

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

PROPOSED AMENDMENTS TO MFDA BY-LAW NO. 1

SECTIONS 3.3 (ELECTION AND TERM), 3.6.1 (GOVERNANCE COMMITTEE), 4.7 (QUORUM)

I. OVERVIEW

A. Current Requirements

The MFDA Board of Directors is comprised of 13 directors, including the President and CEO, with an even number of Industry Directors and Public Directors. Currently, under section 4.7 of MFDA By-law No. 1, a quorum for a MFDA Board meeting consists of a majority of directors.

MFDA By-law No. 1, section 3.6.1 provides that the MFDA Governance Committee consist of 2 Public and 2 Industry Directors. The quorum for a meeting of the Governance Committee requires 1 Industry and 1 Public Director present.

Under section 3.3 of MFDA By-law No. 1, the terms of office for Industry Directors of the MFDA are 2 years with a maximum of 3 terms (i.e. 6 years); and for Public Directors the terms are 3 years with a maximum of 2 terms (i.e. 6 years).

B. Reasons for Amendments

As discussed in greater detail below, the proposed amendments are intended to ensure that the governance structure of the MFDA aligns with comparator organizations where appropriate and continues to reflect best governance practices for SROs.

C. Objectives

The objectives of the proposed amendments are to implement the suggestions and recommendations arising from the MFDA governance review by Borden Ladner Gervais LLP (“BLG”) as described below.

D. Effect of Proposed Amendments

The effect of the proposed amendments, will be to enhance quorum requirements for the MFDA Board of Director meetings and meetings of the Governance Committee by requiring that a majority of Public Directors be present, in the case of Board meetings, and a majority of the Public Directors who are members of the Committee, in the case of Governance Committee meetings. The proposed amendments will also increase the size of the Governance Committee by 1 Public Director and increase the term limits for both Industry and Public Directors.

II. DETAILED ANALYSIS

A. Proposed Amendments

Background

In furtherance of the 2018-2022 MFDA Strategic Plan initiative to review our current processes and requirements to ensure that they continue to be relevant and appropriate and in response to ongoing dialogue with CSA SRO oversight staff, the Governance Committee of the MFDA Board of Directors asked BLG to undertake a review of the MFDA's corporate governance structure as a whole with a view to ensuring that it continues to reflect best governance practices for SROs. BLG concluded that the MFDA's corporate governance requirements and practices are consistent with best practices. Nevertheless, as corporate governance practices are ever evolving, BLG offered certain recommendations and suggestions for the MFDA's consideration. The MFDA Board of Directors considered and endorsed the recommendations which are reflected in the proposed amendments to MFDA By-law No. 1 described below.

Summary of Proposed Amendments

The following is a summary of proposed amendments to sections 3.3, 3.6.1 and 4.7. Attached as Schedule "A" to this Notice, is a blackline of MFDA By-law No.1, which shows proposed amendments to reflect the revisions noted below.

The proposed amendments are in the public interest as they will enhance the MFDA governance structure. When considered together, the proposed amendments reflect the MFDA's ongoing commitment to best governance practices for SROs as they will enhance the independence of the MFDA Governance Committee and the quorum requirements for Board meetings. The proposed amendments will also support the continued board engagement of experienced Industry and Public Directors from diverse backgrounds that should result from increased terms consistent with industry standards. In addition, continuity and experience on the MFDA Board of Directors will better position the MFDA to navigate an increasingly complex industry and regulatory environment.

Quorum for Board Meetings

A number of self-regulatory organizations within the securities industry provide for a quorum for Board meetings that include a minimum number of non-industry or Public Directors (either a majority or 50% of public or non-industry directors). The proposed amendments to section 4.7 of MFDA By-law No. 1 would enhance the current quorum for Board meetings to provide that a majority of Public Directors be present consistent with comparator organizations and best practices. The proposed change to the Board quorum would not present any practical problems due to the historically high attendance at Board meetings.

Governance Committee – Composition and Quorum

The proposed amendments to section 3.6.1 would require that the Governance Committee consist of a majority of Public Directors (3 Public Directors and 2 Industry Directors) to align with a number of comparator organizations and the current composition of the MFDA Audit Committee. The proposed amendments would also require that a quorum for meetings of the MFDA Governance Committee consist of a majority of Public Directors (2 Public and 1 Industry) to reflect the proposed increase in Governance Committee composition and would be consistent with the

quorum requirement for the MFDA Audit Committee. By increasing the size of the MFDA Governance Committee by 1 Public Director, the MFDA will also ensure that Public Directors consist of a majority of the Governance Committee.

