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And –

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Dear Sir and Madam:

**Subject: Proposed Amendments to MFDA By-Law No.1 (No Actions Against the Corporation)**

Independent Financial Brokers of Canada (IFB) has prepared the following comments on the proposed amendments to Section 35 of MFDA By-Law No. 1.

IFB is a professional association representing approximately 4,000 licensed financial advisors. Many of our members are mutual fund registrants, operating as Approved Persons. Some members have mutual fund dealerships. Therefore, IFB has a significant interest in proposed changes to mutual fund rules, by-laws, policies, etc., that may affect the way they conduct business.

The MFDA states that the objectives of these amendments are:

- (i) to ensure that the MFDA IPC and its directors, officers and personnel are adequately protected in the discharge of their investor protection mandate from legal actions by MFDA Members, Approved Persons or other persons under the jurisdiction of the MFDA; and

(ii) to provide for, within the MFDA Bylaws, the terms of the relationship between the MFDA and MFDA IPC and existing MFDA and Member obligations to the MFDA IPC.

It cites, as precedent, the similar changes IIROC made to its By-Laws to better define the relationship between IIROC, as the industry regulator, and the IPC's counterpart for the protection of securities investors, the Canadian Investor Protection Fund (CIPF).

With regard to (i), we question whether the MFDA or the IPC should indeed have such broad protection from a potential legal action taken by a Member or Approved Person against them. The ability of one to exercise the right to legal recourse, where no other satisfactory resolution can be arrived at, is a fundamental principle of our legal system. While such instances may arise infrequently (if at all) we do not see how, if engaged, this would reduce the consumer protection mandate of the IPC Board, or the MFDA Board. In addition, such officers, employees and directors will have errors and omissions insurance coverage to protect them from personal liability where such instances arise and are found to have merit. Removing the right of those regulated by the MFDA to commence a legal challenge seems unnecessarily protective – irrespective of whether a similar provision exists for IIROC and CIPF directors.

We note that the equivalent section in the IIROC By-Law, Article 14, Section 14.1, *No Actions Against the Corporation* seems to have more broadly worded exemptions than the MFDA version. If the sections are intended to be comparable between the MFDA and IIROC, then it would be preferable to include this broader wording.

Despite our overall concerns with (i), we specifically question the inclusion of Approved Persons from those permitted to take legal action. Approved Persons do not share the same standing with the MFDA or IPC, as dealer members. Approved Persons do not participate in the governance of either corporation. They have no direct representation on these Boards, nor do they have the right to vote on matters related to their mutual fund business or to choose directors. Therefore, we think they should be able to undertake a legal action, in the unlikely event that such a situation arises. Again, the risk to the MFDA or IPC is minimal, as is the threat to their consumer protection mandate.

In summary, we believe that those regulated by the MFDA should have the ability to challenge a decision of these corporations. Realistically such situations will be infrequent and unlikely to be superfluous in nature. However, similar to shareholders who may institute a `derivative action` against directors who do wrong against the corporation, we feel this is an appropriate right for MFDA “shareholders” and stakeholders, like Approved Persons.

IFB appreciates the opportunity to provide our comments.

Yours truly,



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