the MFDA where the primary allegation was outside business

Financial Planning as an Outside Business Activity

2.9. Adding to the complexity, financial planning, when it does not involve the recommendation of a specific security, is not an activity that requires a person to be registered (except in the Province of Quebec[6]) and it is an activity that does not fall within "securities related business" and is not required (given current MFDA rules) to be conducted through the Member. Nonetheless, it is required that "subject to any applicable legislation, the Member and the Corporation are to have access to financial plans that are prepared on behalf of clients of the Member by its Approved Persons".[7]

2.10. Investors would not expect financial planning activity to be conducted as a distinct business activity, separate and apart from the dealer. Clients cannot be expected to understand that financial planning activity isn't part of the dealer's business, since it's so integral to addressing the client's interconnected investment and financial needs. What's needed, therefore, is regulation making dealers take responsibility for all financial planning done by their advisors, prohibiting dealers from letting advisors do financial planning as an outside business activity, requiring dealers and their Approved Persons to have appropriate levels of proficiency, and subjecting them to a statutory best interest standard (which necessarily includes removing conflicts of interest).

2.11. It is not clear that Approved Persons can create financial plans without being influenced by compensation arrangements. It is therefore questionable whether those plans are independent and objective, and thus whether the Approved Person has the necessary qualifications to produce and provide such plans to their clients.

2.12. **FAIR Canada believes that deleting existing Rule 1.2.1(c)(vii) and treating financial planning like any other outside business activity is inappropriate, especially at this time. The MFDA should not be taking steps to eliminate existing specific requirements regarding financial planning activities while an Expert Panel appointed by the Ontario government is comprehensively reviewing all aspects of financial planning.** If the MFDA's existing rules in this area are causing confusion among Members, the MFDA should alleviate that confusion by issuing guidance pending the outcome of the Expert Panel's review.

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activities. Similarly, the MFDA's 2013 Enforcement Report made special mention of the high incidence of violations of the outside business activities rules:

> "One of the most common allegation types in hearings conducted in 2013 involved undisclosed outside business activities of Approved Persons. Where a Member becomes aware of an Approved Person's undisclosed outside business activity, whether through a client complaint or other source, the MFDA expects that the Member will conduct a reasonable supervisory investigation to ensure that any issues identified are adequately addressed and resolved. Any information received by a Member that would suggest the outside activities of an Approved Person may bring the Member or the mutual fund industry into disrepute must be followed up. In addition, Members have ongoing obligations to take reasonable measures to detect undisclosed outside business activities before any issues arise. The Enforcement Department will be paying particular attention to the adequacy of Member supervision in ongoing and future cases involving outside business activities."

6 The MFDA does not operate in Quebec. A certificate or license is necessary in Quebec but is only granted when certain requirements are met.

7 MFDA Rule 1.2.1(c)(vii), (June 29, 2015), online: http://www.mfda.ca/regulation/rules/RulesJun29-15.pdf.

FAIR Canada's Proposed Changes to Existing Rules

2.13. In order to conform to existing CSA requirements and make the existing obligations of Members and Approved Persons clear, FAIR Canada recommends the following changes to MFDA rules:

(i) The definition of outside business activity should make it clear that it includes:

- Any employment and business activities outside the registrant's sponsoring firm;
- All officer or director positions; and
- Any other equivalent positions held, as well as positions of power or influence (including positions with charitable, social or religious organizations)

regardless of whether the registrant receives compensation or not. Currently, the proposed Rule 1.3.1 suggests that, absent compensation, it is not an "outside activity".

(ii) The MFDA rules should be drafted so that it is clear an Approved Person cannot engage in any outside business activity unless and until specific requirement**s** are met. The MFDA rules should not be written to suggest Approved Persons can carry on with an outside business activity unless it crosses a line, such as it being "prohibited by the securities regulatory authority or the MFDA" or if it "brings the MFDA, its Members or the mutual fund industry into disrepute".

(iii) The MFDA Rules should be drafted to make clear what a Member's obligations are with respect to the outside business activity (including securities related activities that are to be conducted through the Member). The requirement should not be to simply disclose the outside business activity to the Member and obtain written approval of the activity. Members must (among other things):

- have appropriate policies and procedures to ensure that the outside business activities do not involve activities that are inconsistent with securities legislation and MFDA requirements, or that interfere with the individual's ability to remain current on securities law and product knowledge;
- ensure their chief compliance officer is able to properly supervise and monitor the outside business activities;
- maintain records documenting its supervision of outside business activities;
- ensure that potential conflicts of interest are identified and appropriate steps are taken to manage those conflicts; and
- ensure that the outside business activity is consistent with the registrant's duty to deal fairly, honestly and in good faith with clients.

