

# IIROC NOTICE

## **Rules Notice Notice of Approval/Implementation**

Dealer Member Rules

*Please distribute internally to:*

Credit  
Institutional  
Internal Audit  
Legal and Compliance  
Operations  
Registration  
Retail  
Senior Management  
Trading Desk  
Training

*Contact:*

Sherry Tabesh-Ndreka  
Senior Policy Counsel, Member Regulation Policy  
416-943-4656  
[stabesh@iiroc.ca](mailto:stabesh@iiroc.ca)

**13-0162**  
June 13, 2013

## **Personal financial dealing and outside business activities**

### **Introduction**

This Rules Notice provides notice of approval by the applicable securities regulatory authorities of amendments to the Dealer Member Rules concerning personal financial dealing and outside business activities (collectively, the “amendments”). The new personal financial dealing rules will be known as Dealer Member Rule 43 – *Personal Financial Dealings with Clients*. Copies of new Dealer Member Rule 43 and revised Dealer Member Rule 18.14, which deals with outside business activities of Registered Representatives and Investment Representatives, are included within Attachment A.

The amendments will take effect on December 13, 2013. In the case of existing arrangements referred to in Dealer Member Rule 43.2(5)(i), such as employees or Approved Persons that may be acting as a Power of Attorney, trustee, executor or otherwise have full or partial control or authority over the financial affairs of a client, such arrangements must be unwound or compliant with Dealer Member Rule 43 by June 13, 2014.



## Objectives of the amendments

The amendments are intended to achieve the following objectives:

- (1) to clearly articulate that any personal financial dealings with clients, subject to limited exemptions, is considered inappropriate conduct, a conflict of interest and a violation of the general business conduct standards; and
- (2) to codify IIROC's prior position regarding outside business activities, by imposing specific and positive obligations on Registered Representatives and Investment Representatives to disclose any outside business activities to the Dealer Member and obtain the approval of the Dealer Member before engaging in any outside business activities in order for the Dealer Member to ensure that they are not inappropriate or give rise to a conflict of interest.

## Summary of the new Rules

The new Rules encompass the following:

### 1. *Personal Financial Dealing with Clients*

As noted in IIROC Rules Notice 10-0155, *Personal Financial Dealing and Outside Business Activities Proposals*, IIROC staff believes that a specific rule which prohibits personal financial dealing with clients is an important step in IIROC's ongoing pursuit of its investor protection objective.

As such, Dealer Member Rule 43 - *Personal Financial Dealings with Clients*, is a principles-based rule that generally prohibits all employees and Approved Persons of a Dealer Member from directly or indirectly engaging in any personal financial dealing with clients. This prohibition is consistent with IIROC staff's view that any personal financial dealing with clients creates an unacceptable conflict of interest between the Dealer Member's employee or agent and the client and as such, it is contrary to both the standards set out in IIROC Dealer Member Rule 29.1 as well as the conflict of interest rules set out in IIROC Dealer Member Rule 42 and National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Dealer Members are reminded that, consistent with their general supervisory obligations, adequate policies and procedures and supervision should be in place to address personal financial dealing with clients.

Dealer Member Rule 43 also provides a list of the type of activities that, subject to limited exemptions, would be considered to be personal financial dealing with clients. These activities include, but are not limited to:

- Accepting any consideration from a person, other than the Dealer Member, for any activities conducted on behalf of a client, unless through an approved outside business activity.



- Entering into a settlement agreement with a client without the Dealer Member's prior written consent or paying for client account losses out of personal funds without the Dealer Member's prior written consent.
- Borrowing from clients or lending to clients, unless the client is a Related Person under the *Income Tax Act (Canada)*.
- Acting as a Power of Attorney, trustee, executor or otherwise having full or partial control or authority over the financial affairs of a client, unless the client is a Related Person under the *Income Tax Act (Canada)* or the authority is exercised in accordance with the IIROC rules within a discretionary or managed account.

At the time of issuance of this notice, for the purpose of the *Income Tax Act (Canada)*, "Related Persons" include:

- “(a) individuals connected by blood relationship, marriage or common-law partnership or adoption;
- (b) a corporation and (i) a person who controls the corporation, if it is controlled by one person, (ii) a person who is a member of a related group that controls the corporation, or (iii) any person related to a person described in subparagraph 251(2)(b)(i) or 251(2)(b)(ii); and
- (c) any two corporations if: (i) they are controlled by the same person or group of persons, (ii) each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation, (iii) one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation, (iv) one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation, (v) any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or (vi) each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.”

Also under the *Income Tax Act (Canada)*, persons are connected by:

- “(a) blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other;
- (b) marriage if one is married to the other or to a person who is so connected by blood relationship to the other;
- (b.1) common-law partnership if one is in a common-law partnership with the other or with a person who is connected by blood relationship to the other; and



- (c) adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is so connected by blood relationship (otherwise than as a brother or sister) to the other.”

