



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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Manager of Market Regulation
Ontario Securities Commission
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Dear Ms. Tabesh-Ndreka:

RE: Request for Comments: Rules Notice 10-0085 “Plain language rule re-write project – Proposed Rule 3100, *Business Conduct* and Proposed Rule 3200, *Client Accounts*” (the “Notice”)

The Investment Industry Association of Canada (IIAC) appreciates the opportunity to comment on the Notice, issued on March 26, 2010.

The IIAC organized a Working Group to identify and discuss issues with the proposals put forward in the Notice. We ask that IIROC consider the comments and request for clarification articulated by our members. The IIAC would be happy to meet with IIROC staff to further discuss the issues raised in this letter.

Proposed Plain Language Rule 3100 (Business Conduct)

Addition of the word “recommendation” (Rule 3102(4))

Proposed Rule 3102(4) will require each Dealer Member to “use due diligence to ensure that any order *or recommendation* for any account is within the bounds of good business practice”. While our members agree with the importance of ensuring that advice given to

clients is appropriately made, members have concerns that this Proposed Rule may be difficult to enforce because of the uncertainty that has been introduced by the inclusion of the word “recommendation”. The uncertainty lies in the lack of a clear understanding as to what constitutes a “recommendation”. As such, we request that the word “recommendation” be removed from the rule to reduce this uncertainty.

Use of the phrase “securities related activities” (Rule 3103)

Proposed Rule 3103 requires a Dealer Member “engaged in securities related activities” to comply with the relevant rules of listed organizations. The definition of “securities related activities” includes “acting as a securities dealer and carrying on any business which is incidental to or a necessary part of such activities”. Members are concerned that this definition is far too broad, encompassing activities related to products that should not be caught under this requirement (e.g. GICs, PPNs). Although we understand that IIROC may view this as merely “codifying existing practice”, we believe that codifying compliance with the rules of other organizations is overreaching and goes beyond the scope of IIROC’s authority and jurisdiction. We recommend that, at a minimum, Proposed Rule 3103 be limited in scope to what is contained in current Rule 17.14, which requires compliance with respect to “trading” and not to the overly broad definition of “securities related activities”.

Addition of the word “understand” (Rule 3150(1)(iii))

Proposed Rule 3150(1)(iii) will require every listed party to “read and *understand* the Conduct and Practices Handbook (CPH) and its updates”. Our members believe that the addition of the word “understand” creates additional complexity and uncertainty and potentially increases the scope of the rule. For instance, is an individual not deemed to have understood the CPH upon passing the exam? Does the Proposed Rule contemplate the requirement of ongoing examinations to ensure individuals understand the updates? Ongoing examinations are not required for other mandatory courses such as the Canadian Securities Course. Unless there are detailed requirements provided on what constitutes “understanding” and how this is to be measured, we recommend that the word “understand” be removed and that the language contained in the current requirement be maintained as the proposed changes will not make the requirement any clearer.

Use of the words “Executive” and “Officer” (Rule 3100 generally)

Members noted that certain rules use the term “Executives” (Rule 3104 and 3150), while others rules use the term “Officers” instead (Rule 3100). If the intention is to distinguish the application of the rule in these instances, members would appreciate an explanation of the policy reasons behind the distinction. Otherwise the use of terms should be consistent.

Proposed Plain Language Rule 3200 (Client Accounts)

Identifying all new clients: “cause for concern” and “reputation of the client” (Rule 3202(1)(i))

Proposed Rule 3202(1)(i) will require each Dealer Member to use due diligence to establish the identity of every new client and, “if there is any *cause for concern*”, the Member is required to “make inquiries as to the *reputation* of the client”. It is unclear what would constitute “cause for concern” and if there were “concerns” what would then satisfy the obligation to make inquiries as to the client’s reputation. Members of our Working Group expressed concern about the standard of care that must be applied to establish that there is a “cause for concern” about a client. Furthermore, by formally requiring Dealer Members to make inquiries as to the reputation of a client, issues with respect to privacy arise depending on the level of detail required and how such information is obtained, documented, used and retained. Further guidance on these issues would be greatly appreciated.

Identifying all new clients: “whether client is an insider of a reporting issuer” (Rule 3202 and 3203)

Both Proposed Rules 3202 and 3203 will require Dealer Members to use due diligence to identify and establish whether clients (including beneficiaries of trust accounts) are insiders or controlling shareholders of a reporting issuer. Proposed Rule 3203 states that the trust account must not be opened until this identification has been made. However, our Working Group has identified types of investments such as GICs that would be appropriate for an insider or controlling shareholder. In such an instance, the account should be permitted to be opened; however, purchases of any equities could be prohibited until the status of the beneficiaries is determined. Additionally, as described below in more detail, this section is inconsistent with Proposed Rule 3222(1) where only the name and address is required to open an account.

Opening trust accounts where minors are beneficiaries (Rule 3203(1))

The Working Group requests clarification as to whether the guidance provided in IDA Member Regulation Notice 0294 issued June 7, 2004 still applies in light of this Proposed Rule. Notice 0294 states that where the risk of improper use of the trust is low and no other means of verification are available (i.e. where minors do not have legal forms of identification), Members may accept assurances from the settlor or trustee as to the identity of the beneficiaries but should carefully document their reasons for so doing.

