

PORTFOLIO STRATEGIES

c o r p o r a t i o n

By E-Mail

May 19, 2009

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

Dear Mr. Bennett:

Re: Task Force on Governance Issues

I am writing in response to the request for comments in MFDA Bulletin #0366-M *Task Force on Governance Issues – Comment Solicitation*.

Summary

I appreciate that the MFDA has formed the Task Force to review and improve the MFDA's current process for selecting directors. The request for comments should have included the option of allowing Members of the MFDA to elect directors from among all nominees. This is clearly the preferred way to choose any board, especially for an organization such as the MFDA where membership is compulsory.

For the work of the Task Force to have credibility, it is necessary at least to study this option and, if it is not advanced as a recommendation by the Task Force, to explain why not with reference to the interest of investors and Members, rather than the interests of the current directors.

Discussion

The Missing Option

Members' primary concern with the current process is that they have no effective influence in the selection of the directors. The result is that the directors do not represent the membership and often do not appear to appreciate the day-to-day experience of operating a dealer. Many Members believe that with the industry directors drawn primarily from large firms in central Canada, the MFDA is not sensitized to the reality faced by most Members who are smaller and are located across the country.

All recent studies of corporate governance have concluded that direct election of directors is the preferred method of selecting directors of an organization. One example is the February 2, 2009 submission to the Canadian Securities Administrators (CSA) of the Canadian Coalition for Good

Governance (CCGG) which recommends both individual director voting and majority voting: <http://www.ccg.ca/media/files/shareholder-democracy/Letter%20to%20CSA%20-%20February%202%2C%202009.pdf>. In other words, Members would be able to vote for specific nominees rather than being limited to voting for a slate, which is the current practice of the MFDA.

Despite the academic research, the request for comments makes no reference to the direct election option. The primary reason advanced in the past against direct election has been that the CSA would not accept direct election. However, the CSA have never publicly supported the Board's contention. Unless and until the CSA does so, the Board's position must be recognized as simply the Board's preference and not a true limitation on the options available. The CSA would, of course, then have to answer to the provincial and territorial ministers responsible for securities regulation for taking such a position.

The other explanation proffered against direct election is that the resulting Board would still not reflect the diversity of the membership. Apart from the fact that this would merely be a continuing, rather than a new, deficiency, it is possible to construct voting models which ensure that the Board has specified representation while at the same time ensuring that selection is primarily based on receiving the most votes. An example of such a system can be found at <http://drop.io/oigjff7>. This example allows a user to model objective criteria for the Board and the characteristics of nominees to show that direct election is entirely consistent with ensuring that the Board has adequate skills and representation.

I note that various professional bodies allow direct election of directors with no evident harm to the public interest, while at the same time achieving representation from a variety of constituencies. For example, there is an open nomination for the board of the Institute of Chartered Accountants of Alberta, members vote for any of the nominees, and the resulting Board generally includes members from public practice, large and small firms, and all areas of the province.

Options Offered by the Task Force

All of the options put forward by the Task Force, with the exception of adopting the aspects of By-law 15 that were rejected at the 2008 Annual General Meeting, represent an improvement on the current process. However, as noted above, all of these options fall short of Members actually electing the directors and are therefore none of them satisfies the objective of giving Members effective influence in the selection of the directors. Notably, the Task Force appears to have pre-determined that the Governance Committee should continue to have absolute, unaccountable control over the composition of the Board, including that members of the Governance Committee should continue to be able to appoint each other to subsequent terms on the Board.

Concerns about the Task Force's Process

The Task Force's steps so far have reinforced Members' legitimate concerns about any alternative short of an election. At a time that the highest level of inclusion and transparency are indicated, the Governance Committee again adopted a back-room, closed-door process. Rather than openly requesting Members to express their interest in participating in the Task Force, the

Governance Committee simply picked people who are most likely to support the current process and who are unlikely to offer new ideas. Instead of opening the process to multiple Members from across the country or selecting a number of different public representatives, only one of each was added to the Governance Committee to create the Task Force. Although I have the highest personal and professional respect for Mr. Moore, the process reinforces the perception that any result short of actual election of directors will continue to be used by the Governance Committee to ensure that new directors will not challenge the status quo or truly represent the membership.

Concluding Comments

The creation of the Task Force is a welcome development. The work of the Task Force is necessarily incomplete unless it considers the option of Members directly election the directors of the MFDA. The Task Force will have to improve its own practices if it wishes the results of its work to have legitimacy and for Members to be able to believe that the Governance Committee has taken Members' concerns seriously.

Yours truly,

(signed)

Kenneth Parker, CA
Vice President, Compliance & Finance

