



Alberta Securities Commission

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# ALBERTA SECURITIES COMMISSION

2006 Oversight Review  
Investment Dealers Association of Canada  
Prairie Regional Office

June 11, 2007

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## 1.0 Overview of Oversight and Report Structure

### 1.1 Background

Staff of the Alberta Securities Commission (“ASC”) conducted an oversight review of the Investment Dealers Association of Canada, Prairie Region (“IDA”) for the period of January 1, 2004 - August 31, 2006. Our oversight included the following departments: Registration, Sales Compliance, Membership, Case Assessment, Investigations and Enforcement Counsel. Several issues have been identified including a number of significant matters detailed below.

The oversight review was coordinated with other jurisdictions across Canada; however, the ASC’s report is published separately in consideration of the different approach the ASC has taken regarding oversight of the day-to-day activities of the IDA. This differentiated approach is reflected by the additional power, freedom and jurisdiction granted to the IDA under the *Securities Act* (Alberta)<sup>1</sup>. The following are examples of the powers the ASC has granted, which may not be available to the IDA in other jurisdictions:

- a) Authority to file disciplinary decisions with the courts so that they have the same effect as if they were orders of the court;<sup>2</sup>
- b) Power to compel 3<sup>rd</sup> parties to produce documents at a disciplinary hearing;<sup>3</sup>
- c) Power to compel 3<sup>rd</sup> party witnesses’ attendance at a disciplinary hearing;<sup>4</sup>
- d) Jurisdiction over former members and former approved persons;<sup>5</sup>
- e) Jurisdiction over current members and current approved persons.<sup>6</sup>

The ASC relies heavily on the IDA, as a self regulatory organization, to ensure that its members are complying with securities laws and we take a “hands off” approach to the day-to-day operation of the IDA. We do not conduct compliance exams of firms that the IDA has already examined, nor do we engage in actively advising the IDA on rule creation and oversight of IDA members. Because of this, the ASC relies on its triennial oversight review of the IDA to gauge the effectiveness with which it is carrying out its delegated functions.

With this in mind, our review was not limited to file testing. It included an examination of compliance with the terms and conditions of recognition; processes used to carry out

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<sup>1</sup> R.S.A., c.S-4.

<sup>2</sup> Ibid, s.69(2).

<sup>3</sup> Ibid, s.69(1)(a)(iii).

<sup>4</sup> Ibid, s.69(1)(a)(i).

<sup>5</sup> Ibid, s.64(5).

<sup>6</sup> Ibid, s.64(4).

the duties delegated to the IDA; the IDA's philosophy and approach when carrying out delegated functions; and the quantity, quality, training and competence of the staff that the IDA hires to carry out the delegated duties.

The ASC, as the regulatory authority in Alberta, is ultimately responsible for investor protection and capital market regulation. As such, in our report we do not make "recommendations" for the IDA to consider; staff drew conclusions based on the audit findings and ask that certain issues be addressed and that certain questions be responded to. Second, for the sake of brevity, where only minor issues were found, we omitted these sections from the report. Minor issues will be dealt with during quarterly meetings between ASC and IDA staff.

## **1.2 Evidence and Presentation**

ASC staff used a combination of interviews, file testing, documentation review and observation to draw conclusions about the operations of the IDA prairie region. Our findings are based on evidence collected in one or more of the above categories. In many cases a procedural weakness will be noted which, in ASC staff's view, may lead to a regulatory issue in future. In some cases our testing samples did not reveal explicit instances where the procedures in question resulted in a physical finding. In these cases ASC staff relied on their independent, objective assessments in order to gauge the likelihood of a problem arising. These findings have been presented along with physical findings that were noted during file testing.

Throughout the report we have highlighted certain deficiencies as significant. Significant deficiencies are findings that fit into one of the following categories:

- Contravention of the terms of the delegation or recognition orders
- Items that may effect the IDA's ability to continue to meet the terms of the delegation or recognition orders
- Significant procedural deficiencies
- Repeat findings that the IDA has not sufficiently addressed
- Supervisory issues

For all significant items we require that the IDA provide a detailed action plan towards correcting the issue. In some cases the IDA should generate a timeline and provide a firm deadline by which time the issue will be corrected. In other cases a description of the steps that will be taken to correct the issue is sufficient.

