



INVESTMENT DEALERS  
ASSOCIATION OF CANADA

Summer 2005

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# IDA Report

## IDA launches Task Force to Modernize Securities Legislation in Canada

At its Annual Meeting and Conference in Banff, Alberta, the IDA announced the establishment of a Task Force to Modernize Securities Legislation in Canada.

The independent task force of prominent business leaders, securities lawyers, industry professionals and academics will recommend revisions to Canadian securities legislation and regulation to achieve a dynamic, fair, efficient and competitive capital market. With IDA funding of up to \$7 million, the Task Force will examine issues related to investor protection, access to capital, corporate governance, regulatory burden, enforcement, proficiency and registration.

The task force, chaired by Thomas Allen, Ogilvy Renault LLP, includes John C. Coffee Jr., Adolf A. Berle Professor of Law, Columbia University Law School; Donald W. Black, CEO, Greystone Managed Investments Inc.; Jill Denham, former Vice-Chair, CIBC; Tom Kierans, Chairman, CSI; L. Jacques Ménard, Chairman, BMO Nesbitt Burns Inc. and President, BMO Financial Group, Québec; Colleen J. Moorehead, former President, E\*Trade Canada Securities Corporation, Robert J. Pritchard, President and CEO, Taylor Gas Liquids Ltd.; Michael H. Wilson, Chair, UBS Canada Securities Inc. and former Minister of Finance.; and Brian Bayley, President and CEO, Quest Capital Corporation.

Content is fundamental to securities regulation and ultimately more important than structure. Content deals

with the critical issues - balancing investor protection with efficiency and competitiveness, the regulatory burden and its potential anti-competitive implications, harmonization with foreign jurisdictions, regional concerns especially regarding small and medium size enterprises (SMEs), access to capital, risk-based regulation, enforcement policy, governance and consumer redress. Furthermore, content has implications for regulatory structure, since concern about content has to some extent framed the debate about jurisdiction. This is particularly true in the West, where there is an abiding concern that the Federal Government will move to a more intrusive approach, which could disadvantage small issuers.

The project will be neutral in the debate between those who favour a national model and those who prefer a harmonized provincial approach.

The Task Force will address questions such as: Is regulation addressing investors' real concerns? Are voluminous and virtually impenetrable disclosure documents the most effective way to communicate with individual investors? Can enforcement be more effective? Do corporate governance rules have the balance right for small issuers? Should harmonization with the US be more narrowly focused on larger issuers? Are we at the optimal point on the continuum between rules and principles?

*Continued on page 3*

# The President's Report

My role is to review the highlights of the Association's activities and accomplishments during the past year. I am also pleased to acknowledge the contribution of our many industry volunteers and dedicated staff in achieving the Association's mission of protecting investors and fostering integrity and efficiency in the Canadian capital markets.

The past year has been one of extraordinary accomplishment:

- Formal recognition in Québec, as well as in Manitoba.
- The transfer of Member Regulation responsibilities from the Bourse de Montréal, making the IDA the sole member regulator for the securities industry.
- Exceptional enforcement performance.
- A leadership role in regulatory reform, including the launch today of the Task Force to Modernize Securities Legislation in Canada.

We have also responded to investors' increased expectations for protection, restitution and transparent and effective disclosure.

At summer hearings held by the Ontario government Standing Committee on Finance and Economic Affairs, we outlined our consumer redress initiatives, complaint process and enforcement performance. The Senate Committee on Banking, Trade and Commerce also held hearings on consumer issues in the financial services sector, at which we urged support for increased enforcement powers.

An in-depth IDA Regulatory Analysis of Hedge Funds report recommended changes to provide better protection for retail investors. Subsequently, the Senate Committee requested a special presentation on this report. The IDA also participated on the Hedge Fund Market Activity Working group, consisting of representatives from the OSC, Bank of Canada, OSFI, and the Québec Autorité des marchés financiers.

As Canada's front line securities industry regulator we completed a series of strategic initiatives. Last month, we issued the first firm Risk Trend Report cards. Our objective is to improve overall industry compliance, reduce risk and contain the cost of regulation by re-allocating Member Regulation staff from low-risk to high-risk Members. We will track the

effectiveness of this initiative with a new performance measure – "to reduce risk scoring levels with the highest-risk firms progressively over time."

Costs, as you know, have been increasing due to growth in the number of firms and registrants under IDA jurisdiction, more frequent and intense oversight by the CSA, and the ever-expanding content of regulation. The development and implementation of benchmarks and risk assessment models has brought an important discipline to the Association's ongoing effort to contain costs. However, the full cost saving potential of the risk assessment models cannot be achieved without significant additional flexibility in the application of CIPF Minimum Standards.

Members' Educational Seminars, including countrywide seminars on the new Business Continuity Plan by-law, drew record attendance, as did our SRO Conference in Toronto, which was also held for the first time in Vancouver. The Regional Dealers Committee hosted their first highly successful Conferences in Toronto and Vancouver. Advisors' Seminars focusing on business practices to help expand wealth management practices attracted nearly 200 advisors in seven cities.

The Association continued to pursue fair but tough enforcement, holding 75 disciplinary hearings. The market timing cases represent one of the largest and most complex series of cases ever undertaken by the Association. They were completed in record time, while respecting due process and fairness. The Association continued to advocate for additional enforcement powers including the power to compel testimony and documents for investigations and hearings and the power to file IDA Hearing Panel decisions as court orders.

Work has been underway on debt market regulation as well as on a related initiative – planning for recommendations of the Trade Reporting and Electronic Audit Trail (TREATS) Committee. We expect to approve two new debt market standards for institutional and retail clients this year.

We successfully completed introduction of the new CFO qualifying exam, with all CFOs expected to be fully qualified by July 2005. Development of a qualifying exam for Chief Compliance Officers is also well underway.

The efforts of IDA staff and industry volunteers have made a profound contribution to the Fair Dealing Model initiative, as our incoming Chair has detailed in his remarks to you today. This contribution

demonstrates self-regulation at its best — bringing the expertise, practical knowledge and balance of industry professionals to the development of regulatory policy.

Our Capital Markets department represented the industry to the Federal Department of Finance on numerous issues such as RRIF transfers, late reporting of T3s on income trust holdings and proposed amendments to the CBCA, which would have imposed corporate governance standards for federally incorporated companies different than provincial standards. The IDA also provided a submission to the Standing Committee on Industry, Natural Resources, Science and Technology on Bill C-37, the Do Not Call legislation.

New publications were launched: *What's Up*, a new monthly Member newsletter, as well as Investor Information Guides on fixed income investing and retirement planning. An Industry Working Group also developed *Guidelines on How to Choose a Carrying Broker*.

The new CanPX Corporates service was launched late last year and has been expanded in terms of numbers of firms participating and number of securities displayed. Trade information is provided on over 95% of traded activity in designated corporate securities.

The IDA continues to support the Canadian Capital Markets Association in its crucial institutional trade matching initiative.

I want to express my personal appreciation to Brian Porter for his leadership and support. Brian's advice and guidance was always motivated by the public interest. He contributed significantly to achieving the Association's mission and so earned our gratitude and that of the public. I am looking forward to working with Ross Sherwood, our incoming Chair, whose active participation has already contributed to achieving our shared goals.

Finally, I want to thank the hundreds of industry professionals who gave generously of their time to our Board, District Councils and committees. Your expertise and sound judgment represent the value added by self-regulation. You assure that our policies and public positions are principled, practical and broadly representative of the entire membership. You contribute to the strength of the Association and its ability to achieve its mission, in the public interest.

Joseph J. Oliver  
President & CEO  
IDA Annual Meeting & Conference, June 27, 2005

## **IDA launches Task Force to Modernize Securities Legislation in Canada**

*continued from page 1*

The Blue-Ribbon Task Force will hire staff and conduct hearings across the country. It will meet with academics, regulators, governments, individual and institutional investors, intermediaries and other stakeholders. The Task Force will publish its independent findings by Fall 2006. The project will constitute a significant contribution to regulatory reform by providing a direction for policy makers and hopefully become a model for the CSA, the Provincial Council and/or a federal initiative.

This initiative has the potential to form the basis of dynamic, modern securities legislation that draws on the best thinking in regulation and that challenges some fundamental precepts that are no longer functional for the realities of the marketplace and investor behaviour.

For more information, please visit the IDA website at [www.ida.ca](http://www.ida.ca) - Industry Issues & Info, IDA/The Task Force to Modernize Securities Legislation in Canada, to see the Mandate, Terms of Reference and Media Release.

For additional information, please contact:  
Joe Oliver  
President & CEO  
(416) 865-3020 or [joliver@ida.ca](mailto:joliver@ida.ca)

# Incoming Chair's Address

I am honoured to be appointed Chair of the Investment Dealers Association. This is an organization that is playing an essential role in investor protection and providing effective and cost-efficient regulation for the Canadian securities industry. I will do my best to build upon and further the work done by my predecessors.

In the Incoming Chair's Address to last year's AGM, Brian identified the IDA's top priorities: enhancing investor protection; regulatory reform; the fair dealing model; and Québec recognition. Brian has provided leadership and wise counsel on these issues and our record of accomplishment is substantive and impressive. Thank you, Brian.

Over the next year I look forward to working with the many talented individuals who serve on the IDA's Board and Committees. I am looking forward to continuing to work closely with Joe Oliver and IDA staff. We have a full and important agenda and I know I can count on your support and help. Today I want to talk about some of our high-level priorities for the coming year.

We will continue to respond to investors' increasing demands for protection, restitution, transparency and effective disclosure. This morning Joe Oliver identified possible improvements to the financial services industry's ombudsman system as a whole, while reaffirming our full support for OBSI's effective efforts for investors. We currently offer one of the most accessible and comprehensive consumer redress programs anywhere in the world. We continue to increase our efforts to ensure that investors are aware of these options for restitution and redress.

The Fair Dealing Model will also continue to be a key priority for your Association as we build on the substantial progress we have made this year. This progress is due in large part to the outstanding contributions of industry Members – close to 50 individuals from 19 firms devoted enormous time and resources to this critically important project. They demonstrate the strengths of self-regulation: the expertise and understanding that comes from professionals working on the ground.

Fortunately the CSA has recognized the essential role that the IDA and other SROs must play in this initiative.

In an unprecedented move, the CSA selected FDM committee members from the SROs and the industry, as well as the CSA. In fact, Paul Bourque and I have been chairing two of the three committees. The final rule drafting will be done by an IDA and MFDA committee with CSA observers. This will remain a key priority for us next year and I can assure you of my continued involvement.

