



Mutual Fund Dealers Association of Canada
 Association canadienne des courtiers de fonds mutuels

MEMORANDUM

TO: MFDA Members
 FROM: MFDA Staff
 DATE: June 22, 2009
 SUBJECT: Summary of Comments – Bulletin #0366-M *Task Force on Governance Issues – Comment Solicitation*

On April 16, 2009, the MFDA issued Bulletin #366-M *Task Force on Governance Issues – Comment Solicitation* seeking preliminary comment from Members to assist the Task Force in developing its initial recommendations for consideration by the MFDA Board.

The comment period expired on May 16, 2009. The following is an executive summary of the comments received. Attached to this memorandum are copies of letters received in response to the Bulletin. A total of 14 submissions were received during the comment period:

Members:

1. Banwell Financial Inc. (“Banwell”)
2. BMO Investments Inc. (“BMO”)
3. Goldstein Financial Investments Inc. (“Goldstein”)
4. HUB Capital Inc. (“HUB”)
5. Investors Group Financial Services Inc. (“Investors Group”)
6. Martin + Becker Financial Management Ltd. (“Martin & Becker”)
7. Portfolio Strategies Corporation (“Portfolio Strategies”)
8. Royal Mutual Funds Inc. and Phillips, Hager & North Investment Funds Ltd. (“RMFI”)
9. Security Financial Services & Investment Corp. (“Security”)
10. Tradex Management Inc. (“Tradex”)

Associations:

11. Federation of Mutual Fund Dealers (“Federation”)
12. Independent Financial Brokers of Canada (“IFB”)
13. Investment Funds Institute of Canada (“IFIC”)

Other:

14. IGM Financial Inc. (“IGM”)

Summary of Public Comments Respecting the Task Force on Governance Issues Request

Commenter/s	Comment
GENERAL COMMENTS	
Investors Group; IGM	Support for the proposed course of action in Bulletin 0366-M.
IGM	The proposed governance changes need to be dealt with as a single matter as the process could be undermined if the MFDA seeks to proceed with initiatives on an individual basis.
Investors Group; Banwell	Opposition to certain issues at the December 4, 2008 AGM resulted from Members' frustration with a perceived lack of meaningful consultation with policy development rather than opposition to particular items.
Martin + Becker; Portfolio Strategies; Tradex	The proposals, as drafted, do not go far enough to ensure improvement in the MFDA governance structure, and, in particular, to ensure that there is adequate turnover of Directors and that all constituencies of the membership have an appropriate opportunity to serve on the Board.
Banwell; Portfolio Strategies	The consultation process of the Task Force is insufficient and lacks transparency. It is not appropriate that the Task Force has asked for comments from MFDA Members only on proposals for specific By-law Amendments. The preferred course of action should have been an open request to Members to participate in the Task Force, other than choosing specific participants for the Task Force.
Banwell	There are members of the Task Force whose tenure on the Board is directly affected by the outcome of any changes it may propose to the Board and are thus in a potential conflict of interest. The MFDA should engage an independent third party with the appropriate expertise to objectively analyze and make recommendations with respect to the MFDA governance issues.
RMFI; IFIC	MFDA Rule making would greatly benefit from a robust review into its effectiveness and such review should be included in this proposal. The MFDA should focus on improving the By-law and Rule making process by making it more robust, transparent and consultative with significant stakeholder input.
Tradex	Members need to have a strong voice in the selection of its Board of Directors – the alternative would be to change the nature of the MFDA to a regulatory organization reporting directly to various provincial government bodies, in which case the dealers that are regulated would not be expected to have a voice in the selection of the Board of Directors.
Tradex	Amend section 3.3.3(i) of By-law No. 1 to provide that no Public Director shall be eligible to serve in aggregate for more than 8 consecutive years as a Public Director. Up to three new Public Directors should be confirmed at the time the new By-law is passed or, preferably, sooner (the two Directors whose terms expired in December 2008 and the other vacant Public Director position). The limited turnover issue also applies to Industry Directors on the MFDA Board.

PART A – BY-LAW AMENDMENTS

IFIC; Federation; HUB; Tradex	Support for a special meeting to implement proposals that would enhance transparency and participation in the governance of the MFDA. Ensure that the proposed changes be reflected in this year’s AGM rather than be delayed for implementation an additional year.
IFIC; Federation; HUB; BMO; RMFI; Tradex	Support for the proposal to increase the Board size to 15, by adding an additional Industry and Public Director. This should allow for appropriate representation for all levels of dealers and is consistent with the overall size and composition of IIROC’s Board of Directors, which has 15 members and equal participation of Industry and Public Directors.