At present the proposed Rule is written in a manner which suggests the only obligation of Members is to approve the activity and ensure appropriate disclosure is made to clients (which we comment on immediately below).

(iv) FAIR Canada does not support giving discretion to Members and their Approved Persons to only disclose outside activities that they believe "could be confused with Member business". Clients should be made aware of all outside business activities that have been approved by the Member, not just those the Member believes "could be confused with Member business." Clients need to know this so they can be alert to being improperly approached by the Approved Person regarding an unapproved outside business. Clients also need to know the extent of an Approved Person's outside business activities in order to assess whether the Approved Person likely will devote sufficient time and attention to the Member's business and the client's investment needs.

(v) Moreover, outside business activities that could be confused with Member business simply should not be approved. In IIROC Notice 13-0163, IIROC makes it clear that "Under no circumstances should an outside business activity, which might cause consumer confusion or reflect poorly on the Dealer Member or the industry, be permitted."[8] IIROC appears to take the position that if there might be consumer confusion, the activity should not be permitted at all and disclosure of the activity to clients is insufficient. FAIR Canada believes the MFDA should take the same stance.

2.14. In respect of the MFDA's proposed changes to Staff Notice MSN-0040, FAIR Canada recommends:

(i) Clearly require that the Member's CCO is to supervise and monitor the outside business activities. Section 7 as currently worded is inconsistent with Companion Policy NI 31-103 which requires "ensuring [that] the firm's chief compliance officer is able to properly supervise and monitor the outside business activities".

(ii) Explicitly state that the Member is not to rely on the AP's description of any conflict of interest the outside business activity creates (whether a potential conflict or actual conflict) but that the Member must conduct their own investigation of the facts and circumstances when determining if there is a potential or actual conflict of interest.

(iii) Prescribe what kinds of situations amount to a conflict that should be avoided and when a conflict may be manageable through other measures and/or through disclosure.

(iv) Require in Section 8, "Member Response to Supervisory Issues", that Members immediately notify the MFDA upon receipt of any information suggesting the outside activities of an Approved Person may bring the Member or the mutual fund industry into disrepute. Simply requiring the Member to follow up is insufficient.

(v) Require that Members immediately notify the MFDA and securities regulators upon becoming aware of an AP's undisclosed outside business activity. The fact

[8] IIROC Notice 13-0163, Guidance Notice, "Disclosure and approval of outside business activities", (June 13, 2013), at page 3 and 5, online: http://www.iiroc.ca/Documents/2013/0cde2cd9-a246-4b02-93d4-2f3a5e196d67_en.pdf.

that an outside business activity is being carried on without approval should trigger an immediate reassessment of the AP's fitness for registration.

(vi) Require Members to ensure that APs who conduct outside business activity do not advise, as APs, any client whose financial affairs might be affected or influenced by the outside business activity. At a minimum, the Member must ensure that such clients are assigned to other APs who are fully independent of the one conducting the outside business activity.

More Fundamental Changes to the Rules Governing Outside Business Activities Needed to Adequately Protect Investors

2.15. **It is FAIR Canada's view that the existing regulatory framework is not working to ensure adequate protection for the investing public. Existing rules need to be better policed by Members and regulators and, and fundamental reform should be undertaken.** Given the continued high incidence of undisclosed outside business activities - which often involves "off book" activities - consideration of more fundamental reform is overdue. FAIR Canada suggests that the proposed amendments be shelved and a consultation that focuses on lowering the incidence of non-compliance be initiated. Instead of focussing on whether the disclosure requirements about outside activities are "overly broad", Members should be concerned with preventing Approved Persons from conducting undisclosed and/or unapproved business activities while associated with the Member.