In my previous role as Vice-Chair of your Association, I served as Chairman of the Regional Dealers Committee, the key forum for the regional independent firms. The Committee appears annually before the CSA to brief regulators on the small firm industry and to discuss issues of regulatory burden and efficiency. The Committee held its first annual conference last year, providing a successful forum for discussion of business strategic issues and regulation. As Chair, I plan to continue my involvement in these important initiatives, many of which are key to efficient delivery of Member services and cost-effective regulation.

There is no doubt the regulatory burden on the securities industry has grown significantly in the past ten years and it's a burden that falls disproportionately on smaller firms. Obviously, no one denies the need for rules, both in terms of high-level statements of principle as well as detailed prescriptions to ensure investors are protected and markets operate efficiently, but the challenge remains to implement only those rules that are really needed and to do so in a way that achieves the intended result.

Over the past four years, the IDA has taken important steps to address this issue, which is a top priority for the Association. I am referring in particular to the leadership role we have taken in implementing risk-based regulation. The fundamental principle of risk assessment is that scarce resources should be allocated effectively to where they are most needed. This approach enhances the quality of regulation while reducing costs of compliance. Last month, we issued the first individual firm *Risk Trend Reports*, (RTRs) – the culmination of three years of work by IDA staff. These reports consolidate information developed from the financial compliance, sales compliance and enforcement risk models. The RTR provides a high level assessment of how the Member firm compares to other firms in its peer group on a variety of risk-based compliance indicators. This initiative will lead to lowering overall industry risk, thus reducing risk to investors and reducing the regulatory burden. At the individual firm level, firms at low risk can look forward to less frequent and less intensive on site examinations by IDA staff.

This is a key initiative that has my full support and I encourage all our Members to assist us in its continuing implementation.

The IDA is a warehouse of regulatory information. More effective knowledge transfer from the IDA to Member firms will increase the level of compliance, reduce risk to the public and enhance the reputation and credibility of the industry. Currently, we transfer regulatory knowledge and expertise to the industry in a number of ways but it's clear that more can and needs to be done by the IDA to fully deliver on this important aspect of its mandate. The most effective knowledge transfer process is a two-way street. The IDA must continue to be proactive in encouraging participation from our Member firms in the rule-making process and seeking feedback on making the compliance process more efficient. The objective should be to achieve the highest standard of integrity through the most efficient regulatory process possible.

I won't address the issue of regulatory reform in any detail. It's a top priority for us and as Joe indicated this morning we are taking a leadership role here. He announced our important initiative, the Task Force to Modernize Securities Legislation in Canada, and proposed other changes including SRO consolidation as did Brian just minutes ago. I want you to know that like Brian, like Joe, I am strongly committed to advancing these very important items. Of particular importance is SRO consolidation. Consolidation would provide clarity; it would streamline; it would create much needed uniformity, and last but not least it would help reduce the weight of regulatory burden on the industry.

We cannot on our own bring about regulatory reform – that is in the hands of governments, commissions and politicians. But it is in our power to alleviate the regulatory burden through consolidation of the SRO system. It's time to show industry leadership and act decisively.

It is clear that we have a full and important agenda. I welcome and solicit your input, your comments and your help. We have much to do and will only achieve our objectives with your support and commitment.

Thank you,

Ross Sherwood  
2005 - 2006 Chair  
IDA Annual Meeting & Conference, June 27, 2005

## 2005-2006 IDA Board of Directors

At the AGM, a number of new directors were confirmed in their appointments.

**Anne-Marie d'Amours**, Capimont Technologies Inc., and **Dr. Daniel F. Muzyka**, University of British Columbia, have been elected for two-year terms as Public Directors. **James C. Baillie**, Torys LLP, and **Michael A. Grandin**, Fording Canadian Coal Trust, have agreed to serve additional two-year terms as Public Directors.

The IDA has recently appointed as Industry Directors **Timothy E. Price**, MacDougall, MacDougall & MacTier Inc., and **Roger Casgrain**, Casgrain & Company Limited. **Frank Laferriere**, Berkshire Securities Inc., has agreed to serve an additional two-year term as Industry Director. **Jane Smith**, Beacon Securities Limited, will join the Board in her capacity as National Advisory Committee (NAC) Chair.

The IDA extends many thanks to the retiring directors for their contributions. They include Public Directors **John L. Howard**, Q.C., and **Alain Rhéaume**; Industry Directors **Dean Manjuris**, BMO Nesbitt Burns Inc.; **Tom Monahan**, CIBC World Markets Inc.; **Gary Reamey**, Edward Jones; **G.F. Kym Anthony**, National Bank Financial Inc.; and NAC Chair **Rob Jennings**, Jennings Capital Inc.

For more information, please contact:  
Ken Nason  
Association Secretary  
(416) 865-3046 or knason@ida.ca

### New Members

The IDA welcomes its newest Member firms:

**SCM Securities LP**  
July 4, 2005

**RSEG Trading Group Ltd.**  
June 9, 2005

# IDA appoints Ross Sherwood as Chair and Ron Lloyd as Vice-Chair



**Ross Sherwood**

The Investment Dealers Association of Canada is pleased to announce the appointment of Ross Sherwood, President & Chief Executive Officer of Odlum Brown Limited, as Chair of the Association. Mr. Sherwood was appointed at the Annual General Meeting and Conference in Banff, Alberta. He previously served as Vice-Chair of the Association and has been a member of the Executive Committee of the Board.

Mr. Sherwood became the President & Chief Executive Officer of Odlum Brown in September 2001. He first joined the Firm in 1967 and has held a variety of positions in Corporate Services, Trading, Retail Sales and Management.

Along with his responsibilities as President & Chief Executive Officer, Mr. Sherwood continues his role as an Investment Advisor, assisting many clients and overseeing a substantial asset base. He is also an active member of the Firm's Board of Directors, Management and Executive Committees.

Under Mr. Sherwood's guidance and leadership, Odlum Brown has celebrated many milestones, including being named one of Canada's 50 Best Managed Companies in 1999 and 2002, and successfully re-qualifying for the award in 2000, 2001, 2003 and 2004. The winning companies are selected based on their "passion to create and retain the right leadership and vision to drive the company forward."

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**Ronald S. Lloyd**

Also at the AGM and Conference, Ronald S. Lloyd was appointed Vice-Chair of the Board of Directors. Mr. Lloyd is Chairman and Chief Executive Officer of Credit Suisse First Boston Canada Inc.

Mr. Lloyd began his career in 1983 in the Global Treasury Area of a major Canadian Chartered Bank. In 1986, he joined Gordon Capital Corporation, an independent Canadian investment dealer, as a partner and director. In 1992 he was appointed head of investment banking. In 1993, he was appointed Co-Chief Executive Officer.

In 1995, Mr. Lloyd joined Midland Walwyn in the Investment Banking Group where he was responsible for the Capital Markets Group, as well as chairing the firm's Underwriting Liability Committee.

From 1997 to 1999, Mr. Lloyd was Executive Vice-President of both Barrick Gold Corporation and TrizecHahn. In this capacity, Mr. Lloyd focused on strategic acquisitions and divestiture opportunities globally, with particular attention to Barrick Gold. Subsequently, for a six year period commencing in 1999, he was President and Chief Operating Officer of Merrill Lynch Canada Inc. and Chairman of the Board of Merrill Lynch & Co. Canada Ltd.

Mr. Lloyd holds an honours degree in Business Administration (HBA) and is a member of the Canadian Institute of Chartered Business Valuators (CICBV). He serves on the Board of the North York General Hospital and is a member of the Hospital's Audit and Governance Committees and is also on the Board of Crescent School.



# New Visions for a Changing World

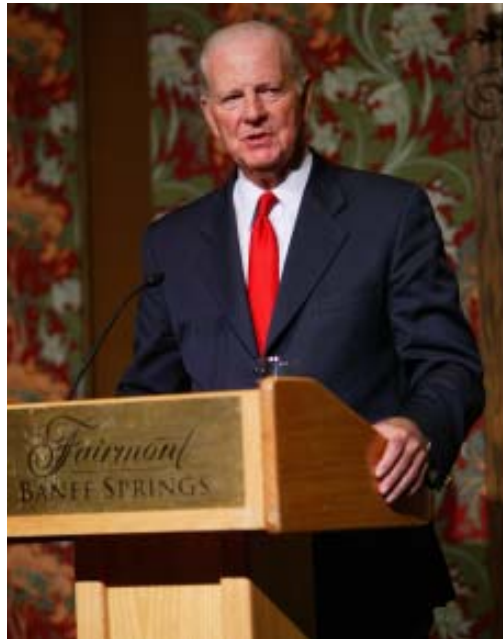
## *IDA 89<sup>th</sup> Annual General Meeting & Conference*

The IDA held its most successful Annual General Meeting & Conference in its ninety-year history, from June 27 to June 29, 2005, at the Fairmont Banff Springs Hotel in Banff, Alberta.

A record number of registrants and sponsors participated in the first fully integrated Industry Education Day, AGM and Conference. Industry Education Day, held on June 26, featured three plenary speakers and a two track program – a program of information and educational seminars directed at investment advisors and senior managers of IDA Member firms.

Plenary session presenters included Ralph Acampora, Director of Technical Analysis, Prudential Securities; Keith Sjogren, Taddingstone Consulting; and Donald Cox, BMO Financial Group/Harris. Other session speakers included Stewart Lee, Lee Training; Dr. Nigel Flook; Nancy Golding, BLG; and Peter Forrester, McCarthy Tetrault. Seminars covered the general areas of capital markets, compliance and firm management. The evening events included motivational speaker DeWitt Jones, renowned National Geographic Photographer.

The Conference featured a China Symposium and an Energy Symposium. The speakers at the China Symposium included David Hale, China Online; Martin Vander Weyer, Business Editor, Spectator Magazine; and James Lindsay, Council of Foreign Relations. The Energy Symposium featured Greg Melchin, Alberta Minister of Energy; Jim Gray, former CEO, Canadian Hunter Ltd.; and Spencer Abraham, former US Secretary of Energy.



**James A. Baker III, former US Secretary of State.**

A highlight of the Conference was the Luncheon Address by James A. Baker III, former US Secretary of State and Advisor to the George W. Bush Administration who spoke on the Canada/US Relationship.

