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Rules Notice
Guidance Note
Dealer Member Rules

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Guidelines for the review, supervision and retention of advertisements, sales literature and correspondence

This Notice replaces Member Regulation Notice MR0281, *Guidelines for the Review of Advertisements, Sales Literature and Correspondence* ("Notice MR0281"), issued on April 12, 2004, and is effective immediately.

Notice MR0281 provided guidance to Dealer Members in the development and implementation of policies and procedures for the review, supervision and retention of communication materials, such as advertisements, sales literature and correspondence. As such, Notice MR0281 focused on the nature of various communications and not on the methods by which such communications are disseminated. However, the available methods of communication have changed significantly with the increasing use of social media websites, such as Facebook, Twitter, YouTube, blogs, and chat rooms. These changes in available communication methods have led to a number of enquiries by Dealer Members regarding the application of the IIROC Dealer Member Rule 29.7 and Notice MR0281 to newer forms of social media communication as noted above.

All methods used to communicate including, but not limited to, Facebook, Twitter, YouTube, blogs, and chat rooms, are subject to the IIROC Dealer Member Rules. The content of Notice MR0281 has been updated to clarify that regardless of the method by which communication takes place, and however social media websites evolve, Dealer Members must ensure compliance with applicable

regulatory requirements and securities legislation. This Notice also addresses the unique compliance and supervisory issues Dealer Members and their Approved Persons must consider when:

- using social media websites to communicate with clients and the public for business purposes, and
- designing firm policies and procedures for the review, supervision, retention and retrieval of these materials.

I. Definitions

Dealer Members' policies and procedures should contain clear and comprehensive definitions of what constitutes advertising, sales literature and correspondence. Whether materials are classified as advertising or sales literature will generally be determined by their content and purpose rather than by the method of communication used. Accordingly, electronic communication, including social media websites, may constitute advertising, sales literature or correspondence depending upon their content and purpose. Dealer Members should therefore consider the following guidelines when designing policies and procedures:

1. Advertisements may be conveyed using all forms of communications media, including print, broadcasting and electronic media.
2. While password protected websites, for example those designed solely for existing clients to enter orders, would not normally fall within the definition of advertising, materials regarding specific securities or strategies that can be accessed through these types of sites may constitute sales literature.
3. A simple link to one's site that resides on another entity's website, whether or not paid for, is not an advertisement. However, a link that also contains any accompanying text or graphics promoting the Dealer Member's services would be considered an advertisement.
4. A letter, e-mail or other communication sent to more than one client, whether or not purporting to be tailored to their specific requirements or objectives, would generally fall within the definition of sales literature unless the communication includes a recommendation with respect to a security or trading strategy. Given that these types of communication can be sent by Approved Persons, Dealer Members should ensure that their policies, procedures and educational efforts clearly define "sales literature".
5. General market and economic commentaries, as well as educational seminars not designed to sell specific securities, do not fall within the definition of advertising or sales literature. Having said that, Dealer Members' policies and procedures should include a process that will ensure that these commentaries do not cross the line into advertising or general sales literature. Toward that end, Dealer Members are encouraged to provide staff with training and guidance to ensure that they fully understand the boundaries between general commentary and advertising or sales literature.

II. Recordkeeping Responsibilities

Pursuant to National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103"), firms must retain records of their business activities, financial affairs, client transactions and communication. Whether a communication is related to the business of the Dealer Member, and therefore captured by this requirement, depends on the content of the communication. The type of device used to transmit the communication or whether it is a firm-issued or personal device is irrelevant. Dealer Members must therefore design systems and programs with compliant record retention and retrieval functionalities for those methods of communication permitted at the firm. For instance, the content posted on social media websites, such as Twitter, Facebook, blogs, chat rooms and all material transmitted through emails, are subject to the above-noted legislative and regulatory requirements. Section 11.5(2) of NI 31-103 requires Dealer Members to maintain transaction related documents entered into on behalf of each client. These documents may include, but are not limited to, trade confirmation statements, emails and notes of oral communications with clients.

The following are considerations for Dealer Members when designing and implementing compliant retention and retrieval practices:

1. Policies and procedures should include record retention requirements that cover both copies of the material itself as well as records of reviews and approvals.
2. Where a post-use or sampling review uncovers a problem, a record of the action taken to correct the problem should be retained.
3. The need to prohibit access to social media websites that do not allow for compliant retention practices.
4. The use of personal communication devices for business communication as well as the ability to retain, supervise and retrieve all business related communication made on these devices.

