



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Mubarak Baksh**

Heard: August 29, 2019 in Toronto, Ontario  
Decision: August 29, 2019  
Reasons for Decision: September 20, 2019

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Frederick H. Webber  
Brigitte J. Geisler  
Melody Potter

Chair  
Industry Representative  
Industry Representative

Appearances:

|                 |   |   |
|-----------------|---|---|
| Jacklyn Neborak | ) | Enforcement Counsel for the Mutual Fund |
|                 | ) | Dealers Association of Canada           |
|                 | ) |   |
|                 | ) |   |
| Mubarak Baksh   | ) | Respondent, in person                   |
|                 | ) |   |
|                 | ) |   |

## **Settlement Agreement**

1. This was a settlement hearing pursuant to a settlement agreement dated May 24, 2019 between the Mutual Fund Dealers Association of Canada (“the MFDA”) and Mubarak Baksh (“the Respondent”), a copy of which is attached hereto as Appendix A (“the SA”).

## **Facts**

2. The relevant facts are set out in section III, paragraphs 7 to 22, of the SA.

## **Contraventions**

3. In the SA, the Respondent admits that between December 2014 and January 2017, the Respondent obtained and possessed, 31 pre-signed account forms in respect of 13 clients, contrary to MFDA Rule 2.1.1.

## **Proposed Penalty**

4. In the SA, the following sanctions were agreed to:

- a) a fine in the amount of \$13,000 upon acceptance by the Hearing Panel of the Settlement Agreement; and
- b) costs in the amount of \$2,500 upon acceptance by the Hearing Panel of the Settlement Agreement.

In the SA, the Respondent also agreed:

- c) to comply with MFDA Rule 2.1.1, and
- d) to attend the settlement hearing in person.

## **Acceptance of Settlement Agreement**

5. Settlements play an important and necessary role in facilitating the MFDA’s principal goal of protecting the investing public. Settlements provide an efficient and effective way for the MFDA to proscribe conduct that is harmful to the public, while providing a flexible remedy that can be tailored to address the interests of the MFDA and respondents. This principle has been stated in a number of cases, e.g. *British Columbia (Securities Commission) v. Seifert*, [2006]

B.C.J. No. 225 at paras. 48-49 (S.C.), affd, [2007] B.C.J. No. 2186 at para. 31 (C.A) (“British Columbia (Securities Commission)”).

6. Accordingly, it is generally accepted that hearing panels will not lightly interfere in a settlement agreement reached between the MFDA and a respondent. Pursuant to s.24.4.3 of MFDA By-law No.1, a Hearing Panel has two options with respect to a settlement agreement. It may either accept the settlement agreement or reject it.

7. The role of a hearing panel at a settlement hearing is fundamentally different than its role at a contested hearing. As was stated by the MFDA hearing panel in *Sterling Mutuals Inc. (Re)*, quoting *Milewski (Re)*:

We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel “will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.”

*Sterling Mutuals Inc. (Re)*, 2008 LNCMFDA 16, at para. 37.

*Milewski (Re)*, [1999] I.D.A.C.D. No. 17, Ontario District Council Decision dated July 28, 1999.

8. The principle that a hearing panel will not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness assists the MFDA to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

*British Columbia (Securities Commission)*, supra, at para. 31.

9. When determining whether it would be appropriate to accept a proposed settlement, MFDA hearing panels have taken into account the following considerations:

- a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;

- b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the respondent as set out in the settlement agreement;
- c) whether the settlement agreement addresses the issues of both specific and general deterrence;
- d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- f) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- g) whether the settlement agreement will foster confidence in the regulatory process itself.

*Jacobson (Re)*, 2007 LNCMFDA 27, at para.68.

#### **MFDA Rule 2.1.1 – Standard of Conduct**

10. The standard of conduct codified by MFDA Rule 2.1.1 requires that Members and Approved Persons deal fairly, honestly, and in good faith with clients, observe high standards of ethics and conduct in the transaction of business and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. The Rule is central to the MFDA mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.

*Breckenridge (Re)*, 2007 LNCMFDA 38 para. 71.

#### **Pre-signed forms**

11. “Pre-signed forms” is a generic term that applies to account forms that were incomplete at the time they were signed by the client. The MFDA has previously warned Approved Persons against the use of pre-signed forms in MFDA Staff Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017), and MFDA Bulletin #0661-E dated October 2, 2015.

12. MFDA Hearing Panels have consistently held that obtaining or using pre-signed forms is a contravention of the standard of conduct under MFDA Rule 2.1.1.

*Nash (Re)*, 2019 LNCMFDA 15, at para 10.

*Oh (Re)*, 2018 LNCMFDA 252 at para. 8.

*Rosborough (Re)*, 2018 LNCMFDA 163 at para.5.

13. Among other things, the use of pre-signed forms adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation. As the hearing panel explained in *Price (Re)* 2011 CanLII 72458 at paras.122-124:

Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading....At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client. Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.