2.16. The current rules require the Member to have, and to demonstrate they have, measures that will detect undisclosed business activities. Despite this, there continues to be a high incidence of Approved Persons engaging in undisclosed outside business activities involving the sale of "investments" to clients of the Member. **FAIR Canada recommends the following reforms be considered in order to decrease the incidence on non-compliance and better protect investors:**

(i) **Requiring Members to conduct reasonably thorough investigations regarding Approved Persons' outside business activities, and requiring Members to report unauthorized outside business activities to the MFDA.**

(ii) **Upon detecting unapproved, outside business activity, Members should be required to report such activity to the MFDA and to notify any affected clients and the public in order to minimize harm.**

(iii) **Approved Persons should not be permitted to conduct an activity as an outside business if that activity would tend to be viewed by clients or by the public as being part of the Member's business**[9]. Rather, the activity should have to be conducted through the Member. For example, segregated funds would be viewed by clients as an "investment" and the sale of such investments would tend to be viewed as being part of the Member's business. The purchase of segregated funds should occur on the books of the Member so that they can ensure the purchase is

[9] This should be an objective test based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered as an outside business activity.

suitable for the client, having regard to the availability of closely equivalent mutual funds that may be less costly[10].

(iv) **Members should be liable for harm resulting from the acts and omission of their Approved Persons through all outside business activities *except where* the Member (a) has reasonably determined that the activity could not be expected to be viewed by clients or by the public as being part of the Member's business, and (b) has made it explicitly clear to its clients, in an effective manner, that the outside business activity is not part of the Member's business and that the Member will not be responsible for those activities.** Members derive substantial profits based on their reputation (in terms of consumer awareness) and name recognition. Retail investors take comfort in dealing with the Approved Person because they believe the AP is backed by the "known" and "reputable" Member, which also leads the investor to assume his or her money is safe. This thought process is not only predictable, it's an intended consequence sought by Members as an essential ingredient to their success. That being so, it's fair to suggest that if this same thought process also induces or entices retail investors to deal with their Approved Person outside of the business, firms should be required to internalize any resulting cost from harm to the client. Such responsibility would not only provide protection to investors, but would also provide Members with a strong incentive to be vigilant against unapproved outside business activities and to closely police approved ones.

(v) **A duty should be imposed on all registrants to report breaches or suspected breaches of securities regulation with appropriate protections for those that do so.** Approved Persons are often best placed to detect potential fraud or other misconduct by other registrants (whether an individual or firm). Reporting potential misconduct could lead to the misconduct being identified at an early stage and loss or damage to clients being reduced or eliminated. Protection from retaliation against the Approved Person who comes forward is also needed. FAIR Canada is aware of instances where registrants who come forward to report suspected wrongful activity are not treated properly and their livelihoods have been severely negatively impacted as a result of doing the right thing. The framework will need to be robust and address Approved Persons who are employees as well as Approved Persons who are independent contractors or have other types of contractual relationships with the Member.

(vi) Members are in the best position, from an economic perspective, to insure against potential fraud or other activities that are harmful to investors. In our view, members should be required to internalize the costs of financial fraud. **FAIR Canada recommends that the MFDA, IIROC and provincial securities regulators determine whether a Member should be required to obtain fidelity insurance or**

[10] As a corollary to this, segregated funds should not be permitted to be sold by those who are not also licensed to sell mutual funds. We appreciate that such a change will require changes to rules outside the scope of the MFDA but call upon the MFDA and its Members to support such a reform in the interests of investor protection and fair and efficient markets.

some other form of insurance to protect investors from unauthorized outside business activities.

(vii) **Requiring that all approved outside business activities be listed and be made publicly available, as recommended by Kenmar Associates, on the National Registration Database; and requiring that database to be made user friendly for investors, which it currently is not.** We agree with the recommendation of Kenmar Associates that the list of approved outside business activities should be made available on the National Registration Database, but that resource needs to be made easy for investors to use. Currently it is not user-friendly.

(viii) Outside business activities may give rise to conflicts of interest for which disclosure may be needed and expected by a reasonable investor. However, generally FAIR Canada is of the view that conflicts of interest are all too often not avoided (when they should be) and instead are *inadequately* managed through disclosure. Disclosure can often have unexpected and perverse effects and should not be viewed as a panacea. **FAIR Canada calls on securities regulators, including the two SROs (IIROC and the MFDA) to institute a statutory best interest standard so that conflicts of interest are addressed in a manner that is in the best interests of the client.**

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Neil Gross at 416-214-3408/neil.gross@faircanada.ca or Marian Passmore at 416-214-2331/ marian.passmore@faircanada.ca.

Sincerely,

Canadian Foundation for Advancement of Investor Rights