Director Term Limits

The proposed amendments will increase the term limits for both Industry and Public Directors to 8 years. The increase in the term limits is intended to address concerns relating to the limited pool of candidates for election as directors, ensure greater continuity on the MFDA Board of Directors and Board Committees and allow the MFDA to benefit from directors who have had a chance to develop familiarity and expertise with MFDA affairs. In addition, a maximum tenure of 8 years is consistent with the governance practices of other Canadian self-regulatory organizations and protection funds.

B. Comparison with Similar Provisions

In conducting its review of the MFDA Governance structure, BLG considered the requirements and policies adopted by certain other comparator organizations including other self-regulatory organizations in the securities industry, investor protection funds, ombudsman services and other financial industry organizations. The proposed amendments are generally consistent with the comparator organizations. BLG considered the composition of IIROC's Governance Committee which consists entirely of Public Directors. The MFDA Governance Committee includes Industry Directors to reflect its broader mandate.

C. Issues and Alternatives Considered

The MFDA Governance Committee considered each of the recommended changes and whether each such change should be implemented.

D. Systems Impact of Amendments

It is not anticipated that the proposed amendments will have a material impact upon MFDA Members' systems, impose any material burden or constraint on competition or innovation, impose any material costs or restrictions on the activities of market participants, or result in any material increased costs of compliance.

E. Best Interests of the Capital Markets

The proposed amendments to MFDA By-law No. 1 were approved by the MFDA Board of Directors at its February 27, 2019 meeting. The Board has determined that the proposed amendments are consistent with the best interests of the capital markets.

F. Public Interest Objective

The proposed amendments are in the public interest as they will ensure that the governance structure of the MFDA aligns with comparator organizations where appropriate.

G. Classification

The proposed amendments have been classified as Public Comment Rule proposals.

III. COMMENTARY

A. Filing in Other Jurisdictions

The proposed amendments will be filed for approval with the Alberta, British Columbia, Manitoba, Nova Scotia and Ontario Securities Commissions, the New Brunswick Financial and Consumer Services Commission, the Superintendent of Securities of Prince Edward Island, and the Saskatchewan Financial and Consumer Affairs Authority.

B. Effectiveness

The proposed amendments are simple and effective.

C. Process

The proposed amendments were reviewed by the MFDA Policy Advisory Committee at its January 31, 2019 meeting. The proposed amendments were reviewed by the Governance Committee of the MFDA Board of Directors at its February 11, 2019 meeting, and approved by the full MFDA Board of Directors at its February 27, 2019 meeting. In approving the proposed amendments, the MFDA has followed its established internal governance practices and has considered the need for consequential amendments.

D. Effective Date

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

E. Exemption from Requirements under Securities Legislation

The proposed amendments do not involve a Rule that the MFDA, its Members or Approved Persons must comply with in order to be exempted from a securities legislation requirement.

F. Conflict with Applicable Laws or Terms and Conditions of Recognition Order

The proposed amendments do not conflict with applicable laws or the Terms and Conditions of a Recognizing Regulator's Recognition Order.

IV. SOURCES

- MFDA By-law No. 1
- By-laws or other organizational documents of the comparator organizations. Including
 - Investment Industry Regulatory Organization of Canada
 - Canadian Investor Protection Fund
 - Ombudsman for Banking Services and Investments
 - Financial Industry Regulatory Authority (United States)

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 90 days of the publication of this notice, addressed to the attention of:

Paige Ward
General Counsel, Corporate Secretary and Vice-President, Policy
Mutual Fund Dealers Association of Canada
121 King St. West, Suite 1000
Toronto, Ontario M5H 3T9
pward@mfd.ca

and one copy addressed to the attention of:

Anne Hamilton
Senior Legal Counsel
British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, British Columbia, V7Y 1L2
ahamilton@bcsc.bc.ca

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the MFDA website at www.mfda.ca.

Questions may be referred to:

Paige Ward
General Counsel, Corporate Secretary and
Vice-President, Policy
Mutual Fund Dealers Association of Canada
(416) 943-5838

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Schedule "A"

Proposed Amendments to MFDA By-law No .1 (Sections 3.3, 3.6.1 and 4.7)

