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For distribution to relevant parties within your firm

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By-Laws and Regulations

By-law 39 Principal and Agent Relationships

The Board of Directors of the Association have approved By-law 39, to be effective immediately.

Under the current IDA rules and regulations there are no provisions for principal and agent relationships. Individuals selling securities to the public are required to be employees of IDA Member firms. As such, By-law 39 was proposed in order to allow alternative business structures among IDA Member firms.

Based on the above, the relationship between the Member and any person conducting securities related business on behalf of the Member may be that of employer and employee or that of principal and agent. However, the relationship between the Member and any person conducting securities related business on behalf of the Member may not be that of an incorporated salesperson. Salespersons are prohibited from conducting securities related business through their unregistered personal corporations. Since most of these personal corporations are not registered with the relevant securities commissions they are prohibited from carrying on the business of selling or advising in securities. Furthermore, the protections available to investors in an employer and employee relationship or principal and agent relationship are not available to investors when dealing with incorporated salespersons operating through their personal corporations. As such, these relationships have not been contemplated by the Association at this time and are therefore prohibited.

Under By-law 39, Members are permitted to structure their businesses using a principal and agent relationship provided that certain conditions are met to the satisfaction of the Association. By-law 39.4 contains the conditions that must be complied with when forming a principal agent relationship.

Paragraph 39.4(n) requires Members to enter into a written agreement with every agent that contains the terms referred to in paragraphs 39.4 (a) through (m). The Agreement may be in the form provided for in Appendix "A" or in a substantially similar form that is satisfactory to the

Association. The Member is also required to provide the Association with a certificate by an officer or director of the Member confirming that the agreement is in compliance with the provisions of the By-law and furthermore, upon request by the Association, shall provide an opinion of counsel confirming that the agreement is in compliance with the By-law.

Paragraph 39.4(o) requires Members to enter into a written agreement with the Association prior to the Member engaging in any principal and agent relationship, which addresses paragraphs 39.4(c) and (d). Paragraph 39.4(c) relates to the Member's responsibility for and supervision of the agent to ensure that the agent complies with all applicable legislation and by-laws, regulations, policies and forms of the Association as well as all by-laws, rulings, policies, rules, regulations, orders and directions of any self-regulatory or similar authority to which the Member is subject. Paragraph 39.4(d) relates to the Member's liability to clients (in addition to other third parties) for the acts and omissions of the agent relating to the Member's business as if the agent were an employee of the Member. The agreement may be in the form provided for in Appendix "B" or in a substantially similar form that is satisfactory to the Association.

Please note that By-law 39 will not apply in Nova Scotia at this time. However, the Nova Scotia Securities Commission is currently considering a Rule the effect of which is to permit Principal and Agent Relationships when in accordance with By-law 39. The Rule will come into force at a date to be determined by the Nova Scotia Securities Commission.

A copy of the By-law, Appendix "A" and Appendix "B" are attached.

Kenneth A. Nason
Association Secretary