

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Application for Amendment and Restatement of Its Recognition Order and Application for Consent to Enter into a Co-operative Agreement in Québec - Notice and Request for Comment

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

APPLICATION FOR AMENDMENT AND RESTATEMENT OF ITS RECOGNITION ORDER AND APPLICATION FOR CONSENT TO ENTER INTO A CO-OPERATIVE AGREEMENT IN QUÉBEC

NOTICE AND REQUEST FOR COMMENT

The Mutual Fund Dealers Association of Canada (the "MFDA") has submitted an application to the securities regulatory authority in each of Alberta, British Columbia, Ontario, Saskatchewan and Nova Scotia (the "Recognizing Jurisdictions") to amend and restate the orders of each of the Recognizing Jurisdictions recognizing the MFDA as a self-regulatory organization (the "Recognition Orders"). The amendments are requested in order to:

- (a) To reflect changes in the MFDA's governance structure;
- (b) To clarify the MFDA's ability to enter into arrangements with another party to perform certain regulatory functions; and
- (c) To make housekeeping amendments to streamline the current Recognition Order.

The MFDA has also submitted an application to the Recognizing Jurisdictions for consent to enter into an arrangement in Québec with the Bureau des services financiers (the "Bureau") and the Chambre de la sécurité financière (the "Chambre") for these agencies to perform certain regulatory functions with respect to MFDA Members and Approved Persons in Québec.

The Recognizing Jurisdictions (including the Ontario Securities Commission) is publishing for comment both applications of the MFDA and the related documents. We are seeking comments on all aspects of the applications and related documents. We also request specific comment on certain matters identified below and have highlighted certain important aspects of the applications.

A. MFDA'S CORPORATE GOVERNANCE CHANGES

Under the terms and conditions of the current Recognition Orders, the MFDA is required to review and make changes

to its governance structure to ensure that, among other things, there are a reasonable number and proportion of directors on the MFDA's board to represent the public interest and the different MFDA members. The MFDA Corporate Governance Committee completed its review and submitted a report to the Recognizing Jurisdictions with recommendations for changes to the MFDA's governance structure. The MFDA subsequently submitted to the Recognizing Jurisdictions for approval proposed By-laws No. 5 and No. 6 that adopt the recommendations included in the report of its Corporate Governance Committee. The proposed By-laws No. 5 and No. 6 were published for public comment by the Ontario Securities Commission on August 29, 2003, at (2003) 26 OSCB 6209. As a result of the proposed changes, the terms and conditions of the current Recognition Orders with respect to governance will no longer be relevant. The MFDA, therefore, has applied to amend these terms and conditions to reflect the new governance structure.

B. MFDA'S ABILITY TO DELEGATE REGULATORY FUNCTIONS

1. Co-operative Agreement

The MFDA is not recognized or approved as a self-regulatory organization ("SRO") in Québec and is not able to conduct its regulatory activities in respect of its Members in Québec on the same basis as it does in other provinces and territories. In order to ensure that MFDA Members and their Approved Persons operating in Québec are properly regulated, the MFDA has struck an agreement with the Bureau and the Chambre, who have jurisdiction over mutual fund dealers and salespersons operating in Québec, to co-ordinate their regulation (the "Co-operative Agreement").

The objectives of the Co-operative Agreement are to avoid regulatory inefficiencies and to preserve and enhance the respective separate mandates of the Bureau, the Chambre and the MFDA. Under the Co-operative Agreement, the Bureau, the Chambre and the MFDA will co-ordinate the various regulatory functions in the following manner:

- (a) Prudential regulation
 - the MFDA can assist the Bureau in conducting prudential examinations
 - the MFDA can take enforcement actions against a Member operating in Québec in respect of prudential matters

(b) Business conduct and sales practices regulation

- Members and Approved Persons operating in Québec complying with the regulations of the Bureau and the Chambre relating to business conduct and sales practices will be deemed to be complying with MFDA rules relating to the same subject matter
- the Bureau and the Chambre will conduct business conduct and sales practices examinations, and the MFDA can request to assist in these examinations only under certain special circumstances described in section 3.3.1 of the Co-operative Agreement
- the MFDA will not take enforcement actions against a Member or an Approved Person operating in Québec in respect of business conduct and sales practices matters, but will rely on the Bureau or the Chambre to do so

(c) Complaints Handling

- the MFDA will refer to the Bureau and the Chambre complaints regarding conduct of its Members and Approved Persons in Québec
- the Bureau and the Chambre will refer to the MFDA complaints regarding conduct of MFDA Members and Approved Persons outside Québec

(d) Policy development

- the Bureau, the Chambre and the MFDA will keep each other advised of the development or proposed development of new or amended regulations, and consult with each other to ensure rule harmonization.

In practice, MFDA Members will be required to comply only with the regulations of the Bureau relating to business conduct and sales practices in Québec, and Approved Persons acting only in Québec will be required to comply only with the regulations of the Bureau. In order to ensure that MFDA Members and their Approved Persons operating in Québec and outside of Québec will be subject to a

similar regulatory regime, the Co-operative Agreement provides for a Coordination Committee, made up of staff of the MFDA and the Bureau, to develop similar approaches and program for compliance examinations and to work towards consistency and harmonization of rules. The Co-operative Agreement also provides for the sharing of information among the Bureau, the Chambre and the MFDA with respect to the status and conclusion of complaints, among other things. Staff request comment on the arrangement under the Co-operative Agreement, specifically with respect to the following:

Question 1: Would the arrangement under the Co-operative Arrangement create risk to the MFDA, the MFDA Investor Protection Corporation or any other compensation fund approved for mutual fund dealers, the mutual fund dealer industry in general, and the investing public?

Question 2: If so, how could the risk be mitigated?

2. MFDA's Ability to Delegate Enforcement Function

The Recognition Orders allow the MFDA to make arrangements to have the compliance function carried out by another party; however, they do not allow the MFDA to delegate its enforcement function to another party. The Recognition Orders also do not contemplate a situation whereby the party performing the compliance and enforcement functions will be monitoring and enforcing compliance with the party's own rules rather than with the MFDA rules. The MFDA, therefore, has applied to amend its terms and conditions of recognition in this respect. Staff request comment on the delegation of regulatory functions by an SRO to another party, specifically:

Question 3: Under what conditions should an SRO be allowed to delegate its enforcement function?

Under Recognition Orders, the MFDA must receive consent from the Recognizing Jurisdictions to make arrangements with another party to perform certain of its regulatory functions. The MFDA, therefore, must receive the consent of the Recognizing Jurisdictions to enter into the Co-operative Agreement before the Co-operative Agreement can become effective.

C. HOUSEKEEPING AMENDMENTS TO THE TERMS AND CONDITIONS OF RECOGNITION

In its application for amendment and restatement of its Recognition Orders, the MFDA has also proposed to remove certain terms and conditions that were transitional and have already been satisfied by the MFDA. In addition, the suspension period for MFDA Rule 2.4.1 is proposed to be extended to December 31, 2006, in the provinces of British Columbia, Ontario and Saskatchewan to allow these Recognizing Jurisdictions sufficient time to consider all issues and to approve any resulting legislative amendments.

D. COMMENT PROCESS

You are asked to provide your comments in writing and delivered on or before **January 12, 2004**, addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, 19th Floor, Box 55, Toronto, Ontario M5H 3S8.

We request that you submit a diskette containing an electronic copy of your submission. The confidentiality of submissions cannot be maintained as a summary of written comments received during the comment period will be published.

Questions may be referred to:

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