



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

## MEMORANDUM

TO: MFDA Members  
 FROM: MFDA Staff  
 DATE: August 7, 2009  
 SUBJECT: Summary of Comments – Bulletin #0384-M *Task Force on Governance Issues – Comment Solicitation*

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On June 26, 2009, MFDA staff issued Bulletin #0384-M *Report of Task Force on Governance Issues – Comment Solicitation* requesting comments from Members and other stakeholders on the Report of Task Force on Governance Issues.

In addition, two separate meetings were held on July 8, 2009 and July 20, 2009 with Members and industry associations to obtain feedback and answer questions about the Report. Attendees were also encouraged to submit comments with respect to the Report.

The comment period expired on July 30, 2009.

7 submissions were received during the public comment period:

### **Members:**

1. CIBC Securities Inc. (“CIBC”)
2. Keybase Financial Group Inc. (“Keybase”)
3. Royal Mutual Funds Inc. (“RMFI”) and Phillips, Hager & North Investment Funds Ltd. (“PH&N”)
4. Tradex Management Inc. (“Tradex”)

### **Associations:**

5. Federation of Mutual Fund Dealers (“Federation”)
6. Independent Financial Brokers of Canada (“IFB”)
7. Investment Funds Institute of Canada (“IFIC”)

The following is a summary of the comments received.

Commenter/s	Comment
<b>GENERAL COMMENTS</b>	
Keybase	<p>The current structure of the Board does not represent small and medium Members' interests adequately. The current election process lacks transparency, is dominated by large institutions and gives an impression that nominees are predetermined.</p>
RMFI & PH&N; IFIC	<p>Concern with lack of an adequate amount of detail in the proposed amendments to allow for meaningful feedback by Members.</p> <p>Recommendation that proposed amendments to the Governance Committee Terms of Reference be made available to Members for comment in conjunction with the proposed amendments to the By-law prior to the October 2, 2009 meeting.</p>
Federation	<p>Recommendation that the MFDA consider conducting a thorough review of its fundamental principles and the process by which they arose, as expressed in the current By-Laws and Rules, preferably by a dedicated task force or committee.</p> <p>Recommendation that the Board consider an appropriate structure and time for conducting this review and analysis.</p>
RMFI & PH&N	<p>Recommendation that the MFDA consider extending the engagement of the Task Force, or dedicating additional resources, to address all issues identified at the 2008 AGM, including the MFDA policy-making process.</p> <p>Recommendation that the Task Force continue its work on the remaining issues with ample time for robust public consultation.</p>
Federation	<p>Support for the proposed amendments including Board composition; terms of office; and redefining the term Public Director.</p> <p>Recommendation that stakeholders be given an opportunity to review the revised By-law and the Governance Committee Terms of Reference.</p> <p>Recommendation that the revised Governance Committee Terms of Reference address the voting process and a method to measure the results of the proposed amendments.</p>
IFB	<p>Recommendation for specific representation from mutual fund advisors or investors on the Board.</p> <p>Recommendation that the MFDA be accountable to all of its constituent groups, i.e., dealers (large and small), licensed representatives and retail investors.</p> <p>Recommendation that the MFDA Board pursue further study of the governance issues, preferably by retaining an outside, third-party specialist in such issues, which can offer impartial advice and recommendations for consideration by industry stakeholders.</p>

RMFI & PH&N; IFB	Recommendation that the proposed amendments be published for further comment despite the request for an expedited CSA approval.
<b>BOARD COMPOSITION: Increase the Number of Directors to 15</b>	
RMFI & PH&N; Tradex	Support for increasing the number of Directors to 15.
IFB	<p>Recommendation that the two new Director positions be, in the future, reserved for a representative of consumers of mutual fund products and an Approved Person.</p> <p>Recommendation for proportionate number of Directors to represent small and medium dealers.</p>
<b>BOARD COMPOSITION: Terms of Office</b>	
IFB	<p>Opposition for the terms of office amounting to eight years.</p> <p>Recommendation for maximum of six-year terms of office to promote reasonable turnover, with staggered terms of expiration to provide for an appropriate mix of experience. The difficulties the MFDA has had in recruiting nominees can be alleviated by adopting Task Force Recommendations 5 through 10.</p>
Tradex	<p>Support for the adoption of four two-year terms with an eight-year maximum term of office for all Directors.</p> <p>Opposition to the "grandfathering" provision in the By-law for three existing Public Directors who have served on the Board since 1998.</p> <p>Recommendation that a number of new Directors be appointed or elected now, not in one or two years.</p>
<b>BOARD COMPOSITION: Selection of Two Industry Directors</b>	
CIBC	<p>Recommendation that Directors represent the best interests of the MFDA as an SRO, as opposed to interests of its Members or any subset of its Members.</p> <p>Concern that creating two classes of directors will jeopardize the Board's ability to constantly adhere to the duty of representing the entire MFDA.</p> <p>Concern that the two Industry Directors elected directly by Members will be under pressure to focus on the small Members' interests, to the detriment of the interests of all Members or investor protection, as well as creating possible conflict of interests where decisions may be influenced by re-election prospects.</p> <p>Recommendation that the Task Force consider other methods to address 2008 AGM concerns, such as adding diversity of Member size in the selection criteria for Industry Directors.</p>