Other speakers included Arnaud de Borchgrave, Center for Strategic and International Studies; Jim Dinning, Chairman of the Board, Western Financial; former IDA Chair, Brian Porter; incoming Chair Ross Sherwood; and IDA President & CEO Joe Oliver.



**From left to right: former IDA Chair Brian Porter, James A. Baker III, and current IDA Chair Ross Sherwood.**

Next year's 90<sup>th</sup> AGM and Conference will be held at the Fairmont Chateau Whistler Hotel, Whistler, British Columbia, June 25-28, 2006.

# Industry Relations & Representation Update

## National Initiatives

### ***Consolidated Reporting of Return of Capital on T3 Slips***

The 2004 Federal Budget required trust issuers to report to their unit holders the portion of their distribution classified as Return of Capital (ROC). In compliance with this requirement, our Members issued T3 slips to unit holders for tax year 2004, which included in Box 42 a consolidated ROC amount from all of the account's income trust holdings. In addition, all clients were provided with a summary information statement which showed the unconsolidated ROC amounts by income trust and by month of receipt.

The Canada Revenue Agency (CRA) has since notified our Members that the current practice of consolidated T3 reporting of ROC does not meet with the government's intended objectives, and requested that future reporting be done on an unconsolidated basis whereby separate T3 slips be provided for each income trust holding per account.

In June 2005, following a meeting with CRA officials, the IDA wrote to the Minister of National Revenue requesting that he not proceed with the proposed changes. Our letter argued that the proposed changes would: 1) impose unnecessary operational costs; 2) would result in additional workloads that would not be manageable within the current, very tight timeframes allowed for T3 reporting; and 3) would result in no incremental benefits in the quantity and quality of information now being provided to clients or the CRA.

Following our submission, the IDA received a reply from CRA acknowledging the difficulties associated with unconsolidated T3 reporting for this item and pledged to work with the industry and the IDA on a solution involving a consolidated T3 with an accompanying table showing the individual trust amounts. CRA officials in the Business Returns and Payments Processing Directorate are currently developing for release in August, detailed instructions for implementing such an approach. The industry will be providing further guidance in the development of these instructions.

### ***T3 Information Reporting Deadlines for Income Trusts and Limited Partnerships***

On a separate, but related T3 reporting issue, IRR has provided the Department of Finance with a proposed solution to the problems faced by our Members caused by late receipt of information required for the production of T3 Supplementaries for income from income trusts and limited partnerships.

The problem relates to the fact that issuers of income trusts and partnerships are presently held to the same reporting deadline for the filing of the information required for the production of T3s, as our Members are for the physical mailout of the information slips to clients.

Between the receipt of the information from issuers and the mailout of the slips, our Members frequently need several weeks to carry out the required manual operations, computer runs, error correction routines, and the printing and mailing of Supplementaries.

Late receipt by our Members of the information required for the production of T3 slips inevitably results in late mailouts, sometimes beyond the mandated March 31 deadline.

To address the problem, the IDA coordinated a joint industry group in June consisting of representatives from investment dealers, IFIC, CLHIA, CAIF and the CBA. Following study of the issue, the group has recommended that the Department of Finance change the Income Tax Regulations to require issuers of business income trusts and partnerships to report their annual income allocations by February 28 and to require investment trusts, (those trusts that invest in business income trusts), to report their income allocations by March 7. These proposals, currently under review by the Department, have broad financial sector support, and, if adopted, will go a long way to improving client service in this area.

### ***Opening Your Account Brochure***

In conjunction with Member Regulation, IRR is developing an "Opening Your Account" brochure. The brochure is intended to be used by firms and investment advisors to educate clients about the requirements for account opening. Association staff understood that Member firms often get queries from clients as to the information required on account opening documents.

It is intended that the brochure be IDA branded; that it be available on the IDA website; and be available for purchase by Members at cost for distribution to clients, should they wish to do so. The brochure will be available in Fall 2005.



### ***Fair Dealing Model (FDM)***

The newly created CSA Registration Reform website is now live. For more information, please visit the website at [www.rrp-info.ca](http://www.rrp-info.ca). Information on the FDM will be posted on the website.

The FDM Working Groups' direction documents have been finalized. Recently, staff representatives from the IDA, MFDA and CSA met to discuss next steps with respect to the SRO Rule Drafting Group. IDA staff are currently working to develop the drafting group, which will include Member volunteers.

### ***Draft Bill C-37 - Do Not Call Legislation (the Bill)***

The Standing Committee on Industry, National Resources, Sciences & Technology have had a number of meetings to discuss the Bill and have agreed on certain amendments. The Committee reported the Bill, with amendments, including the exemption for established business relationships, to the House on June 13. However, the Bill was not considered or read a second time before the House rose for the summer on June 28 because of the higher priority debates that were also scheduled for the end of the session.

It is anticipated that the Bill will be brought before the House in the fall and will be implemented in mid to late 2006.

For more information, please contact:

Ian Russell

Senior Vice-President, IRR

(416) 865-3036 or [irussell@ida.ca](mailto:irussell@ida.ca)

## **The Regions Report**

### **Pacific Region**

#### ***Pacific District Council***

The Pacific District Council elected Elizabeth Petticrew, BMO Nesbitt Burns, as Vice-Chair. Bert Quattrociochi, Pacific International Securities Ltd., is the 2005-2006 PDC Chair. The PDC also elected its committees for the 2005 - 2006 year:

#### Member Regulation Committee (Registration)

- Bert Quattrociochi, Chair, Pacific International Securities Ltd.
- Chris Oosthuizen, RBC Dominion Securities
- John Thompson, Union Securities
- Dean Freeman, Scotia Capital
- Gord Medland, Leede Financial

#### Corporate Finance Committee

- Bert Quattrociochi, Chair, Pacific International Securities Ltd.
- Frank Sullivan, Canaccord Capital
- Mike Scott, Raymond James

#### Hearing Committee - Nominating Committee

- Bert Quattrociochi, Chair, Pacific International Securities Ltd.
- Elizabeth Petticrew, Vice-Chair, BMO Nesbitt Burns
- David Schneider, PDC, Wellington West

#### Hearing Committee Appointments (*effective 10/1/2005*)

- Six Public Members
- Nine Retired Members
- 11 Industry Members

#### Continuing Education Committee

- Elizabeth Petticrew, BMO Nesbitt Burns
- Barbara Simpson, Rogers Group Financial
- Lothar Fabian, Credential Securities

### ***2006 Annual Conference Planning Committee***

The 2006 Annual Conference Planning Committee is comprised of Ross Sherwood, Odlum Brown Ltd.; Bert Quattrociochi, Pacific International Securities Ltd.; Daniel Siu, Golden Capital Securities; Rob Blanchard, Haywood Securities Inc; and IRR staff Ian Russell, Glenn Knowles, Richard Korble and Eileen Brady.

At the 2005 Annual Meeting & Conference in Banff, Alberta, postcards were given to delegates announcing the conference theme "*The New Canada*", date (June 25-28, 2006) and venue (Fairmont Chateau Whistler, BC). In keeping with IDA tradition, the committee accepted

the IDA flag from the 2005 Annual Conference Planning Committee from Alberta. Work is well underway to identify speakers, activities and events, and the conference program will be as robust as the Banff conference.

### ***Broker Liability Seminar – June 8, 2005***

We hosted a two-hour Broker Liability Seminar for Investment Advisors and their Assistants, which was attended by 94 people. The co-presenters were Deborah Armour, Senior Vice-President & General Counsel, Raymond James Ltd.; Dean Holley, President, CMC Capital Markets Consulting Corp.; and Gary Snarch, Barrister & Solicitor, Snarch & Allen. Attendees earned two CE Compliance credits.

### ***BCSC's "Investigate Before You Invest"***

Glenn Knowles, Pacific Regional Director, attended presenter training at the British Columbia Securities Commission for their revised investor protection series, "Investigate Before You Invest" (IBYI). Glenn co-presented the seminar at a recent meeting of the White Rock/Peace Arch Rotary Club, attended by 40 people. The BCSC's program is presented to community groups throughout the year and focuses on educating investors on the Commission's role and how consumers can protect themselves from investment fraud. Glenn explains the IDA's role, the benefits of investing through an IDA Member firm and the various forms of consumer redress available to consumers. Last year the IBYI program was presented to over 130 groups across the province.

### ***Capilano College – School of Commerce***

On June 22, Glenn Knowles addressed a commerce class at Capilano College. Glenn spoke on the industry's regulatory structure, the role of the IDA, the disciplinary process and consumer redress.

### ***Canadian Payments Association Conference***

A member of the Stakeholder Advisory Council, Glenn Knowles attended the CPA's Biennial Conference, held in St. John's, Newfoundland from June 15 to 17. The program focused on the changes in the electronic payments sector, both nationally and internationally. However, there were also sessions applicable to the securities industry on Canada-US cross-border payments and money laundering, reporting obligations from the US Office of Foreign Assets Control, money laundering and straight-through processing.

For more information, please contact:  
Glenn Knowles  
Pacific Regional Director  
(604) 331-4797 or gknowles@ida.ca

## **Prairie Region**

### ***Manitoba District***

The Manitoba District played host to the IDA Executive during their annual visit to Manitoba in May. While in town the Executive attended the MDC Annual Meeting and Recognition Function, and met with both the Manitoba Securities Commission and Finance Minister Greg Selinger. In addition, the IDA hosted a successful business leaders dinner.

The Annual Recognition Function was again a great success. This year featured two speakers, Winnipeg Mayor Sam Katz and IDA President & CEO Joe Oliver, who addressed about 100 members of the local brokerage community. As is customary, recognition was given to those individuals passing industry classes in the past year. Special recognition was paid to distinguished retirees from the business and to individuals who had volunteered in the Junior Achievement Dollars and Sense program as session teachers.

The MDC also hosted their annual charity golf tournament. Funds are raised on behalf of the Manitoba Children's Hospital. The final tally is still pending but several thousand dollars have been raised.

### ***Saskatchewan District***

The IDA Executive traveled to Regina and Saskatoon in May for their annual visit to the province. In addition to attending the annual meeting and industry luncheon, the Executive also met with the Saskatchewan Financial Services Commission and the Provincial Ministers of Justice and Finance.

The SDC is planning to host another compliance CE Session this Fall. Further details will be released once the dates are finalized.

### ***Alberta District***

The Alberta District was pleased to host the IDA Annual Meeting & Conference June 26 to 29 in Banff, Alberta. The conference was a huge success!