Similarly, see MFDA Staff Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017) and MFDA Bulletin #0661-E dated October 2, 2015.

14. The prohibition on the use of pre-signed account forms applies regardless of whether:

- a) the client was aware, or authorized the use, of the pre-signed account forms; and/or
- b) the forms were used by the Approved Person for discretionary trading or other improper purposes.

*Oh (Re)*, supra, (paragraph 12).

15. In the present case, the Respondent admits that he obtained and possessed 31 pre-signed account forms.

### **Enhanced Penalties**

16. In the MFDA Bulletin #0661-E dated October 2, 2015 (the "Bulletin"), the MFDA reminded Members and Approved Persons that "Signature Falsification" is not permissible under MFDA Rules. This term includes conduct like pre-signed account forms, altered account forms and the falsification of a client signature. In the Bulletin, and in the MFDA Staff Notice #MSN-0066 updated on January 26, 2017, the MFDA advised Members and Approved Persons that the MFDA would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015.

17. In this matter, 3 of the account forms were obtained after the MFDA issued the Bulletin. This is an aggravating factor, which has been discussed by hearing panels in several MFDA decisions.

### **Appropriateness of Sanction**

18. The primary goal of securities regulation is the protection of the investing public. Disciplinary sanctions imposed in a securities regulatory context are protective and preventative, intended to be exercised to prevent likely future harm.

*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at para.59.

*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para.42.

19. Hearing panels have taken into account the following factors when evaluating whether the penalties proposed should be accepted:

- a) the seriousness of the allegations proven against the respondent;
- b) the Respondent's past conduct, including prior sanctions;
- c) the Respondent's experience and level of activity in the capital markets;
- d) whether the Respondent recognizes the seriousness of the improper activity;

- e) the harm suffered by investors as a result of the Respondent's activities;
- f) the benefits received by the Respondent as a result of the improper activity;
- g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- j) the need to alert others who are permitted to participate in the capital markets of the consequences of inappropriate activities; and
- k) previous decisions made in similar circumstances.

*Headley (Re)*, 2006 LNCMFDA 3 at para.85.

20. The hearing panel may also refer to the MFDA's new Sanction Guidelines, which came into effect on November 15, 2018. The Guidelines are not mandatory or binding on the hearing panel, but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed above, which have been considered in previous decisions of MFDA Hearing Panels, are also reflected and described in the Guidelines.

### **Application to this Case**

21. This panel took into account the factors and principles stated above in determining whether to consent to the SA. Set out below are the factors that are particularly pertinent to this case.

#### (a) Nature of the Misconduct

22. Although the pre-signed forms were not actually used, obtaining and possession of pre-signed forms is still a serious breach of MFDA Rule 2.1.1.

*Symes (Re)*, 2017 LNCMFDA 104 at para.2.

*Owen (Re)*, supra at para.34.

#### (b) Client Harm

23. As stated in paragraph 20 of the SA, there is no evidence of client loss or lack of authorization.

(c) Benefits Received by the Respondent

24. As stated in paragraph 19 of the SA, there is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

(d) The Respondent's Past Conduct including Prior Sanctions

25. As stated in paragraph 21 of the SA, the Respondent has not previously been the subject of MFDA disciplinary proceedings.

(e) The Respondent's Recognition of the Seriousness of the Misconduct

26. The panel accepts the statement of the MFDA that it is satisfied that the Respondent recognizes the seriousness of his misconduct, and that by entering into the SA, the Respondent has accepted responsibility for his actions and avoided the time and expense of a full disciplinary hearing.

(f) Deterrence

27. Deterrence is intended to capture both specific deterrence of the wrongdoer as well as general deterrence of other participants in the capital markets in order to protect investors. As stated by the Supreme Court of Canada in *Cartaway Resources Corp. (Re)*, 2004 SCC 26 at para. 61:

The Oxford English Dictionary (2nd ed. 1989), vol. XII, defines “preventive” as “[t]hat anticipates in order to ward against; precautionary; that keeps from coming or taking place; that acts as a hindrance or obstacle”. A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; It discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s.162.

The respective importance of general deterrence as [page 698] a factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act.

28. This panel wishes to emphasize the importance of general deterrence in this case. Industry participants must refrain from the conduct engaged in by the Respondent in this case.

29. The panel agrees that the proposed fine of \$13,000 will act as a general deterrent and reinforce the message that pre-signed forms are not tolerated by the MFDA and the mutual fund industry. It also agrees that the proposed penalty will act as a specific deterrent regarding the Respondent engaging in misconduct in the future.

(g) Previous Decisions Made in Similar Cases

30. MFDA counsel reviewed with the panel several cases which were similar to this case. The panel agrees that the proposed resolution is within the reasonable range of appropriateness with regard to these other decisions made by MFDA hearing panels in similar circumstances.