3.3. Election and Term

3.3.2. *Public Directors*

At each Annual Meeting, 3 a number of Public Directors shall be elected to fill the vacancies created by the expiry of the terms of office of ~~the 3~~ that number of Public Directors whose terms have expired at such meeting. The term for each Public Director to be elected at an Annual Meeting shall expire at the third Annual Meeting next following such election ~~on~~ (in the case of a Public Director's first or second successive term) or the second Annual Meeting next following such election (in the case of the Public Director's third successive term), upon the election of his or her successors, unless expired earlier in accordance with this By-law. The Board of Directors shall be authorized to fix the term of any Public Director to be elected for a period of less than 3 years in order to maintain the intended staggered terms of all Public Directors, but no such term shall be shortened if the Public Director has commenced his or her term of office. A Public Director shall be eligible to serve for only 3 ~~2~~ successive terms and such terms shall be of a period of 3 years for the first and second terms and of a period of 2 years for the third term, or such shorter period as may be of 2-3 years which shall include any shorter term as may have been fixed by the Board of Directors in accordance with this By-law, but shall exclude any portion of, provided that (i) if the Board of Directors fixes a term of fewer than 3 years in respect of the first or second terms or fewer than 2 years for the third term, the maximum number of successive terms shall not exceed 3; and (ii) a term of office in respect of a vacancy filled pursuant to Section 3.5 shall not be included in determining whether a Public Director has served a maximum of 3 successive terms. Unless nominated otherwise in accordance with the Act, each Public Director to be elected at an Annual Meeting shall have been recommended by the Governance Committee to the Board of Directors for nomination for election by the Members according to the requirements of the By-laws and the terms of reference of the Governance Committee adopted by the Board of Directors. Any Member shall be entitled to submit to the Governance Committee nominations for Public Directors provided that such nominations shall have been received by the Corporation not less than 60 days prior to the relevant Annual Meeting.

3.3.3. *Industry Directors*

At each Annual Meeting, 3 a number of Industry Directors shall be elected to fill the vacancies created by the expiry of the terms of office of ~~the 3~~ that number of Industry Directors whose terms have expired at such meeting. The term for each Industry Director to be elected at an Annual Meeting shall expire at the second Annual Meeting next following such election ~~on~~ upon the election of his or her successors, unless expired earlier in accordance with this By-law. The Board of Directors shall be authorized to fix the term of any Industry Director to be elected for a period of less than 2 years in order to maintain the intended staggered terms of all Industry Directors, but no such term shall be shortened if the Industry Director has commenced his or her term of office. An Industry Director shall be eligible to serve only 4 ~~3~~ successive terms of 2 years which shall include any or such shorter term period as may have been be fixed by the Board of Directors in accordance with this By-law, but shall exclude any portion of provided that (i) if

the Board of Directors fixes a term of fewer than 2 years in respect of any term, the maximum number of successive terms shall not exceed 4; and (ii) a term of office in respect of a vacancy filled pursuant to Section 3.5 shall not be included in determining whether an Industry Director has served a maximum of 4 successive terms. Unless nominated otherwise in accordance with the Act, each Industry Director to be elected at an Annual Meeting shall have been recommended by the Governance Committee to the Board of Directors for nomination for election by the Members according to the requirements of the By-laws and the terms of reference of the Governance Committee adopted by the Board of Directors. Any Member shall be entitled to submit to the Governance Committee nominations for Industry Directors provided that such nominations shall have been received by the Corporation not less than 60 days prior to the relevant Annual Meeting.

3.3.4. Transition

At the Annual Meeting when this section 3.3.4 is sanctioned and becomes effective,

- (i) Public Directors whose terms do not expire at such time (having served fewer than 2 successive terms) shall remain eligible to be nominated and elected as Public Directors at subsequent Annual Meetings for a further consecutive third successive term provided that no such Public Director shall be eligible to serve in aggregate for more than 8 consecutive years as a Public Director;

- (ii) Industry Directors whose terms do not expire at such time (having served fewer than 3 successive terms) shall remain eligible to be nominated and elected as Industry Directors at subsequent Annual Meetings for a further fourth successive term provided that no such Industry Director shall be eligible to serve in aggregate for more than 8 consecutive years as an Industry Director.

3.6 Committees

3.6.1 Governance Committee

The Board of Directors shall establish a Governance Committee composed of 23 Public Directors and 2 Industry Directors. The 2 Industry Director members of the Governance Committee shall be officers or employees of a Member of the Corporation or of an affiliate or corporation which is an associate of a Member. The Chair of the Governance Committee shall be 1 of the 23 Public Directors as selected by the Board of Directors. The Governance Committee shall be responsible for identifying and recommending to the Board of Directors Public and Industry Directors for election to the Board of Directors in accordance with the By-laws and the terms of reference adopted for the Governance Committee by the Board of Directors. In addition, the Governance Committee shall perform such other duties as the Board of Directors may delegate or direct from time to time. 12 Public Directors and 1 Industry Director shall constitute a quorum of the Governance Committee.