The ADC also staged its Annual Meeting and Reception in May. In June, the ADC hosted Alberta Finance Minister Shirley McClellan for the annual Minister's Dinner.

For more information, please contact:  
Terry Melling  
Prairie Regional Director  
(403) 260-6278 or tmelling@ida.ca

## Ontario District

### **Ontario District Council 2005-06**

On May 19, the Ontario District held its 2005 Annual Meeting. At the meeting, Ronald Mock, Vice-President, Alternative Investments, Ontario Teachers Pension Plan, spoke on hedge fund trends.

Additionally, at the meeting the 2005-2006 Ontario District Council was elected. The ODC's members are:

- Chair, Duncan Webb, Credit Suisse First Boston Canada Inc.
- Vice-Chair, Terrence Hetherington, Raymond James Ltd.
- Past-Chair, Daniella Dimitrov, Dundee Securities Corporation
- Brad Aulthouse, BMO Nesbitt Burns Inc.
- Terry Bourne, Penson Financial Services Canada
- Scott Bowman, Edward Jones
- Henrik Bruusgaard, First Associates Investments Inc.
- Loretta Carbonelli, M Partners
- Greg Davies, ITG Canada Corp.
- Keith Harris, Westwind Partners Inc.
- Gavin Higgs, RBC Dominion Securities Inc.
- Michael Konopaski, Money Managers Inc.
- Lisa Langley, First Asset Advisory Services Inc.
- Mark Lyon, Richardson Partners Financial Limited
- John Morton, Scotia Capital Inc.
- Derek Nelson, McFarlane Gordon Inc.
- John Rothwell, Wellington West Capital Inc.
- Chris Salapoutis, Orion Securities Inc.

At the meeting, attendees expressed their appreciation to Daniella Dimitrov, the outgoing ODC Chair, for her dedication and hard work on behalf of the Council and the District.

For more information, please contact:  
Morag MacGougan  
Vice-President, Industry Relations & Representation  
(416) 943-6991 or mmacgougan@ida.ca

## Atlantic Region

On June 2, the TSX Venture Exchange visited Halifax to introduce the financial community to the Province of Nova Scotia's recently announced rules permitting access to the Exchange's Capital Pool Company Program. The CPC program is designed to match experienced investors with entrepreneurs whose companies require capital and public company status. The defining quality of such a company is that it initially has no assets other than cash, and no commercial operations; it uses these funds to

purchase an exchange-qualified company in what is referred to as a "qualifying transaction."

Recently, the Nova Scotia Minister of Environment and Labour introduced changes in the Province's *Securities Act* that will provide the NSSC with increased powers of compliance and enforcement. The measure further harmonizes the commission's powers with those of other provinces.

On June 13, Maysar Al-Samadi, Vice-President, Professional Standards, held a Business Continuity Planning Seminar for IDA Member firms located in Atlantic Canada. With the assistance of representatives from Sungard and Telus, Maysar was able to answer many of the "what if" questions related to disaster recovery.

For more information, please contact:  
David Beazley  
Atlantic Regional Director  
(902) 423-8289 or dbeazley@ida.ca

## FAS Annual Conference 2005

**September 22 to 25, 2005**  
**Vancouver, British Columbia**

From September 22 to September 25, 2005, the Financial Administrators Section (FAS) of the Investment Dealers Association of Canada will be holding its Annual Meeting and Conference at the Fairmont Hotel Vancouver in Vancouver, British Columbia. The Conference is the largest annual gathering of senior financial and operations decision-makers in the Canadian securities industry. This IDA event brings together an array of senior financial officers, chief administrative officers, chief operating officers, chief financial officers, directors and vice presidents of finance and operations.

To register, please visit the What's New page on the IDA website at [www.ida.ca](http://www.ida.ca) and click on the FAS Conference 2005 button.

For information on the Conference business, speakers program and more, please contact:  
Richard Corner  
Vice-President, Regulatory Policy  
(416) 943-6908 or rcorner@ida.ca

# The Committees Report

## Capital Markets

The Capital Markets Committee met on three occasions in the second quarter of 2005. Key items on the Committee's agenda during the quarter included the OSC's Concept paper on Best Execution and Soft Dollars, data issues concerning the Market Trades Reporting System, Policy 5 revisions, and a presentation from Fimat Canada clarifying the firm's business model in the Canadian cash market. The Canadian Security Calculation Standards Sub-committee, a subcommittee of the CMC, was struck during the quarter with a mandate to document existing conventions for the calculation of market prices, accrued interest and interest payable for Canadian fixed income securities. The Sub-committee is due to report back to the CMC with recommended standards by the end of October 2005.

For more information, please contact:  
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Director, Capital Markets  
(416) 943-5787 or [jcockerline@ida.ca](mailto:jcockerline@ida.ca)

## Compliance and Legal Section

### ***IOSCO Report - Compliance Function at Market Intermediaries***

The IDA was responsible for coordinating a response on behalf of the SRO Consultative Committee (a committee of IOSCO) on the IOSCO publication "*Compliance Function at Market Intermediaries*". Anyone interested in obtaining a copy of the Committee's response can contact Deborah Wise for further information.

### ***Incorporation of Sales Persons***

A subcommittee has been working on preparing a By-law with respect to incorporation of sales persons as an alternative business structure to that of employer/employee or principal/agent. The draft By-law will be presented to the Compliance and Legal Section at the September meeting.

### ***Client Brochure - "Why Your IA Requests Certain Information"***

The IDA is in the final stages of branding its brochure aimed at retail clients to explain why the IA/firm requires certain information, such as picture ID and SIN.

The Concept has received support from the CLS Executive, the Retail Sales Committee and the Regional Dealers Executive.

For more information on these issues or the work of the section and its standing committees, please contact:

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(416) 943-5885 or [malexander@ida.ca](mailto:malexander@ida.ca)

Deborah Wise  
Legal and Policy Counsel, Regulatory Policy  
(416) 943-6994 or [dwise@ida.ca](mailto:dwise@ida.ca)

## Corporate Finance Committee

The Corporate Finance Committee is striking a task force to re-consider the Syndicate Practices Handbook over the summer. The newly created Due Diligence Guidelines form a part of the revisions to the Handbook.

For more information, please contact:  
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(416) 943-6991 or [mmacgougan@ida.ca](mailto:mmacgougan@ida.ca)

## Incorporation of Individuals

The Incorporation of Individuals Working Group has determined that it would be useful to meet with the CSA Registration Reform Committee, before the By-Law is to be presented to the Board. The draft By-Law will therefore be presented to the October Board, at the earliest.

For more information, please contact:  
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(416) 943-6991 or [mmacgougan@ida.ca](mailto:mmacgougan@ida.ca)

# Controlling the Cost of Regulation

## Part II – Strategic Use of Enforcement

In Part I of this series, proper allocation of rule making responsibility was discussed as a technique to reduce unnecessary rules and the regulatory burden. In Part II, the bias of regulators for rule making to address market problems will be examined as another aspect of unnecessary rules and regulatory burden. The strategic use of enforcement should be considered by regulators to reduce the number of unnecessary rules.

### Reactive Rule Making

Regulators have understood their role primarily as standard setters – providing the antecedents to compliance. The critical function of imposing consequences for compliance failure has traditionally taken a back seat to rule making. The great majority of regulatory resources, staff and attention are directed to analysis, development and implementation of new standards. While regulators maintain enforcement capability, typically this represents less than 20 per cent of the organizations' overall budget.

Regulatory bias for new rules to solve regulatory problems should come as no surprise. Governments have built regulatory organizations which are designed to respond to regulatory problems in precisely this way. For example, regulators responded to the Bre-X fraud with rule making taskforces that produced more rules.<sup>1</sup> The paradox is that the new rules were premised on voluntary compliance but Bre-X was a deliberate fraud.

Making rules that assume voluntary compliance in response to deliberate fraud is common but not unique to Canada. In an article entitled "Does Regulation Make it Worse?"<sup>2</sup> David Jackman describes rule making as a stop-go reactivity to specific crisis:

*"Taking a broad view of regulation it seems, new regulations have been born and rules introduced in response to specific crisis and concerns, sometimes at the behest of politicians and at other times arising from problems emerging in the market itself....."*

*The growth of regulation is consequently fitful and sporadic, with only the briefest periods of stability interspersed by phases of rapid growth, some might even say turmoil. The structures that emerge therefore seem somewhat impermanent and haphazard despite the*

*opportunity for clean-sheet starts and blue-sky thinking. The reason coherence has been so difficult to deliver is, I believe, the failure to give long and deep thought to what exactly it is that regulation is supposed to deliver. What precisely are the outcomes we are all looking for? What could or should the world look like after it has been regulated?"<sup>3</sup>*

The inevitable consequence of rules that respond to crisis, as Jackman points out, is a deflection from the question, – "What exactly it is that regulation is supposed to deliver. What precisely are the outcomes we are all looking for?" In the absence of such reflection, we have an ideal environment for the creation of unnecessary rules.

An important factor that supports the regulators' bias for rules is the relentless pressure from market participants themselves who insist that regulators provide detailed and prescriptive rules for every business or trading strategy imaginable and even for some business practices which have not been imagined.<sup>4</sup> This tendency reinforces the abdication by the firm of responsibility for ensuring its own policies achieve ethical and competent behavior by its own employees. As long as the regulators provide detailed prescriptive compliance recipes, the firm's compliance staff will be engaged supervising those detailed recipes. They will be diverted from their real job which is exercising their own discretion and professional judgment about what is right and wrong as opposed to what is against the rules and what they can get away with.

The risk of over-reliance on stop-go standard setting is well described by Peter M. Senge:

*"The long term, most insidious consequence of applying non-systemic solutions is increased need for more and more of the solution. This is why ill-conceived government interventions are not just ineffective, they are 'addictive' in the sense of fostering increased dependency and lessened abilities of local people to solve their own problems. The phenomenon of short-term improvements leading to long-term dependency is so common, it has its own name among system thinkers – it's called 'shifting the burden to the intervener'."<sup>5</sup>*

Regulators should not bend to the pressure from market participants to "show me the rule." In doing so they let market participants off the hook for dealing with their problem employees by blaming the scandal on a lack of rules. Market participants understand more clearly than regulators the problems they face and likely know best how to fix them. Regulators should make firms responsible for this and make them do it.

## **The Strategic Role of Enforcement**

Most of the recent public scandals from Bre-X to Enron to Parmalat involve deliberate fraud or at least an uncontested breach of a current well understood regulatory or accounting standard. Why, then, is the response biased in favor of more rules?