CIBC; RMFI & PH&N	<p>If MFDA follows through with the two Industry Director proposal, recommendation that the Task Force provide details of the procedures for the selection process with the Members' meeting materials.</p> <p>Commenter provided suggestions for the issues to be considered in the procedures.</p> <p>Recommendation to provide the materials to Members well in advance of the special meeting in order to provide sufficient time for substantive feedback.</p>
Keybase	<p>Support for the recommendation.</p> <p>The proposal does not go far enough, as the resulting Board would still not reflect the diversity and geography of the membership, with small/medium dealers representing about 72% of all Members.</p>
RMFI & PH&N	<p>Recommendation to require at least one Industry Director to represent Level 4 Members to ensure representation from each membership type.</p>
Tradex	<p>Support for the recommendation.</p> <p>Concern that the proposed amendment to allow Members elect one or two individuals who are employed by small or medium size firms will not rectify the failure to comply with the mandate, as the MFDA Board of Directors has an overriding obligation to start ensuring that the Board appropriately represents the diversity of membership based on size, business type and ownership structure.</p>
<b>Selection and Nomination Process</b>	
Keybase	<p>Request for clarification as to how the election procedure and the nomination process will improve involvement and engagement of all Members.</p> <p>Request for providing details of the process, including the actual mechanisms and the terminology to be used in the Terms of Reference.</p>
RMFI & PH&N	<p>Request for clarification as to what selection process would apply to the remaining five Industry Directors and the rationale for this differentiation.</p> <p>Request for clarification of the term "election" in sections 3.3.1 and 3.3.2 of the proposed By-law.</p> <p>Recommendation to add a requirement for timely notice to Members to solicit Director recommendations, given that Members have a right to submit recommendations to the Governance Committee for individuals to fill positions as Public and Industry Directors no later than 60 days prior to the relevant Annual Meeting.</p>
Tradex	<p>Support for the recommendation No. 6 to continue the existing process for selecting Directors; however, opposition to the proposed transitional provisions.</p>

Tradex	<p>Support for the recommendation No. 7 to review the selection procedures to include detail and guidance.</p> <p>Recommendation that Members be given an opportunity to provide comments with respect to the procedures.</p>
Tradex	<p>Support for the recommendation No. 8 to actively solicit Director nominees. Insufficient number of nominees in the past results from the fact that Members discontinued putting forward the names of qualified individuals for the Board as the MFDA has re-elected existing directors (including Public Directors) and the Governance Committee has failed to nominate qualified candidates from small and medium size firms.</p>
<b>Conflicts of Interest</b>	
IFB	<p>Support for the recommendation to review the conflict of interest policy.</p> <p>Recommendation for a two-year cooling-off period.</p>
<b>Three-Year Mandatory Review of Process</b>	
Keybase; IFIC	<p>Recommendation to consider a formal provision for a three-year review of the process to assess if it achieved its goal of transparency and effective representation of all MFDA Members.</p>
IFB	<p>Opposition to a three-year review, as a number of important issues, such as advisor and consumer representation on the Board, have not been resolved and need to be addressed sooner than in three years.</p>
Federation	<p>Support for three-year review of the process.</p> <p>Recommendation for an annual, less formal review until various issues are resolved.</p>
<b>Other Issues – Quorum</b>	
RMFI & PH&N	<p>Recommendation to add provisions respecting the required quorum for the Board of Directors to the By-law, as the required quorum has been prescribed for various Board Committees but not the entire Board.</p>

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