



30 Eglinton Avenue West, Suite 306
Mississauga ON L5R 3E7
Tel: (905) 279-2727
Website: www.ifbc.ca

May 14, 2009

Jason Bennett
Corporate Secretary
Mutual Fund Dealers Association
121 King St. West, Suite 1000
Toronto ON M5H 3T9

Sent by email: jbennett@mfd.ca

Dear Mr. Bennett:

Subject: Bulletin #0366 - Task Force on Governance Issues

Independent Financial Brokers of Canada (IFB) appreciates the opportunity to offer our comments on the proposed changes to the current MFDA governance structure for consideration by the Task Force.

IFB is a professional Association comprised of approximately 4,000 licensed financial advisors. Many members are Approved Persons of mutual fund dealers. IFB supports a professional standard amongst members through requiring adherence to our Code of Ethics, providing comprehensive educational events, an errors and omissions insurance program and compliance/regulatory information. IFB advocates on behalf of its members to ensure that government, regulators and industry stakeholders, like the MFDA, consider their collective viewpoint when drafting public policy or amending the regulatory/legislative framework.

Governance of the MFDA has been an issue of interest to IFB and its members since it was first established. We welcome the opportunity to once again comment on these proposals in the hope that a more representative structure, inclusive of all stakeholders, can be achieved.

Part A. By-law Amendments

IFB Recommendation #1: The MFDA Board needs direct representation from advisors. In our view, it has been a significant short-coming of the current governance structure that there is no specific representation from mutual fund advisors on the Board. Our reasons are two-fold.

First, advisors are at the centre of the client-advisor relationship. They are the face of the mutual fund industry to clients – far more than the Dealer Members. Many clients, in fact, associate their investments with their advisor, while the dealer branding is secondary or immaterial. The current Board composition neglects to recognize the importance of the advisor community.

Our members feel that as Approved Persons it is appropriate that they have direct representation on the MFDA Board of Directors. They are governed by MFDA imposed rules, and, indeed, the cost of dealer participation in the MFDA and financing of the IPC fund is borne in part by them through costs passed on by the dealer. Amongst advisors, there is a strong belief that the MFDA favours dealers, often at the advisors' expense. The MFDA develops new rules, policies and takes enforcement action all of which directly impacts advisors, yet they have no representation. The result is regulation without representation!

Second, advisors and dealers do not always share the same perspective. Both have a legitimate role within the mutual fund industry, however, by having only Dealers represented on the Board, the Board lacks the balanced input that advisors could bring. They can add value by understanding the client's perspective, as well as from their own perspective as the individual responsible for advising on and recommending mutual funds. We recommend that the Task Force strongly consider advisor representation from the primary advisor associations, like IFB and Advocis, or solicit advisor representatives directly.

Recommendation #2: Increase the proportion of small and medium size Members represented on the Board.

The Task Force proposes increasing the size of the Board to 15 by adding an Industry and Public Director “*to better ensure that all member constituencies are adequately represented on the Board*”. It further recommends that at least two of the Industry Directors represent Level 1, 2, or 3 Members to ensure a small or medium size Member is represented.

With respect to the 6 industry directors, we note that 5 of these represent “MFDA members or affiliated or associated organizations”. We also note the primary factors relevant to the “diversity of interests of the members and public, namely, regional representation, size of business, type of business and ownership structure”.

It is our strong view that ‘independence’ be considered as important requirement for the ‘type of business’ factor. By this, we mean dealers who offer a range of funds from a variety of fund companies and who recognize and encourage dual-licensed Approved Persons. At least one of the 5 dealer directors should be from an organization which serves the public in this way, so that the Board gets advice from the perspective of an “independent” dealer and its advisors. Currently, many of the industry directors represent dealers who employ advisors who are restricted to selling their proprietary products.

We also strongly believe that the sixth ‘industry’ director should be chosen from the ranks of advisors or approved persons. As mentioned above, such advisors are the persons who deal directly with the consumer and are more likely to be aware of current customer concerns and, perhaps more importantly, how MFDA Board and management decisions will actually impact the consumer and his/her pocketbook.

