



Agenda Item 6.1

December 4, 2013 Board Meeting

MEMORANDUM

TO: Board of Directors

FROM: Brendan Wycks, Executive Director

DATE: November 28, 2013

SUBJECT: CAFII Continuance Under *Canada Not-for-Profit Corporations Act*

The deadline for CAFII, a federally incorporated not-for-profit corporation, to become compliant with this legislation – by filing Articles of Continuance – is October 17, 2014. We must meet that deadline or, if not, the Association will become “dissolved.”

While CAFII is, relatively speaking, a small, straightforward, narrowly-focused Association, from a CNCA compliance perspective, things are not as simple as they might first appear. The fact that we distinguish between Foundation and Voting Members; and between them and Associate Members; and the fact that we have a somewhat unique division of responsibilities between the Board of Directors and the Executive Operations Committee are complicating factors.

In addition, the requirement for CAFII to transition and comply with the new Act by filing Articles of Continuance should be looked upon as an opportunity for the Association to re-examine its purposes, membership model, governance model, and other fundamentals. We may have to come up with an altered approach to Associate Members, to avoid having the new Act put the Association in a position where Associate Members would have voting rights, even in limited circumstances.

The EOC has reviewed this matter at its October and November meetings and resolved upon the following:

CNCA Compliance Critical Path

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| Dec 4, 2013 | CAFII Board receives CNCA Compliance Update; endorses Critical Path and approves required budget (through 2014 Operating Budget) |
| Dec 5 - March 21/14 | CNCA Working Group reviews CAFII Bylaw and oversees preparation of Revised Bylaw and Articles of Continuance to achieve CNCA compliance, working with external advisor and legal counsel as appropriate |
| March 25, 2014 | EOC reviews and endorses, for recommendation to Board, proposed Revised CAFII Bylaw and draft Articles of Continuance |
| April 8, 2014 | CAFII Board reviews and approves proposed Revised CAFII Bylaw and draft Articles of Continuance (at Board meeting to be held in Montreal) |
| June 10, 2014 | CAFII Membership approves proposed Revised CAFII Bylaw at Annual General Meeting |
| June 30, 2014 (approx) | CAFII files Articles of Continuance with Industry Canada |

255-55 St. Clair Ave West, Toronto, Ontario M4V 2Y7

Tel: (416) 494-9224 Fax: (416) 967-6320

Email: info@cafii.com Web: www.cafii.com

To achieve this plan, we will

- form a CNCA Compliance Working Group comprising John Lewsen, Brendan Wycks, Leya Duigu, Pamela Smith (see below), and one or two additional EOC members (possibly Brian Wise, a lawyer and Assurant Solutions Canada's new EOC appointee).
- at a cost of between \$1,500 and \$2,500 plus taxes, engage the services of Pamela Smith, TO Corp's resident "governance expert," who has worked with four other Association clients in helping them complete the work necessary to file Articles of Continuance with Industry Canada to achieve CNCA compliance. She has developed a matrix that references an Association's current Bylaw/governance document(s) against the key provisions of the CNCA, to help Associations work expeditiously through the required analysis and wording considerations. This analysis exercise that she facilitates minimizes the number of required hours of a lawyer's time.
- At a cost of approximately \$5,500 plus taxes, engage the services of law firm Faskens Martineau to draft the Bylaw revisions identified by the CNCA Compliance Working Group; draft the Articles of Continuance; provide general legal guidance on this project including attending (by teleconference) the April 8 Board meeting, if necessary, and the June 10 AGM, if necessary; and file CAFII's continuance documents.

Faskens is the firm that prepared CAFII's Bylaw at the time of the Association's inception, and the firm we have worked most closely with over the years.

Faskens has provided CAFII with a quote for legal services on this project, and is prepared to provide those services in accordance with our Work Plan and timelines. Faskens partner Koker Christensen, who has worked with CAFII in the past, would be the lead/consulting partner on this engagement.