

IIROC NOTICE

Rule Notice Guidance Note

Dealer Member Rules
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IIROC Compliance Priorities

IIROC is pleased to present its annual Compliance Priorities Report for 2015/2016. It has been renamed to reflect its new, forward-looking focus on the key priorities for IIROC's compliance and registration teams over the coming year. As in previous years, this Report (formerly the "Annual Consolidated Compliance Report") is intended to assist IIROC Dealer Members in focusing their supervision and risk management efforts to ensure compliance with IIROC's regulatory requirements. The Report deals with current issues and challenges to be addressed by Dealer Members to improve investor protection and foster market integrity in an environment that is rapidly evolving and becoming increasingly complex.



IIROC's compliance priorities stem from:

- new risks that have emerged recently;
- concerns due to recurring / significant deficiencies noted in the past year; and
- results of our targeted reviews and surveys.

IIROC's ongoing efforts to strengthen the culture of compliance among Dealer Members, set high standards of conduct and strengthen market integrity benefit Canadian capital markets and all stakeholders. As a public interest regulator, we will continue to oversee IIROC-regulated Dealer Members proactively to protect investors and support healthy capital markets. We will continue to monitor, update and enhance our compliance examination programs to reflect changes in market structure, business risks, investment products, demographics and corporate priorities. As part of our risk-based, top-down approach, our risk models are used to inform compliance examinations, helping to focus on areas that present the highest risk while reducing time spent on insignificant issues. A comprehensive review of our risk models is planned to ensure they remain current and reflect the most significant risks to those we regulate, market integrity and the investing public.

We will also continue to focus on and take action against investment dealers that fail to address significant compliance findings and/or fail to demonstrate a commitment to the development of a strong compliance culture. This year we will have a new tool to assist us in this regard. When our Consolidated Enforcement Rules become effective in 2016, we will have the ability, under section 9208, to recommend and impose terms and conditions on the membership of Dealer Members to ensure continuing compliance with IIROC's requirements.

We recognize the diversity of dealers on our platform and that there are different ways in which they can implement an effective compliance, supervision and risk management framework. This Report, together with IIROC's body of guidance notes, day-to-day contact, annual compliance conferences and other forums, helps investment dealers better understand and ensure they comply with IIROC's requirements in a way that is appropriate for their unique business models.



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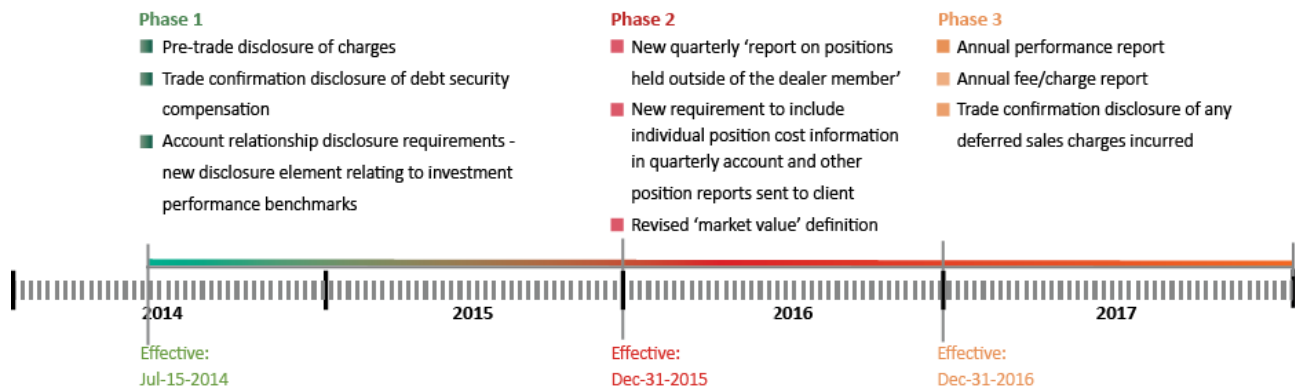
1. Financial and Operations Compliance

1.1. Client Relationship Model (CRM)

The objective of the CRM initiative is to enhance investor protection by requiring that clients be provided with more information about the account arrangements they enter into with Dealer Members, enhancing the suitability assessment requirements, and increasing the transparency of the fees clients pay and the investment performance clients receive. Beginning in March 2012 IIROC introduced two sets of rule amendments designed to achieve the CRM objective.

The second set of CRM rule amendments (CRM2) introduces new client reporting requirements in three phases as shown in the implementation timeline below. IIROC's examinations of Dealer Members in 2015/16 will focus on their processes for compliance with the implementation of: i) quarterly reporting on certain off-book client holdings; ii) annual account performance reporting; and iii) annual account fee/charge reporting (see [Notice #15-0013](#) - January 19, 2015 and [Notice # 15-0128](#) - June 11, 2015 for further information). Examinations will include the review of Dealer Member policies and procedures adopting CRM2 reporting requirements, and tests of system and process changes to compile information for the new customer reporting requirements.

