

RULE 39

PRINCIPAL AND AGENT

- 39.1. All [Rules](#) and Forms of the Corporation that refer to the term employee shall be deemed to refer as well to the term agent and all references to the term employment shall be deemed to refer as well to the term agency relationship, where applicable.
- 39.2. For the purposes of this Rule “**securities related business**” means any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities or exchange contracts (including commodity futures contracts and commodity futures options) for the purposes of applicable securities legislation and exchange contracts legislation in any jurisdiction in Canada, including for greater certainty, sales pursuant to exemptions under that legislation.
- 39.3. The relationship between the Dealer Member and any person conducting [securities related business](#) on behalf of the Dealer Member may be that of:
- a) an employee, or
 - b) an agent who is not an employee,
- but may not be that of an incorporated salesperson.
- 39.4. Where a Dealer Member structures its business relationship with a person conducting [securities related business](#) on behalf of the Dealer Member using the principal / agent relationship contemplated in paragraph 39.3(b), the Dealer Member shall ensure that:
- a) the business relationship is not contrary to the provisions of applicable legislation;
 - b) such agent is registered or licensed in the manner necessary, and is in good standing, under the applicable legislation in the province or territory where the agent proposes to act;
 - c) the Dealer Member shall be responsible for, and shall supervise the conduct of the agent in respect of the business including compliance with applicable legislation and the [Rules](#) of the Corporation, including the by-laws, rulings, policies, rules, regulations, orders and directions of any [self-regulatory organization](#) or similar authority to which the Dealer Member is subject;
 - d) the Dealer Member shall be liable to clients (and other third parties) for the acts and omissions of the agent relating to the Dealer Member’s business as if the agent were an employee of the Dealer Member;
 - e) the agent is in compliance with applicable legislation and the [Rules](#) of the Corporation, including the by-laws, rulings, policies, rules, regulations, orders and directions of any [self-regulatory organization](#) or similar authority to which the Dealer Member is subject;
 - f) the financial institution bond and insurance policies required to be maintained by the Dealer Member pursuant to Rule 17 and Rule 400 cover and relate to the conduct of the agent;
 - g) all books and records prepared and maintained by the agent in respect of the business of the Dealer Member shall be in accordance with Rule 17 and Rule 200 and all applicable legislation and shall be the property of the Dealer Member and shall be available for review by and delivery to the Dealer Member at all times and upon termination of the agreement referred to in paragraph (n);

- h) the Dealer Member shall, at all times, have access to the premises of the agent where the agent conducts [securities related business](#) on behalf of the Dealer Member ;
- i) in the event of a compliance issue arising in respect of a client or clients, the Dealer Member shall be entitled to take control of all future dealings with the client or clients;
- j) all [securities related business](#) conducted by the agent is in the name of the Dealer Member subject to Rule 29.7A;
- k) the agent shall not conduct [securities related business](#) with or on behalf of any person other than the Dealer Member;
- l) if the agent is engaged in or carrying on any business activity other than business conducted on behalf of the Dealer Member, including any business or activity which is subject to regulation by any regulatory authority other than a [securities commission](#), compliance with the terms of the agreement referred to in paragraph (n) shall be monitored and enforced directly by the Dealer Member and not by or through any other person including another employer or principal of the agent;
- m) the terms or basis on which the agent may be engaged in or carry on any business or activity other than the business conducted on behalf of the Dealer Member shall not prevent or impair the ability of the Dealer Member or the Corporation from monitoring and enforcing compliance by the agent with the terms of the agreement referred to in paragraph (n) or the [Rules](#) of the Corporation; and
- n) the Dealer Member and the agent shall enter into an agreement in writing which shall be provided to the Corporation prior to engaging in the principal/agent relationship and shall contain terms which include the provisions of paragraph (a) to (m), inclusive, and which do not include provisions which are inconsistent with paragraph (a) to (m), and shall provide the Corporation with a certificate by an officer or director of such Dealer Member and upon request by the Corporation shall provide an opinion of counsel confirming the agreement is in compliance with such provisions;
- o) the Dealer Member and the Corporation shall enter into an agreement in writing prior to the Dealer Member engaging in the principal/agent relationship, which shall contain terms which include the provisions of paragraphs (c) and (d) that specifically relate to the Dealer Member's responsibility for and supervision of the agent to ensure the agent's compliance with applicable legislation and the [Rules](#) of the Corporation, including the by-laws, rulings, policies, rules, regulations, orders and directions of any [self-regulatory organization](#) or similar authority to which the Dealer Member is subject and relate to the Dealer Member's liability to clients (and other third parties) for the acts and omissions of the agent relating to the Dealer Member's business as if the agent were an employee of the Dealer Member;
- p) the agreements referred to in paragraphs (n) and (o) shall be in a form satisfactory to the Corporation;
- q) the Dealer Member and the agent shall be responsible for ensuring all arrangements between them comply with applicable tax laws and for providing satisfactory evidence to the Corporation of such compliance.