Adequate Representation on the Board

Banwell	Support for the need to have adequate representation of the small and medium size dealers on the Board.
Federation; HUB	Support for amendments to require that at least two of the Industry Directors represent Level 1, 2 or 3 Members.
Tradex	At least three out of seven Industry Directors should be from small and medium size level 1, 2 or 3 Members.
IFB	Increase the proportion of small and medium size Members represented on the Board, as independence (i.e. dealers who offer a range of funds from a variety of fund companies and who recognize and encourage dual-licensed Approved Persons) should be considered as an important requirement for the “type of business” factor for Industry Directors. At least one Industry Director should be from such an organization so that the Board can receive advice from the perspective of an “independent” dealer and its advisors. Currently many of Industry Directors represent dealers who employ advisors that are restricted to selling their proprietary products.
BMO	Reserve at least two posts from large dealers as they represent a bigger segment of Approved Persons.
RMFI	Require that at least one of the Industry Directors represent Level 4 Members and that the Governance Committee’s Terms of Reference include a corresponding requirement that at least one Industry Director nominee represent Members with over 100 Approved Persons and over \$500 million in AUA.
IFB; Banwell	The Board needs direct representation from mutual fund advisors – consider advisor representation from the primary advisor associations, such as IFB and Advocis or seek solicit advisor representatives directly. Consider how appointments of the Public Directors can be fortified to ensure that the investor interests are heard. One Public Director position should be reserved for investors.
IFB	Support for the current restrictions which do not permit representatives from IFIC or IIROC to qualify for a Director position on the Board.
IFB	The majority of Board members represent large bank-owned dealers and fund manufacturers – adequate Board representation is lacking for smaller financial services firms that represent the bulk of MFDA Members, advisors and investors.

PART B – CHANGE IN TERMS OF REFERENCE OF GOVERNANCE COMMITTEE

Federation; HUB	Support for the proposed amendments in respect of Public and Industry Directors.
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Public Director Proposal	
IFB; Tradex; IFIC; Banwell	Support for an appropriate cooling off period for nominees previously associated with a Member or the industry and a process for taking into account potential conflicts of interest for Public Director Nominees. Provide a minimum cooling off period of 1-2 years for nominees previously associated with a Member or the industry.
BMO	Replace the 2 year cooling off period with a reasonability test, similar to that used in NI 81-107, to determine the independence criteria for members of the Independent Review Committee. In the alternative, support for the one year cooling off period.
IFB	Potential conflicts of interest that could interfere with the exercise of independent judgment should not be allowed; however, simply owning a mutual fund, except under the most exceptional circumstances, would not constitute a conflict.
IFIC; RMFI	Delete the phrase “A process for taking into account” from 4(i). Conflicts of interest should be considered for nominations of all Directors and not just Public Directors.
Industry Director Proposal	
RMFI	Support for the proposal to mandate Member representation according to membership level and size, to ensure representation from each Member type.
Martin + Becker;	Members should be able to select the majority of Industry Directors by election with the balance being selected by the nominating committee.
IFB; Security	Representation from the entire membership should reflect dealers of all sizes. The proposal to include at least 1 “small” size Member and 1 “medium” size Member still allows the large dealers the majority voice. The Board should reflect the composition of the membership itself and, therefore, 70% of the Board should be comprised of small and medium size dealers. The MFDA should consider 3 additional places on the Board for Level 1 and 2 Members.
BMO	If at least two of the available spaces for Industry Directors are to be reserved for small and medium size Members, then the MFDA must also ensure that larger Members are adequately represented as they have a far greater stake in the regulatory changes that the MFDA proposes.
Goldstein; Tradex	Section 4(ii), bullets 2 and 3 should be amended so that a “small” size Member is considered to be one with less than 10 Approved Persons <u>or</u> AUA of less than \$100 Million and a “medium” size Member is considered to be one with 10-100 Approved Persons <u>or</u> AUA of \$100-\$500 Million so as to avoid excluding from both categories firms that might meet either but not both the number of APs and AUA requirements in each category.
Proposal with respect to All Directors	
IFB; IFIC; IGM; RMFI	Support for appropriate diversity on the Board, including representation in terms of dealers and individuals with appropriate experience. Consideration with respect to gender representation should be expanded to include consideration of diversity in general (e.g. ethnicity, gender, age, national origin, disability, etc).
Federation; HUB;	A variety of diversity issues need to be considered – pointing out gender as a

