

Kenmar
Investor Protection

c/o Sarah Corrigan-Brown
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Email: scorrigan-brown@bcsc.bc.ca
Subject: Proposed MFDA Governance changes
http://www.oscbulletin.carswell.com/bb/osc/bb/3121/on3121.htm#13_1_2

We at Kenmar Associates are pleased to submit our comments:

The MFDA is a critical force in investor protection and its governance structure and processes should reflect this. Its previous history in selecting board members is spotty and a recent decision regarding a BC case has raised our concerns. We were also dismayed to see the MFDA challenge OBSI's plan to deal with systemic issues. Retail investors have about \$700 billion invested in mutual funds so this SRO is key to ensuring nest eggs are kept out of harms way .If anything, we would have expected greater sensitivity to investor concerns rather than harmonization with other SRO's as a priority.

The Mutual Fund Dealers Association of Canada (MFDA www.mfda.ca), a entity focused on investor protection, is seeking changes to its Recognition Orders, and amendments to expand the population of possible public directors. The MFDA has submitted an application to the securities regulators in AB, BC, Manitoba, ON, Saskatchewan, NB and Nova Scotia to amend its Recognition Orders in order to: remove the definition of "public director" from the terms and conditions of the Orders; and, to make certain housekeeping amendments. It is seeking to remove the definition from the recognition orders saying that it duplicates the by-law -the MFDA would prefer to have the definition in its By-law, which it can change without prior approval from securities commissions. We can see no benefit to investor protection in doing this.

The MFDA's application also includes proposed amendments to the definition of "public director" in its by-laws. The current definition excludes a director, partner, significant shareholder, officer, employee or agent of (or an associate or affiliate of) (i) a Member protection fund or of the IDA or industry lobbyist IFIC, or (ii) a member of such fund, the IDA or IFIC. It also excludes any individual who is a member of the immediate family e.g. a spouse of an individual who would otherwise be disqualified from being a Public Director. The proposed amendment to the definition is stated to be designed to permit individuals currently ineligible to act as public directors to qualify. It certainly does that! But would this enhance investor protection or degrade it? Is it wise to have a registered lobbyist organization as a public or Industry Director? Is it appropriate to create a possible conflict of interest with investor protection funds?

The proposals would also increase the terms of office and maximum tenure for all MFDA directors to 8 years from 6. Our experience is that boards get stale and that 6 years is about the maximum period for a Director as long as there is a plan for rotation. We are told that the experience of the MFDA's Governance Committee in identifying and

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assessing potential Public Directors has demonstrated that certain aspects of the criteria for Public Directors “**may be too rigid and inappropriate** ” but no rationale is provided. http://www.oscbulletin.carswell.com/bb/osc/bb/3121/on3121.htm#13_1_2
Given the critical importance of this regulator, we’d be asking a lot of questions about if and how these changes improves investor protection.

How about some seniors groups, retired regulator commission personnel, retail investors, and investor advocates on the Board of this SRO if the goal is to expand the public director universe and enhance investor protection ? And why not take the opportunity to encapsulate the Chair of the Board a Public Director rather than an option? It would be comforting to know that the Chair of an SRO cannot be an Industry Director. And finally, why not clearly define a “Public Director “, roles and responsibilities of Public Directors and the different committees and their composition required to govern the organization. E.g Governance committee, Board Nomination/Selection Committee, Audit Committee, Effectiveness Committee etc.

We sincerely hope that our comments will prove useful. Should you have any questions, pleased do not hesitate to contact us.

Sincerely,

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May 27, 2008