III. Suitability and Recommendations

Dealer Members must be mindful of the additional regulatory obligations that may be triggered as a result of the content of a communication delivered to clients. For instance, a "recommendation", whether delivered via a social media website or by way of written correspondence, must take into consideration the suitability requirements set out in IIROC Dealer Member Rule 1300.1 ("Rule 1300.1"). Dealer Members may also refer to Member Regulation Notice 098, *What Constitutes a "Recommendation"? Is a Suitability Determination Required under Regulation 1300.1?*, for additional guidance. At the very least, Dealer Members should implement measures to monitor and/or prohibit electronic communications that constitute a recommendation which must comply with IIROC's suitability rules.

IV. Supervisory Responsibilities

Pursuant to IIROC Dealer Member Rule 29.7(2), Dealer Members must establish policies and procedures that allow them to comply with their supervisory obligations and protect clients from misleading or false statements. Subject to IIROC Dealer Member Rule 29.7(3), it is at the discretion of Dealer Members to determine whether to employ:

- pre-use approval,
- post-use review, or
- post-use sampling

as the most effective means of monitoring communications.

When making this determination, Dealer Members should consider the following:

1. Post-use or sampling reviews may be appropriate for specific instances of template advertisements.
2. Research reports, market letters, telemarketing scripts, promotional seminar texts, original advertising and any material that is used to solicit clients and/or contains performance reports or summaries must be subject to pre-use approval for both content and disclosure requirements pursuant to IIROC Dealer Member Rule 29.7(3).
3. When pre-use approval is required, the record of approval should evidence the fact that the review and approval was based upon the final draft or proof, not a preliminary draft or proof in which changes have been requested. Furthermore, Dealer Members should pre-approve a communication that has been materially changed, despite it having been approved in a previous version.
4. Original advertising refers to the first instance of an advertisement and requires pre-approval.
5. Template advertising is an advertisement that has a preset format which serves as a starting point each time it is used. The first instance of a template advertisement requires pre-approval; however, minor variations in specific placements of template advertisements, such as the name of the registered representative or location of the branch office, do not require continuous approval.
6. Any advertising, sales literature or correspondence used to solicit clients and that contains performance reports or summaries must be pre-approved. This does not include, however, software-generated portfolio reports to clients or material containing price and volume charts for specific equities or yields for specific fixed income securities. It does however, include advertisements containing performance reports on mutual funds or asset allocations services, which should be reviewed for compliance with both IIROC Dealer Member Rule 29.7 and National Instrument 81-102 ("NI 81-102").

It is the Dealer Member's responsibility to evaluate the adequacy of their systems to review all forms of communication: incoming, outgoing, printed or electronic. This can be done by providing secure remote access to the Dealer Member's systems to employees and agents, by prohibiting the sending of business-related communication through sites and devices that are not supervised, or by requiring that copies of all business-related communication be sent to the Dealer Member on a pre/post approval basis. There is also software available that will enable Dealer Members to review outgoing and incoming emails for keywords which highlight communications that require review.

A Dealer Member's policies and procedures should describe:

- the type of review required, including who is responsible for conducting reviews and taking remedial action if necessary;
- sampling frequency or techniques; and
- record retention requirement

for each type of material used by the Dealer Member. Policies and procedures should also provide for cross-supervision; individuals should not be responsible for the supervision or approval of advertising or sales literature which they themselves have prepared, and where specific types of advertising, sales literature or correspondence are prohibited by the Dealer Member, the policies and procedures should explicitly state the prohibition.

Where a Dealer Member is organized in two or more separate business units or divisions, the Dealer Member may assign a Supervisor for each business unit or division responsible for ensuring the business unit's or division's compliance with IIROC Dealer Member Rule 29.7. The designated Supervisor should ensure that policies and procedures are:

- adequate,
- reviewed periodically to ensure that they remain adequate
- revised to incorporate relevant rule changes, as required; and
- communicated to all applicable personnel on a timely basis.

The designated Supervisor should also ensure that any individuals assigned specific responsibilities under the policies and procedures are aware of their duties and are properly fulfilling them.

With regard to social media websites used for business purposes, such as blogs, LinkedIn, Twitter, YouTube, chat rooms and Facebook, Dealer Members are faced with supervisory challenges. Specifically, IIROC staff has received a number of enquiries relating to interactive versus static content as well as password protected versus accessible websites. Static content, such as a profile, background or wall information, usually considered an 'original template advertisement', must be pre-approved pursuant to IIROC Dealer Member Rule 29.7(3) and is generally accessible to anyone. An interactive electronic forum, such as Facebook or Twitter, on the other hand, includes real time discussions and although it does not require prior approval, must be supervised to ensure

compliance with IIROC Dealer Member Rules and securities legislation. In the event that interactive content becomes static, for example by posting the real-time interactive content in a static forum such as a blog, this static content must be pre-approved if it is captured under IIROC Dealer Member Rule 29.7(3).