## **1.3 Conclusions and Questions**

For many of the deficiencies noted, a conclusion has been reached and in each case a request for action has been included to direct the IDA's response. In some cases we have

asked specific questions that were not sufficiently addressed during the oversight review or exit meetings. We request that the IDA respond to each finding in turn and that the IDA respond to all listed questions.

## **2.0 Regional Deficiencies**

### **2.1 Supervision**

The Vice President, Western Canada is responsible for the Prairie Region office, located in Calgary, Alberta. The office of the Vice President is located in Vancouver, B.C.; he spends the majority of his time at the Pacific Region office, making occasional visits to Calgary. An important function of the Vice President is to supervise the department managers and to ensure that the Prairie Region office is running smoothly.

In early 2002, at the request of the IDA, the ASC agreed to allow a B.C. resident to oversee the regulatory functions of the Prairie Region with the understanding that the Prairie Region would receive appropriate attention. We are not satisfied that this has occurred. When questioned, several IDA personnel indicated that the Vice President, Western Canada is seldom in the Prairie Region office and does not generally have a great deal of direct contact with staff. The absence of a resident supervisor has contributed significantly to several deficiencies noted during the review. These include:

- Executive level registration decisions being made outside of Alberta
- Lack of supervision of department managers
- Insufficient staff levels in the region
- High staff turnover in the region
- Ineffective training programs in some departments
- Inefficient processes in some areas, and
- Lack of communication between departments.

These deficiencies will be discussed in detail below.

The lack of supervision has a detrimental impact on organizational cohesion and is a major concern for ASC staff. We request that the IDA advise what steps it will take to address this concern.

### **2.2 Communication Between Departments**

ASC staff conducted interviews with the managers of Registration, Sales Compliance, Case Assessment and Investigations as well as various Registration Officers, Sales Compliance Officers, Case Assessment Officers, Investigators and Enforcement Counsel. Interviews were conducted to obtain information about each department's operations and

to assess the level of cross functional interaction between departments. We also observed the interaction between departments during the on-site portion of the oversight review and assessed the adequacy of policies and procedures dealing with interdepartmental communication within the region.

Overall, there is a lack of communication between departments in the Prairie Region. We observed that IDA staff tend to work in isolated areas, by department. There is little interdepartmental interaction and the limited communication that does take place tends to occur through e-mail. In some instances communication policies dictate that information is fed from one Prairie Region department to another via the Toronto office rather than directly through face-to-face meetings between regional staff.

Interviews with individuals in several departments identified that IDA staff have little knowledge of the roles and responsibilities of those who work in other departments within their region. This, coupled with the lack of interaction, promotes a “silo” effect: each department operates in its own sphere and has limited contact with other departments.

The IDA should ensure that interdepartmental staff communication is encouraged and that additional initiatives are put in place so that staff in the Prairie Region begin to function as part of a whole rather than in isolation. We ask that the IDA advise what action will be taken to address this concern.

### **2.3 Staff Turnover**

ASC staff reviewed the staffing history for all departments as provided by the IDA Human Resources department. We also interviewed the Vice President, Western Canada and all department managers in the Prairie Region to assess the effect that turnover has had on various departments.

During the review period, the Prairie Region experienced high levels of turnover at both management and staff levels. This has affected performance across all departments. Under the terms of the ASC recognition orders, the IDA must maintain sufficient staff in this region to perform all delegated functions. It is noted that the labour market in Calgary is currently competitive and has been for some time; nevertheless, the IDA must ensure that its hiring practises and staff retention policies minimize the impact this market has on the operations of the Prairie Regional office.

The IDA should implement processes and staffing initiatives to effectively mitigate these challenges. Please describe what steps the IDA is taking to reduce staff turnover at the Calgary office.

## **3.0 Registration**

### **3.1 Philosophical differences**

As the securities regulator for Alberta's capital market, the ASC views registration as the gateway into the securities industry. Registration applications provide the first opportunity to consider the suitability and operations of a firm or to assess whether an individual applicant is suitable for registration based on their personal and professional history. The registration department is the gatekeeper and the decisions made in this department are critical to upholding the integrity of the capital markets.