Potential conflict between Rules 3203, 3204 and 3205

Proposed Rules 3203 (Trusts) and 3204 (Corporations) both state that Dealer Members “must not open an account” unless the Dealer Member identifies the individual beneficiaries or beneficial owners. Yet, Proposed Rule 3205 (Identity Verification) states that the identity of individuals “must be verified as soon as practicable and not more than

six months after the opening the account”. Members have expressed confusion as to whether accounts should or should not be opened prior to identity verification, as these Proposed Rules appear to create conflicting requirements.

Verification of institutional clients (Rule 3207(2))

The Working Group requests clarification as to what inquiries members are required to make to verify that a client qualifies as an institutional client.

A previous sub-committee at IIROC had undertaken extensive work to replace Form 2 with guidelines specific to institutional clients. While the proposal was withdrawn, we understand that guidelines are still being contemplated. As such, the Working Group recommends that this requirement be withheld until changes are finalized with respect to Form 2 (in whatever form it will take for institutional clients) to ensure that the requirements are consistent.

“All other laws and regulations applicable” (Rule 3207(4))

Proposed Rule 3207(4) requires Dealer Members to ensure that all new account documentation meets the requirements of “*all other laws and regulations applicable to the Dealer Member’s business*”. We are concerned that this rule overreaches, far beyond the scope of IIROC’s authority. We recommend that the original language in the last sentence of the current Rule 1300.02(a) be reinstated.

Leverage Risk Disclosure Statement – grammatical change (Rule 3209(1))

Our members have commented that the words “retail client” should be moved from the current location in the text, so that the rule reads:

*“When opening a new account **for a retail client**, prior to making a recommendation to purchase securities using borrowed money...”*

The grammatical change is recommended merely to clarify the requirement. The current drafting appears to indicate that the requirement applies to institutional accounts as well.

Leverage Risk Disclosure Statement – written acknowledgement (Rule 3209(1)(ii))

Obtaining a written acknowledgement of the leverage risk disclosure statement, as envisioned in the Proposed Rule, is impractical and will become very difficult to monitor and supervise. In order to technically comply with this requirement, Dealer Members would need to obtain a signed client acknowledgement every six months. Furthermore, National Instrument 31-103 does not require any type of acknowledgement and for consistency the same requirements should apply under the Proposed Rule. The Working Group would also like to request clarification as to why the current requirement under Dealer Member Rule 29.26(1) which states that the leverage disclosure requirements do not apply to the purchase of securities by a client on margin have not been retained.

Record keeping – specimen signatures (Rule 3220(1)(iii))

The requirement as drafted has caused confusion as to whether the specimen signature is required from *another* authorized person or from the account holder. We would appreciate clarification on this matter.

Account opening procedures – length of time to obtain documents (Rule 3221(2))

The Proposed Rule requires specific actions to be taken “to obtain required documents that have not been received within 25 *or more* business days of opening the account”. We believe that the “or more” should be removed, as its inclusion obviates the need for imposing a time frame for action.

Opening new accounts for spouses of employees of Dealer Members (Rule 3222(5))

Proposed Rule 3222(5) requires Dealer Members to obtain written approval from the client’s employer and to designate the account as “non-client” before opening an account for an employee of another Dealer Member. We request clarification as to whether this requirement also applies when opening accounts for spouses of employees of Dealer Members as under the current definition of “pro” or “non-client”, spouses living under the same roof as the employee would be included.

Verification of “hedgers” (Rule 3259)

The Proposed Rules do not provide a definition of “hedgers”. The Working Group noted that a definition of “hedgers” is included in the *Quebec Derivatives Act*, and it may be helpful to ensure that the definitions of the term are consistent.

Discretionary Accounts (Rule 3272)

The Working Group has concerns with the proposed changes to the discretionary account regime. Specifically, the absolute prohibition on allowing a discretionary account for longer than 12 months is unworkable. Clarification is necessary, because while the Notice specifically mentions the prohibition, the Proposed Rule simply states that the discretionary account agreement will have a maximum term of 12 months but does not prohibit renewal.

In our members’ experience, clients demand flexibility as to how their accounts are managed and how fees are paid. Specifically, they want options to avoid the higher fees that may be charged for managed accounts. By eliminating the possibility of extending the time frame in which a discretionary account can be used, clients who require an arrangement that extends beyond 12 months are forced into a managed account where fees are specified.

The Working Group recommends that no absolute prohibition be placed on a discretionary account. If IIROC must limit a discretionary account to no more than 12

months, we recommend creating the option to allow for hybrid accounts which would in essence allow clients to participate in making their own investment decisions when they wish, yet still enable their advisor to manage the account where the client is unable. The IIAC and our Working Group would be pleased to work with IIROC to create this option and to establish parameters as to when it could be used and how it would be monitored.

Conclusion

The IIAC and our Working Group would be happy to meet with IIROC staff to discuss these issues and how they might be addressed. Please contact the undersigned with any questions or meeting requests.

Yours sincerely,

“Andrea Taylor”

“Deborah L. Wise”