Timeline for CRM2 Requirements



With the implementation of phase 3 of the CRM2 requirements, the new performance reporting requirements will come into effect on July 15, 2016 (with the option of later adoption as at December 31, 2016 for dealers that report on a calendar year basis).

As part of the requirements, the IIROC definition of "market value" has been amended to better align with the International Financial Reporting Standards (IFRS) to be effective



December 31, 2015. As a result, the industry practice of marking securities on month-end client statements with “no price available” will no longer be acceptable. Industry guidance may be found in the *“Target and Sample Market Value Aging Matrix by Pricing Type”* developed by the Investment Industry Association of Canada (IIAC) as part of its *“Framework for Securities Market Value Considerations”*.

In advance of the new performance reporting requirements, IIROC Financial and Operations Compliance (FinOps) initiated a review in the most recent exam cycle of Dealer Member security valuation policies and procedures, focused on the pricing of stale-dated and illiquid securities held in client accounts. The following new industry practices were identified:

- Pricing policies being updated to address the pricing of illiquid or non-exchange-traded securities and private companies, applying the security valuation hierarchy defined in the new Form 1 “market value” definition.
- Pricing policies identifying alternative sources of information to verify price data and specify a hierarchy for determining when securities should be considered stale-dated and when they should be priced at zero.
- Control procedures are being implemented to monitor:
 - security prices that were over-ridden manually on the system,
 - newly priced and stale-dated securities, and
 - material price variances comparing last closing price (used for month-end customer reporting) with last bid/offer price.
- Introducing brokers implementing their own supervisory procedures to evidence their review of pricing information reported on client statements for hard-to-price / illiquid securities generated by their carrying broker back-office service provider.
- Retention of documentary evidence to support the valuation of security positions of unlisted/private securities using unobservable inputs such as a valuation letter signed by the CEO/CFO of the issuing company, third-party valuation letter, audited or unaudited financial statements, or subsequent share price issued.

1.2. Cyber-security

As noted in last year’s report, cyber-security continues to be a key issue for investment firms and for IIROC. For regulators and financial market participants, the increased efficiencies and improved capabilities of today’s information technology infrastructure come with incremental cyber-risks. Given the increasing automation of, and interconnections among business functions, information and operational systems, an appropriate response to the challenge of cyber-security must take an enterprise-wide perspective and be part of each firm’s overall risk-management program.



Proactive management of cyber-risk is critical to the stability of IIFOC-regulated firms, the integrity of capital markets and the protection of investors. In February and March 2015, we surveyed IIFOC-regulated firms to collect information concerning their assessment of their cyber-security preparedness. In March 2015, we conducted a “table-top” exercise with a cross-section of firms to test their preparedness to deal with cyber-attacks. The exercise included coordination among firms and with regulators for sharing information to mitigate the impact of an attack, and protocols for updating clients and other stakeholders during such an incident.

Defining the current state of defences against cyber-threats was a core objective of the exercise, and a necessary pre-condition for IIFOC to define a strategy to assist its Dealer Members to protect themselves adequately against these threats. We used the results of the survey and table-top exercise to assist in developing best-practice recommendations that can be applied by all IIFOC-regulated firms, irrespective of size and business model, as well as a cyber-incident management planning guide, developed with the expertise of an independent third-party cyber security firm. These resources (published with IIFOC [Notice 15-0294](#) on December 21, 2015) draw on input from a focus group made up of a number of Dealer Members that participate in the IIFOC’s cyber-security working group. They also draw on our review of the approaches of other domestic and global financial services regulators. In 2016, we will further develop a cyber-security program with the following primary objectives:

- host webinars to help Dealer Members understand the guides and stay informed about emerging cyber-security issues, challenges and best practices;
- conduct a more extensive self-assessment survey among those we regulate to measure the adequacy of their cyber-security infrastructure;
- inform IIFOC-regulated firms about how well their cyber-security practices compare to those of their peers;
- evaluate systemic or sector-wide practices as a means of gaining insights into the overall vulnerability of the industry to disruption by risk factors arising from individual investment dealers; and
- collaborate with and advise Dealer Members to help them assess their own readiness and implement cyber-security systems and procedures for the protection of client data against cyber-security threats.

Where Dealer Members are already subject to similar cyber-security oversight by other regulators, such as OSFI and/or FINRA, we will consider working with and/or relying on those regulators in order to avoid duplication.



1.3. Outsourcing Arrangements

As Dealer Members continue to outsource operational functions to reduce expenses and focus on core activities, IIROC reminds firms that outsourcing regulated activities in no way diminishes a registrant's responsibility for: 1) full compliance with applicable IIROC rules and securities laws, and 2) supervising a service provider's performance.