The IDA seems to view registration as an administrative exercise, not as a critical component of regulation that helps to ensure the protection of investors. It appears that as long as an individual meets the minimum requirements for registration, and has the approval of a member firm, the IDA considers the individual acceptable for registration. In practice, IDA staff are not encouraged to undertake a reasoned consideration of each application; instead, a perfunctory review is performed based on a rigid and overly detailed set of checklists. Reducing registration to an administrative function is the most poignant indication of the IDA's differing views regarding registration. This approach does not appear to adequately address the fit and proper registration requirements for individuals. In some cases the IDA may not be appropriately considering the integrity of all individuals who apply for registration (Please refer to section 3.7.2 for a specific example). It is critical that the proficiency, integrity and solvency for all applicants be reviewed in detail, not just the proficiency and solvency.

When asked about this process and the possible ramifications to the capital markets, IDA executive expressed the opinion that any issues that arise subsequent to registration with respect to a registered individual's conduct can be adequately dealt with either by the member firm or by the IDA Sales Compliance department. ASC staff are of the opinion that this approach is insufficient. Not adequately assessing individual integrity during the application process may result in the registration of individuals who should not have been registered at all.

A second issue, one that was brought forward in each of the 2003 and 2001 oversight reports, is the issue of IDA members engaging in registerable activity in another jurisdiction, without registration in that jurisdiction. The 2006 review has again highlighted this concern, which was identified and discussed with the Vice President, Western Canada. A specific instance of this behaviour was brought to the IDA's attention. The response received was that this issue was not significant enough to warrant attention because the firm had only one client in a jurisdiction where they were not registered. Regardless of the facts of this particular instance, the response provided under direct questioning illustrates the IDA view of registration and provides a practical example of how the philosophical difference affects IDA responses to regulatory issues.

Other high level issues on which the IDA and ASC differ include the following.

- Location of Mind and Management and how this relates to the IDA's recognition order in Alberta
- Direct supervision over registration officers
- Required proficiency, quality and training for new registration staff
- Reliance on a firm's compliance department to perform various activities including a review of the appropriateness of sub-branch personnel

All are discussed in more detail below.

Responsibility for registration of IDA member firms and individuals in Alberta was delegated to the IDA with the expectation that appropriate care and attention would be devoted to these functions. The conduct of the IDA with respect to registration issues, coupled with the "philosophical difference" about the importance of registration, falls quite short of appropriate care and attention.

### **3.2 Mind and Management (Significant Deficiency)**

In our oversight report dated January 22, 2001 ASC staff noted that "the ASC has delegated regulation responsibilities to the IDA with the expectation that these responsibilities will be carried out within the province". The IDA conceded this point and appointed the Vice President, Western Canada as head of the Prairie Regional office. This individual was to be the ultimate decision maker for the region. ASC staff were concerned when, during an interview, the Vice President, Western Canada opined that he does not add value to the registration department and generally refers difficult registration questions to either the Vice President, Sales Compliance and Registrations or the Director, Registrations, both of whom are based in Toronto.

The ASC has delegated registration authority to the IDA in accordance with an order dated July 27, 1994 (amended March 11, 1998). The order was granted based on an expectation that decisions regarding registration in Alberta would be made by Prairie Region staff. The current chain of authority does not meet this expectation.

We request that the IDA advise what steps it will take to ensure that Alberta registration decisions are made by Prairie Region staff.

### 3.3 Supervision (Significant Deficiency)

In both the 2001 and 2003 oversight reports, the ASC expressed concern that Registration staff were not operating with an adequate level of supervision. During the current review it was noted that supervision continues to be an issue.

In 2003 it was suggested that the Manager, Registration should review a sample of submissions to ensure that the decisions made by Registration staff were appropriate. During the 2006 oversight we were provided with a spreadsheet detailing the random selections that were chosen for review over the last three years. We were concerned that on average 10.8 applications were reviewed monthly (with a minimum of five in July, 2005 and a maximum of 34 in August, 2006 immediately prior to the commencement of our fieldwork) out of an average of 700 monthly submissions for the period. It was also noted that these random selections were being tested after the application had already been processed and approved. The purpose of the requested review is to ensure primary supervision of each Registration Officer and therefore should be undertaken prior to approval and should include a statistically significant sample.

