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By-Laws and Regulations

Amendments to Regulation 1300, 1800.5 and 1900.4 Policy 9

The Board of Directors of the Association has approved the attached amendments to Regulation 1300, to be effective immediately.

Regulation 1300.1 contains the current suitability provision which requires dealers to consider such factors as a client's age, investment objectives, risk tolerance, investment knowledge, net worth and income in order to assess whether each transaction, recommended or non-recommended is suitable for the client.

Under the rule change a dealer's obligation to make a suitability determination will apply only to securities that have been recommended by the dealer. An example of such a situation would occur where a Member accepts an order from a client and is recommending a particular transaction to a client. A suitability determination would not be required where the dealer acts solely as an order-taker for a client on a particular transaction who, on their own initiative, executes a trade without a recommendation.

The rule change will apply to both discount brokers that offer solely an order execution service and to full service brokers who offer both an advisory service and an order execution only service, provided that the dealer has met the requirements of Policy 9, as described below. A Member is required to collect the required information for the New Client Application Form as set out in Form No.2 of the Association's Rulebook. Such information is required so that it can be reviewed for those transactions where the client is provided with recommendations by the dealer. However, where a Member offers solely an order-execution only service, the rules provide that the Member or separate business unit of the Member will not be required to include such information in the new client application form.

In order for a Member to take advantage of the rule change the Member must receive approval from the Association under Regulation 1300.1(e). Approval is based upon the Member firm satisfying the policies and procedures outlined in the Association's Policy 9 "Minimum Requirements for Members Seeking Approval under Regulation 1300.1(e) for Suitability Relief for Trades not Recommended by the Member."

Regulation 1800.5 and 1900.4 were amended in order to be consistent with the changes to Regulation 1300.

Policy 9 contains the documentary, procedural and systems requirements which a Member must satisfy in order to be granted relief from suitability by the Association. The Policy is divided into two parts. The first part is applicable to firms that solely offer order-execution only services and the second part is applicable to those firms that offer both advisory and order- execution only services.

Members applying for relief from the suitability rules must submit the following to the Manager, Sales Compliance of the IDA Regional Office responsible for the region in which the Member's head office is located:

1. an application for approval pursuant to Policy 9 to accept orders from customers without making a suitability determination. The application should indicate whether the approval is being sought for an order execution only service under Part A or for a mixed advisory and order execution only service under Part B of Policy 9.
2. policies and procedures covering all matters outlined in the relevant section of Policy 9 including both dealings with clients and supervision.
3. a plan and any related material for communicating these policies and procedures to employees and providing training as necessary to ensure that they are properly understood and implemented.
4. copies or drafts of documents such as new account forms, letterhead, account statement and confirmation forms and disclosures to clients to the extent that these differ from forms and documents currently approved and in use.
5. descriptions of any systems or systems enhancements to record or generate additional information, such as client acknowledgements, marking of orders, required disclosures on confirmations or monthly statements and supervisory reports. To the extent that such enhancements have not yet been implemented, mock-ups of supervisory and exception reports should be provided, with actual sample reports following as they become available.

To assist Members in determining what may or may not constitute a recommendation the Association has released Member Regulation Notice 098. The Notice is not intended to define all situations that may fall under the definition of "recommendation". Rather, whether a particular transaction is in fact "recommended" depends on an analysis of all the relevant facts and circumstances of the particular case.

It should be noted that Members who wish to provide a suitability review, regardless of whether a recommendation has been provided, or for those Members who do not receive Association approval, a suitability requirement still exists under Regulation 1300.1(c).

A copy of the amendment is attached.

Kenneth A. Nason
Association Secretary

INVESTMENT DEALERS ASSOCIATION OF CANADA SUITABILITY

THE BOARD OF DIRECTORS of the Investment Dealers Association of Canada hereby makes the following amendments to the By-laws, Regulations, Forms and Policies of the Association:

Regulation 1300.1 is repealed and replaced as follows:

“1300.1.

Identity and Creditworthiness

- (a) Each Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

Business Conduct

- (b) Each Member shall use due diligence to ensure that the acceptance of any order for any account is within the bounds of good business practice.

Suitability Generally

- (c) Subject to Regulation 1300.1(e), each Member shall use due diligence to ensure that the acceptance of any order from a customer is suitable for such customer based on factors including the customer’s financial situation, investment knowledge, investment objectives and risk tolerance.

Suitability Determination Required When Recommendation Provided

- (d) Each Member, when recommending to a customer the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such customer based on factors including the customer’s financial situation, investment knowledge, investment objectives and risk tolerance.

Suitability Determination Not Required

- (e) Each Member that has applied for and received approval from the Association pursuant to Regulation 1300.1(f), is not required to comply with Regulation 1300.1(c), when accepting orders from a customer where no recommendation is provided, to make a determination that the order is suitable for such customer.

