

# IIROC NOTICE

## **Rules Notice Request for Comments**

Dealer Member Rules

*Please distribute internally to:*

Legal and Compliance

Senior Management

*Contact:*

Richard J. Corner

Vice President, Member Regulation Policy

416.943.6908

[rcorner@iiroc.ca](mailto:rcorner@iiroc.ca)

**09-0119**

**April 24, 2009**

## **Revisions to the definition of “securities related activities”**

### **Summary of nature and purpose of proposed Rule**

On December 10, 2008, the Board of Directors (the Board) of the Investment Industry Regulatory Organization of Canada (IIROC) approved the publication for comment of proposed amendments (Proposed Amendments) to the Dealer Member Rules (the Rules) that would revise the definition of “securities related activities” and repeal the definition of “securities related business”.

Specifically, the Proposed Amendments set out in Attachment A would:

- clarify the definition of the term “securities related activities” set out in Dealer Member Rule 1.1 to ensure that it specifically refers to all investment products; and
- repeal the defined term “securities related business” currently set out in IIROC Dealer Member Rule 39.2 and replace all existing references to the term with “securities related activities”.

The primary objective of the Proposed Amendments is to clearly articulate that IIROC registered representative recommended transactions for any investment product (which includes products defined as securities under provincial legislation as well as principal protected notes, guaranteed investment certificates and other like products) must be



conducted within and recorded on the books of an IIROC Dealer Member. It is important that all securities related activities be recorded on the books of the Dealer in order that IIROC can effectively regulate those activities. This is not considered to be change but rather a clarification of existing IIROC Dealer Member requirements.

The secondary objective of the Proposed Amendments is to harmonize the requirements for agent and employee salespersons to conduct certain activities within an IIROC Dealer Member and to record such activities on the books of the IIROC Dealer Member. This will be accomplished by repealing the defined term “securities related business”.

### **Issues and specific Proposed Amendments**

IIROC currently utilizes two defined terms in determining the activities and business lines that are considered to be securities related and that must be conducted within and recorded on the books of the Dealer Member. IIROC Dealer Member Rules define both “securities related activities” and “securities related business” as follows:

“Securities Related Activities” means acting as a securities dealer and carrying on any business which is incidental to or a necessary part of such activities provided that the Board of Directors may, from time to time, include in, or exclude from this definition any activities and change those included or excluded; [Dealer Member Rule Section 1.1]

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. [Dealer Member Rule Section 39.2]

The “securities related business” definition was adopted by the IDA (now IIROC) in May of 2003 when IIROC Dealer Member Rule 39 was revised to allow the use of the principal agent business structure. The adoption of this definition was required by the IDA’s recognizing regulators at the time to ensure that scope of activities performed within the IIROC principal agent structure was consistent with those within the MFDA principal agent structure.

The current definition of securities related business in Rule 39.2 is restricted to trading in securities or commodity futures under applicable Canadian securities legislation. In comparison, the current definition of securities related activities in Rule 1.1 is general in nature and includes a provision permitting the IIROC Board to include or exclude a particular activity.

IIROC is of the opinion that a single definition of activities considered securities related should apply throughout the Dealer Member Rules and that the narrower “securities related business” definition set out in By-law 39.2 should be repealed. Furthermore, amendments are proposed to the current wording of “securities related activities” to clearly articulate IIROC’s



existing view that trading or advising in any investment product is a securities related activity that must be recorded on the books of the Dealer Member.

As a result, it is proposed that the revised definition of “securities related activities” set out in Rule 1.1 will:

- apply whether the Approved Person is in an employee / employer or agent / principal relationship with the Dealer Member; and
- clarify that trading or advising in any investment product is considered a securities related activity.

To accomplish these objectives the Proposed Amendments seek to repeal the defined term “securities related business” set out in Dealer Member Rule 39.2 and to amend the definition of “securities related activities” that appears in IIROC Dealer Member Rule 1.1 as follows:

“Securities Related Activities” **means:**

- (1) acting as a securities dealer,
- (2) trading or advising in any other investment product, and
- (3) carrying on any business (whether or not carried on for gain) which is incidental to or a necessary part of such activities

provided that the Board of Directors may, from time to time, include in, or exclude from this definition any activities and change those included or excluded;

References to “securities related business” will also be changed throughout IIROC Dealer Member Rule 39 to “securities related activities”.

The Board Resolution setting out the Proposed Amendments and a black-line copy of the Dealer Member Rules affected by these amendments are set out in Attachments A and B. A draft IIROC Rules Guidance Notice listing activities that will be included within the scope of the revised “securities related activities” definition is set out in Attachment C.

