



December 21, 2015

Dear Sirs/Mesdames:

Re: Comments on the Revised Draft of the Provincial *Capital Markets Act*

We are writing to you in response to your invitation to provide comments on the Revised Consultation Draft of the *Capital Markets Act* (“CMA”). As stated in our previous comment letter to you (attached), the MFDA supports the stated objectives of the draft legislation to update and modernize current provincial securities legislation, retaining key components while introducing new elements to promote flexibility within a robust regulatory framework. It is in light of these objectives that we wish to reiterate our comments regarding subsection 201(3) of the draft legislation: immunity of recognized self-regulatory organization, and make additional comments regarding subsection 89(1): Orders of Tribunal, and the exchange of information.

The MFDA is recognized as a self-regulatory organization (“SRO”) under provincial securities legislation to regulate the operations, standards of practice, and business conduct of its Members. In doing so, the MFDA develops and enforces its own Rules, By-laws, and Policies (collectively “the Rules”) approved by the recognizing securities regulators and assumes a degree of frontline responsibility for the administration of securities regulation on behalf of the provincial securities authorities.

Immunity from Civil Actions:

In our initial comment letter we suggested an amendment to subsection 201(3) which would ensure that SROs receive the same immunity and equal protection in performing their regulatory functions as staff of the Authority, tribunal members and the recognized auditor oversight organization, currently the Canadian Public Accountability Board (“CPAB”). Such an amendment would recognize that the MFDA, pursuant to its recognition orders, performs many of the same regulatory activities and functions as the provincial securities regulators pursuant to the same public interest mandate.

We are pleased this matter continues to be under consideration as indicated in the published commentary. Immunity from civil actions is consistent with both the public interest mandate of the MFDA and the regulatory activities that it currently undertakes pursuant to its recognition orders.

Enforcement of SRO decisions as Court Orders:

We note that subsection 89(1) of the CMA, provides for a decision of an SRO disciplinary panel to be enforced against the respondent as a court order, provided that the SRO first obtains an order from the Capital Markets Regulatory Authority (“CMRA”) Tribunal requiring the respondent to comply with the SRO panel order. We are concerned that the necessity of having

to first obtain a CMRA Tribunal order may make the power impractical to use because of cost-benefit concerns on the part of the SRO. The approach set out in subsection 89(1) would be time-consuming and resource intensive, and could result in the duplication of hearings conducted by the MFDA. We ask that you consider amending the CMA to allow for SROs to file decisions directly with the courts, which is consistent with the current approach used in certain provinces, such as Alberta.

Exchange of Information:

Pursuant to its recognition orders, the MFDA is required to share information with certain other bodies, including with the various Commissions and their staff, and other Canadian federal, provincial and territorial recognized self-regulatory organizations and regulatory authorities, including those responsible for the supervision or regulation of securities firms, financial institutions, insurance matters and competition matters. Currently, this information is shared in confidence and not subject to disclosure under freedom of information and privacy legislation in Ontario. The maintenance of this confidentiality is important to our ability to investigate, review and regulate in the public interest. Accordingly, we propose a provision be included in the CMA to maintain the confidentiality of information shared by SROs with the Authority.

Thank you for your consideration of our remarks. We would be pleased to meet with members of the CCMRS to discuss these matters further.

Yours truly,



Paige L. Ward
General Counsel, Corporate Secretary and Vice-President, Policy

CC: Mark Gordon, President and Chief Executive Officer