Association Approval

- (f) The Association, in its discretion, shall only grant such approval where the Association is satisfied that the Member will comply with the policies and procedures outlined in Policy No. 9. The application for approval shall be accompanied by a copy of the policies and procedures of the Member. Following such approval, any material changes in the policies and procedures of the Member shall promptly be submitted to the Association.”

2. Regulation 1300.2 is repealed and replaced as follows:

“1300.2.

- (a) Each Member shall designate a director, partner or officer or, in the case of a branch office, a branch manager reporting directly to the designated director, partner or officer who shall be responsible for the opening of new accounts and the supervision of account activity. Each such designated person shall be approved by the applicable District Council and, where necessary to ensure continuous supervision, the Member may appoint one or more alternates to such designated person who shall be so approved. The director, partner or officer as the case may be, shall be responsible for establishing and maintaining

procedures for account supervision and such persons or, in the case of a branch office, the branch manager shall ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry. As part of this supervision each new account shall be opened pursuant to a new account form which includes, at a minimum, the information required by Form No. 2, and the designated person (other than a branch manager in the case of discretionary or managed accounts) shall prior to or promptly after the completion of any transaction specifically approve the opening of such account. In the absence or incapacity of the designated director, partner or officer or when the trading activity of the Member requires additional qualified persons in connection with the supervision of the Member's business, an alternate, if any, shall assume the authority and responsibility of such designated persons.

- (b) Notwithstanding Regulation 1300.2(a), a Member or separate business unit of the Member is exempt from the requirement that a new account form include, at a minimum, the information required by Form No. 2 where the Member or separate business unit of the Member does not provide recommendations to any of its customers and has received approval pursuant to Regulation 1300.1(e). In such circumstances, the Member or separate business unit of the Member shall not be required to include in the new account form the information currently set out in Form No. 2 of the Association that relates to suitability.”

3. Regulation 1800.5(a) and (b) is repealed and replaced as follows:

- “(a) subject to Regulation 1300.2 opening all new contracts accounts pursuant to a new account application form approved by the Association and the approval of such form for all accounts prior to the commencement of any trading activity;
- (b) using due diligence to learn and remain informed of the essential facts relative to every customer (including the customer's identity, creditworthiness and reputation) and to every order or account accepted, to ensure that the acceptance of any order for any account is within the bounds of good business practice and, subject to Regulation 1300.1(e), to use due diligence to ensure that the acceptance of any order from a customer is suitable for such customer based on factors including the customer’s financial situation, investment knowledge, investment objectives and risk tolerance;”

4. Regulation 1900.4 is repealed and replaced as follows:

“ A registered options principal of a Member designated pursuant to Regulation 1900.2 shall be responsible for establishing and maintaining procedures for account supervision and shall ensure that the handling of customers' business relating to options is in accordance with the By-laws, Regulations, Rulings and Policies including, in particular, Regulations 1300.1, 1300.2 and 1900.2(a). As part of this supervision, each new account involving trading in options shall be opened pursuant to an appropriate account application form and the registered options principal shall have, prior to the completion of the initial transaction, specifically approved the opening of such account, provided that in the case of a branch office or sub-branch office, such approval (other than in respect of discretionary or managed accounts) may be given by a branch manager unless such branch manager is not qualified for the supervision of options accounts. All procedures to carry out the provisions of the By-laws and Regulations including Regulation 1300 as it relates to options trading shall be in writing and subject to review by the Association. In the absence or incapacity of the designated registered options principal or when the trading activity of the Member requires additional qualified persons in connection with the supervision of the Member's business, an alternate, if any, shall assume the authority and responsibility of the registered options principal.”

PASSED AND ENACTED BY THE Board of Directors this 11th day of April 2001, to be effective on a date to be determined by Association staff.

POLICY NO. 9

Minimum Requirements for Members Seeking Approval under Regulation 1300.1(e) for Suitability Relief for Trades not Recommended by the Member

The following Policy sets forth the documentary, procedural and systems requirements for Members to receive approval to accept orders from a customer without a suitability determination where no recommendation was provided by the Member.

In this Policy, “order-execution service” means the acceptance and execution of orders from customers for trades that the Member has not recommended and for which the Member takes no responsibility as to the appropriateness or suitability of the trades to the customers’ financial situation, investment knowledge, investment objectives and risk tolerance.

A. Minimum requirements for Members offering solely an order-execution service, either as the Member’s only business or through a separate business unit of the Member

1. Business Structure and Compensation

- a) The Member must operate either as a legal entity or a separate business unit which provides order-execution only services.
- b) If operated as a separate business unit of the Member, the order-execution only service must have separate letterhead, accounts, registered representatives and investment representatives and account documentation.
- c) The registered representatives and investment representatives of the Member or separate business unit of the Member shall not be compensated on the basis of transactional revenues.

