

RULE 38

COMPLIANCE AND SUPERVISION

- 38.1 A Dealer Member must establish and maintain a system to supervise the activities of each partner, [Director](#), [Officer](#), [Registered Representative](#), [Investment Representative](#), employee and agent of the Dealer Member that is reasonably designed to achieve compliance with the [Rules](#) of the Corporation and all other laws, regulations and policies applicable to the Dealer Member's securities and commodity futures business. Such a supervisory system shall provide, at a minimum, the following:
- (i) The establishment, maintenance and enforcement of written policies and procedures acceptable to the Corporation regarding the conduct of the types of business in which it engages and the supervision of each partner, [Director](#), [Officer](#), [Registered Representative](#), [Investment Representative](#), employee and agent of the Dealer Member that are reasonably designed to achieve compliance with the applicable laws, rules, regulations and policies;
 - (ii) Procedures reasonably designed to ensure that each partner, [Director](#), [Officer](#), [Registered Representative](#), [Investment Representative](#), employee and agent of the Dealer Member understands his or her responsibilities under the written policies and procedures in (i);
 - (iii) Procedures to ensure that the written policies and procedures of the Dealer Member are amended as appropriate within a reasonable time after changes in applicable laws, regulations, rules and policies and that such changes are communicated to all relevant personnel;
 - (iv) Sufficient personnel and other resources to fully and properly enforce the written policies and procedures in (i);
 - (v) The designation of Supervisors with the qualifications and authority to carry out the supervisory responsibilities assigned to them. Each Dealer Member shall maintain an internal record of the names of all Supervisors, the scope of their responsibility and the dates for which such responsibility and authority is or was in effect. The records must be preserved by the Dealer Member for seven years, and on-site for the first year;
 - (vi) Procedures for follow-up and review to ensure that supervisory personnel are properly executing their supervisory functions. Where the supervision is conducted and supervisory records are maintained at a branch office, the follow-up and review procedures shall include periodic on-site reviews of branch office supervision and record-keeping as necessary depending on the types of business and supervision conducted at the branch office;
 - (vii) The maintenance of adequate records of supervisory activity, including on-site reviews of branch offices as described in (vi), compliance issues identified and the resolution of those issues.
- 38.2
- (a) A Dealer Member must appoint as many Supervisors as are necessary to properly supervise the Officers, partners, employees and agents of the Dealer Member, taking into account the scope and complexity of its businesses to ensure that the businesses of the Dealer Member are carried out in compliance with the [Rules](#)

and Rulings of the Corporation and any other laws or regulations governing the Dealer Member's business conduct.

- (b) A Dealer Member must take reasonable steps to ensure that all of its Supervisors are proficient and understand the products that persons under their supervision trade in or advise on and the services that persons under their supervision provide to a sufficient degree to properly supervise those persons. At a minimum, the Dealer Member must ensure that all Supervisors meet the applicable proficiency requirements of Rule 2900.

38.3

- (a) No person may act and no Dealer Member may permit a person to act as a Supervisor without the approval of the Corporation.
- (b) Failure to satisfy sub-clause A.1(a)(ii)D of Part I of Rule 2900 will result in the automatic suspension of approval. Approval will be reinstated only at such time as the individual has satisfied the applicable proficiency requirement and notified the Corporation.

38.4

- (a) A Supervisor must fully and properly supervise each partner, Director, Officer, Registered Representative, Investment Representative or agent in accordance with the supervisory responsibilities assigned to the Supervisor, the Rules of the Corporation and the written policies and procedures of the Dealer Member so as to ensure their compliance with the Rules of the Corporation and all other laws, regulations and policies applicable to the Dealer Member's securities and commodity futures business.
- (b) A Supervisor may delegate specific supervisory functions or procedures, provided that:
 - (i) the delegation of such functions is not contrary to applicable laws, regulations, rules or policies;
 - (ii) the person to whom such functions are delegated is qualified by virtue of registration, training or experience to properly execute them;
 - (iii) the Supervisor conducts sufficient follow-up and review to ensure that the person to whom the functions have been delegated is properly executing them; and
 - (iv) the Dealer Member records the terms of the delegation and the follow up and review.

38.5 Ultimate Designated Person

- (a) A Dealer Member must designate an individual who is approved under the Corporation's rules in the category of Ultimate Designated Person and who shall be responsible to the Corporation for the conduct of the firm and the supervision of its employees and to perform the functions described in paragraph (c).
- (b) A Dealer Member must not designate an individual to act as the firm's Ultimate Designated Person unless the individual is:
 - (i) the chief executive officer or sole proprietor of the Dealer Member;

- (ii) an [Officer](#) in charge of a division of the Dealer Member, if the activity that requires the firm to register under provincial or territorial securities laws occurs only within the division, or
 - (iii) an [individual](#) acting in a capacity similar to that of an [Officer](#) described in paragraph (a) or (b).
- (c) The Ultimate Designated Person must
- (i) supervise the activities of the Dealer Member that are directed towards ensuring compliance with the Corporation's Dealer Member [rules](#) and applicable securities law requirements by the firm and each [individual](#) acting on the Dealer Member's behalf, and
 - (ii) promote compliance by the Dealer Member, and individuals acting on its behalf, with the Corporation's Dealer Member [rules](#) and applicable securities laws.