For an official copy of the definition, Dealer Members should refer to section 251 of the *Income Tax Act (Canada)*.

The text of new Dealer Member Rule 43 is included within Attachment A.

## 2. Outside business activities

The amendments to Dealer Member Rule 18.14 expand the scope of the conditions set out in current Dealer Member Rule 18.14 from other gainful occupations to outside business activities and clarifying that Registered Representatives and Investment Representatives must inform the Dealer Member of any outside business activities and obtain the Dealer Member’s approval to engage in any such outside business activities prior to engaging in the activity. Consistent with IIROC’s prior position and Dealer Member practices, the amendments further clarify that the Dealer Member must notify IIROC of the outside business activity within the time period and manner required by the applicable National Instrument<sup>1</sup>.

The text of revised Dealer Member Rule 18.14 is included within Attachment A.

## **Related guidance**

IIROC is also issuing, concurrent with this Rules Notice, guidance relating to the disclosure and approval of outside business activities. The guidance sets out:

- (a) A summary of the requirements relating to the disclosure and approval of all outside business activities;
- (b) Some considerations relating to the approval of outside business activities;
- (c) Dealer Members’ supervisory responsibilities relating to outside business activities; and
- (d) Filing requirements – National Registration Database (“NRD”) relating to outside business activity.

Please refer to Rules Notice 13-0163 for the guidance on *Disclosure and approval of outside business activities*.

## **Publication for comment and summary of written comments**

### The new rules

The amendments to the IIROC Dealer Member rules were published for comment with IIROC Rules Notice 10-0155 on May 28, 2010. IIROC staff has considered all of the comments received and

---

<sup>1</sup> At the time of issuance of this Notice, Dealer Members should refer to National Instrument 33-109 *Registration Information*.



thank all of the commenters. A summary of the comments received, as well as IIROC staff's response to the comments is enclosed as Attachment C.

The scope of the amendments remains the same as the proposed amendments that were published for comment in May, 2010. IIROC has made revisions to the rules to address the comments received and to clarify its expectations with regards to personal financial dealing with clients and outside business activities. None of the revisions are substantive in nature. Therefore, the revisions have not been republished for a further comment period. A black-lined copy of the final rules, detailing the revisions made since the publication for comment of proposed amendments in May, 2010, is enclosed as Attachment B.

#### The Guidance Note

The Guidance Note was published for comment with IIROC Rules Notice 11-0150 on May 11, 2011. IIROC staff has considered all of the comments received and thank all the commenters. A summary of the comments received and IIROC staff's response to the comments is enclosed as Attachment D. The scope of the Guidance Note remains the same. IIROC staff has, however, made some revisions to address the comments received and to clarify IIROC's position relating to the disclosure and approval of outside business activities.

### **Summary of changes**

In response to CSA and public comments received, IIROC has made some minor revisions to the rules relating to personal financial dealing with clients and outside business activities. Noteworthy changes made since the publication in May, 2010, are as follows:

#### Personal financial dealing with clients

Wording was added to clarify that the list of types of personal financial dealings set out in Rule 43 is not exhaustive.

Wording was added to clarify that the prohibition against receiving consideration for activities conducted on behalf of a client does not include compensation received in exchange for services provided through an approved outside business activity.

Wording was added to clarify that receiving or providing a guarantee, in relation to borrowing or lending money, is captured by the prohibition against borrowing from or lending to clients any money, securities or other assets.

#### Outside business activities

Wording was added to clarify that the disclosure of the outside business activities by a Registered Representative or Investment Representative to their Dealer Member, and the Dealer Member's approval of such activities, must be done prior to engaging in such outside business activity.



## **Implementation plan**

The new rule relating to personal financial dealing with clients will be known as Dealer Member Rule 43 – *Personal Financial Dealings with Clients*. Copies of new Dealer Member Rule 43 and revised Dealer Member Rule 18.14 are included within Attachment A. The amendments will take effect on December 13, 2013. In the case of existing arrangements referred to in Dealer Member Rule 43.2(5)(i), such as employees or Approved Persons that may be acting as a Power of Attorney, trustee, executor or otherwise have full or partial control or authority over the financial affairs of a client, such arrangements must be unwound or compliant with Dealer Member Rule 43 by June 13, 2014.

IIROC is issuing guidance relating to the disclosure and approval of outside business activities concurrently with this Rules Notice as Rules Notice 13-0163.

## **Attachments**

- [Attachment A](#) - Dealer Member Rule 43 - *Personal Financial Dealings with Clients* and Dealer Member Rule 18.14 relating to outside business activities (clean)
- [Attachment B](#) - Dealer Member Rules 43 and 18.14, black-lined to the previously published version
- [Attachment C](#) - Summary of public comments received and IIROC staff response to comments on the previously published amendments
- [Attachment D](#) - Summary of public comments received and IIROC staff response to the comments on the previously published draft Guidance Note