Whether a social media website is password protected or accessible to all does not determine whether or not it is an acceptable method of communicating with clients. As long as websites are adequately supervised and do not violate any regulatory or legislative requirements, for example, record retention, Dealer Members and their representatives are permitted to use these sites and/or technology to communicate with clients and the public for business purposes. Having said that, it is improper and a violation of IIROC Dealer Member Rule 29.1 for Approved Persons to make anonymous representations or recommendations using any method of communication.

The following are considerations for Dealer Members when designing and implementing compliant supervisory practices:

1. Prohibit access to social media websites that do not allow for compliant supervisory practices,
2. Prohibit or restrict the use of these types of sites by Approved Persons who have a history of non-compliant behavior, and
3. Allow only those Approved Persons who have received appropriate training on the Dealer Member's policies and procedures regarding social media websites to utilize this technology to communicate with the investing public.

V. Electronic or Voice-mail Orders

Acceptance of orders communicated via email, voice mail, or any other electronic means, other than a dedicated order-entry system, creates a number of risks, such as delays in opening and executing instructions or inadequate instructions being provided by the client. Clients and registered representatives should be strongly discouraged from communicating order instructions via email or voice-mail. Having said that, if they choose to use these methods of communication, clients should be warned of the risks described above.

VI. Third-Party Communications and Research

Dealer Members should exercise extreme caution when engaging in third-party communications, such as permitting third parties to comment or post on a Dealer Member's website or providing links on a Dealer Member's website to a third party website. Third-party posts may be attributed to or considered an endorsement by the Dealer Member, thereby triggering regulatory and legislative requirements. For example, re-tweeting a client's post or providing a "thumbs-up" may be considered an endorsement. Whether or not a third-party communication will be considered to be the Dealer Member's communication will depend on the facts and circumstances of each case. Dealer Members should consider the use of disclaimers, the nature of their involvement in the preparation of the communication prior to posting and any evidence of explicit or implicit endorsement or approval

of the post to help determine whether or not the third-party post reflects the views of the firm. Dealer Members should note that the use of disclaimers will not necessarily relieve Dealer Members' of their responsibility for third-party posts.

The following are suggested best practices relating to third-party communications:

1. Develop a guideline for use by third-parties which sets out acceptable practices relating to third-party posting on firm-sponsored websites;
2. Develop policies and procedures that address acceptable practices relating to communication in response to third-party communication posted on firm-sponsored and personal websites;
3. Develop screening processes that will ensure that third-party content complies with regulatory requirements and firm policies; and
4. Disclose Dealer Member policies regarding its responsibility for third-party posts.

Third party research is not governed by IIROC Dealer Member Rule 29.7, but is dealt with under IIROC Dealer Member Rule 3400. However, material provided by a party not at arm's length to the issuer, such as an investor relations firm, would constitute sales literature if disseminated by a Dealer Member. Furthermore, registered representatives who are not employed as research analysts, as defined under IIROC Dealer Member Rule 3400, but who nonetheless issue their own reports and recommendations that resemble research reports are governed by IIROC Dealer Member Rule 29.7. Pursuant to IIROC Dealer Member Rule 29.7(3), such research reports, as well as market letters and any materials used to solicit clients and that contain performance reports or summaries must be approved prior to publication. Such reports must also be reviewed for, among other things, disclosure of relevant conflicts of interest, using applicable regulatory and legislative requirements. Whereas market letters include information on market conditions, the author's expectations, economic forecasts and other factors which may have an impact on security prices and investor profits, materials similar to research reports generally contain recommendations of securities. Dealer Members are advised to exercise caution when drafting sales and marketing materials in order to ensure compliance with their regulatory requirements.

VII. Other Regulatory Requirements

Dealer Members' policies and procedures should be designed to ensure that all advertisements, sales literature and correspondence comply with applicable regulatory and legislative requirements, including IIROC Dealer Member Rule 29.7(1). Other notable requirements include, but are not limited to, the following:

- CIPF disclosure (IIROC Dealer Member Rule 29.14)
- Restricted share terms disclosure (for example, section 2.2(1)(c) of Ontario Securities Commission Rule 56-501)

- National Instrument 31-103 – Registration Requirements and Exemptions (sections 11.5 and 11.6 – General Requirements for Records)
- National Policy 47-201 – Trading in Securities Using the Internet and Other Electronic Means
- Mutual fund advertising restrictions (section 15 of NI 81-102)
- Supervision of Accounts (IIROC Dealer Member Rules 1300 and 2500)
- Research Restrictions and Disclosure Requirements (IIROC Dealer Member Rule 3400)
- Member Regulation Notice MR008: Guidelines for the Electronic Delivery of Documents