Outsourcing will continue to be a priority and focus of review during 2016 examinations, and the extent of outsourcing activities carried out by firms and the risk control frameworks implemented to manage this risk will provide input into the Financial and Operations (FinOps) risk model. Please refer to IIROC [Notice 14-0012 - Outsourcing Arrangements](#) for guidance on outsourcing risk management frameworks, and to the [2014/15 IIROC Annual Consolidated Compliance Report](#) for industry best practices.

1.4. Custodial Arrangements

As custodians of customer assets, Dealer Members are ultimately responsible for all security positions held on behalf of clients and reported on customer statements. As the value of these securities can represent millions or billions of dollars, a comprehensive framework of rules exists to safeguard customer securities and minimize the risk of loss related to the control of customer assets by firms.

Central to these rules is the requirement that all securities held beyond the physical possession of the Dealer Member must be held at an "acceptable securities location" as defined in the IIROC rules, and supported by a written custody agreement containing certain specified provisions.

IIROC continues to identify deficiencies encompassing securities being held at locations which do not qualify as acceptable securities locations, securities holdings not supported by a custodial agreement, and custodial agreements with missing required provisions (such as no lien or encumbrance).

These deficiencies normally stem from breakdowns in the Dealer Member's internal control infrastructure, which should be designed to ensure that:

- staff receives adequate training in managing all custody arrangements of the firm;
- adequate documentation evidencing compliance with IIROC requirements is obtained and retained on file for inspection; and
- proper review and approval of the custodial agreements is performed by responsible personnel.



Dealer Members are reminded to review and update their policies and procedures to ensure compliance with IIROC minimum standards for internal control over the safeguarding of customer-held securities, including the criteria for acceptable securities locations supported by duly executed agreements containing required minimum provisions.

1.5. Debt Concentration Test and Capital Charge

Subject to final Canadian Securities Administrators (CSA) approval and subsequent implementation in 2016 of proposed new Rules [Notice 14-0298](#) - *Proposed amendments to Dealer Member Rules 100 and 1200 and to Form 1 relating to client free credit cash usage limit, client free credit segregation requirements, and securities concentration test*, FinOps examinations will focus on the procedures and systems needed by Dealer Members to compile and report concentration of related debt issuer's securities with a margin rate of less than 10%.

1.6. T+2 Settlement

Following the 2008 financial crisis, there has been increased focus on reducing risk, achieving greater transparency, and improving efficiency in order to establish a safer market environment. Shortening the settlement cycle provides important benefits such as reduced counterparty risk, decreased clearing capital requirements, reduced pro-cyclical margin and liquidity demands, and increased global settlement harmonization. Major markets across the globe have moved or are moving to a T+2 settlement period.

The Canadian Capital Markets Association (CCMA) has been reactivated and mandated to coordinate a smooth transition from T+3 to T+2 in the third quarter of 2017. This date has been set by the US, and Canada must transition on the same date to ensure uniformity and continuity of inter-listed security settlements. IIROC Dealer Members will be participants with other industry groups on steering and working groups to guide the industry's transition to T+2 in Canada.

IIROC's priority will be to monitor Dealer Members' settlement and clearing system readiness, and to observe and assess industry test results scheduled for the second quarter of 2017 in preparation for lock-step transition with the US in the third quarter.



2. Trading Compliance

2.1. Debt Transaction Reporting

On November 1, 2015, IIROC-regulated dealers that are Government Securities Distributors began reporting details of their fixed-income trades to IIROC via the new Market Trade Reporting System (MTRS 2.0). Although still in early days, the data being received by IIROC is already providing valuable insight into what has been a largely opaque market.

In conjunction with the trade reporting requirement, Trading Conduct Compliance (TCC) staff is examining Dealer Member compliance with the reporting rule as part of regular TCC reviews. This effort is supported by the Debt Surveillance team which, in addition to performing routine surveillance and following up on questionable trades, is conducting ad hoc reviews of reported transactions for completeness, accuracy and timeliness.

All other Dealer Members that conduct fixed-income trades will be required to report details of their transactions by no later than November 1, 2016. IIROC is working on the dealer interfaces necessary to facilitate those reports, and will be making further announcements during the year. Dealer Members are also reminded that the internal oversight of fixed income trading is an essential part of a robust supervisory system.

2.2. Expanded Scope of Trading Conduct Reviews

Commencing in April 2016, the scope of TCC examinations will expand beyond the universe of Dealer Members subject to market integrity-focused examinations (“Participants”) to include non-Participant Dealer Members that are active in either primary or secondary fixed-income securities trading, secondary trading of over-the-counter or foreign equity securities, or active in other asset classes including foreign exchange and derivatives. While the Universal Market Integrity Rules (UMIR) do not apply to trading activity outside of Canadian equity marketplaces, there are a number of trading rules in the Dealer Member Rules, the provincial securities acts and national instruments that apply to all Dealer Members. The expansion of scope also aligns with the proposed amendments to rules governing Best Execution (see below) that would consolidate current UMIR best execution requirements and Dealer Member Rule (“DMR”) requirements regarding fair pricing of over-the-counter (“OTC”) securities into a single DMR rule.