We request that the IDA provide an action plan detailing the steps it will take to ensure that more effective primary supervision of Registration Officers will be performed.

### 3.4 Number of Staff: (Significant Deficiency)

Documentation provided by the Director, Registrations during the review revealed that, based on current processes, the Prairie Region has the lowest staff-to-submission ratio of all jurisdictions in Canada as outlined below:

<b>2006 Statistics</b>				
	Pacific	Prairie	Ontario	Quebec
Average # of submissions per month	788	759	1,292	669
Average # employees per month	5.489	3.277	12.562	4.389
Average # submissions per employee	144	232	103	152

The IDA bases two of its three registration benchmarks on the number of submissions processed by Registration Officers. This benchmark is not adjusted from one region to another based on perceived difficulty of submissions received in the region. As such, the IDA appears to view the number of submissions as an adequate measure of performance for all regions. Senior management should therefore ensure that all regions have sufficient staff to meet their performance benchmarks. The numbers provided suggest that the Prairie Region staff complement is inadequate to handle the volume of submissions, in accordance with IDA prescribed standards.

We request that the IDA explain what analysis has been done to arrive at the staffing levels in this region, as the staffing levels in the Registration department appear to be inadequate. The IDA should explain what steps it intends to take to address this issue.

### **3.5 Quality, Training and Turnover of Staff: (Significant Deficiency)**

Interviews with Registration Officers identified a wide range of proficiency and knowledge among the individuals. The knowledge gap was not due, entirely, to different levels of experience in the position. Examples were noted where Registration Officers did not have an adequate understanding of high level registration concepts. When asked about specific submission types the individuals who did not fully understand the registration process continually referred to checklists in order to answer the questions. This highlights both a lack of staff proficiency and the shortcomings of the department's training program.

Staff training consists of two parts: one-on-one coaching and a reading list. The reading list contains a full review of Multilateral Instruments 31-102 and 33-109 as well as various IDA by-laws and rules. The job description for a Registration Officer requires "High School and/or Community College Diploma" and "One year's progressive, related experience within the securities industry". The IDA should not expect a high school graduate with one year of experience to read and fully understand complex IDA by-laws and multilateral instruments.

The one-on-one training component shows new recruits how to fill out various registration checklists. The checklists are overly detailed and ultimately impede the recruit's ability to become a fully functioning member of the registration team. Coupled with high turnover rates, the current training program ensures that the Registration department remains in a constant state of training.

Five Registration Officers and one Manager, Registration, have left the department since January, 2004. One factor that may lead to high turnover among Registration Officers is the Manager's inability to hire permanent staff. The Prairie Region is limited to three full-time Registration Officers (one of whom is senior), one full-time clerk and one contract Registration Officer. The contract position has been staffed consistently throughout the review period. It is clear that this position is required given the workload in the Prairies and the staff complement in other jurisdictions. Continuing to maintain a contract position, as opposed to a permanent position, will limit the Manager's ability to attract and retain staff of sufficient calibre.

In order to ensure that the Registration department is able to meet the terms of delegation, the department must be able to recruit competent, experienced staff, retain these individuals and execute an effective training program so that the individuals are able to effectively administer the registration function for investment dealers in Alberta.

We request that the IDA address the following questions regarding quality, turnover and training of staff:

1. What analysis was performed to determine the proficiency requirements for new Registration Officers?
2. How was the training program developed in the Prairie Region and what analysis has been performed to assess its effectiveness?
3. What initiatives are being undertaken to address turnover in the Registration department?
4. Why has the contract position not been converted to a permanent position?

### 3.6 Benchmarks

The IDA registration benchmarks include the following:

1. 80% of all applications will be either approved or the Member will be sent a first deficiency letter within 5 business days.
2. All transfers of registration will be completed within 2 business days provided no extenuating circumstances require a longer processing time (i.e. exemption request).