The reason for this it seems, in part at least, is that those who craft the rules do not always appreciate the strategic role of enforcement. Enforcement is inevitably a backward looking exercise. Critics have used this orientation to argue that enforcement has not proven reliable in delivering consequences for fraudulent behavior; that it has been a story of too little, too late, when it occurs at all. That, of course, is not an argument to ignore the strategic role of enforcement in the rule making process but rather to make the enforcement effort more effective. It is certainly not an argument to shore up an anemic enforcement effort by adding more rules or hiring more staff to write them. Rather, it is an admonition to management or the regulatory agency to promote a more robust enforcement capacity and a leaner, more comprehensible set of rules.

We all acknowledge that rules will not prevent deliberate misconduct. At best, rules can assist in the detection and investigation of deliberate misconduct after it has occurred. They provide hooks upon which administrative enforcement action can be justified. For example, regulation frequently requires market participants to provide information. None of this, however, is of much assistance if the information is false and that, of course, will never be known until after the harm is done. Given this reality, it is counter-productive to create additional rules to reduce the risk of deliberate dishonesty.

## **Some Concluding Thoughts on the Regulatory Burden**

It is certainly not the case that regulators have been indifferent to the increasing regulatory burden. For example, the IDA commissioned a Red Tape Review Project which provided a report to the Board in January 2002. The OSC initiated a Regulatory Burden Task Force which reported to the Commission in December 2003. Although both reports produced some useful recommendations, the overall reduction in the regulatory burden was marginal. A few branches were pruned but the great forest of regulation remained essentially untouched.

Conventional attempts have been ineffective because they assume the value of regulators providing not only regulatory outcomes but also large volumes of detailed prescriptive rules explaining how market participants are to achieve those outcomes. There is a strong bias

for rules to solve every regulatory problem. Conventional red tape reduction exercises do not question the assumptions that give primacy to rule making or the current allocation of rule making responsibility. If previous attempts to reduce the regulatory burden by examining each rule have demonstrated anything, it is that nearly every rule no matter how obscure or outdated will have an advocate among market participants, regulators, the public or all three.

Of equal importance is a change in the culture at regulatory agencies. When faced with a new regulatory problem, regulators must look for a solution without a bias in favor of prescriptive rules. Regulators should resist the temptation to assume the responsibility for those aspects of compliance that properly belong to market participants by writing ever more prescriptive rules for them. Existing rules should be enforced with at least as much enthusiasm as writing new ones. The strategic use of enforcement should assist in reducing the regulatory burden.

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## Footnotes

<sup>1</sup> The Mining Standards Task Force and the Securities Industry Analyst Standards Task Force.

<sup>2</sup> Journal of Financial Regulation and Compliance, Vol. 12 No. 2 2004 pp.106-110

<sup>3</sup> David Jackman, Does Regulation Make It Worse?, Journal of Regulation and Compliance, 2004 Vol.12 Number 2 p.107

<sup>4</sup> I have discussed this somewhat contradictory behavior in a previous contribution to the Investment Executive; "Evaluating Right vs. Wrong - The market timing issue shows why increased regulation is the flip side of unprincipled behavior" - Investment Executive, mid January, 2005

<sup>5</sup> Peter M. Senge, The Fifth Discipline: The Art and Practice of the Learning Organization (Doubleday, 1990), p.58

For more information, please contact:  
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(416) 865-3038 or pbourque@ida.ca

# Hedge Funds Report

On January 19, 2005, the IDA's Member Regulation Oversight Committee asked that IDA staff study hedge fund activity in Canada, particularly the activity of Member firms and their affiliates. The objective was to identify any weaknesses in the securities legislation and regulations governing this area.

The result of that study, *Regulatory Analysis of Hedge Funds*, was released on May 27, 2005. The report includes the characteristics, history and size of hedge funds in Canada; a review of securities laws and regulations relating to the exempt market; hedge fund investment strategies; a review of principal-protected notes; a review of IDA margin rules as they relate to hedge fund products; a discussion of regulatory and compliance issues; and recommendations.

The report found that there has been explosive growth in hedge fund assets under management in Canada, in large part because of increased distribution to retail investors. This widespread move into retail distribution raises serious concerns in several areas, including the applicability of securities laws exemptions; marketing practices; conflicts of interest; levels and transparency of fees; and disclosure of hedge fund operations and financial affairs.

In one of his last speeches as Chair of the IDA, Brian Porter told The Canadian Club that the strengths of self-regulation, particularly flexibility and responsiveness to innovation, are evident in *Regulatory Analysis of Hedge Funds*. By drawing on the industry's expertise, the IDA was able to study an emerging concern and quickly make recommendations to deal with that concern before it becomes a crisis.

The report sets out an action plan for the IDA, including five recommendations (see sidebar) for immediate action, and calls for a review of provincial laws and regulations to bring hedge fund products being offered to the retail investor fully within the regulatory system.

The report's release was very timely; it came out shortly after the Portus affair made headlines, and coincided with a *Globe and Mail* three-part special report on hedge funds. On June 8, 2005, the IDA's Paul Bourque and Louis Piergeti appeared, by invitation, before the Standing Senate Committee on Banking, Trade and Commerce to present the findings of the report. Since the release, the IDA has also met with an OSC working group concerned with this issue.

Their presentation, as well as the report itself, can be found on the IDA's website at [www.ida.ca](http://www.ida.ca).

## Recommendations of the *Regulatory Analysis of Hedge Funds*:

1. Re-issue the advisory to all Members reminding them of the prohibition of "off-book" transactions.
2. Issue industry guidelines as to acceptable practices for referral agreements.
3. Issue an advisory to all Member firms as to their responsibility to conduct due diligence on recommended products.
4. Review guidelines or standards regarding disclosure, conflicts of interest and internal controls for IDA Members acting as manufacturer, advisor and distributor of hedge funds or public mutual funds and determine whether such standards need amendment.
5. Restrict IDA Members from conducting securities-related activities in an affiliate with a limited market dealer registration when such activities could be conducted by the Member.

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# Risk Trend Reports

Member Regulation has developed risk-based methodologies that permit the allocation of scarce resources where they are most needed. This approach enhances the quality of regulation while reducing costs of compliance. In May, Member Regulation began issuing the first individual firm *Risk Trend Reports*, (RTRs) – the culmination of three years of work by IDA staff. The remaining reports will be issued in the coming months.

These reports consolidate information developed from the Financial Compliance, Sales Compliance and Enforcement risk models. Each RTR identifies key factors in a firm's risk assessment and makes specific recommendations, if needed. Circulation of the RTR is restricted and can only be accessed or used by the Member firm, the Member firm's panel auditor and regulators.

More detailed information about the risk assessment models, including criteria and weightings, is available on the IDA's website, at [www.ida.ca](http://www.ida.ca), under Regulation.

The RTR is not intended to replace the current on-site compliance examination process, nor is it intended to be another compliance program. Rather, it is intended to provide a Member with a credible high-level assessment of how it is doing in relation to its peers, along with recommendations as to how it can reduce its risk profile.

This initiative will lead to lowering overall industry risk, thus reducing risk to investors and reducing the regulatory burden. At the individual firm level, firms at low risk can look forward to less frequent and less intensive on-site examinations by IDA staff.

For more information, please contact:  
Louis Piergeti  
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(416) 865-3026 or [lpiergeti@ida.ca](mailto:lpiergeti@ida.ca)

# Panel Auditors Seminars

Every year, the Financial Compliance Department hosts seminars in Toronto, Montréal and Calgary or Vancouver, to update the panel auditors of Member firms on the latest trends in the industry. Presentations from IDA staff cover recent regulatory developments and audit-related issues that should be considered in the planning and execution of annual regulatory audits of Member firms. Minimum standards set by the Canadian Investor Protection Fund require that these seminars be held annually.

## **Montréal Panel Auditors Seminar**

October 18, 2005

Omni Hotel

1050 Sherbrooke West

Montréal, Québec

Contact for Information/Registration: Isabelle Perron  
(514) 878-2854

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## **Vancouver Panel Auditors Seminar**

September 21, 2005

Morris J. Wosk Centre for Dialogue

580 West Hastings Street

Vancouver, BC

Contact for Information/Registration: Christine Pollitt  
(604) 331-4770

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## **Toronto Panel Auditors Seminar**

September 8, 2005

TSX Conference Centre

130 King Street West

Toronto, ON

Contact for Information/Registration: Heather Barclay  
(416) 943-6931



# Business Continuity Planning for IDA Members

On June 19, 2005, CSA members approved By-law 17.19, requiring IDA Members to have in place Business Continuity Plans (BCP) that would deal with significant business disruptions (SBD). The IDA Board of Directors had approved the By-law on June 13, 2004. A notice to Members is being issued granting Members twelve months to comply with the By-law requirements.

The objective of the By-law is for Members to have the capacity to operate to an agreed level of business activity that meets their legal, fiduciary and regulatory obligations and their commitments to their customers. At a minimum, Members will be required to facilitate client access to their assets within 48 hours following a SBD. Access to assets means the ability of the clients to buy, sell or redeem securities and have assets (including funds) delivered out based on clients' instructions.

The IDA has developed BCP Plan Development Guidelines and a comprehensive checklist that Members can use in developing their plans, appreciating that such plans would be unique for the individual Member. IDA staff has also drawn up a BCP template for IDA introducing brokers, which has been approved by the BCP Subcommittee and has been posted on the IDA website.

Except for Introducing Members where IDA staff will review their BCPs, a third party independent review of the plans will be required from all other Members. The independent reviewer can be panel auditors or other BCP consultants and all such reviewers will have to be approved by the IDA. The IDA's BCP Committee will develop criteria for approving reviewers and requests for reviewer approval must be submitted by the Members.

All plans must be reviewed and reported to the IDA once they are completed and tested and every third year thereafter, except where there have been material changes in the business environment or systems of the Member where another review will be required to be done in the year of the change. The Members will be required to test their plans at least annually and have them approved by senior management. Plans must be kept up to date at all times. IDA staff may review the plans at any time.

In the first half of 2005, the IDA arranged for SunGard and Telus to hold technical BCP education sessions in Vancouver, Calgary, Winnipeg, Toronto, Montréal and Halifax in an effort to help Members comply with the By-law requirements. The sessions were well attended and all presentations have been posted on the IDA website.