When possible, IIROC will schedule TCC reviews to coincide with reviews being conducted by FinOps or Business Conduct Compliance (BCC) (i.e. integrated examinations) in order to be more effective and mitigate the impact on these Dealer Members.



2.3. Best Execution

IIROC is continuing its focus on Dealer Members' policies, procedures and supervision of best execution. Since reporting the results of our best execution survey¹, the compliance examination team has been reviewing Dealer Members' practices and has been making recommendations on issues highlighted in our report including:

- access to “lit” and dark marketplaces;
- use of smart order routers;
- best execution governance;
- order handling practices;
- treatment of marketplace fees and rebates; and
- compliance and supervision practices.

On December, 10, 2015, IIROC announced [proposed amendments](#) to rules governing best execution, which will have the effect of codifying many of the issues above, as well as aligning with proposed amendments to National Instrument 23-101 and clarifying that all investment dealers have a best execution obligation.

More recently, IIROC staff members have been examining Dealer Member practices surrounding the routing of orders for Canadian listed securities to foreign jurisdictions for execution, to ensure consistency with the principles of best execution and ensure that any conflicts have been addressed appropriately. Order handling modifications made in response to changes in market structure and marketplace innovations, such as the arrival of unprotected visible marketplaces and new order types that impact queue priority, will be reviewed.

2.4. Electronic Trading

Dealer Members that access markets directly (Participants) have adopted various pre-trade risk controls designed to protect both the dealers and other market participants from disruptions in orderly trading and financial loss due to erroneous order entry. While many Participants have put in place risk controls that limit the entry of unusually large volume or value orders, excessively large volume and value limits are a recurring deficiency in examination reports. Participants are reminded to set and regularly review risk control thresholds to ensure they remain reasonable and effective.

¹ See http://www.iroc.ca/Documents/2014/61ec2e27-7e15-4a42-9adc-5c7895d16c81_en.pdf



A number of Dealer Members continue to rely solely on controls that can be overridden easily by trading staff. In some instances, erroneous orders were initially caught by trader-managed (i.e. “soft”) controls but were overridden by trading staff in error, resulting in significant and costly trading errors. While trader managed controls can be a useful tool to prevent erroneous trades, additional controls that cannot be overridden without secondary approval, are essential to address these risks adequately and are required by the Electronic Trading Rule.

2.5. *Third Party Access*

Our examiners have found that some participants providing electronic marketplace access to other Dealer Members or Foreign Dealer Equivalents did not have proper or updated Routing Arrangement agreements in place for all clients. In addition, some did not perform the necessary review of those agreements, required at least annually under UMIR.. IIROC has found Participants that lacked policies and procedures detailing the onboarding process for new Direct Electronic Access/Routing Arrangement (DEA/RA) clients or policies and procedures to advise IIROC of terminations of DEA/RA agreements when it has become aware of one or more of the following:

- breach of agreement;
- breach of standard;
- client has engaged in unauthorized trading on behalf of the account of another person;
- client has granted or provided access to another person improperly; and
- client has failed to ensure that orders were transmitted through the system of the Participant, investment dealer or foreign dealer equivalent before entering the marketplace.

2.6. *Compliance with the Early Warning System*

Under the Ontario Securities Act s 102.1, every acquiror who acquires beneficial ownership of, or the power to exercise control or direction over, voting or equity securities of any class of a reporting issuer or securities convertible into voting or equity securities of any class of a reporting issuer that, when added to the acquiror’s securities of that class, would constitute 10 per cent or more of the outstanding securities of that class, shall disclose the acquisition in the manner and form required by regulation. The term “control or direction” is generally defined as a person, directly or indirectly, through any contract, arrangement, understanding or relationship or otherwise has or shares:

- (a) voting power, which includes the power to vote, or to direct the voting of, such securities; and/or



- (b) investment power, which includes the power to acquire or dispose , or to direct the acquisition or disposition of such securities.

IIROC intends to examine Dealer Members' compliance with the rule regarding inventory positions that may be approaching or exceeding the above levels, or where discretionary managed accounts under the control or direction of a Dealer Member, in aggregate, approach or exceed 10 per cent of the outstanding securities of that class.

3. Business Conduct Compliance

3.1. Know Your Client (KYC) & Suitability

As outlined in Rule 1300.1(r), “each Dealer Member shall use due diligence to ensure that the positions held in a client’s account or accounts are suitable for such client based on factors including the client’s current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account or account(s)’ current investment portfolio composition and risk level”. Traditionally many firms have relied on a “risk-bucketing” approach to suitability that focused primarily on identifying client risk tolerances based on an allocation of low-risk, medium-risk, and high-risk securities. IIROC recognizes that there are different ways to implement a suitability assessment framework, depending on the Dealer Member’s business model, investment philosophy and product/service offerings and that many firms are implementing more sophisticated methods of portfolio-level suitability analysis for their clients.