The Prairie Region has had the following success rate for these benchmarks (indicated by number of months):

Year	Benchmark #1	Benchmark #2
2004	8/12	1/12
2005	12/12	4/12
2006 (through Sept.)	2/9	5/9

In 2006, the Registration department experienced difficulty consistently achieving its benchmarks. When a benchmark is not met, management is required to explain why they were unable to achieve the goal on a tracking spreadsheet. The reasons listed are generally: training, position vacancy, or vacation issues. It is acknowledged that the benchmarks for Registration are fair, by both the ASC and the IDA. It is also clear that benchmark #1 is achievable given the 100% success rate during 2005. The fact that other years are inconsistent, with seemingly no action taken, is of concern.

We request that the IDA address the following questions regarding Registration benchmarks:

1. What action is taken when benchmarks are not met?
2. What action will the IDA take to address the above noted concerns?

### **3.7 Quality of Processes**

#### *3.7.1 Checklists*

Registration Officers complete a checklist for each application made through NRD. The checklists are overly detailed and slow down the registration process considerably. Although we acknowledge that checklists can be an effective tool for Registration Officers, the detail required by the current documents is excessive.

We suggest that the detail in these checklists impede the development and effectiveness of staff by turning registration into a mechanical exercise rather than one of reasoned, critical thought.

We request that the IDA re-assess its registration checklists and advise what changes will be implemented to improve the process.

#### *3.7.2 Opening Sub-Branches*

The sub-branch opening checklist does not require a full review of the individuals who will be operating out of a sub-branch location. Under some circumstances it may be inappropriate for an individual to work out of a sub-branch and thus, the process should be modified so that the review is more comprehensive. The individual's suitability to operate out of a sub-branch should be considered, as well as the branch manager's ability to supervise from a distance.

One instance was noted where an individual, who was sanctioned by the IDA for "conduct unbecoming a registered representative by engaging in personal financial dealings with his clients", was allowed to open a sub-branch out of his home supervised by a Branch Manager located two hours away. As part of a settlement agreement the individual was fined \$100,000 and placed under close supervision for one year. It was during this one-year period of close supervision that the sub-branch was opened. The file shows no evidence that the registration officer considered the appropriateness of the application given the previous sanctions, no evidence that enforcement was contacted to seek their opinion of the individual and no evidence of supervision over the registration officer's activities by the Manager, Registrations.

The individual continued to conduct illicit activity out of the sub-branch resulting in additional losses to clients. He was subsequently expelled from membership with the IDA.

The IDA should revisit its procedure for opening sub-branches to incorporate an assessment of the individuals who will work out of the sub-branch and the adequacy of supervision over their activities.

### *3.7.3 Reliance on other Departments (Significant Issue)*

When completing a submission, a Registration Officer may consult with other departments to gather relevant information. For example, Sales Compliance is consulted when opening a sub-branch, in some instances, to verify the quality of the firm's supervision systems. Discussion with other departments is advisable where the Registration Officer requires additional information; however, in these instances the Registration Officer should collect all the relevant data and make an independent decision. Interviews with IDA staff revealed that some Registration Officers view the opinions of outside managers as approvals rather than information and thus, in some instances, the Registration Department is abdicating the registration decision to others rather than drawing their own conclusions. Decisions should not be made by an outside manager who may have little or no understanding of registration issues.

We request that the IDA explain what steps will be taken to ensure that registration decisions will be made by Registration staff.

### *3.7.4 District Council Exemption Process*

A district council standing committee makes all decisions regarding discretionary exemptions from registration requirements for individuals in the Prairie Region, except those applications falling under the blanket exemptions outlined in IDA Policy 6 which can be approved at staff level. This committee generally has a pool of five members. A summary of each exemption application along with staff's recommendation is emailed to three out of the five members for review. The members come to a conclusion individually and transmit their decision back to staff through email. There is rarely discussion regarding the applications between the members and any comments provided are in the form of reply emails.

This process is not conducive to collaborative thinking and does not ensure that the District Council members are weighing all available evidence and opinions. Given that a Standing Committee is formed for the purpose of vetting exemption requests, it is reasonable to expect that a certain amount of discussion will be undertaken by the members to ensure that they fully understand both the request and the consequences of their decision. We found very few instances where members discussed the exemption.

The IDA should re-assess this approval process and advise what changes have been implemented to address this concern.