As part of the same initiative, the IDA has assumed responsibility for setting up a Crisis Communication Centre, which will be used as a communication hub to establish and maintain communication with IDA Members in case of a SBD. Should a significant SBD occur, the IDA will collect information from the major sources we have identified earlier and disseminate such information to Members in a timely fashion.

The sources will include IDA Members, Government Departments, the Clearing Corporations, Stock Exchanges, the Bank of Canada, significant service providers, etc. For this purpose, the IDA has set up a Members' only website which will be used for communicating with Members and other entities. A core Crisis Communication Group has been set up representing the industry and the IDA and a Procedures Manual for the Centre has been completed and posted to the IDA website.

Login names and passwords have been issued to Members and other entities participating in the Members' Only section of the IDA website.

For more information, please contact:  
Maysar Al-Samadi  
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(416) 943 6902 or [malsamadi@ida.ca](mailto:malsamadi@ida.ca)

# The OSC's Investor Town Hall

On May 31, the IDA participated in the OSC's Investor Town Hall at the CBC Atrium in Toronto. Over 400 investors participated in the two-hour long dialogue with panelists David Brown, Joe Oliver, Larry Waite, Ombudsman Michael Lauber, and Stan Buell, President of the Small Investor Protection Association (SIPA).

The OSC's objective in holding the Town Hall was to hear the concerns of investors and listen to their suggestions as to how the system could be improved.

Panelists were allowed two-minute opening remarks, following which the floor was opened to questions moderated by CBC Journalist Mike Hornbrook, columnists James Daw (Toronto Star) and Linda Leatherdale (Toronto Sun).

IDA Enforcement, Investigations and Complaints staff, including Alex Popovic, Vice-President, Enforcement; Jeff Kehoe, Director, Enforcement Litigation; Mike Haddad, Director, Investigations; and Kim Lucas, Manager, Complaints, attended at the IDA booth to respond to questions from individual investors, while Public Affairs staff distributed IDA materials on consumer redress options, information services and the complaints process.

Debate and discussion focused principally on the merits of current restitution programs (including OBSI and arbitration) and recent changes to the Ontario Statute of Limitations - reducing time limits from six years to two years for initiating civil actions. Panelists encouraged attendees to take their complaint to the regulators or to use the services of OBSI.

In his closing remarks, Joe Oliver identified new ideas that the IDA will pursue in the next few months. They include:

- Providing through the Fair Dealing Model, a more user-friendly account-opening document, greater clarity about fees and investment performance on account statements.
- Modifying the IDA's consumer protection brochure to alert investors about the changes to the statutes of limitations.

- Pursuing the ideas outlined in the IDA's hedge fund report designed to protect retail investors.
- Convincing governments to create special courts for white-collar crimes and toughen the parole laws.
- Pursuing new enforcement powers to gather evidence and collect fines from individuals who have left the industry.

In late June, the OSC issued a report on the Town Hall titled *What We Heard: A Report on the Ontario Security Commission's Investor Town Hall*, which is available on their website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). The contents of the report include a Message from David Brown and panelists Joe Oliver, Larry Waite, Michael Lauber and Stan Buell; an Event Overview; Audience Feedback; Major Themes; Our Commitment; and Appendices, including Compensation Options, Regulatory Review and additional information on the OSC, IDA, MFDA, the Ombudsman for Banking Services and Investments (OBSI) and SIPA.

To view Joe Oliver's opening and closing remarks, please go to the IDA website at [www.ida.ca](http://www.ida.ca)

For more information, please contact:  
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# Regulatory Update

## New Rules Now In Effect:

The Association has implemented changes to By-law 2.4 – Membership. The amendment places a time frame around the membership application process. The amendment seeks to require the process for membership be completed within a six-month time frame. The amendments were made effective July 22, 2005 through the issuance of IDA Bulletin #3444.

The Association has implemented changes to the Business Continuity Planning. Given the complex interdependencies of the markets, there is a potential for a sudden business disruption to cascade into a significant market-wide crisis. This issue has become a major concern for the securities industry and the subject of much discussion, both nationally and internationally, particularly in response to the serious new risks posed in the post-September 11<sup>th</sup> environment. By-Law 17.19 requires Member firms to have adequate preparations in place to deal with significant business interruption scenarios and to be able to resume service within an acceptable period of time. The amendments were made effective July 22, 2005 through the issuance of IDA Bulletin #3442.

## Upcoming Rule Changes:

Rules that will become effective in the coming months include:

*Supervision of Branch Offices:* Proposed amendments to By-law 4.6 and Regulation 1300 were designed to permit Member firms to appoint supervisors of non-retail branch offices without requiring that they be registered as branch managers and meet branch manager proficiency requirements designed for retail accounts supervision. The specific changes proposed did not interact well with requirements in several CSA jurisdictions. Proposed amendments to By-law 4.6 and Regulation 1300 have been withdrawn, and a proposed amendment to By-law 4.9, which will achieve the same goal, was approved at the October 2004 Board and has been submitted to the securities commissions for approval.

*Board of Directors, National Advisory Committee and Meetings:* Proposed amendments to By-laws 10.1 and 10.4 seek to eliminate the mandatory requirement that at least two-thirds of the Board be comprised of industry

directors and in turn facilitate an increase in the proportion of public directors. The amendment will also reduce the number of members needed to form a quorum of the Board from nine members to seven members. The proposed amendments were approved at the June 2005 Board Meeting and have been submitted to the securities commissions for approval.

*Conflicts of Interest and Client Priority:* The IDA is currently reviewing the proposed conflicts of interest rule as a result of comments from some Member firms.

*Capital and Margin Requirements for Money Market Mutual Funds:* Regulation 100.2(f)(ii) currently treats securities of mutual funds qualified by prospectus for sale in any province of Canada on the same basis as listed stocks. However, in the case of money market funds, this requirement is overly conservative as the underlying securities to such funds are inherently less risky than listed stocks. In addition, the MFDA rules already recognize the lower risk associated with money market mutual funds by assigning a 5% margin requirement to such funds. Proposed Regulation 100.2 will permit Member firm account and customer account positions in money market mutual funds, as defined in National Instrument 81-102, to be margined at a rate of 5%. The amendment was approved at the June 2004 Board and has been submitted to the securities commissions for approval.

*Margin Treatment of CNQ Exchange Traded Securities:* The OSC has recently recognized the CNQ as a recognized stock exchange in Canada; therefore its securities will automatically become eligible for margin. CNQ quoted issuers are mostly emerging companies and the minimum listing standards of the CNQ are lower than the minimum standards for issuers listed on the Toronto Stock Exchange or the TSX Venture Exchange. Due to the lower minimum listing requirements (including a lower market capitalization requirement) for CNQ listed securities compared to the TSX Venture Exchange capital pool companies that have been denied loan value, the proposed amendment seeks to deny loan value to CNQ listed securities. The proposed Regulation 100.2(f)(i) was approved at the June 2004 Board and has been submitted to the securities commissions for approval.

*Proposed Methodology for Margining Equity Securities:* A working group of the FAS Capital Formula Subcommittee has developed an improved margin rate methodology that tracks an individual security's market risk and sets a margin rate for the security based on the measured risk. This proposed methodology determines market risk by measuring both the price risk and

liquidity risk components of the market risk of an individual security. The proposal was approved at the June 2001 Board and was approved in concept by the ASC, BCSC, OSC and SSC in February 2002. IDA staff are now in the process of developing a testing program to determine the potential impact of these proposals on IDA Member firms.

*Offset positions in Canadian Debt Securities and Related Futures Contracts:* The proposed amendments to Regulation 100.4C recognize for regulatory purposes the market risk reduction of Member firm offset positions in debt securities of different issuers and of different maturity bands by expanding the number of permissible offsets. The accompanying amendments to Regulation 100.4K keep the offsets available to Government of Canada bond futures positions consistent with those available to Government of Canada bonds. The amendments were approved at the January 2005 Board and have been submitted to the securities commissions for approval. The IDA has responded to comments received from the OSC.

*Commodity Futures and Futures Contract Options:* The proposed housekeeping amendments to Regulation 100.8 seek to repeal redundant sections of the regulation while retaining the general capital and margin requirements for commodity futures and futures contract options positions. The housekeeping amendments were approved at the April 2005 Board and have been submitted to the securities commissions for approval.

*Currency Options:* The proposed amendments seek to amend Regulations 100.9 and 100.10 to extend the current margin treatment given to OCC issued currency options to CDCC issued currency options. The proposed amendments were approved at the June 2005 Board and have been submitted to the securities commissions for approval.

*Over-The-Counter Options and the Definition of an Option:* The amendments to Regulation 100.11 seek to repeal redundant sections and make consistent the margin and capital requirements for OTC options consistent with those for exchange traded options, while retaining the current limitations on certain OTC option offsets. The amendment to the definition of "option" set out in Regulation 1900.1 seeks update the names of the derivatives clearing corporations that issue and clear exchange traded options. The proposed amendments were approved at the June 2005 Board and have been submitted to the securities commissions for approval.

*Margin Requirements for Securities Held in a Registered Trader's Account:* The proposed amendments to

Regulation 100.12 and Form 1, Schedule 2 seek to repeal Regulation 100.12(f) and make conforming changes to Schedule 2 of Form 1 (and related Notes and Instructions) to address recent changes that have been made to the market-making function at both the Toronto Stock Exchange and the Bourse de Montréal. The amendments were approved at the April 2005 Board and have been submitted to the securities commissions for approval.

*Customer Account Guarantee Agreements:* The proposed amendment to Regulation 100.15 requires that the customer's account statement be sent to the guarantor to ensure that guarantors are better informed about the liability they have incurred for accounts they have guaranteed. The proposed amendments to Regulation 300.2 require the external auditors to obtain positive confirmations for accounts that would require significant margin either during the year or at the year-end date if the customer account guarantee agreement wasn't relied upon. The proposed amendments were approved at the June 2005 Board and have been submitted to the securities commissions for approval.

*Securities Concentration Charge:* The proposed housekeeping amendments to Regulation 100.20 and Schedule 9 Notes and Instructions seek to clarify the threshold to be used for the calculation of the securities concentration charge. The amendments were approved at the January 2005 Board and have been submitted to the securities commissions for approval.

*Requirement to Send Quarterly Statements to Clients:* Currently there are Member firms whose fiscal year-end does not fall on a calendar quarter-end. These firms, because of the requirement to send out statements on a calendar quarter-end basis and the requirement to send out fiscal year-end statements for external audit purposes, end up sending a minimum of five sets of statements each year to all their customers with money balances and/or securities. The proposed amendment to Regulation 200.1(c) seeks to set the minimum number of customer mailings per year for all Member firms to four. The proposed amendment was approved at the January 2004 Board and has been submitted to the securities commissions for approval.

