

June 27, 2003

Lang Evans  
Director, Capital Market Regulation  
British Columbia Securities Commission  
PO Box 10142, Pacific Centre  
5th fl. - 701 West Georgia Street  
Vancouver, BC V7Y 1L2

Dear Mr. Evans:

**Re: Enforcement Audit 2002**

We appreciate the work and professionalism of the British Columbia Securities Commission ("BCSC") staff in preparing the Audit. We are pleased that the Audit recognizes the significant strides that the IDA has made.

Following, in order, is our response to the specific sections of the Audit Report:

**1. Results**

As indicated in the Audit, we too expect to see more cases that lead to formal discipline. We believe that the changes that have already been put in place will bear the expected results. Currently, there are five cases that are either awaiting a decision of a panel or are scheduled to be heard by a Panel. This is in addition to the five cases that have already been decided this calendar year. There is a risk in concentrating on the number of cases as an overall indicator of activity. It is part of the IDA's stated objectives to focus on larger, more complex cases, which will logically reduce the overall number of cases while increasing their significance. We also point out that considerable time has been spent, and more time is required, for a very large investigation underway in conjunction with BCSC staff. Projects such as this joint investigation will reduce our overall numbers although both organizations recognize the importance of such cases.

**2. File Specific Issues**

**Assessment**

We agree with the BCSC's assessment in this section.

**Areas for Improvement**

*Investigations involving firms failure to supervise*

We do not readily agree with the subjective findings of the five sample files. However, we will address the concerns about the processes that we use to determine the investigation and prosecution of supervisory failings by our members. From the period of the 2000 Audit to the 2002 Audit, the IDA was undergoing significant change which has been well described in this Audit. One of those changes has been to move from a complaint-driven model of investigations to a risk-based approach to member regulation. Specifically, this includes the assessment of complaints through file screening guidelines, the implementation of Comset, the implementation of a risk assessment by Financial Compliance and the imminent implementation of a risk assessment by Sales Compliance. The result is a two-pronged enforcement approach to supervision. At the micro level, every case that is investigated does include a review of supervision (Section 8 of our Investigations Procedures Manual). The other prong is the overall assessment of the firm. Senior management intuitively ranked the compliance culture of each firm in the past, which was relatively easy with only 21 head office firms in BC and 200 members of the IDA. The addition of more tools and structure will help. The link is found in the outcome of our sales and financial compliance reviews. More time is spent reviewing the higher risk firms. If there are significant deficiencies these should be detected and, if they are serious enough, will trigger a referral to enforcement. Furthermore, complaints received against higher risk firms may be assigned a higher priority. These procedures and initiatives are either in place or well developed. We cannot guarantee a specific quota of supervision cases will be brought forward. We do wish to ensure that the BCSC is satisfied with our current procedures.

#### *Violation Patterns*

We do not readily agree with the subjective findings on this point. However, we agree there is a need to join investigations. Our interpretation of the BCSC's comments is that there is no need to amend our procedures in this area.

#### *File Closing due to a Registrant's departure from the industry*

We agree and we will ensure that in cases where weight is placed on a registrant's departure, that the documentation reflects the other factors influencing the decision.

### **3. Central Complaints Bureau (CCB)**

#### **Assessment**

We agree with the BCSC's assessment.

### **4. File Prioritization and Backlogs**

#### **Assessment**

We agree and, of course, the BCSC staff will be kept informed of our performance in relationship to our Key Performance Indicators ("KPIs") by way of the current monthly reports and quarterly meetings.

## **5. Staffing**

### **Assessment**

The BCSC has suggested that we notify the Director of Capital Markets Regulation of any position that has been vacant for more than 60 days and to provide an explanation. We will do so.

## **6. Sales Compliance Department (SCD) Referrals**

### **Assessment**

We agree. The BCSC seems to accept that enough information is available to key people in Sales Compliance and Enforcement to ensure all matters are properly considered. This is our intention. Anyone who needs access to any regulatory document is provided with the information. The only reason for any kind of restrictions is to preserve confidentiality.

## **7. Investor Complaints and Settlements**

### **Assessment**

We agree with the BCSC's assessment.

## **8. Organizational Structure**

### **Assessment**

We agree with the BCSC's assessment.

## **9. Cooperation and Coordination with other Self Regulator Organizations**

### **Assessment**

We agree with BCSC's assessment.