The challenge for BCC examiners, given the proliferation of alternative approaches to suitability, coupled with an increasing variety of KYC forms and risk tolerance assessment methods, is to ensure consistency in the testing of Dealer Member suitability processes. In order to meet this challenge in a way that focuses on investor protection, while at the same time being open to alternative approaches to suitability assessment, BCC is currently enhancing its test procedures. We have also implemented examiner training focused on the unique realities of investment risks in the current near-zero interest rate environment. These enhancements and training will better equip examiners to analyze the effectiveness with which Dealer Members are considering all of the KYC factors outlined in Rule 1300.1(r) as part of an assessment of the overall suitability of the investment portfolio composition and risk level in client accounts.

In 2015, we reported, together with other regulators, the results of a mystery shopping initiative conducted the previous year in Ontario that identified issues associated with the collection and discussion of core KYC requirements. These findings were similar to those from focus groups we conducted with investors in Ontario and Quebec to better understand their experience with the KYC process. As a result, we committed to increasing our focus on KYC in our overall compliance program and policy priorities



moving forward. Specifically, we committed to assess the impact on the KYC process of the evolution of business models used by IIROC dealers – including the use of new on-line tools and model portfolios. We will consider potential regulatory reforms and/or guidance to ensure that IIROC’s KYC requirements appropriately align the types and depth of KYC information collected with the business models used.

3.2. Automated/Online Advice

The provision of online advice is a relatively recent phenomenon in Canada. During the past two years a number of small independent firms have begun operations in this market space. For the most part, these firms have operated under the CSA-regulated status of Portfolio Manager (PM), using an IIROC Dealer Member to “carry” the accounts. We are now seeing growing interest by some Dealer Members to also directly enter this market space. Although online advice firms are subject to a suitability obligation, the automated nature of most online advice offerings introduces various challenges from a regulatory and public interest standpoint. These challenges include such things as the adequacy of online KYC and risk tolerance assessment, the extent of human touch points in the client onboarding process, the availability of a Registrant/PM to address client concerns on an ongoing basis, assessment of the algorithms used in the provision of advice, and the complexity of products offered through the online process.

In 2016, one of IIROC’s priorities will be to develop a business conduct test methodology that will identify any deficiencies associated with the various online business models, particularly with respect to assessing KYC and suitability that are being proposed and implemented by IIROC Dealer Members.

3.3. Social Media

The requirements of IIROC Dealer Member rule 29.7 regarding advertisements, sales literature and correspondence used to promote the business of Dealer Members apply regardless of the method used for the business communication. The increasing use of social media websites such as LinkedIn, Facebook, Twitter, YouTube, blogs and chat rooms has, however, introduced challenges for Dealer Members in complying with rule 29.7. In 2011, IIROC published [Guidance Note 11-0349](#), which clarified our expectations regarding the review, supervision and retention of advertisements, sales literature and correspondence, especially as they pertain to communications made via social media. The guidance note allows for Dealer Member discretion in various areas such as whether to employ pre-use approval, post-use review or post-use sampling for certain types of interactive content. It clarifies, however, that certain types of social media content, generally classified as static content, always require pre-approval.



In order to gain a better understanding of how well Dealer Members are complying with rule 29.7, as it relates to social media, BCC recently conducted an analytical study of exam results based on a sampling of Dealer Members that are active in social media.

The results indicate that there is a wide variety in the quality of monitoring processes and supervisory controls that have been implemented by Dealer Members. Certain firms have developed extensive social media policies and procedures, require mandatory staff training and have implemented robust monitoring processes. These processes often involve automated tools that assist in the identification of business communications requiring pre-approval, post-use review/sampling and record retention. Other firms, however, have only minimal, if any, supervisory controls even though their registered employees are active in social media.

The study results indicate that a number of firms are failing to comply fully with the requirements of rule 29.7 as it relates to social media. In order to address this situation, BCC will implement enhanced test procedures that will better equip our examiners to identify deficiencies in the oversight of social media used for business purposes by Dealer Members and their registered staff.

3.4. Conflicts of Interest

In 2015, BCC conducted a study of Dealer Member compliance with IIROC Rule 42, which pertains to the management of conflicts of interest. In particular, Rule 42 requires Dealer Members to identify all material conflicts that could potentially apply to their business activities, and to address these conflicts in a fair, equitable and transparent manner, considering the best interests of their clients. The study was based on a detailed questionnaire completed by a cross-section of Dealer Members that provide service to retail clients, as well as a review of conflict-related policies and procedure documents provided by each of the survey respondents. The questionnaire focused on the governance and oversight of conflicts, compensation-related conflicts, and conflicts relating to the marketing and distribution of new products.