*Trader Registration:* The proposed amendments to Regulation 500 and Policy 6, Part I updates the terminology used in our rules by renaming the Trader categories based on the relevant exchange, rather than the trading platform and lifts an unnecessary regulatory burden to the industry by deferring to the exchanges' own proficiency requirements, rather than repeating them. The proposed amendments were approved at the

June 2005 Board and have been submitted to the securities commissions for approval.

*Day Trading:* Prior to the development of these proposals, there were no by-laws or regulations that addressed the unique issues that arise with respect to day trading. As there were a number of day trading promoting firms seeking membership in the Association and day trading is an extremely risky activity, the need for rules specific to the unique investor protection concerns relating to day trading was apparent. The proposed regulations delineate the duties of a Member firm with respect to:

- Ensuring that a day trading account is appropriate for a particular client before the opening of such an account.
- Warning clients of the risks associated with day trading.
- Protecting the client from financial loss through the implementation of strict leverage limits, in the form of margin requirement.

The initially proposed Regulation 2500 was approved at the June 2001 Board and additional comments were provided by the securities commissions. Subsequently proposed Regulation 2500 – Day Trading, proposed Regulation 100.22 – Margin Requirements for Intra-Day Exposures and proposed Policy 10 – Margin Requirements for Certain Customer Accounts with Intra-Day Exposures, were approved at the October 2003 Board and have been submitted to the securities commissions for approval.

*Minimum Standards for Institutional Accounts:* Policy No. 4 has been prepared by the Compliance and Legal Section Institutional Subcommittee. The Policy will set out minimum industry standards as they relate to institutional account supervision. The Policy was initially approved at the April 2003 Board. The securities commissions and IDA staff met recently to discuss some remaining issues, notably, with respect to suitability review. Due to the revisions necessary, the OSC requested in September that the IDA withdraw the Policy pending amendments. IDA staff revised the Policy based on the commissions' comments on the above issues and presented the revisions to the Institutional Subcommittee, which supported the changes. The revised Policy No. 4 was approved by the CLS in December. The Policy was approved at the January 2005 Board and has been submitted to the securities commissions for approval. The IDA is currently preparing a response to questions raised by CSA staff.

*Trading in Domestic Debt Markets:* The amendment reorganizes Policy 5 to make it consistent with other Regulations and Policies while retaining the history of the policy and commentary on other market participants in the Preface. It also delineates specific types of debt market activity that are improper to assist Members in designing supervision and compliance systems to prevent or detect improper activity.

The amendment also includes a new section, Policy 5B, which sets standards regarding activity in the retail debt market. While Policy 5B reiterates those improper activities listed in Policy 5 which might also occur in the retail market, it also adds a requirement to establish mark-up and mark-down guidelines and supervise mark-ups and mark-downs to ensure that any deviations from those guidelines are justified.

The proposed amendments were approved at the June 2005 Board and have been submitted to the securities commissions for approval.

*CFO Qualifying Examination – Late Completion Fee:* Policy No. 6, Part I is being amended to provide an incentive for all registered CFO's to write and pass the CFO Qualifying examination on a timely basis. The new registration requirement came into effect January 5, 2004 and all existing CFOs that held that position at the time of implementation were granted an 18-month transition period to complete the CFO qualification exam. Furthermore, when the employment of a CFO terminates, a Member may appoint a temporary CFO. The temporary CFO can complete the CFO Examination within 90 days and obtain permanent approval, or the firm can within the same 90 day deadline appoint a qualified CFO. The remedies currently available regarding any current CFOs that have not completed the examination by the deadline would be, in many cases, ineffectual or unduly harsh. IDA staff is proposing to impose a late filing fee as a more moderate and appropriate remedial measure. The proposed amendment was approved at the April 2005 Board and has been submitted to the securities commissions for approval.

*Proficiency Requirements for Futures Contract Portfolio Managers:* Policy No. 6, Part I is being amended to add an education component to the proficiency requirements for futures contracts and associate futures contracts portfolio managers, to remove the barrier to entry caused by the inter-linking of the current requirements and to make the experience requirements relate directly to relevant experience in trading in or advising on futures contracts. The proposed

amendment was approved at the June 2005 Board and has been submitted to the securities commissions for approval.

*Proficiency and Education:* Policy No. 6, Parts I and II have been amended to recognize additional courses and exemptions without reducing the rigour of the existing proficiency requirements, to eliminate outdated requirements and references, and to add provisions for an exemption fee. The amendments also correct a number of terminological, syntactic and grammatical corrections in the current policy and update cross-references to other By-laws and Regulations. The proposed amendments to Parts I and II of Policy No. 6 were approved at the June 2004 Board and have been submitted to the securities commissions for approval.

*Wealth Management Essentials Course:* Policy No. 6, Parts I and II is being amended to replace the options in the current 30 month requirement with a new course, the Wealth Management Essentials Course, which included study of both financial planning and investment management. The proposed amendment was approved at the June 2005 Board and has been submitted to the securities commissions for approval.

*Foreign Currency Cash Balances Held in Registered Retirement Savings Plan Accounts:* The amendment to Form 1, Notes and Instructions to Statement A seeks to allow foreign currency cash balances (and other similar balances) held in RRSP accounts at an acceptable institution that is a participating organization in either the CDIC or the AMF (with respect to deposit insurance) to be classified as allowable assets in Statement A, Form 1. Implementation of this proposal will eliminate an unnecessary regulatory burden on Member firms and their clients. The proposed amendment was approved at the June 2005 Board and has been submitted to the securities commissions for approval.

*Calculation of a Securities Concentration Charge for Positions in Broad Based Index Securities – Form 1:* Schedule 9 of Form 1 requires disclosure of the largest ten issuer security positions that are being relied upon for loan value so that over exposure to an individual issuer and applicability of a concentration charge can be determined. In determining whether an exposure to a particular issuer is a concern, the combined inventory and customer account collateral “amount loaned” exposure is calculated and compared to the Member firm’s risk adjusted capital. Broad based listed index products have become popular vehicles and have the advantage of reducing both the issuer and sector risk that may be associated with individual security

holdings. As a result, it is believed that broad based index securities warrant different treatment in determining whether they represent significant issuer risk to a Member firm. The proposed amendments seek to allow Member firms the option of treating positions in broad based index products in the same manner as the underlying basket of index securities for security concentration purposes. The proposed amendments to Schedule 9 of Form 1 have been approved at the June 2004 Board and have been submitted to the securities commissions for approval.

*Commodity Concentrations and Deposits:* The proposed amendments to the Notes and Instructions to Schedule 12 of Form 1 seeks to clarify that short options on futures positions are to be reported and that certain offset strategy related to short options on futures positions may be excluded. The amendments were approved at the January 2005 Board and have been submitted to the securities commissions for approval.

*Account Concentration Charge:* The proposed amendments to Form 1 – Proposed Schedule 15 will establish limits on a Member firm’s exposure to one or more arms-length counterparties. Exposures incurred in excess of these limits will trigger a capital charge to the Member firm that is representative of the increased risk due to concentration. The charge will apply to all counterparties and not just “acceptable institutions” as concentration risk may arise in dealings with any counterparty type. The amendment has now been approved in concept by the securities commissions. The next step will be the performance of industry testing to determine the potential financial/operational impact of this proposal on Member firms.

*Capital Requirements Relating to Custodial Arrangements:* Proposals have now been finalized to amend the current capital requirement for the situation where a custodian would otherwise qualify as an acceptable securities location, except for the fact that the Member firm has not entered into a written custodial agreement with the custodian. It is believed that these proposed revised capital requirements are more reflective of the risk of not having a custodial agreement in this situation, but that they still provide a sufficient incentive to the Member firm to execute the standard custodial agreement. The amendments were approved at the October 2002 Board and approved by the securities commissions. IDA staff are awaiting joint implementation with the Bourse de Montréal.

*Permit Foreign Pension Funds to be Classified as “Acceptable Institutions” and “Acceptable Counterparties” – Form 1:* Current Association rules do not specifically recognize

foreign pension funds as either “acceptable institutions” or “acceptable counterparties” for credit risk purposes. This results in most foreign pension funds being margined using the same approach used for retail customers. The proposed amendments will eliminate or significantly reduce the margin requirements that apply to foreign pension funds as they will now qualify as either acceptable institutions or acceptable counterparties. The reduction in margin requirements will provide Member firms with more capital efficient access to a group of foreign securities lending counterparties without negatively affecting the solvency of Member firms or their customers. The proposed amendments were approved at the January 2004 Board and by the securities commissions on November 30, 2004. IDA staff are awaiting joint implementation with the Bourse de Montréal.

*Auditors’ Report on Financial Statements:* The proposal seeks to make a housekeeping amendment to the Part I Auditors’ Report in Form 1 by allowing a change to the current prescribed audit opinion to reflect new CICA Handbook Section 5600. It is proposed that the current Part 1 Auditors’ Report be repealed and replaced with the new requirements as set forth by the CICA. There are a total of four different versions of the new audit reports: standard, combined, combined and non-consolidated and non-consolidated. Within each of these four audit reports there are three other sets of reports: standard, first year audit and new auditor, for a total of twelve variations of audit reports. The amendment was approved at the January 2005 Board and has been submitted to the securities commissions for approval.

## **Rules Under Development:**

*By-law 19:* The Compliance and Legal Section has established a subcommittee to assist in the development of more effective rules related to compliance examinations and enforcement investigations.

*By-law 39:* A subcommittee has been formed to look at the issue of incorporation of sales persons as an alternative to structuring the business relationship as employer/employee or principal/agent.

*Regulation 100 - VaR Modeling Concept Paper:* Regulation 100 sets out strategy-based rules that are to be used to determine the capital requirements for proprietary positions in and offsets involving securities (and related derivative instruments). These rules have been found to be overly conservative in that the number of permitted offset strategies within an issuer product

group is limited and issuer risk diversification is not considered. The result has been that in many cases proprietary positions have been transferred from Member firms to their bank parents in order to utilize OSFI’s less stringent capital requirements. The objective of this proposal is to grant those Member firms who maintain sophisticated and/or significant proprietary inventories the option of using a Value at Risk (VaR) modeling approach to determine their capital requirements. The byproduct of using VaR will be capital requirements that are more reflective of the overall market risk of the proprietary positions.