## **10. Technology – Computer Systems and Databases**

We agree that that it is worth exploring opportunities to provide the public with broader access to disciplinary actions through a joint venture with the other SRO's and with the BCSC.

We also are willing to discuss better links with the BCSC's intelligence databases.

## **11. Processes, Policies and Procedures**

### **Assessment**

We will simplify the instructions in our Procedures Manual to indicate that the manager will refer all criminal matters to the police.

*File Procedures and Processes – KPIs*BCSC Comment

“Some of the KPIs defeat the intended purpose. For example there is a requirement for Investigations and Prosecutions to send complainants a letter after sixty days (recently extended from forty-five days) to update them. The purpose of the letter is to let complainants know that the file is still under review. The problem is, the letter provides so little information that complainants end up calling the IDA as the appearance of the letter makes them think that something of significance may have occurred.”

IDA Response

We strive to keep complainants informed to the extent possible but there are sound legal reasons why we cannot and should not be consulting with a complainant. The intention of the letters is merely to let the complainant know that we are working on the file and that the investigation is active. We do not share your view that the complainant phoning is counter productive. It accomplishes the desired result and in many instances we garner more information or sometimes the determination of critical facts and allows us to continually monitor the willingness of a complainant to testify. This is very important to the IDA, as unlike the Commission, we do not have the ability to compel a witness. We have found that the alternative of not contacting them is that the complainant loses interest, forgets whom to contact and may not be available when we need the complainant as a witness.

BCSC Comment

“Some staff would prefer to call the complainant when they receive the file, and advise complainants that they can call at any time if they have questions. The KPIs should be revised to include the choice of either sending a letter, or making a telephone call to the complainant. The telephone calls should be documented in the file. This seems like a more personal and practical approach. The overall goal of the policies make sense, perhaps the means of achieving them should be more flexible.”

IDA Response

Our procedures have already been revised to give staff the choice and to document the contact.

BCSC Comment

“In Investigations, one year to conclude an investigation is reasonable in most cases. One KPI that can be difficult to meet is the requirement to notify all parties involved in an investigation that an investigation has commenced. The KPI requires that a letter be sent within five days. Perhaps ten days or two weeks would be more reasonable as sometimes it is difficult to immediately identify the parties who will be investigated. For example, investigators must determine if the branch manager will be part of the investigation. This can’t always be done without investigating the matter first to determine the extent of the branch manager’s involvement.”

IDA Response

The KPI referred to is an internal, secondary KPI, which we do not report on outside of management. We recently adjusted the KPI from 2 to 5 days in consultation with staff and the KPI is being accomplished. The purpose of the KPI is to establish reasonable targets so that management's expectations are clear to staff.

BCSC Comment

"Another KPI that can be difficult to meet is the CCB KPI requirement to send document requests out to firms within seventy-two hours of receiving a complaint. Sometimes this is just not possible because more information is required from the complainant."

IDA Response

We agree although we do not think changing the KPI is appropriate. Again this is not a KPI that is reported outside of management. We do not expect to meet the KPI 100% of the time and the BCSC has identified one legitimate reason why we may not meet the KPI in a particular case. The objective is to get the investigation moving by having the Complaints officer consider the complaint quickly and at least to start collecting information.

BCSC Comment

"In terms of who monitors KPIs, most staff are not certain who reviews them. Investigation staff thought that IDA staff in Toronto review them but they were not sure. "

IDA Response

We can ensure that staff has a better understanding of who monitors the KPI's. Some KPI's are reported to the Member Regulation Oversight Committee and are reviewed by senior staff in both cities. The more procedural KPI's, many of which have been commented on by the BCSC above, are used more as management tracking tools. Again, they can be monitored by management in any city, but are more closely reviewed from a national perspective.

**12. Documentation in Investigation Files****Assessment**

We agree that documentation is important and can always be improved upon.

**13. Investigative Tools****Assessment**

We agree with BCSC'S assessment.

**14. Investor Education and Protection**

**Assessment**

We agree with BCSC's assessment.

**15. Focus on Losses**

**Assessment**

We agree with BCSC's assessment.

Once again, we appreciate the work of BCSC staff on the Audit.

Yours truly,

Warren H. Funt  
Vice President, Western Canada  
Member Regulation

WF:sb