

## COVERING MEMO & RESOLUTION REGARDING

### BOARD AGENDA ITEM 5.4: CNCA Transition

**Purpose:** To effect the continuance of CAFII under the new Canada Not-for-Profit Corporations Act (“CNCA”).

#### **SPECIAL RESOLUTION TO BE PASSED:**

#### **CONTINUANCE UNDER THE CANADA NOT-FOR-PROFIT CORPORATIONS ACT**

##### **RESOLVED that:**

- 1. the Corporation is hereby authorized to make an application under section 297 of the CNCA to the Director appointed under the CNCA for a Certificate of Continuance of the Corporation;*
- 2. the Articles of Continuance of the Corporation, which been previously circulated to the board and which are annexed to these minutes as Schedule A, are hereby approved;*
- 3. all existing by-laws of the Corporation are repealed in their entirety effective on the date that the Corporation continues under the CNCA, and the new general operating By-law No. 1, which has been previously circulated to the board, is approved to be effective on the same date, and the Chair and Secretary of the Corporation are hereby authorized and directed to sign the By-Law as evidence of the foregoing and to insert the same in the minute book of the Corporation;*
- 4. the Articles of Continuance and By-Law No. 1 shall be submitted to the members for approval at the Annual General Meeting to be held in June 2014; and*
- 5. the persons executing the Articles of Continuance and the By-Law (the “Authorized Signatories”) be and are hereby authorized and directed to make such technical changes in the Articles of Continuance and/or the By-Law as may be required by Industry Canada, as the case may be, with no further recourse to the board or the members to approve or confirm such changes, and any such amendments made by such Authorized Signatories shall be conclusive evidence of the need to make such amendments and are hereby ratified, sanctioned and approved.*

#### **BACKGROUND INFORMATION**

Following is background information and attached are the draft documents for your review, including:

1. Articles of Continuance
2. Articles of Continuance, Schedule A
3. Articles of Continuance, Schedule B
4. Articles of Continuance, Schedule C
5. CNCA By-Law No. 1
6. CNCA By-Law No. 1, annotated

## **Process of Continuance**

The new *Canada Not-for-profit Corporations Act* (CNCA) was proclaimed in force on October 17, 2011.

The CNCA establishes a new set of rules for federally-incorporated not-for-profit corporations, being Part II of the *Canada Corporations Act* (CCA) which currently governs CAFII.

The board and members of CAFII will need to approve two documents in order to complete the continuance: (1) Form 4031 Articles of Continuance, and (2) new corporate by-laws that comply with the new requirements of the CNCA. Once approved, the application for Articles of Continuance will be filed and, provided all of the documents have been properly completed and are in compliance, Industry Canada will issue a Certificate of Continuance.

## **Articles of Continuance (Form 4031)**

The Articles of Continuance have been drafted based on the information available in CAFII's existing letters patent (which the Articles will replace) and by-laws. The minimum of 3 and a maximum of 25 directors reflects section 4.02 of the current CAFII by-laws. The statement of the purpose of the corporation repeats the objects outlined in CAFII's 1997 letters patent.

## **General Operating By-Law**

A draft CNCA-compliant By-Law No. 1 is also attached, as well as an annotated version. The annotated version highlights and explains key changes from the current CAFII by-laws. Some changes of note include:

- "Written resolutions" signed by all of the members or directors, as the case may be, who are entitled to vote will now be permitted in lieu of a meeting.
- The requirement that a proxy holder be a member has been removed to comply with the CNCA.
- By-Law No. 1 includes a regime for addressing of conflicts of interest that aligns with the CNCA and is significantly more robust than what previously existed under the CCA.
- The descriptions of various offices have been updated to reflect CAFII's current practices, including certain qualification requirements that have developed as a matter of long-standing practice within the organization (e.g. only a Foundation Director may serve as Chair, etc.)
- Existing provisions relating to 'By-Laws, Amendment or Repeal' have been revised to reflect the relevant provisions of the new CNCA. While the current by-law provides the Foundation Members with the unfettered right to confirm a new by-law by a 2/3 majority (see s. 2.09), this right will be somewhat circumscribed because of certain mandatory requirements under the CNCA that extend voting rights to members who would not otherwise have voting rights in the case of certain types of changes (in this case, the Regular Members). As a result, by-law changes that affect the Regular Members differently from other members would be subject to a class vote by the Regular Members (though certain of these class voting rights are, to the extent permitted by the CNCA, opted-out of in "Special Provisions" of the Articles of Continuance).