VaR modeling is more accurate at measuring residual market risk than are strategy-based rules because:

- In the case of issuer specific market risk, VaR modeling determines the liquidation value for all products of or related to the same issuer as one basket of risk rather than requiring the pairing of positions for offset purposes as is required with the strategy-based rules; and
- In the case of overall portfolio market risk, VaR modeling recognizes the risk reductions that can be achieved through portfolio diversification.

Before this proposal can be implemented, the overall capital requirements impacts of the proposal, the additional IDA resources (including staffing) required to support the use of VaR modeling and a rule implementation plan will need to be determined. The concept paper was reviewed and approved by the IDA Board on October 20, 2004.

*Role of the Compliance Officer:* A subcommittee of CLS has been formed to examine the understanding of standards, expectations and ways to support the compliance function at Member firms.

For more information, please contact:  
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# Enforcement Update

*From April 22, 2005 to July 22, 2005*

## **Union Securities Limited (3413/05)**

**Violation:** The Hearing Panel found that between November 2000 and January 2001 inclusive, Union violated By-law 17.A and Policy 3 in that it:

- failed to establish internal controls with respect to enforcing the use of foreign exchange rates by its employees.

**Penalty:** \$25,000 fine

## **Haralambos Pandelidis (3416/05)**

**Violation:** The Hearing Panel found that Mr. Pandelidis violated By-law 29.1 and Regulations 1300.4 and 1300.5 in that he:

- engaged in unauthorized discretionary trading;
- falsely confirmed trades;
- made offers to compensate a client for account losses;
- engaged in personal financial dealings with a client;
- made a representation to a client that a security would be listed on an exchange in furtherance of a trade; and
- participated in an illegal distribution of securities.

**Penalties:** \$75,000 fine and \$12,524 in Association costs; prohibition for a period of five years; and upon any return to the industry, must rewrite and pass the *Conduct and Practices Handbook* exam and be subject to strict supervision for a period of 12 months followed by an additional 12 month period of close supervision.

## **Hugh Cairns Bell (3417/05)**

**Violation:** Mr. Bell admitted that during the period between May to June 2002, he:

- distributed sales literature to certain clients or potential clients for which he did not receive approval from his Member firm, contrary to Association By-law 29.7;
- engaged in outside business activity, for which he received remuneration and did not disclose to his Member firm, thereby engaging in conduct unbecoming a registrant or detrimental to the public interest, contrary to Association By-law 29.1; and

- during the period of December 2002 and April 2003, he forged the signature of three clients, engaging in conduct unbecoming a registrant or detrimental to the public interest, contrary to Association By-law 29.1.

**Penalties:** \$30,000 fine and \$3,000 in Association costs, and is required to work under close supervision for a period of 12 months.

## **Gregory Bruce MacKay (3418/05)**

**Violation:** The Hearing Panel found that Mr. MacKay violated By-law 29.1 in that he misappropriated funds while employed at BMO Nesbitt.

**Penalties:** Permanent prohibition, \$100,000 fine and \$8,361.92 in Association costs.

## **Dimitrios Boulieris had Appeal dismissed on May 11, 2005**

On May 11, 2005, the Ontario Divisional Court dismissed an appeal brought by Dimitrios Boulieris to set aside a decision of the Ontario Securities Commission (OSC), which granted an application by IDA staff for a hearing and review of the decision of the Ontario District Council of the Investment Dealers Association (IDA).

**Violation:** The IDA initiated disciplinary proceedings against Mr. Boulieris in November 2001, alleging, among other things, that he engaged in business conduct unbecoming, contrary to By-law 29.1, on two counts, in that he:

- knowingly acted as an agent or facilitator for a company that was soliciting securities while not registered to do so with the OSC; and
- traded for a client who had advised Mr. Boulieris that he was attempting to manipulate the market price of a security.

Following a June 2002 disciplinary hearing, the Ontario District Council concluded that there was insufficient evidence to prove the first count, but that Mr. Boulieris was in violation of the second count.

**Penalties:** Must successfully rewrite the *Conduct and Practices Handbook* exam before re-approval; subject to strict supervision for a two-year period; and \$5,000 in Association costs.



## **Robert Kyle and Derivative Services Inc. Appeal Upheld on May 25, 2005**

The IDA welcomed the May 25, 2005 decision by the Ontario Superior Court of Justice-Divisional Court ruling regarding the appeal by Robert Kyle and his company, Derivative Services Inc., of the Ontario Securities Commission decision to uphold an IDA disciplinary decision. The Court dismissed the appeal in its entirety.

The court ruling fully supports the IDA's position in this matter. The Court upheld the IDA's investigative powers, ruling that they do not violate Charter rights and do not involve unreasonable search and seizure. The Court also determined that Mr. Kyle, at that time President and CEO of Derivative Services Inc., an IDA Member firm, had unreasonably refused to cooperate with an IDA investigation. It affirmed the Ontario District Council's (ODC) decision that refusal to comply was a serious infraction and that failure to provide information undermined the integrity of the self-regulatory system. The IDA had submitted a record of a prior infraction, that the conduct was intentional, that the refusal was complete and that there was no indication of a willingness to comply. The court ruled that taken individually and collectively the findings of the ODC on the Penalty Hearing were eminently reasonable and that the fines were responsive to the offence.

## **Douglas Francis Corrigan (3425/05)**

**Violation:** The Hearing Panel found that:

- Mr. Corrigan failed as Branch Manager to adequately supervise the activities of a TK Investment Representative, and thereby failed to ensure that the handling of client business was within the bounds of ethical conduct, consistent with just and equitable principles of trade, and not detrimental to the interests of the securities industry, contrary to Association Regulation 1300.2.

**Penalties:** Permanent prohibition from being or acting as a branch manager or compliance officer, \$25,000 fine and \$15,000 in Association costs.

## **Phillip John E. Deans (3429/05)**

**Violation:** The Hearing Panel found Mr. Deans guilty of the following violations:

- Between May 28, 1998 and November 30, 2001, he effected approximately 157 trades in the account of a client, without the client's knowledge or consent.

- Between May 28, 1998 and November 30, 2001, he falsely declared as "unsolicited" 134 unauthorized trades effected by him in a client's account, without the client's knowledge and consent, suggesting falsely that these trades had been initiated by the client himself.
- Between May 28, 1998 and May 28, 2002, he misled a client by providing him with false portfolio statements, showing the assets in his account to be higher than they actually were, even after all of the investments had been liquidated and the account showed a debit.

**Penalties:** Permanent prohibition, \$125,000 fine, \$41,789.37 disgorgement of commissions and \$15,000 in Association costs.

## **Doreen Dempsey (3430/05)**

**Violation:** Ms. Dempsey admitted that:

- between October 1999 and April 2000, she acted contrary to Regulations 1300.1. (p) and (q) by recommending and processing transactions in the accounts of clients without first using due diligence to ensure that the recommendations or transactions were suitable for the clients, based on their financial situation, investment knowledge, investment objectives and risk tolerance.

**Penalties:** \$35,000 fine and \$5,000 in Association costs, and her continued approval in any registered capacity is subject to a period of close supervision for one year by her Member firm. In addition, she is required to re-write and pass the *Conduct & Practices Handbook* course.

## **Irene Judt (3431/05)**

**Violation:** The Hearing Panel found that Ms. Judt violated By-law 29.1 in that she:

- misappropriated funds from her clients and employer, thereby engaging in conduct unbecoming or detrimental to the public interest.

**Penalties:** Permanent prohibition, \$7,500 fine and \$5,000 in Association costs.

## **Bruce Graeme Taylor (3433/05)**

**Violations:** Mr. Taylor admitted that:

- Between October 2002 and February 2003, he failed to disclose his involvement in an outside business activity, namely his position as an Officer and Director of Tone Resources Limited to Assante or the IDA, contrary to By-laws 18.14 (b) and 18.14 (c).

- In or about September 2002, he advised and facilitated the participation of clients in a private placement of shares – a purchase contracted off the books and records, and without the knowledge of Assante, and thereby engaged in business conduct or practice unbecoming or detrimental to the public interest, contrary to By-law 29.1.
- Between February 2003 and May 2003, he breached an undertaking given to Assante that he would not trade in nor provide advice upon shares in Tone Resources Limited, and thereby engaged in business conduct or practice unbecoming or detrimental to the public interest, contrary to By-law 29.1.

**Penalties:** A public reprimand and \$7,000 in Association costs.

### **Spencer Edward Graham (3434/05)**

**Violations:** The Hearing Panel found that Mr. Graham violated Regulation 1300.2 in that he:

- failed to adequately supervise Richard Reynaud Gareau, over whom Mr. Graham had supervisory responsibility, to ensure that Mr. Gareau performed sufficient due diligence with respect to a security. Mr. Graham further failed to take steps to remain sufficiently informed of the essential facts with respect to the security. These actions led to unsuitable concentrations of the security in four client accounts.

**Penalties:** \$50,000 fine and \$15,000 in Association costs, and as a condition of continued approval as branch manager, must successfully rewrite the CSC, CPH, and PDO examinations by March 31, 2006.

### **John William Stewart (3443/05)**

**Violations:** A Hearing Panel found that Mr. Stewart violated By-law 19.5 in that he failed to cooperate with an Association investigation. Mr. Stewart did not file a Response and did not appear at the hearing as requested. The hearing proceeded without Mr. Stewart in attendance pursuant to Rule 7.2 and Rule 13.5 of the Association Rules of Practice and Procedure.

**Penalties:** No Findings. (The Written Reasons for Decision of the Hearing Panel will only be released after a subsequent Hearing and final disposition in this matter.)

### **John William Stewart (3443/05)**

**Violations:** A Hearing Panel found that Mr. Stewart violated By-law 19.5 in that he failed to cooperate with an Association investigation. Mr. Stewart did not file a Response and did not appear at the hearing as requested. The hearing proceeded without Mr. Stewart in attendance pursuant to Rule 7.2 and Rule 13.5 of the Association Rules of Practice and Procedure.

**Penalties:** Permanent prohibition, \$50,000 fine and \$11,165 in Association costs.

For more information, please contact:

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## **Investment Dealers Association of Canada**

The Investment Dealers Association of Canada is the national self-regulatory organization and representative of the securities industry. The Association's mission is to protect investors and enhance the efficiency and competitiveness of the Canadian capital markets.

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Ce rapport est aussi disponible en français sur demande.