

13.1.7 MFDA Notice and Request for Comments - Hearing Panels (Section 19.9 of By-law No.1)

MUTUAL FUND DEALERS ASSOCIATION OF CANADA (MFDA)

HEARING PANELS (SECTION 19.9 OF BY-LAW NO.1)

I. OVERVIEW

A. Current Rule

Section 19.9 of By-law No. 1 currently requires that a Hearing Panel must always consist of three members of the Regional Council: one public representative who must be the Chair of the Hearing Panel and two industry representatives who may be either elected or appointed members of the Regional Council but shall not include ex-officio members of the Council. Section 19.9 also provides that appointment of members to a Hearing Panel shall be made in accordance with the rules of procedures prescribed pursuant to Section 19.12.

B. The Issue(s)

By-law No. 1 does not currently provide for the continuance of a hearing should an industry appointed panel member be unable to continue to participate in the hearing. In the event that an industry appointed panel member is unable to continue to participate in a hearing, the only existing option is to start a new hearing with a newly constituted Hearing Panel. The current process is an inefficient use of resources.

C. Objective(s)

The objective of the proposed amendments is to allow a Hearing Panel to continue as a two member panel should an industry appointed Hearing Panel member be unable to continue to participate in the hearing.

D. Effect of Proposed Amendments

The proposed amendments will allow a Hearing Panel to consist of two members in specified circumstances, provided one is always the appointed public member.

II. DETAILED ANALYSIS

A. Relevant History

MFDA staff is concerned that the MFDA does not have procedures for the continuation of a hearing when an industry appointed panel member is unable to continue. In such circumstances, delay and increased expense may be incurred due to the need to reconstitute a new panel and begin a new hearing. MFDA staff has identified the need to introduce an amendment to provide for a procedure to continue a hearing where an industry appointed panel member becomes unable to continue.

B. Proposed Amendments

The proposed amendments add the provision in section 19.9 to permit a Hearing Panel to continue to preside over a disciplinary hearing in the event that one of the two industry representatives is unable to continue after the hearing commences.

C. Issues and Alternatives Considered

The MFDA considered the possibility of allowing a new panel member to replace the recused panel member and continuing the hearing with a three member panel. However, this alternative was determined to be inconsistent with administrative law principles.

D. Comparison with Similar Provisions

The ability to continue as a two member Hearing Panel contemplated by the proposed amendments is generally consistent with the process followed by other securities regulators and, in particular, the Investment Dealers Association.

E. Best Interests of the Capital Markets

The Board has determined that the proposed By-law amendments are in the best interests of the capital markets.

F. Public Interest Objective

The proposed amendments will assist in the protection of the investing public by ensuring that MFDA hearings can be conducted in an expedient, fair and cost effective manner should a industry appointed panel member be unable to continue.

III. COMMENTARY

A. Filing in Other Jurisdictions

The proposed By-law amendments will be filed for approval with the Alberta, British Columbia, Nova Scotia, and Ontario Securities Commissions and the Saskatchewan Financial Services Commission.

B. Effectiveness

The proposed amendments are simple and effective.

C. Process

The proposed amendments have been prepared in consultation with relevant departments within the Corporation and have been reviewed by external counsel. The MFDA Board of Directors has approved the proposed amendments.

D. Effective Date

The proposed amendments will be effective on a date to be subsequently determined by the MFDA.

IV. SOURCES

MFDA By-law No. 1
IDA By-law No. 20

V. REQUIREMENT TO PUBLISH FOR COMMENT

The MFDA is required to publish for comment the proposed amendments so that the issues referred to above may be considered by the Recognizing Regulators.

The MFDA has determined that the entry into force of the proposed amendments would be in the public interest and is not detrimental to the capital markets. Comments are sought on the proposed amendments. Comments should be made in writing. One copy of each comment letter should be delivered within 30 days of the publication of this notice, addressed to the attention of the Corporate Secretary, Mutual Fund Dealers Association of Canada, 121 King St. West, Suite 1000, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of Leslie Rose, Senior Legal Counsel, British Columbia Securities Commission, 701 West Georgia Street, P.O. Box 10142, Pacific Centre, Vancouver, British Columbia, V7Y 1L2.

On request, the MFDA will make available all comments received during the comment period.

Questions may be referred to:

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MUTUAL FUND DEALERS ASSOCIATION OF CANADA (MFDA)

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On September 27, 2006, the Board of Directors of the Mutual Fund Dealers Association of Canada made and enacted the following amendments to:

19.9 Hearing Panels

The authority of a Regional Council under Sections 20 and 24 shall be exercised on its behalf by a Hearing Panel appointed from the members of the Regional Council. Hearing Panels shall be composed of:

- (a) three members of the Regional Council: one public representative who will be the Chair of the Hearing Panel, and two industry representatives who may be either elected or appointed members of the Regional Council, but shall not include ex-officio members of the Council; or
- (b) two members of the Regional Council: one public representative who will be the Chair of the Hearing Panel, and one industry representative who may be either an elected or appointed member of the Regional Council, but shall not include ex-officio members of the Council, in the event that an industry representative cannot continue to participate in a hearing.

Appointments of members to a Hearing Panel shall be made in accordance with the rules of procedures prescribed pursuant to Section 19.12.