The results of the study indicate that, with a few notable exceptions, generally Dealer Members have implemented robust governance and oversight processes and also have incorporated an effective analysis of potential conflicts as part of their new product review processes. When it comes to compensation-related conflicts, however, the effectiveness of supervisory monitoring was found to be lacking in many cases.

As a next step, BCC will follow up on this study by conducting a comprehensive sweep of the oversight and monitoring of compensation-related conflicts by IIROC Dealer Members. This initiative will help inform any further regulatory response that may be needed to clarify the requirements of Rule 42. BCC will also enhance its test procedures to look more closely at compensation grids, supervisory oversight of registrants that focus on products



with high commissions, and monitoring of registrants who are approaching compensation thresholds.

3.5. *Limitation of Liability Clauses*

In the process of conducting examinations over the past year BCC examiners have encountered a variety of client account agreements that include exclusionary / limited liability clauses. In certain cases such clauses may be perfectly valid. In other cases, however, the clauses appear to violate the spirit of IIROC Dealer Member Rule 29.1, regarding the standards of ethics and business conduct required of firms and their registered employees. Certain clauses that have been reviewed also appear to be in violation of IIROC Rule 37 that outlines the obligation for Dealer Members to participate in an Alternative Dispute Resolution program.

In 2016, BCC will be implementing enhanced test procedures that will enable examiners to better identify inappropriate exclusionary / limited liability clauses.

4. Registration

A request for approval may be delayed if the application is incomplete or lacks sufficient detail. IIROC's Registration department undertook a review of the most common deficiencies and priority items of focus for individual related filings over the last year. The most common deficiencies are highlighted below with reminders addressing filing requirements and/or suggested practice tips or sources to assist firms and individuals in addressing these deficiencies.

Dealer Members must ensure sufficient resources are allocated to the registration function and assign an adequate number of staff possessing the experience and qualifications necessary to discharge registration responsibilities and tasks properly. Dealer Members should create and implement appropriate registration specific policies and procedures.

4.1. *Late and Incomplete Filings on Disclosures Regarding Current Employment, Other Business Activities and Material Notices*

IIROC has found that Dealer Members often do not make accurate and timely disclosures on their Approved Persons' other business activities (OBAs) and changes to information on Form 33-109F4, particularly with respect to criminal, civil or financial items. The failure to make accurate and timely disclosure of these matters, as well as the substance of the disclosure, may raise suitability concerns and lead to a recommendation to the District Council for the imposition of terms and conditions or, in more serious cases, suspension or refusal of IIROC approval.



Other Business Activities (OBAs)

Many Dealer Members are not disclosing OBAs or changes to a previously- disclosed OBA within the filing deadlines prescribed in section 4.1(1) (b) of NI 33-109. All OBAs must be disclosed as there may still be a potential for conflicts of interest, even if the OBA is not securities-related.

Filing Requirements

Firms must provide details of new OBAs or changes to an existing OBA by submitting a Current/Previous Employment Change Notice in accordance with Section 4.1(1)(b) of NI 33-109. An Approved Person must notify IIROC of changes to information previously submitted in a Form 33-109F4, within 10 days of the change. To meet the filing requirements, in addition to periodic attestations regarding OBAs, firms should require Approved Persons to notify them in the event of a material change to their OBAs and remind them frequently of this requirement.

Dealer Members must ensure sufficient detail is being provided when describing the nature of the OBA, the duties of the individual and the relationship to the Dealer Member. Boilerplate disclosures are often provided when responding to question 5 of Schedule G of Form 33-109F4, in particular with regards to disclosure of conflicts of interest and the potential for client confusion arising from the OBA. Responses must be tailored to the specific OBA at issue and ensure sufficient detail to demonstrate that the Dealer Member has considered thoughtfully the potential for client confusion and conflicts of interest that may arise as a result of the OBA and how this will be mitigated and managed by the Dealer Member. In this context, firms should be considering whether the OBA will (i) interfere with or otherwise compromise the Approved Person's responsibilities to the Dealer Member and clients; and (ii) be viewed by clients or the public as a part of the Dealer Member's business based upon, among other factors, the nature of the OBA and the manner in which it will be conducted or offered. If a Dealer Member does not believe that an OBA will result in any potential for client confusion or potential conflicts of interest, the Dealer Member must provide the basis for this conclusion.

Changes to Form 33-109F4 Information

Disclosure of changes to an Approved Persons information contained in the 33-109F4, particularly with respect to material changes, are not being provided to IIROC within the filing deadlines prescribed in section 4 of NI 33-109.



Filing Requirements

Dealers/registrants must provide details of all changes to the information previously submitted in an individual's Form 33-109F4 by submitting a Form 33-109F5 in accordance with Section 4.1 of NI 33-109. An Approved Person must notify IIROC of changes to information previously submitted in a Form 33-109F4 within 30 days for a change in items 4 (citizenship) and 11 (previous employment), and within 10 days for any other changes including items 13 (regulatory disclosure), 14 (criminal disclosure), 15 (civil disclosure) and 16 (financial disclosure). To meet the filing requirements, in addition to periodic attestations regarding material changes, firms should require registered or permitted individuals to notify them in the event of a material change to their Form 33-109F4 and frequently remind them of this requirement.