APPENDIX A
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
PROVISIONS FOR AGENCY AGREEMENTS
IN CONNECTION WITH RULE 39.4

1. Definitions

- (a) "**Agent**" means [•].
- (b) "**Applicable Laws**" means all laws, legislation and regulations of any governmental entity that are applicable to the Dealer Member and all by-laws, rulings, policies, rules, regulations, orders and directions of any [self-regulatory organization](#) or similar authority that are applicable to the Dealer Member, including, without limitation, the [Rules](#).
- (c) "**Client**" means a person who has engaged the services of the Dealer Member through the Agent.
- (d) "**Corporation**" means Investment Industry Regulatory Organization of Canada.
- (e) "**Rules**" means the [Rules](#) of the Corporation as each may be amended, supplemented, restated or replaced from time to time.
- (f) "**Dealer Member**" means [•], together with its successors and permitted assigns.
- (g) "**Dealer Member Business**" means any business activity of the Agent conducted on behalf of the Dealer Member.
- (h) "**Non-Dealer Member Business**" means any business activity of the Agent that is not Dealer Member Business.
- (i) "**Records**" means books, records, client files, client information and all other documentation of the Agent relating in any way to Dealer Member Business, whether in written or electronic form.
- (j) "**Securities Related Business**" has the meaning specified in Rule 39.2.

2. Confirmation of Supremacy of Rule 39.4

- (a) The Agent and the Dealer Member acknowledge and confirm that this Agreement is intended to be made and be effective in compliance with the Rules, including without limitation Rule 39.4. In the event of any inconsistency between the terms of this Agreement and the terms of Rule 39.4, the terms of Rule 39.4 shall prevail. Any such inconsistent terms of this Agreement shall be deemed to be severable and deleted with the intent that this Agreement shall be construed, complied with by the Agent and the Dealer Member and enforced in a manner that gives full effect to the terms of Rule 39.4.

3. Compliance by the Agent with Applicable Laws

- (a) The Agent represents and warrants to the Dealer Member that (i) it is registered or licensed in the manner necessary under all Applicable Laws; (ii) it is in good standing under all Applicable Laws; and (iii) it is in compliance with all Applicable Laws.
- (b) The Agent shall (i) maintain any registrations or licenses in the manner necessary under all Applicable Laws; (ii) remain in good standing under all Applicable Laws; and (iii) comply with all Applicable Laws.

4. Conduct of the Agent's Business

- (a) Subject to Rule 29.7A, the Agent shall conduct all Dealer Member Business in the name of the Dealer Member.
- (b) The Agent shall not conduct any [Securities Related Business](#) with, in respect of or on behalf of any person other than the Dealer Member. The Agent shall not conduct any Non-Dealer Member Business except as disclosed in writing to the Dealer Member and as consented to in writing by the Dealer Member.

5. Supervision of the Agent by the Member

- (a) The Dealer Member shall be responsible for the conduct of the Agent, and shall supervise the conduct of the Agent in respect of Dealer Member Business, including, without limitation, compliance by the Agent with all Applicable Laws and with the terms of this Agreement.
- (b) If the Agent is engaged in or carrying on Non-Dealer Member Business, the Dealer Member shall monitor and enforce compliance with the terms of this Agreement directly, and not by or through any other person.
- (c) The Agent shall ensure that the terms or basis on which it is engaged in or carries on Non-Dealer Member Business comply with the terms of this Agreement and the Rules and do not prevent or impair the ability of the Dealer Member or the Corporation from monitoring and enforcing compliance by the Agent with the terms of this Agreement and the Rules.
- (d) Where the Dealer Member and Agent agree that the Agent shall make written disclosure to Clients advising Clients of the business activity included in or excluded from the [Securities Related Business](#) that the Dealer Member conducts and that any other business activity conducted by the Agent is not the responsibility of the Dealer Member but the responsibility of the Agent alone, the Dealer Member shall be responsible for ensuring that the Agent provides the disclosure directly to Clients.
- (e) The Dealer Member shall be liable to clients (and other third parties) for the acts and omissions of the Agent relating to Dealer Member Business as if the Agent were an employee of the Dealer Member, subject to any defence available to the Dealer Member under Applicable Laws.
- (f) In the event that:
 - (i) the Corporation, a [securities commission](#) or any other regulatory authority having jurisdiction has advised the Dealer Member to the effect that, or has commenced an investigation or any proceeding on the basis that, or
 - (ii) the Dealer Member has reasonable grounds to believe that,

the conduct by the Agent of any business in respect of any Client or Clients is not in compliance with any Applicable Laws, the Dealer Member may immediately and without notice to the Agent assume responsibility for and control of all or any dealings and communications with such Client or Clients, and the Agent shall not engage in any such dealings or communications with the Client or Clients for as long as and to the extent that the Dealer Member has assumed such responsibility. During the period that the Dealer Member has assumed responsibility for the Client or Clients in the manner above, the Dealer Member may designate another employee or agent of the Dealer Member who is qualified to provide such services to the Client or Clients as may be necessary or desirable in connection with its Dealer Member Business, and all or any portion of the

remuneration otherwise payable to the Agent in respect of such services or business may be directed or paid to such other employee or agent.