## **3.8 Firm Registration (Significant Deficiency)**

The initial registration of firms and membership are treated as one process at the IDA. Applications are received by the Corporate Secretary in Toronto. His staff divide the

application into three sections, by department: Sales Compliance, Financial Compliance and Registration. Each department reviews their specific section and makes a determination. Once approval is obtained from each of the three departments the application goes to the local District Council for approval, followed by the Board of Directors of the IDA. Although the Registration department is involved in the process, it does not make the ultimate decision to recommend a firm for registration. This approach poses a problem because staff of Sales and Financial Compliance do not necessarily have the expertise to identify registration specific issues.

Three firms with head offices in the Prairie Region were registered during the review period. In one instance, a firm was granted membership and approved to service fully managed accounts without having a qualified portfolio manager on staff. Sales Compliance identified the issue and agreed to a proposal to allow for registration. Although the Manager, Registrations was made aware of the issue, she did not evaluate the merits of the proposal because it was not part of her section to review.

Authority to register firms has been delegated to the IDA by the ASC and thus individuals who are knowledgeable about registration should be making the decision to register firms in Alberta. It is unlikely that the Manager of either Sales or Financial Compliance would have an appropriate level of registration knowledge to judge a firm's suitability for registration in Alberta. That being said, the knowledge of these managers is invaluable to this process. Registration should seek input from other departments regarding their area of expertise and make an independent decision based on all available data.

This is another area where Registration staff are abdicating decision making responsibility to other departments. The IDA should ensure that Registration staff make the ultimate decision to recommend firms for registration in Alberta.

### **3.9 Registration of Alternative Trading Systems (Significant Deficiency)**

National Instrument 21-101 was implemented in 2001; it sets out that Alternative Trading Systems ("ATs") will be registered as dealers and imposes filing requirements on ATs. The required documentation must be filed with the local securities commission. As noted above, the mind and management for registration in the Prairie Region is based in Ontario. The changes implemented under 21-101 did not require a process change in Ontario because the IDA has not been delegated firm registration by the Ontario Securities Commission ("OSC"). As such, both the application for registration and the required filings are handled internally by the OSC. No changes were required to the internal registration processes of the IDA's Toronto office as a result of this national instrument.

This is not the case in Alberta. The IDA handles registration of firms on behalf of the ASC, but the ATS's required filings must be reviewed and commented on by staff at the ASC. IDA staff should be advising ASC staff when an ATS application is received, in order that we may follow up with the applicant if the required filings have not been submitted. IDA staff have not been advising ASC staff when an ATS registration application is received. Further, due to the classification of ATSS as dealers, were ASC staff to access NRD to search for new registrants, there is no way to determine that an applicant is an ATS. Without information from the IDA, the ASC cannot determine which entities are proposing to operate as ATSS, rather than regular dealers, and are subject to the reporting requirements.

The IDA did not change its procedures to account for the new requirements of NI 21-101 and the process that was in place did not consider regional differences. Specifically, the IDA should have changed its procedure in Alberta to include providing the ASC with notice of ATS applications, prior to the granting of registration.

A further issue arises from this lack of communication. An exemption from residency is required if a firm plans to operate in Alberta but not have a physical presence here. This is a common application for regular dealers, as well as ATSS. The ASC should always be advised, in advance, that a firm is an ATS so all available information is considered during ASC staff's review of residency exemption applications. In at least one instance an exemption was granted prior to ATS status being disclosed.

Not only was this issue not dealt with procedurally by the IDA, communication has not improved since the issue was brought to the attention of IDA staff.

We request that the IDA explain what processes it will implement to ensure that regional differences arising from changes in national regulation are recognized by the IDA and processes are implemented appropriately to ensure that new rules are administered properly.

## **4.0 Sales Compliance**

### **4.1 Benchmark is not Sufficiently Stringent (Significant Deficiency)**

Sales Compliance has four benchmarks one of which deals with timelines for completing examination reports. This benchmark is as follows:

Completion and issuance of final examination reports:

- a. Within 15 weeks of completion of fieldwork for 60% of reports,
- b. Within 26 weeks for all reports.

These timeframes are not sufficiently stringent. Deficiency reports issued this long after the completion of fieldwork jeopardizes the importance and effectiveness of the review.