4.2. Confusion on What Needs to be Disclosed as an OBA

There continues to be confusion among Dealer Members as to what OBAs should be reported, resulting in these types of OBAs not always being disclosed or being disclosed outside of prescribed timelines.

Filing Requirements

To determine if the OBA is reportable, Dealer Members should review the guidance set forth in the Companion Policy to National Instrument 31-103, IIROC [Notice 13-0163 Disclosure and approval of outside business activities](#) and [CSA Staff Notice 31-326 Outside Business Activities](#). Firms and Approved Persons are reminded that the following must be reported as "other business activities" or "outside business activities" under NI 33-109:

- „ any business or employment activity with an entity other than the individual's sponsoring firm – this would include any business or employment activity with an affiliated firm;
- „ acting as an officer, director or in an equivalent position for a company, other than the individual's sponsoring firm, regardless of whether the individual is in a position or power of influence and despite whether payment, compensation, consideration or other benefit is received or expected;
- „ being an officer, director or a significant owner of a holding company or personal corporation; and
- „ having a paid or unpaid position of influence within a charitable, social or religious organization. Any position of influence, regardless of whether the position is business related and despite whether payment, compensation, consideration or other benefit is received or expected, is required to be reported.



IIROC has pursued disciplinary actions against Approved Persons who fail to disclose OBAs to their sponsoring Dealer Member and IIROC, and will continue to do so in appropriate cases.

4.3. Exemption Requests from Proficiency Requirements

There continue to be deficiencies in providing sufficient information regarding the exemption(s) sought and in the submissions and analysis provided by the Dealer Member to demonstrate equivalency. As a result, IIROC may be unable to evaluate the exemption request in a timely fashion to determine if granting the relief is appropriate. Often the information provided simply lists the education and/or courses the individual has completed, as well as his/her employment experience. The information submitted often does not explain how the information supports the exemption request or demonstrates equivalency. IIROC Registration's role is to evaluate the submission and make a recommendation to the applicable District Council. IIROC Registration staff cannot advocate on behalf of the firm/applicant. The onus is therefore on the Dealer Member/applicant to state clearly the basis for the exemption and demonstrate equivalency through experience and/or alternative education.

Suggested Practice

If the exemption request is based on other courses the individual has taken, the request should provide a comparative analysis of the topics and information covered in those courses with the topics and information covered in the course for which exemptive relief is sought. If the exemption request is based on the individual's relevant experience, the request should provide sufficient details of how that experience demonstrates equivalency to the educational content of the course for which exemptive relief is sought. It is expected the Dealer Member will review an individual's work experience and education to meet the requirements under section 5.1(1) of NI 33-109 to make reasonable efforts to ensure the truthfulness and completeness of registration information.

5. Membership Issues

The General Counsel's Office (GCO) conducted a review of the most common deficiencies relating to membership related filings over the past year. Highlighted below are the identified deficiencies together with a summary of the filing requirement and suggested practice tips.

5.1. Late and Incomplete Filings Requesting Approval of Significant Equity Interests in a Dealer Member



Under Dealer Member Rule 5.4, Dealer Members must seek District Council approval of any transaction that permits an investor, alone or together with its associates and affiliates, to own a significant equity interest in the Dealer Member or to own special warrants or any other securities that are convertible, at any time in the future, to a significant equity interest in the Dealer Member. “Significant equity interest” is defined in Dealer Member Rule 5.4(2) as 10% or more of the voting or outstanding participating securities or 10% or more of the total equity of the Dealer Member or its holding company.

Dealer Members requesting the approval of a District Council under Dealer Member Rule 5.4 should file the request for approval with the Membership & GCO Specialist no less than 30 days in advance of the transaction so that we have sufficient time to review the transaction and any Investor Application Forms, as applicable. IIROC’s recommendation to the relevant District Council is dependent upon an assessment of whether the transaction is:

- likely to give rise to conflicts of interest;
- likely to hinder the Dealer Member in complying with IIROC rules and securities legislation;
- inconsistent with an adequate level of investor protection; or
- otherwise prejudicial to the public interest.

IIROC often finds that these requests for approval do not provide enough information to allow us to make a proper assessment of the proposed transaction, which may result in delays before a recommendation is finalized. Dealer Members must also consider in any such transaction whether a “permitted individual” filing is required under NI 33-109 and/or whether a written notice must be filed with the applicable securities regulatory authority under sections 11.9 and/or 11.10 of National Instrument 31-103.

Where a proposed transaction involves a change of control of a Dealer Member and the acquirer intends to make significant changes to the nature of the Dealer Member’s business and/or operations, such as where the Dealer Member has been conducting very limited activities prior to the proposed transaction, a more detailed review may be necessary. In such circumstances, we may give consideration as to the appropriateness of treating the proposed transaction as a new Dealer Member application.

For investments of less than 10% (below the threshold for a significant equity interest) in a non-publicly traded Dealer Member or its holding company, the Dealer Member must provide prior written notice to IIROC under Dealer Member Rule 5.3 The Dealer Member should file the notice with the Membership & GCO Specialist at least 20 days before the transaction date and include an Investor Notification Form if such form has not previously been filed in respect of the investor.



Suggested Practice

The following are suggested practices to prepare Dealer Member Rule 5.4 requests for approval. The relevancy of each of these suggested practices will depend on the type of transaction and/or the case specific facts.

1. Explain the business reasons for the transaction, in detail.
2. Provide details concerning the Dealer Member's operations and business plan, in the event the transaction closes. The information regarding any changes to business operations should include details required in Item 3.1 of the Form 33-109F6 Firm Registration (i.e. primary business activities, target market, and the products and services the Dealer Member provides to clients).
3. Provide details regarding the entities involved in the transaction, including the description of the business, corporate address, full legal name of officers, directors and investors – including their dates of birth, any other names they may be “known as” and their residential addresses for the past five years.
4. Provide details regarding changes to the Ultimate Designated Person (UDP), the Chief Compliance Officer (CCO), key management, directors, officers, permitted individuals and Approved Persons that may flow from the proposed transaction. If no personnel changes are contemplated, confirm this is the case.
5. Provide details of the Dealer Member's policies and procedures that are in place to address conflicts of interest that may arise as a result of the transaction.
6. If there is a potential conflict of interest arising from the transaction, explain how this conflict of interest would be addressed.
7. Confirm whether the parties to the transaction have adequate resources to ensure compliance with all applicable conditions of registration and provide details supporting this conclusion.
8. Provide details as to whether directors, officers, partners and Approved Persons of the Dealer, if applicable, will be in compliance with section 4.1 of NI 31-103 (restrictions on acting for another registered firm) and whether any cross registrations arise from the transaction.
9. Provide details of all client communications that have occurred or are planned. If the Dealer does not propose to communicate with clients about the transaction, confirm that fact and explain the basis for that decision.
10. Provide a copy of the draft press release announcing the transaction. If the Dealer Member does not plan on issuing a press release, confirm that fact and explain the basis for that decision.
11. Confirm the proposed closing date.



12. Provide detailed pre/post transaction corporate organization charts that include all affiliated companies and subsidiaries of the Dealer Member. The charts provided must identify all companies or affiliates which are registered under provincial/territorial/foreign securities and commodity futures legislation and specify their category of registration. Any other related entities operating in the financial services sector must also be identified.
13. If any individuals identified on the corporate organization charts hold an interest in a company, partnership or trust, confirm whether such holdings are held directly or through a holding company, trust or other entity (a “Holdco”) and provide details of these holdings. If ownership is held through a Holdco, provide the name of the Holdco and details regarding its ownership structure.

5.2. Late and Incomplete Filings Requesting Approval of Related and Associated Companies of a Dealer Member

Under Dealer Member Rule 6.3, no Dealer Member or partner, director, officer, investor or employee of a Dealer Member shall form, maintain or have any interest in a related company or associate without the prior approval of the applicable District Council. The term “Related company” is defined in Dealer Member Rule 1, while the term “associate” is defined in section 1.1 of IIROC By-Law No. 1.

In our view, the primary aim of this approval requirement is to allow for consideration of the potential regulatory impact to a Dealer Member of a proposed interest of the Dealer Member or its holding company in a related or associated securities registrant. Investments by a Dealer Member or its holding company in a corporation that carries on activities other than securities-related activities, on the other hand, would be subject to the written notification requirement under the diversification provisions of Dealer Member Rule 6.7.

Requests for District Council approval under Dealer Member Rule 6.3 should be filed with the Membership & GCO Specialist no less than 30 days in advance of the transaction, so that IIROC has enough time to review the transaction. IIROC’s recommendation to the appropriate District Council will depend on whether the transaction is:

- likely to give rise to conflicts of interest;
- likely to hinder the Dealer Member in complying with IIROC rules and securities legislation;
- inconsistent with an adequate level of investor protection; or
- otherwise prejudicial to the public interest.



We often find that Dealer Members' requests for these types of approval do not provide IIROC with sufficient information to assess the transaction properly, which may result in the final recommendation being delayed. From time to time, information requested from Dealer Members or their filing counsel is not provided on a timely basis. Failure to file the requested information on a timely basis impacts IIROC's ability to complete their review of the transaction and may result in IIROC being unable to respond to the applicant on a timely basis.

Suggested Practice

A Dealer Member seeking Dealer Member Rule 6.3 approval should address the suggested practices noted above, as applicable.