6. Records and Insurance

- (a) The Agent shall prepare all Records in accordance with Rule 17, Rule 200 and all other Applicable Laws.
- (b) The Agent's Records are the property of the Dealer Member. Upon the request of the Dealer Member for any reason, including, without limitation, the termination of this Agreement, the Agent shall forthwith deliver the Records to the Dealer Member.
- (c) The Dealer Member shall maintain, in accordance with Rule 17 and Rule 400, financial institution bond and insurance policies that cover and relate to the conduct of the Agent.

7. Access by the Member

- (a) The Agent shall make the Records available for review by the Dealer Member at the premises where the Agent conducts [securities related business](#) on behalf of the Dealer Member and at any other place the Records are located. The Dealer Member has the right to inspect the Records at any time, immediately upon demand by the Dealer Member.
- (b) The Dealer Member has the right to access any place of business of the Agent at any and all times. The Dealer Member may exercise such right to access at any time, immediately upon demand by the Dealer Member.

APPENDIX B

MEMBER AGREEMENT REGARDING AGENTS

TO: INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (THE "CORPORATION")

RECITALS:

- A. The Dealer Member is a member of the Corporation and has agreed to be bound by its By-laws and Rules ("Rules").
- B. Rule 39.4(o) of the Corporation requires the Dealer Member to enter into this Agreement, which is in addition to, and does not replace or modify, the Rules or any agreement between the Corporation and the Dealer Member.

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Dealer Member agrees that:

1. The Dealer Member shall ensure that each of its agents (as defined in Rule 39.3(b)) complies with all laws, legislation and regulations of any governmental entity that are applicable to such agent and all by-laws, rulings, policies, rules, regulations, orders and directions of any [self-regulatory organization](#) or similar authority that are applicable to such agent (collectively, "Applicable Laws"), as if such agent is an employee of the Dealer Member.
2. The Dealer Member shall enter into an agreement with each agent of the Dealer Member, in accordance with Rule 39.4(n) of the Corporation, pursuant to which the agent agrees to comply with all Applicable Laws.
3. The Dealer Member shall administer and comply with all Rules as if each agent of the Dealer Member is an employee of the Dealer Member and, without limitation, shall be responsible for and shall supervise the conduct of each agent in respect of its business, including compliance with Applicable Laws as if such agent is an employee of the Dealer Member.
4. The Dealer Member or the agent of the Dealer Member shall make written disclosure to the client advising the client of the business activity included in or excluded from the [securities related business](#) (as defined in Rule 39) that the Dealer Member conducts and that any other business activity conducted by the agent is not the responsibility of the Dealer Member but is the responsibility of the agent alone. The disclosure to new clients shall be provided at the time an account is opened for a client. The disclosure to existing clients shall be provided simultaneously with the language set out in Paragraph 7 within 6 months of the effective date of Rule 39.
5. Where the written disclosure described in Paragraph 4 is made by the agent, the Dealer Member shall ensure that the agent provides the disclosure directly to the client.
6. At the time an account is opened for a client, the Dealer Member shall include the following language in the New Client Application Form:

Your investment adviser may be an employee or an agent of [Dealer Member firm]. In either case, [Dealer Member firm] will be irrevocably liable to you, and will continue to be liable to you for the acts and omissions of your investment adviser relating to [Dealer Member firm's] business as if the investment adviser were an employee of [Dealer Member firm]. By continuing to deal with our firm you accept our offer of indemnity.

7. For existing client accounts that were opened with the Dealer Member on or before the effective date of Rule 39, the Dealer Member shall deliver to clients a document that includes the language as set out in Paragraph 6.
8. This Agreement shall be governed by the laws of the [applicable province or territory] and the laws of Canada applicable in the [applicable province or territory].
9. This Agreement shall enure to the benefit of, and shall be binding upon, the parties hereto and their successors and permitted assigns, provided that the Dealer Member may not assign its rights and obligations hereunder without the prior written consent of the Corporation.

DATED as of the ____ day of _____, _____.

[MEMBER]

Name:

Title: