

13.1.10 Summary of Public Comments respecting Proposed Amendments to Section 19.9 of MFDA By-law No. 1 (Hearing Panels) and Response of the MFDA

**SUMMARY OF PUBLIC COMMENTS
RESPECTING PROPOSED AMENDMENTS TO
SECTION 19.9 OF MFDA BY-LAW NO. 1 (HEARING PANELS)
AND
RESPONSE OF THE MFDA**

On October 27, 2006, the British Columbia Securities Commission published for public comment proposed amendments to Section 19.9 of MFDA By-law No. 1 – Hearing Panels (the “Proposed Amendments”).

The public comment period expired on November 27, 2006.

Two submissions were received during the public comment period:

1. The Investment Funds Institute of Canada (“IFIC”); and
2. Portfolio Strategies Corporation (“Portfolio Strategies”).

Copies of the comment submissions may be viewed at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario by contacting Ken Woodard, Director, Communications and Membership Services Manager, (416) 943-4602.

The following is a summary of the comments received, together with the MFDA’s responses. Unless otherwise indicated, all references are to sections of MFDA By-law No. 1, including the Proposed Amendments.

1. Continuance of Hearing at Chair’s Discretion

IFIC commented that the Proposed Amendments do not grant the Chair the express authority to either continue a hearing with two panel members or terminate the hearing where an industry panel member is unable to continue to participate in the hearing. IFIC requested further explanation and clarification as to why the Proposed Amendments make no such provision.

MFDA Response

We have amended the section to clarify this intent.

2. Continuance of Hearing at Respondent’s Discretion

Portfolio Strategies expressed the view that the decision to continue a hearing before a two-member panel should be left to the Respondent(s). The concern raised was that the loss of an industry member and his/her expertise may have an adverse effect on the Hearing Panel and ultimately on the Respondent.

MFDA Response

It is a fundamental principle of administrative law that an administrative tribunal has, and should have, inherent jurisdiction to control all aspects of the adjudicative process over which it presides, subject to the requirements of natural justice and fairness and any specific requirements contained in enabling documents. A Hearing Panel therefore has the discretion to choose whether to continue a hearing before a two-member panel, having regard to all of the circumstances of the proceeding, including the submissions of Staff and the Respondent. The interests of the Respondent in the proceeding are only one factor to be considered by the Hearing Panel in making a decision.

3. Procedures Followed in a Tied Decision

IFIC and Portfolio Strategies both raised the question of what procedure would be followed in the event of a tied decision rendered by a two-member Hearing Panel, as the Proposed Amendments do not address such circumstances.

MFDA Response

The procedure to be followed in the event of a tied decision rendered by a two-member hearing panel will be addressed in companion Rules of Procedure to be prescribed by the MFDA. The procedure will depend on the type of tied decision. Where a Hearing Panel is comprised of only two members, any action affirmed by both members shall constitute the decision of the Hearing Panel. Where an agreement concerning any procedural matter or motion cannot be reached, the decision of the Chair shall prevail. Where an agreement concerning the determination of misconduct cannot be reached, any misconduct affirmed by both panel members shall constitute the decision of the Hearing Panel and, where there is no agreement on any

findings of misconduct, the matter shall be deemed dismissed as against the respondent. Where an agreement cannot be reached concerning the penalty to impose with respect to any findings of misconduct agreed upon by the Hearing Panel, the decision of the Chair with respect to penalty shall prevail.

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

HEARING PANELS (Section 19.9 of By-law No.1)

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.~~ in the event that an industry representative in (a) above is unable to continue to serve on a Hearing Panel. The Chair of the Hearing Panel shall decide whether or not to proceed with a two-member Hearing Panel.

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