## Conclusion

31. For the reasons set out above, the panel has concluded that acceptance of the SA would advance the public interest. The Respondent has admitted to his misconduct, and the penalties proposed are reasonable and proportionate having regard to the nature and extent of the Respondent's misconduct and all of the circumstances and is in keeping with the MFDA's mandate to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct. Accordingly, the panel accepted the SA and at the conclusion of the hearing signed an order setting out the sanctions agreed to.

**DATED** this 20<sup>th</sup> day of September, 2019.

“Frederick H. Webber”

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Frederick H. Webber  
Chair

“Brigitte J. Geisler”

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Brigitte J. Geisler  
Industry Representative

“Melody Potter”

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Melody Potter  
Industry Representative

DM 698511



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Mubarak Baksh**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Mubarak Baksh (the "Respondent"), consent and agree to settlement of this matter by way of this agreement (the "Settlement Agreement").
2. Staff conducted an investigation of the Respondent's activities which disclosed activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No.1.

**II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.
4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the Mutual Fund Dealers Association of Canada ("MFDA"):

- a) between December 2014 and January 2017, the Respondent obtained and possessed, 31 pre-signed account forms in respect of 13 clients, contrary to MFDA Rule 2.1.1.

5. Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$13,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No.1;
- b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No.1;
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- d) the Respondent will attend in person on the date set for the Settlement Hearing.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule "A".

### **III. AGREED FACTS**

#### **Registration History**

7. Since March 2007, the Respondent has been registered in the mutual fund industry.
8. Since May 2009, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Canfin Magellan Investments Inc. (the "Member"), a Member of the MFDA.
9. At all material times, the Respondent conducted business in the Brampton, Ontario area.

#### **Pre-Signed Account Forms**

10. At all material times, the Member had policies and procedures that prohibited its Approved Persons from obtaining or using pre-signed account forms.

11. Between December 2014 and January 2017, the Respondent obtained and possessed, 31 pre-signed account forms in respect of 13 clients.

12. The pre-signed account forms consisted of:

- a) 15 Trade Instruction forms;
- b) 2 Tax-Free Savings Account (“TFSA”) Application forms;
- c) 6 Plan Application forms;
- d) 2 Client Application forms;
- e) 1 Investment Account Application form;
- f) 2 Canada Revenue Agency Direct Transfer forms;
- g) 2 Transfer Authorization for Registered Investments (“TARI”) forms; and
- h) 1 Dealer/Advisor Change form.

### **The Member’s Investigation**

13. On or about March 28, 2018, during the course of a sub-branch review, the Member identified the account forms that are the subject of this Settlement Agreement.

14. On April 4, 2018, the Member placed the Respondent under close supervision.

15. As part of its investigation, the Member reviewed all of the client files serviced by the Respondent and conducted an audit of the trading activity in all affected client accounts.

16. In May 2018, the Member spoke with 11 of the affected clients who confirmed that they signed all orders for trades placed in their accounts. The Member also sent these clients letters to confirm the details of their conversation with the Member.

17. On May 14, 2018, the Member sent audit letters to the affected clients that the Member was unable to speak with in order to confirm that the clients had authorized the transactions in their accounts. No clients reported any concerns.

18. On August 9, 2018, the Member issued a disciplinary letter to the Respondent with respect to the misconduct that is the Subject of this Settlement Agreement. The Member also required the

Respondent to complete the Conduct and Practices Handbook (CPH) course offered by the Canadian Securities Institute (CSI). The Respondent has successfully completed the CPH course.

### **Additional Factors**

19. There is no evidence that the Respondent received any benefit from the conduct set out above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

20. There is no evidence of client loss or lack of authorization for the underlying transactions.

21. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

22. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

### **IV. ADDITIONAL TERMS OF SETTLEMENT**

23. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

24. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the "Settlement Hearing"). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at [www.mfda.ca](http://www.mfda.ca).

25. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

26. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- e) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- f) the Respondent waives any rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;
- g) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in this Settlement Agreement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- h) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1; and
- i) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

27. If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

28. Staff and the Respondent agree that the terms of the Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

29. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 24<sup>th</sup> day of May, 2019.

“Mubarak Baksh”

\_\_\_\_\_  
Mubarak Baksh

“DB”

\_\_\_\_\_  
Witness – Signature

DB

\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”

\_\_\_\_\_  
Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement

**Schedule “A”**

**Order**

**File No. 201939**



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Mubarak Baksh**

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**ORDER**

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Mubarak Baksh (the “Respondent”);

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the “Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

**AND WHEREAS** the Hearing Panel is of the opinion that the Respondent:

- a) between December 2014 and January 2017, the Respondent obtained and possessed, 31 pre-signed account forms in respect of 13 clients, contrary to MFDA Rule 2.1.1.

**IT IS HEREBY ORDERED THAT** the Settlement Agreement is accepted, as a consequence of which:

1. the Respondent shall pay a fine in the amount of \$13,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
2. the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
3. the Respondent shall in the future comply with MFDA Rule 2.1.1; and
4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

**DATED** this [day] day of [month], 20[ ].

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]