The Prairie Region has been largely meeting this benchmark throughout the period, as outlined below:

	<b>2004</b>	<b>2005</b>	<b>2006 (to date)</b>
Average Number of Weeks to Issue a Report to Members	10.3 Weeks	12.7 Weeks	12.0 Weeks
% of Final Reports issued within 15 weeks	80.9%	65.5%	75.0%
Number of reports issued after 26 weeks	0	1	0

One report during the period exceeded the 26-week benchmark. Given that the benchmarks are generous, this single instance is troubling, especially since the report raised serious compliance issues. The IDA cannot effectively convey the importance of its findings to its members when more than six months elapses between fieldwork completion and issuance of the report.

This issue was raised in both the 2001 and 2003 oversight reviews and yet the benchmarks have not changed in the last five years.

We request that the IDA explain why the benchmarks have not been adjusted, as the ASC has brought the matter forward on two prior occasions.

#### **4.2 Inconsistent Quality of Reviews (Significant Deficiency)**

The quality of Sales Compliance examinations varies significantly from file to file. In one instance, a branch review performed in early 2005 raised two minor points. Six months later the branch was revisited and a targeted exam was performed. We were advised that the repeat review was required because findings at the branch level did not correspond with findings at the head office. The targeted review identified several significant deficiencies. We are concerned that a deficient branch compliance review progressed through several levels of supervision and was issued to the registrant. There should be systems in place to ensure that the Manager, Sales Compliance is adequately supervising the Sales Compliance Officers, and that the work is adequately performed before the review is concluded and the report issued.

The IDA should re-examine its sales compliance review process to ensure a high quality of work on all compliance reviews and report any changes implemented.

### **4.3 Sales Compliance Program**

The Sales Compliance program was revised in 2004 so that interviews are now conducted only after file testing has been performed. According to the IDA's 2004 self assessment the "revised procedure begins with a brief interview to help locate relevant records and identify responsible persons within the Member, followed by a more intensive review of books and records. The interview follows the physical review". Discussion with IDA staff, including Compliance Officers and the Vice President, Western Canada, indicated that these interviews are used mainly to fill in details not apparent in the paper work. In many instances the interviews are listed as optional in the revised program. The rationale for the change was to speed up the examination process.

The audit process should always include discussion with relevant staff of a firm. Valuable information can be obtained from interviews that may not have otherwise been apparent from the documentation provided by the firm during the review.

We request that the IDA explain what analysis has been done to measure the effect of this change in terms of both quality and timing of reviews.

### **4.4 Staff Turnover**

Two Sales Compliance Officers and two Managers left the Sales Compliance Department during the review period. The more concerning of these departures is the turnover in management positions. As noted above, the Manager is responsible for ensuring adequate quality of all Sales Compliance reviews. It is important that stability be maintained at a management level in this Department. As a term of recognition with the ASC: "the IDA will maintain within the Province of Alberta a staff complement sufficient to ensure that all...sales practices reviews and audits that the IDA is required to perform on its member firms operating in Alberta are performed in a timely and thorough manner". Turnover significantly impacts the ability to meet this requirement of recognition.

The issue of high staff turnover in the Sales Compliance department has been identified by the IDA as a problem across the country. We note that some initiatives have been implemented to retain Sales Compliance Officers; however, none of the initiatives deal specifically with the management position.

We request that the IDA comment on any initiatives planned to promote management positions at the IDA as attractive and viable career options.

## **5.0 Case Assessment**

### **5.1 Issue Identification (Significant Deficiency)**

During the review period, the ASC referred a significant file to the IDA regarding a gatekeeping issue. ASC correspondence was addressed to the Investigations branch, due to the nature of the allegations involved. Upon receipt, Investigations sent the file to Case Assessment for review. After reviewing the file, a decision was made at the Case Assessment level to issue a caution letter and close the file. This decision did not seem appropriate given the circumstances of the case and the nature of the information provided to the IDA. The case appeared to warrant further investigation and attention.

We request that the IDA explain what steps are being taken to ensure that files referred by ASC staff are given sufficient attention in the Enforcement department.