BMO	distinct attribute does not seem appropriate as the primary goal is to ensure that the Board is accurately representative of industry participants.
Tradex	Add the words “appropriate experience <u>and expertise</u> ” to the criteria for nomination under section 4(iii).
IFB	Previous or current significant enforcement, compliance or other regulatory concerns should not be considered by the Governance Committee in recommending nominees to the Board.
IGM; Federation; HUB; RMFI	Clarify the meaning of the word “significant” in the phrase “previous or current significant enforcement, compliance or other regulatory concerns”.
Federation; HUB	Make the wording used in section 4(iii), bullet 4 and section 6(ii) consistent.
IFIC; RMFI	Redraft the phrase “previous or current significant enforcement, compliance or other regulatory concerns” to read: “No previous or current significant enforcement, or other regulatory concerns in the last 10 years that would affect the ability of the nominee to serve as a Director” so as not to exceed disclosure requirements found in other regimes, such as prospectus disclosure. Delete the phrase “compliance concerns” as they already fall under the category of regulatory or enforcement concern. Consider that some of these concerns would not impact a nominee’s ability to serve as a Director.
PART C – CHANGES TO, AND FULL TRANSPARENCY OF, NOMINATION PROCESS	
Federation; HUB; RMFI; Tradex	General support for the proposals set out in Part C and for changes in the Director nomination process to allow for greater clarity and participation.
RMFI	Extend proposals under Part C that are limited to Industry Directors to apply to all potential Directors.
Tradex	The proposed changes to the nomination process do not go far enough. The current process for Members to nominate Directors (both Public and Industry) does not need changing but the problems arise at the stage where the Governance Committee narrows down the list to those "selected" individuals, including existing Directors. It would be appropriate for Members to have a voice (or for the Governance Committee to have less unrestricted decision making authority) in the selection of Industry Directors at this stage.
Tradex	Members should be able to vote for a slate of "eligible" Industry candidates. If, for technical reasons, it was felt that not all eligible Industry Directors could be "elected" by Members, then the Board could appoint perhaps one or two Industry Directors with the balance being elected by the Members. As an alternative, the Nomination Committee could consist of non-Directors of the MFDA (i.e., a blue chip panel of "outsiders").
Tradex	The current nomination principles, criteria and processes are very clear and do not need rewriting unless the MFDA undertakes some fundamental change in the way Directors are actually selected and elected.
IFIC	Support for the proposal to invite non-Director Member representatives to participate in consideration of eligible nominees. This process should be formalized so that it is open and transparent, giving Members who have concerns the opportunity to share their opinions.

Martin + Becker; Federation	Provide more detail as to how the proposal to invite non-Director Member representatives to participate in consideration of eligible nominees would work to ensure that invitees are of independent mind and that their views are received and reflected.
Tradex	Opposition to inviting non-Director Member representatives to participate in its consideration of eligible nominees unless such non-Director Member representatives are voted for by the Members to act in this capacity.
Tradex	The proposed changes with respect to increasing transparency of the nomination process do not go far enough to improve the process as all of the proposed items are very well covered in bulletins and letters currently sent to Members.
RMFI	Support for Member input in the selection of eligible Directors at the early stages of the selection process.
Tradex	Support for the proposal to advise Members of all eligible Industry Director nominees being considered by the Governance Committee. The preferred solution would be to allow Members to vote from a list of "eligible" candidates.
Martin + Becker;	Soliciting Member comments with respect to consideration of all eligible Industry Director nominees being considered by the Governance Committee could be problematic for the nominating committee depending on the comments received.
IFIC; BMO	Members have the ability to vote and should be allowed to do so for Directors, after the Governance Committee has provided its recommendations. Members should be able to cast votes for a nominated panel of Directors, as opposed to voting for individual candidates and voting should be executed on a basis that is representative of the industry status quo.
Portfolio Strategies; Banwell	Members should be allowed to directly elect Directors from all nominees rather than being limited to voting for a slate. This option should be considered by the Task Force.
IFB	Directors should not be allowed to stand for re-election for at least two years. The current ability of Directors to serve for up to six years is too long and a shorter term would ensure a consistent flow of new entrants and fresh perspectives whose relative "inexperience" will be offset by Directors whose term has not yet expired.
IFIC	The word "eligible" is not used consistently in the Bulletin and "eligible Director" should be clearly defined.
Martin + Becker	"Significant compliance/enforcement concerns" used in 6(ii) must be better defined.

Doc 177563