Small financial advice firms make up the bulk of MFDA members yet have no representation on the Board. An analysis of members by firm size and assets under administration¹ shows the following:

No. of Members by Firm Size
10 Approved persons or fewer = 64 (40%)
11-100 Approved persons = 50 (31%)
Total Firms represented = 114 (71%)

No. of Members by AUA:
\$100 million and under = 69 (43%)
\$101 million to \$500 million = 45 (28%)
Total Members = 114 (71%)

Under the current structure, the public is represented on the MFDA Board by 6 directors. However, there is no representation of the mutual fund consumer. We believe that it is of utmost importance that investors, those who actually buy these financial products to secure their financial future, should have a voice in how these products are regulated and to bring insight to the consumer experience. The decisions of the Board directly impact consumers through regulation, fees and setting of policy. We suggest that one public director position be reserved for consumers who have habitually had a significant position in mutual funds. Furthermore, we suggest that the term of the consumer filling this position be limited to perhaps 2 years to ensure the Board has the value of a fresh perspective from time to time.

IFB Recommendation #3: Retain the current restrictions from Board membership.

We believe there is considerable merit in the current restrictions which do not allow representatives from the Investment Funds Institute of Canada (IFIC) or the Investment Industry Regulatory Organization of Canada (IIROC) to qualify for a director position on the Board. While these organizations certainly have a clear expertise related to these markets, there were sound reasons for implementing this arms-length policy when the MFDA moved to a fully operational self-regulatory organization. The Ontario Securities Commission expressed this back in 2002 in a Public Notice, stating that the governance structure should better represent the public and those who are members:

"The commission is of the view that the better governance structure for a self-regulatory organization, particularly after it has been operating for a few years, is one where there is appropriate representation on a

¹ Mutual Fund Dealers Association of Canada, Annual Report 2008

board of directors from the public and from the full membership of the SRO," says the notice.

However, while we agree with this viewpoint, we submit that the MFDA has not achieved this goal of full membership, as the majority of its Board members represent large, bank owned dealers and fund manufacturers – not the smaller financial services firms which represent the bulk of its members. Furthermore, it is lacking a representative from the advisor community and an investor who can advocate for the consumer's interests. Adding Board directors from the mutual fund's trade association or a sister regulator does not address these needs and, in fact, further removes the Board from receiving valuable direct, front-line input.

Part B. Change in Terms of Reference of Governance Committee

The amendments as proposed would improve upon the existing Terms of Reference; however, we have the following comments.

i. Public Directors

In our view, the cooling off period should be longer for nominees previously associated with a Member or the industry and would suggest a minimum of 2 years as more appropriate.

We agree with the suggestion that there should be a process to take into account potential conflicts of interest that could interfere with the exercise of independent judgment. In our view, however, potential conflicts of interests should not be allowed. Simply owning mutual funds, except under the most exceptional circumstances, would not constitute a conflict.

ii. Industry Directors

As noted earlier, we agree that there needs to be more representation from the entire membership, reflecting all sizes of dealers. The proposal to include at least 1 'small' size member and 1 'medium' size member still allows the large dealers the majority voice. Membership on the Board should reflect the composition of the membership itself. As currently configured and demonstrated in the analysis presented above, this would mean 70 percent of the Board should be comprised of small and medium dealers.

iii. All Directors

We agree that there should be appropriate regional and gender representation and nominees should have appropriate experience, secondarily to the comments we have already made. We expect that as the updated governance model is developed and parameters around such terminology are further defined, that we will have additional comments.

We would add that Directors, once they have served their term, should not be allowed to stand for re-election for at least 2 years. The current ability of Directors to serve up to 6 years is too long in our view. A shorter term ensures a consistent flow of new

entrants and fresh perspectives. Their relative ‘inexperience’ will be offset by Directors whose term has not yet expired.

We do not agree that there should be a requirement for “previous or current significant enforcement, compliance or other regulatory concerns”. This is the function of MFDA staff which can bring this expertise to the Board on such matters, as required.

Part C. Changes to, and Full Transparency of, Nomination Process

The proposed changes appear to generally increase the level of transparency for Members related to the Director nominee process. We question the need though, expressed in section 6, for information related to the nomination process to be put into the ‘Members’ Only Section’ of the MFDA website. This lack of public disclosure undermines the goal of greater transparency and we fail to understand why the MFDA would want to restrict this information to Members.

This concludes our comments on a revised governance structure. We believe there are some positive steps being taken arising from the 2008 Annual General Meeting and hope this process will result in a better model for the MFDA and its constituents.

IFB would be pleased to offer any further assistance as required.

Yours truly,



John Whaley
Executive Director
Email: jaw@ifbc.ca