



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

December 8, 2014

Dear Sirs/Mesdames:

Re: Comments on the Consultation Draft of the Provincial Capital Markets Act (PCMA)

We are writing in response to your invitation to provide comments on the Consultation Draft of the *Provincial Capital Markets Act* (PCMA). 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.

The MFDA has been 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, Policies and Rules (collectively, the “Rules”) approved by the recognizing securities regulators and assumes a degree of front-line responsibility for the administration of securities regulation on behalf of provincial securities authorities.

We have specific comments with respect to subsection 201(3) of the draft legislation which is of particular relevance to the SROs: immunity from civil actions.

Subsections 201(1) and (2) of the draft PCMA provide immunity to the Authority, tribunal members and a recognized auditor oversight organization (currently the Canadian Public Accountability Board (“CPAB”)) from civil liability for regulatory decisions made in good faith.

As an SRO, the MFDA regulates the operations, standards of practice and business conduct of its Members pursuant to its recognition orders and in doing so, performs many of the same regulatory activities and functions as the provincial securities regulators pursuant to the same public interest mandate. MFDA Rules are approved by the recognizing securities regulators and in some cases mirror those under securities legislation for which staff of the recognizing securities regulators have immunity. Accordingly, to ensure that the SROs receive the same immunity and equal protection in performing its regulatory functions as staff of the Authority and tribunal members, we recommend that the wording of subsection 201(3) be amended to conform to the language of subsection (2).

MFDA By-laws currently prohibit Members, Approved Persons and other persons subject to the jurisdiction of the MFDA from commencing or carrying on legal actions or other proceedings against the MFDA. However, these provisions do not currently cover claims by third parties (i.e. entities or individuals not subject to the By-laws of the MFDA) and as such may impact our ability to deal confidently with matters within our regulatory mandate in furtherance of the public interest. An amendment to the language of subsection 201(3), as described above, would address this by ensuring that the MFDA is similarly protected from claims by individuals or entities that are not subject to the By-laws of the MFDA. 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.

We have reviewed the submissions of IIROC in respect of this matter and share similar views with respect to the specific policy considerations warranting a review of section 201(3).

Thank you for considering our remarks. We would be pleased to meet with members of the CCMRS to discuss this matter further.

Yours truly,

A handwritten signature in blue ink that reads "Paige L. Ward". The signature is written in a cursive, flowing style.

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

Cc: Mark Gordon, President & Chief Executive Officer