3.6.2 Audit Committee

The Board of Directors shall establish an Audit Committee composed of 3 Public Directors and 2 Industry Directors. The Chair of the Audit Committee shall be 1 of the 3 Public Directors as selected by the Board of Directors. The Audit Committee shall review and report to the Board of Directors on the annual financial statements of the Corporation and shall perform such other duties as the Board of Directors may delegate or direct from time to time. 2 Public Directors and 1 Industry Director shall constitute a quorum of the Audit Committee.

3.6.3 Executive Committee

The Board of Directors may in its discretion establish an executive committee (which may be otherwise named) composed of an equal number of Public Directors and Industry Directors. The Chair of the Executive Committee, if any, may be either a Public Director or Industry Director and shall be selected by the Board of Directors. The Executive Committee shall exercise such powers and such duties as are delegated or directed by the Board of Directors including, without limitation, the authority to exercise any of the powers of the Board of Directors. 1 Public Director and 1 Industry Director shall constitute a quorum of the Executive Committee.

3.6.4 Other Board Committees

The Board of Directors may from time to time in its discretion appoint any other committee or committees as it considers necessary or appropriate for such purposes and with such powers as the Board of Directors may determine including, without limitation, the authority to exercise any of the powers of the Board of Directors and to act in all matters for and in the name of the Board of Directors under the By-laws. Subject to any provisions of the By-laws otherwise, any such committee may be composed of Public Directors or Industry Directors, or both. A majority of the members of a committee established under this Section 3.6.4 shall constitute a quorum, provided that if the committee is composed of 1 or more Public Directors, a quorum shall include 1 Public Director.

3.6.5 Committee Membership and Procedures

Members of any committee of the Board of Directors including, without limitation, the Governance Committee, Audit Committee, Executive Committee (if any) or any other committee established pursuant to Section 3.6.4 and shall be appointed and subject to removal by the Board. The Board of Directors may prescribe rules and procedures not inconsistent with the Act and the By-laws relating to the calling of meetings of, and conduct of business by, committees of the Board. Subject to the By-laws and any resolution of the Board of Directors, meetings of any such committee shall be held at any time and place to be determined by the Chair of the committee or its members provided that 48 hours' prior written notice of such meetings shall be given, other than by mail, to each member of the committee. Notice by mail shall be sent at least 14 days prior to the meeting. No error or accidental omission in giving notice of any meeting of a committee shall invalidate such meeting or make void any proceedings taken at such meeting.

4 MEETINGS OF DIRECTORS

4.1 Place of Meeting

Meetings of the Board of Directors may be held at any place within Canada.

4.2 Notice

A meeting of directors may be convened by the Chair of the Board, the Vice-Chair of the Board, the President and Chief Executive Officer or any 2 directors at any time. The Secretary, when directed or authorized by any of such officers or any 2 directors, shall convene a meeting of directors. Unless sent by mail, 7 days' notice of such meeting shall be given to each director. Notice of any such meeting that is sent by mail shall be served in the manner specified in Section 31 not less than 14 days (exclusive of the day on which the notice is given) before the meeting is to take place; provided always that a director may in any manner and at any time waive notice of a meeting of directors and attendance of a director at a meeting of directors shall constitute a waiver of notice of the meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called; provided further that meetings of directors may be held at any time without notice if all the directors are present (except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called) or if all of the absent directors waive notice before or after the date of such meeting.

4.3 Error or Omission in Giving Notice

No error or accidental omission in giving notice of any meeting of directors shall invalidate such meeting or make void any proceedings taken at such meeting.

4.4 Chair and Secretary

The Chair of the Board or, in his or her absence, the Vice-Chair, shall be chair of any meeting of the directors. If no such officer is present, the directors present shall choose 1 of their number to be chair. If the Secretary is absent, the chair of the meeting shall appoint some person, who need not be a director, to act as secretary of the meeting.

4.5 Adjournment

Any meeting of directors may be adjourned from time to time by the Chair of the meeting, with the consent of the meeting, to a fixed time and place. Notice of any adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting. Any adjourned meeting shall be duly constituted if held in accordance with the terms of the adjournment and a quorum is present thereat. The directors who formed a quorum at the original meeting are not required to form the quorum at the adjourned meeting. If there is no quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated forthwith after its adjournment. Any business may be brought before or dealt with at any adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

4.6 Regular Meetings

The Board of Directors may appoint a day or days in any month or months for regular meetings of the Board of Directors at a place or hour to be named by the Board of Directors and

a copy of any resolution of the Board of Directors fixing the place and time of regular meetings of the Board of Directors shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meetings.

4.7 Quorum

A majority of the directors then in office, including a majority of Public Directors, shall form a quorum for the transaction of business ~~provided that 2 Public Directors are present~~ and, notwithstanding any vacancy among the directors, a quorum may exercise all the powers of directors.

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