### **Proposed Rule classification**

In deciding to propose these amendments, IIROC identified that there was a need:

- to clarify that the registrant sale of any investment product must be conducted within and recorded on the books of an IIROC Dealer Member; and
- to harmonize the activities that must be conducted in an IIROC Dealer Member between agent and employee registrants.

To address both of these needs was assessed as being in the public interest and, as a result, the Board has determined that the Proposed Amendments are a Public Comment Rule proposal.



## **Effects of the proposed Rule on market structure, Dealer Members, non-Dealer Members, competition and costs of compliance**

Statements have been made elsewhere as to the nature and purpose of the Proposed Amendments.

The effect of the Proposed Amendments is to make consistent the activities that are considered to be securities related between the employer / employee and principal / agent structures. The amendments grant Member firms and their salespeople the option of choosing the most effective structure for their business activities.

The Proposed Amendments do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in furtherance of IIROC's regulatory objectives. They do not impose costs or restrictions on the activities of market participants (including Dealer Members and non-Dealer Members) that are disproportionate to the goals of the regulatory objectives sought to be realized.

## **Technological implications and implementation plan**

The Proposed Amendments will have no impact on Dealer Member's systems. As such, it is intended that these amendments will be implemented immediately after approval is received from IIROC's recognizing regulators.

## **Request for public comment**

Comments are sought on the Proposed Amendments. Comments should be made in writing. Each comment letter should be delivered by June 23, 2009 (60 days from the publication date of this notice) to the attention of:

Richard J. Corner  
Vice-President, Member Regulation Policy,  
Investment Industry Regulatory Organization of Canada,  
Suite 1600, 121 King Street West,  
Toronto, Ontario,  
M5H 3T9

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the IIROC website ([www.iiroc.ca](http://www.iiroc.ca) under the heading "IIROC Rulebook - Dealer Member Rules - Policy Proposals and Comment Letters Received").



Questions may be referred to:

Richard J. Corner  
Vice-President, Member Regulation Policy  
Investment Industry Regulatory Organization of Canada  
(416) 943-6908  
rcorner@iiroc.ca

**Attachments**

Attachment A - Board Resolution proposing amendments to IIROC Dealer Member Rules 1.1 and 39.2

Attachment B - Black-line copy of IIROC Dealer Member Rules 1.1 and 39.2 reflecting amendments

Attachment C - Draft Rules Guidance Notice



**INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA  
DEFINITION OF SECURITIES RELATED ACTIVITIES - RULES 1.1 AND 39**

**BOARD RESOLUTION**

THE BOARD OF DIRECTORS of the Investment Industry Regulatory Organization of Canada hereby approves on this 10th day of December, 2008, the publication for public comment of the English and French versions of the following proposed amendments to the Rules and Forms of the Corporation:

1. Dealer Member Rule Section 1.1 is amended by repealing and replacing the definition of Securities Related Activities with the following:

“1.1. In these Rules unless the context otherwise requires, the expression...

“Securities Related Activities” means:

- (1) acting as a securities dealer,
- (2) trading or advising in any other investment product, and
- (3) carrying on any business (whether or not carried on for gain) which is incidental to or a necessary part of such activities

provided that the Board of Directors may, from time to time, include in, or exclude from this definition any activities and change those included or excluded;”

2. Dealer Member Rule Sections 39.1 through 39.4 are repealed and replaced as follows:

“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. Repealed.

39.3. The relationship between the Dealer Member and any person conducting securities related activities 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 activities on behalf of the Dealer Member using the principal / agent relationship contemplated in subsection 39.3(b), the Dealer Member shall ensure that:



## ATTACHMENT A

- (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 and Forms 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 and Forms 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 Rules 17 and 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 Rules 17 and 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 activities 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 activities conducted by the agent in the name of the Dealer Member is subject to Rule 29.7A;
- (k) the agent shall not conduct securities related activities 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



## ATTACHMENT A

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 and Forms 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 and Forms 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."





**INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA  
DEFINITION OF SECURITIES RELATED ACTIVITIES - RULES 1.1 AND 39**

**BLACK-LINE COPY**

**Dealer Member Rule Section 1.1**

1.1. In these Rules unless the context otherwise requires, the expression...

“Securities Related Activities” means:

- (1) acting as a securities dealer,
- (2) ~~trading or advising in any other investment product,~~ and
- (3) carrying on any business ~~(whether or not carried on for gain)~~ which is incidental to or a necessary part of such activities

provided that the Board of Directors may, from time to time, include in, or exclude from this definition any activities and change those included or excluded;

**Dealer Member Rule Sections 39.1 through 39.4**

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. ~~Repealed. 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~~activities 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~~activities on behalf of the Dealer Member using the principal / agent relationship contemplated in ~~paragraph~~subsection 39.3(b), the Dealer Member shall ensure that:



## ATTACHMENT B

- (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 and Forms 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 and Forms 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 RuleRules 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 Rules 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 businessactivities 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 businessactivities conducted by the agent in the name of the Dealer Member is subject to Rule 29.7A;



## ATTACHMENT B

- (k) the agent shall not conduct securities related business activities 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 and Forms 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 and Forms 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;



## **ATTACHMENT B**

- (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.

# IIROC NOTICE

## **Rules Notice Guidance Note**

Dealer Member Rules

*Please distribute internally to:*

Legal and Compliance

Senior Management

*Contact:*

Richard J. Corner

Vice President, Member Regulation Policy

416.943.6908

rcorner@iiroc.ca

**09-xxxx**

**Date**

## **Interpretation of the definition of “securities related activities”**

### **Background**

On [insert date] IIROC announced amendments to the Dealer Member Rules to revise the definition of “securities related activities” through the issuance of IIROC Notice 09-xxxx. These amendments were implemented effective [insert rule effective date]. The remainder of this notice discusses the effect of these amendments and provides guidance to Dealer Members as to which activities are now considered to be “securities related activities”.

### **Effect of amendments to definition**

Prior to the recent definition revisions, IIROC utilized two defined terms in determining the activities and business lines that were considered to be securities related and that must be conducted within and recorded on the books of the Dealer Member. IIROC Dealer Member Rules defined both “securities related activities” and “securities related business” as follows:

“Securities Related Activities” means acting as a securities dealer<sup>1</sup> and carrying on any business which is incidental to or a necessary part of such activities provided that the Board of Directors may, from time to time, include in, or exclude from this definition any activities and change those included or excluded; [Dealer Member Rule Section 1.1]

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

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<sup>1</sup> “Securities dealer” is defined to mean “an individual, firm or corporation acting as dealer (principal) or broker (agent) in carrying out transactions in securities and commodity futures contracts or options on behalf of clients and includes, without limitation, acting as an underwriter or adviser;” [Dealer Member Rule Section 1.1]



## ATTACHMENT C

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. [Dealer Member Rule Section 39.2]

Neither definition specifically mentioned investment products, although the IDA (now IIROC) had previously issued guidance that required that certain transactions involving investment products, such as guaranteed investment certificates, be considered to be “securities related activities”.

The “securities related business” definition was adopted by the IDA (now IIROC) in May of 2003 when IIROC Dealer Member Rule 39 was revised to allow the use of the principal agent business structure.

The effects of the recent move to a single “securities related activities” definition are:

- to clarify that registrant transactions involving any investment product must be conducted within and recorded on the books of an IIROC Dealer Member; and
- to harmonize the activities that must be conducted in an IIROC Dealer Member between agent and employee registrants.

### **List of activities within the scope of the “securities related activities” definition**

To assist Dealer Members, a list of activities within the scope of the “securities related activities” definition has been prepared and is enclosed as Appendix A. This list is not exhaustive and as a result other activities may also be considered to be “securities related activities” upon IIROC staff review and IIROC Board of Director approval. This list will be updated from time to time as new investment products/services are introduced or the sales practices of existing investment products/services change.

Questions may be referred to:

Richard J. Corner  
Vice-President, Member Regulation Policy  
Investment Industry Regulatory Organization of Canada  
(416) 943-6908  
rcorner@iirroc.ca

### **Appendices**

Appendix A - List of activities within the scope of the “securities related activities” definition



**List of activities within the scope of  
the “securities related activities” definition**

The following activities are considered to be securities related activities:

1. Acting as a dealer (principal) or broker (agent) in carrying out transactions on behalf of clients in any of the following investment products:
  - a. Listed and unlisted equity securities, including trust units
  - b. Listed and unlisted index products, including participation units
  - c. Equity security and index product derivatives, including warrants, rights and options, futures and forward contracts and swap agreements
  - d. Exchange traded fund, hedge fund and mutual fund securities
  - e. Debt securities, including bonds, debentures and notes (including principal protected notes)
  - f. Debt security derivatives, including options, futures and forward contracts and swap agreements
  - g. Canadian and foreign chartered bank deposit certificates (including guaranteed investment certificates)
  - h. Foreign currency contracts
  - i. Precious metal bullion and precious metal certificates
  - j. Listed commodity futures contracts and options on futures contracts.
2. The preparation of financial plans on behalf of clients.