### **5.2 Failure to Notify ASC Regarding Outcomes (Significant Deficiency)**

We reviewed all four files that the ASC referred to the IDA during the review period. It was noted that when the significant file listed above was concluded, no notification was sent to ASC staff. Pursuant to the recognition order, the IDA is required to report any decisions, orders or rulings that arise from complaints or referrals of complaints from residents of Alberta to ASC staff in a timely manner.

The IDA should review its procedures for notifying referring regulators when matters are concluded.

### **5.3 Lack of Documentation**

During the course of the review, we noted several instances where files had information gaps due to lack of documentation, including documentation of significant verbal conversations. Concluded Case Assessment files should stand alone, offering a complete and accurate record of the reasons for taking action or closing a file.

We request that the IDA revisit its policy on documenting files, including verbal conversations, and report any changes that will be implemented to address this concern.

### **5.4 Staffing**

The Enforcement department has experienced a high turnover rate during the review period. Case Assessment had two Case Assessment Officers (“CAO”) leave the IDA, and one CAO transfer to another department. Two other CAOs went on planned maternity leave during this period. As a result of turnover and maternity leave, the most Senior CAO has been at the IDA for approximately eight months. Current staff seem to have the appropriate qualifications and proficiency to perform the function; however,

given their limited regulatory experience and the high rate of turnover in the department, management should ensure that CAOs are appropriately supervised and receive training as required.

We request that the IDA advise what initiatives will be implemented to address turnover in this department.

## **5.5 Training**

The training program for CAOs is inconsistent. The CAOs currently employed at the IDA received some instruction from the departing employees and the manager, however the amount of training varied greatly. Interviews with staff revealed that the quality and quantity of training activities in Case Assessment varies greatly among the individuals. During these interviews staff also expressed concern that the IDA's policy regarding continuing education courses was not well known and therefore not being utilized by all staff.

The IDA should provide ASC staff with a plan for ensuring that the CAOs receive sufficient training to adequately perform their duties, given their lack of regulatory experience.

## **6.0 Enforcement Counsel**

### **6.1 Staffing (Significant Deficiency)**

During the course of our audit, one Enforcement Counsel for the Prairie region resigned leaving only one individual in this position.

Given that maintaining adequate staffing levels is a term of recognition in Alberta, we request that the IDA address the following questions regarding staffing in this area:

1. What initiatives are in place, or proposed, to ensure that sufficient staff can be attracted and retained?
2. How are staffing levels determined for this position?
3. What consideration has been given to adding a third position in this department?
4. What steps will be taken in the meantime to deal with the caseload?

### **6.2 Lack of Available Hearing Panels (Significant Deficiency)**

Settlement Agreements are approved, and contested hearings are heard, by a Hearing Panel. These panels are chaired by a lawyer and include two industry members. The IDA advised ASC staff that hearing panels are often difficult to convene because of

scheduling issues, conflicts of interest and other factors affecting the availability of panel chairs. This limits the number of hearings and results in hearing delays.

The IDA should advise what steps are being taken to rectify this problem and how the availability of hearing panels will be monitored in the future.

### **6.3 Consistency of Settlement Agreements -- Forgery (Significant Deficiency)**

According to IDA documentation, eight forgery files were prosecuted during the review period. We reviewed two of these concluded litigation files and another file that was concluded after the completion of our fieldwork. In one file, the individual entered into a settlement agreement with Enforcement Counsel which included a reprimand and costs of the investigation as terms. This settlement agreement was rejected by the Hearing Panel for being too lenient. The Panel determined that the settlement did not correlate with the severity of the charge. Counsel negotiated and agreed upon a new settlement that included a penalty, close supervision and costs of the investigation. The Hearing Panel accepted this re-negotiated settlement agreement.

In another file involving similar circumstances, the ultimate designated person of a firm forged a signature and misled IDA staff. The IDA issued a warning letter and closed the file.

These two cases had similar fact patterns and yet the action taken by the IDA was inconsistent from one case to the next. Only one of these cases was brought before a hearing panel and the settlement reached in this case did not fall with the IDA's prescribed guidelines for Forgery. Given that these guidelines were not followed we request that the IDA explain the purpose of the guidelines, how often settlements stray from these guidelines and what action is taken when negotiated settlements do not fall within the guidelines.