



November 27, 2006

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto ON M5H 3T9
Attention: Gregory Ljubic, Corporate Secretary
Email: gljubic@mfd.ca

British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver BC V7Y 1L2
Attention: Leslie Rose, Senior Legal Counsel
Email: lrose@bcsc.bc.ca

Sent by mail and Email

Dear Sir/Madam:

Subject: Request for Comments on MFDA Suspensions in Certain Circumstances and Related Provisions of By-Law No. 1

Independent Financial Brokers of Canada (IFB) is pleased to provide our comments on the changes the Mutual Fund Dealers Association (MFDA) is proposing to Section 24.3 of By-Law No. 1 and the related provisions.

We would like to mention, at the outset, that the process used to solicit such public comments is not conducive to the MFDA receiving input from a variety of stakeholders, which in turn does not lead to an open, transparent dialogue. In our own case, we only discovered that these proposals were under consideration well into the 30 day comment period. IFB regularly receives formal notice of comment periods pertaining to proposed statutory changes from many other government agencies and ministries. It would be very

helpful if the MFDA undertook to more widely publicize such changes to ensure that all industry stakeholders have equal opportunity to comment on such important matters.

IFB is a national association dedicated to representing the interests of independent financial advisors, and has done so for over 20 years. Our members strongly believe that the provision of financial services through independent advisors is the business model most suited to providing consumers with the range of product choices they need to meet their financial needs. The majority of our members are licensed to sell life/health insurance and/or mutual funds and many are dual-licensed. IFB, and its members, therefore, have a direct interest in any proposals which will affect “Approved Persons”, either directly or indirectly through new Member rules. With this context in mind, we offer the following comments.

First and foremost, IFB is of the opinion that the increased powers being contemplated by Section 24.3.1 “Approved Persons” far exceeds any reasonable, demonstrable need. If such wide ranging powers are indeed required, the MFDA should make full and open disclosure of the reasons. These reasons must be rooted in fact. It appears to us that the MFDA is seeking a perfunctory solution to meet a ‘perceived’ need. The danger, here, is that the desire for administrative efficiency will drive the hearings such that procedural justice will be sacrificed and Approved Persons will suffer the unfortunate consequences.

It is apparent, that by introducing these changes, the MFDA is attempting to significantly expand the grounds for making temporary orders and establish procedures that avoid notice being given to individuals affected by these orders. In the current regulation, there are very few situations where the MFDA can move *ex parte*. Therefore, what is being proposed constitutes a major change. While the MFDA clearly wishes to expand the grounds for making temporary orders (although the need for this is not yet apparent to us) it must also be mindful of the principles of fairness that should be afforded to individuals who will be adversely affected by such orders. In this regard, we suggest the MFDA look to the procedures set out in the *Securities Act (Ontario)* as an example of a more fair and balanced approach than the procedure being considered. Section 127(5) of this *Securities Act* permits a temporary order to be made, *ex parte*, in circumstances where the length of time required to hold a hearing would be prejudicial to the public interest. In such a case, the temporary order takes effect immediately and expires on the fifteenth day, unless extended by the Commission. This procedure permits the Commission to impose restrictions on individuals in exceptional circumstances, but also provides the individual affected with the opportunity to appear on notice to contest the temporary order within 15 days. The burden is on staff of the Ontario Securities Commission to seek the extension of the order.

At a hearing to extend the temporary order, the Commission must be satisfied that there is sufficient evidence of conduct which may be harmful to the public interest. The Commission is also required to consider any explanations or evidence that may contradict this evidence in order to allow it to weigh the threat to the public interest against the potential consequences of the temporary order. While this procedure can impose similar

penalties as those proposed in Section 24.3.3, it is more fair and balanced than the procedure used by the IDA or the one being proposed by the MFDA.

At a minimum, if the MFDA is not prepared to examine more fair alternatives, it should at least consider implementing a requirement that MFDA staff **demonstrate** a need to move *ex parte* and reduce the timing of a review, as set out in Section 24.3.7, from 21 days to 15 days, so that the period of uncertainty is lessened and the potential harm to the individual's business and personal life.

A fundamental reason cited for the changes proposed under Section 24.3 is that it will bring the regulation of MFDA members and Approved Persons in line with existing IDA regulations. In comparing the regulations we do not find this to be the case. In fact, the MFDA proposals, in some instances, go well beyond those contained in the IDA regulations. For example, Section 24.3.1(b) provides that the Hearing Panel can impose penalties on an Approved Person if his/her license has been suspended, cancelled or terminated not only by a securities body but also by a "financial services regulator or professional licensing or registration body in any jurisdiction inside or outside of Canada". The IDA regulation is limited to securities-related bodies, which we believe is more appropriate. The MFDA change will be particularly significant to Approved Persons, like our members, because they often hold multiple licenses. For example, many would be dual licensed in mutual funds and life insurance. Many may also be licensed as general insurance agents, mortgage brokers, financial planners, and so on. Where these businesses are unrelated to an Approved Person's mutual fund business, the MFDA should have no jurisdiction. Such broadly-defined categories are inappropriate and too intrusive.

Similarly, Section 24.3.1(f) references a person who has been charged with a criminal or *regulatory* offence. The IDA rule is limited to charges of a criminal offence only. By broadening the offence to include both criminal and regulatory offences, the MFDA is widening the scope for the imposition of penalties against Approved Persons significantly. IFB does not support this and in fact would argue that this section should be limited to those convicted of a criminal offence, not simply charged. Again, the MFDA is attempting to extend its regulatory oversight into areas over which it has no mandate.

To control the application of subsections (a) through (f) to reasonable circumstances, the MFDA should add additional wording so that a Hearing Panel must also be required to find that "the person cannot continue to conduct securities related business without risk of imminent harm to the public". Without this, the grounds for making orders in 'exceptional circumstances' are simply too broad.

Subsection (g) which permits the Hearing Panel to impose penalties upon an Approved Person arising from *information* the MFDA receives pertaining to the incapacity of a person due to a "mental or physical illness, other infirmity, addiction to or excessive use of alcohol or drugs" is another example of grounds that could be far too broadly interpreted. Again, we could not find any equivalent section in the IDA regulations.

Furthermore, the inclusion of such vaguely defined categories as ‘mental or physical illness’ or ‘excessive use of alcohol or drugs’ may well violate Canada’s legislated human rights or privacy rights.

As we see it, the role of the MFDA is to provide a fair and balanced regulatory approach – one that strengthens protection for the investing public, while at the same time being flexible enough to foster competition and innovation within the financial marketplace. Proposals like these create barriers for independent advisors to participate in the mutual fund market which can only lead to a reduction in the providers of such independent advice and product choice, and ultimately harm the consumer. In our opinion, the consumer will not be best-served by a mutual fund regime which is dominated by a few large providers.

The value of independent advisors, like our members, should not be underestimated. These advisors provide financial services and advice to consumers in large, small and rural communities across Canada everyday. Many of these consumers may not feel comfortable in approaching a large bank or investment dealer directly. Independent advisors bring these financial choices into the homes of consumers like these everyday.

We trust you will give serious consideration to the issues we have identified before Section 24.3 becomes entrenched in regulation, and to the method and timing of such public consultations.

If you have questions on any of the above, I am available to discuss them further.

Yours truly,

A handwritten signature in black ink, appearing to read 'John Whaley', written over a faint, illegible background.

John Whaley
Executive Director
Email: jaw@ifbc.ca