2. Written Policies and Procedures

- a) The Member or separate business unit of the Member must have written policies and procedures covering all of the matters outlined in this Policy.
- b) The Member or separate business unit of the Member must have a program for communicating those policies and procedures to all its registered representatives and investment representatives and ensuring that the policies and procedures are understood and implemented.

3. Account Opening

- a) At the time an account is opened, the Member or separate business unit of the Member must make a written disclosure to the customer advising that the Member or separate business unit of the Member will not provide any recommendations to the customer and will not be responsible for making a suitability determination of trades when accepting orders from the customer. Such disclosure shall clearly explain to the customer that the customer alone is responsible for his or her own investment decisions and that the Member will not consider the customer’s financial situation, investment knowledge, investment objectives and risk tolerance when accepting orders from the customer.
- b) At the time an account is opened, the Member or separate business unit of the Member must obtain an acknowledgement from the customer that the customer has received and understood the disclosure described in Paragraph 3(a). For accounts such as joint and investment club accounts having more than one direct beneficial owner, the Member must obtain an acknowledgement from all beneficial owners.

- c) Prior to operating any existing accounts under the approval, the Member or separate business unit of the Member must provide the disclosure described in Paragraph 3(a) to the customer and obtain the acknowledgement described in Paragraph 3(b).
- d) The acknowledgements obtained under Paragraphs 3(b) and (c) must take the form of a positive act by the customer(s), a record of which must be maintained by the Member in an accessible form. Possible forms of the acknowledgement are:
 - i) the customer's signature or initials on a new customer application form or similar document where the signature or initial specifically relates to the required disclosure and acknowledgement;
 - ii) the clicking of an appropriately labeled button on an electronic account application form, placed directly under the disclosure and acknowledgement text;
 - iii) the tape recording of a verbal acknowledgement made by telephone.

4. Supervision

- a) The Member or separate business unit of the Member must have written procedures for the supervision of trading reasonably designed to ensure that customers are not provided with recommendations as a result of the customer having an account with the separate business unit of the Member and with another separate business unit of the Member or with the Member itself.
- b) The Member or separate business unit of the Member must have written procedures and systems in place to review customer trading and accounts for those concerns listed in Policy No. 2 other than those related solely to suitability.
- c) The Member or separate business unit of the Member must maintain an audit trail of supervisory reviews as required in Policy No. 2.
- d) The Member or separate business unit of the Member must have sufficient supervisory resources allocated at head office and branch levels to effectively implement the supervisory procedures required under this Policy.

5. Systems and Books and Records

- a) The order-entry systems and records of the Member or separate business unit of the Member must be capable of labeling all account documentation relating to customers, including monthly statements and confirmations, as "order-execution only accounts" or some variant thereof.
- b) The monthly statements of a separate business unit of a Member shall not be consolidated with the account statements of any other business unit of the Member or of the Member itself.

B. Minimum requirements for Members offering both an advisory and an order-execution only service

1. Terminology

All references to the basis of trades in procedures, documents and reports under this Policy must use the terms "recommended" or "non-recommended". In particular, designating trades as solicited or unsolicited will not be accepted as complying with the requirements of this Policy.

2. Written Policies and Procedures

- a) The Member must have written policies and procedures covering all of the matters outlined in this Policy.
- b) The Member must have a program for communicating those policies and procedures to all its registered representatives and ensuring that the policies and procedures are understood and implemented.

3. Account Opening

- a) At the time an account is opened, the Member must make a written disclosure to the customer advising that the Member will not be responsible for making a suitability determination when accepting an order from the customer which was not recommended by the Member or a representative of the Member. Such disclosure shall clearly explain to the customer that the customer alone is responsible for his or her own investment decisions and that the Member will not consider the customer's financial situation, investment knowledge, investment objectives and risk tolerance when accepting orders from the customer. Such disclosure also shall include a brief description of what does or does not constitute a recommendation¹ and instructions on how the customer can report trades which have not been accurately designated as recommended or non-recommended.
- b) At the time an account is opened, the Member must obtain an acknowledgement from the customer that the customer has received and understood the disclosure described in Paragraph 3(a). For accounts such as joint and investment club accounts having more than one direct beneficial owner, the Member must obtain an acknowledgement from all beneficial owners.
- c) Prior to operating any existing accounts under the approval, the Member must provide the disclosure described in Paragraph 3(a) to the customer and obtain the acknowledgement described in Paragraph 3(b).
- d) The acknowledgements obtained under Paragraphs 3(b) and (c) must take the form of a positive act by the customer(s), a record of which must be maintained by the Member in an accessible form. Possible forms of the acknowledgement are:
 - i) the customer's signature or initials on a new customer application form or similar document where the signature or initial specifically relates to the required disclosure and acknowledgement;
 - ii) the clicking of an appropriately labeled button on an electronic account application form, placed directly under the disclosure and acknowledgement text;
 - iii) the tape recording of a verbal acknowledgement made by telephone.