38.6 Chief Financial Officer

- (a) Each Dealer Member must, subject to the approval of the Corporation, appoint one [Executive](#) as Chief Financial Officer who, in addition to the requirements under Rule 7.4(a), must have met the proficiency requirements of Rule 2900, Part I, section A.2A. The Chief Financial Officer need not be engaged full time in the business of the Dealer Member.
- (b) Notwithstanding subsection (a), if the Chief Financial Officer of a Dealer Member terminates his/her employment with the Dealer Member and the Dealer Member is unable to immediately appoint another qualified [person](#) as Chief Financial Officer, the Dealer Member may, with the Corporation's approval, appoint an Executive as Acting Chief Financial Officer, provided that within 90 days of the termination:
 - (1) the Acting Chief Financial Officer meets the requirement of subsection (a) and is approved by the Corporation as Chief Financial Officer; or
 - (2) another qualified person is appointed Chief Financial Officer by the Dealer Member and approved by the Corporation.
- (c) The Chief Financial Officer must monitor adherence to the Dealer Member's policies and procedures as necessary to provide reasonable assurance that the Dealer Member complies with the financial rules of the Corporation.

38.7 Chief Compliance Officer

- (a) Every Dealer Member must designate an [individual](#) who is approved under the Corporation's [rules](#) in the category of Chief Compliance Officer to perform the functions described in paragraph (h).
- (b) A Dealer Member must not designate an [individual](#) to act as the firm's Chief Compliance Officer unless the [individual](#) is one of the:
 - (i) an [Officer](#) or partner of the Dealer Member;
 - (ii) the sole proprietor of the Dealer Member.
- (c) A Dealer Member may appoint the Ultimate Designated Person to act as the Chief Compliance Officer.

- (d) Where a Dealer Member is organized into two or more separate business units or divisions, a Dealer Member may, with the approval of the Corporation, designate a Chief Compliance Officer for each separate business unit or division.
- (e) The Chief Compliance Officer must have the qualifications required under Rule 2900, Part I, section A.2B.
- (f) Notwithstanding subsection (a), a Dealer Member may, with the Corporation's approval, designate an [Officer](#) as Acting Chief Compliance Officer if the Chief Compliance Officer terminates his or her employment with the Dealer Member and the Dealer Member is unable to immediately designate another qualified person as Chief Compliance Officer provided that, within 90 days of the termination of the previous Chief Compliance Officer:
 - (i) the Acting Chief Compliance Officer meets the requirement of subsection (e) and is designated by the Corporation as Chief Compliance Officer; or
 - (ii) another qualified [person](#) is designated Chief Compliance Officer by the Dealer Member and is approved by the Corporation.
- (g) The Corporation may grant to a Dealer Member an exemption from subsection (e) where it is satisfied that the nature of the Dealer Member's business is such that the qualification is not relevant to the Dealer Member and that to do so would not be prejudicial to the interests of the Dealer Member, its clients, the public or the Corporation. In granting such an exemption, it may impose such terms and conditions as it considers necessary.
- (h) The Chief Compliance Officer of a Dealer Member must do all of the following:
 - (i) establish and maintain policies and procedures for assessing compliance with the [Rules](#) and applicable securities laws by the Dealer Member and individuals acting on its behalf;
 - (ii) monitor and assess compliance by the Dealer Member, and individuals acting on its behalf, with the [Rules](#) and applicable securities laws;
 - (iii) report to the Ultimate Designated Person as soon as possible if the Chief Compliance Officer becomes aware of any circumstances indicating that the firm, or any [individual](#) acting on its behalf, may be in non-compliance with the [Rules](#) or applicable securities laws and
 - (A) the non-compliance creates a reasonable risk of harm to a client;
 - (B) the non-compliance creates a reasonable risk of harm to the capital markets; or
 - (C) the non-compliance is part of a pattern of non-compliance;
 - (iv) submit an annual report to the firm's board of directors, or individuals acting in a similar capacity for the firm, for the purposes of assessing compliance by the firm, and individuals acting on its behalf, with the Corporation's Dealer Member [rules](#) and applicable securities laws.
- (i) The Chief Compliance Officer must have access to the Ultimate Designated Person and the board of directors (or equivalent) at such times as the Chief Compliance Officer may consider necessary or advisable in view of his or her responsibilities.

- 38.8 The board of directors (or equivalent) of the Dealer Member must review the report of the Chief Compliance Officer and determine what actions are necessary to rectify any compliance deficiencies noted in the report and ensure such actions are carried out. The board of directors (or equivalent) must maintain records of the actions it determines to be necessary and the monitoring to ensure that those actions are carried out.
- 38.9 A Dealer Member must file with the Corporation:
- (a) A copy of a governance document setting out the organizational structure and reporting relationships, which support the compliance arrangement set out above; and
 - (b) Notice of any material changes to the organizational structure and reporting relationships as set out in subsection (a).