4. Supervision

- a) The Member must have written procedures for the supervision of trading reasonably designed to ensure that orders are marked accurately as recommended or non-recommended.
- b) The Member must have written procedures for the selection of accounts to be subject to a monthly review at least equal to those currently required by Policy No. 2. The selection must not have regard to whether the trades in the account are marked as recommended or non-recommended. The account review must include a

determination whether the overall composition of the customer's portfolio no longer conforms to the documented objectives and risk tolerance of the customer as a result of non-recommended trades and, when it does not, the procedures must specify the steps to be taken for dealing with the disparity.

- c) The Member must maintain an audit trail of supervisory reviews as required in Policy No. 2.
 - d) The Member must have sufficient supervisory resources allocated at head office and branch levels to effectively implement the supervisory procedures required under this Policy.
5. Systems and Books and Records
- a) The Member's order-entry systems and records must be capable of recording whether each order is being done on a recommended or non-recommended basis. If the Member permits customers to enter orders on-line for direct transmission to a trading system, the order entry system must require the customer to indicate whether the trade was recommended or non-recommended. If there is default marking, it must be "recommended."
 - b) The Member must disclose on the confirmation for each trade by an account whether the transaction was recommended or non-recommended.
 - c) The Member must disclose on the monthly statement whether each trade was executed on a recommended or non-recommended basis, but is not required to disclose on monthly statements which securities positions resulted from which type of trade.
 - d) The Member must maintain records of complaints or requests from customers to change the designation of a trade as recommended or non-recommended.
 - e) The Member must be able to generate reports enabling supervisors to supervise the accuracy of recommended/non-recommended disclosure on orders. Possible methods of meeting this requirement are included as Appendix A to this Policy.
 - f) The Member's systems must be able to select accounts or generate exception reports to show accounts requiring review as specified in its policies and procedures and Policy No. 2 without regard to whether the trades were marked as recommended or non-recommended.

APPENDIX A

Supervision of Accuracy of Recommended/Non-recommended Trade Basis Reporting for Member Firms Granted Approval under Regulation 1300.1(e)

Under section B.4 (a) of Policy No. 9, Members must have procedures for the supervision of trading reasonably designed to ensure the accuracy of the marking of customer orders as recommended or non-recommended. Under section B.5(e) of Policy No. 9, Members must have systems capable of generating reports which will enable supervisors to conduct such supervision.

While Members may, subject to the approval of the Association, design their own procedures and reports in compliance with the Policy, the following are examples of reports and procedures which Association staff believe would meet the requirements of the Policy.

1. Reports used in required daily trading reviews should indicate whether a trade has been designated as recommended or non-recommended.
2. Procedures should direct those reviewing reports used in daily trade supervision to look for patterns suggestive of inaccurate designation of trade basis, such as:
 - a) trades by more than one customer of a registered representative in the same security on the same day being designated as non-recommended. Where such situations occur, there must be a reasonable explanation such as widespread holding or trading of the stock;
 - b) trades in securities that are the subject of research reports issued or distributed by the Member, or with respect to which the Member has recently changed its research recommendation. While the issuance of a research report or general recommendation is not determinative that there has been a recommendation made to a specific customer, trades in such securities marked as non-recommended may be questioned in relation to the individual registered representative's tendency to make use of the Member's recommendations in dealings with customers;
 - c) crosses between customer accounts of the same registered representative both shown as non-recommended.
3. The Member should be able to generate statistical or exception reports capable of revealing patterns of trade designation to be reviewed for possible inaccuracy, for example:
 - a) percentages of trades designated as recommended and non-recommended by registered representative and branch office. Depending on the nature of the business of the registered representative or branch office, high percentages of trades designated as non-recommended may indicate inaccurate marking;
 - b) percentages of trades in particular securities designated as recommended or non-recommended. High percentages of trades in some securities marked as non-recommended, such as those being recommended in the Member's research, may be indicative of inaccurate marking. Such reports may also identify frequent trades by particular offices or registered representatives in one security, which are all marked as non-recommended but occur over more than one day. As noted above, such a pattern may require further investigation by the Member but is not determinative that the trades are inaccurately marked;
 - c) numbers of complaints or reports from customers that trades are inaccurately marked

which show any frequency of complaints about a particular registered representative or branch office.

4. The Member's procedures should provide instructions to supervisors on the requirement to review statistical and exception reports, on steps to be taken to investigate any questionable patterns and on audit trail requirements. Audit trails should include a record of questions asked, answers given and action taken as in reviews conducted under Policy No. 2.
5. Where compliance procedures under this Policy are conducted at the branch office level, the Member should have head office review procedures sufficient to ensure that the supervisory requirements are being properly executed at the branch level.