

MEMBER REGULATION



INVESTMENT
DEALERS
ASSOCIATION
OF CANADA



ASSOCIATION
CANADIENNE DES
COURTIERS EN
VALEURS MOBILIÈRES

notice

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MR0177

November 18, 2002

ATTENTION:

Ultimate Designated Persons
Chief Financial Officers
Panel Auditors

Distribute internally to:

- Corporate Finance
- Credit
- Institutional
- Internal Audit
- Legal & Compliance
- Operations
- Registration
- Regulatory Accounting
- Research
- Retail
- Senior Management
- Trading desk
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Electronic Signatures

The Investment Dealers Association will now permit the use of electronic or digital signatures where a signature is required with respect to agreements, contracts or transactions with and between the Member and its clients, registrants, the Association, other Members and any other person or company where a signature is required to be executed.

Examples of some of the Association's By-laws, Regulations, Policies and Forms that contain a requirement for a signature are set forth below. This list is intended for illustrative purposes only and is by no means exhaustive.

LEGISLATIVE REQUIREMENTS

Electronic commerce legislation in force in a number of jurisdictions now clarifies that electronic signatures are legally valid in those jurisdictions. The commonly accepted legal definition of "executed" and "signature" all suggest that there is more than one method of signing (and hence executing) a document.

Each jurisdiction has similar requirements. However, Members are advised to refer to the applicable provincial legislation in order to ensure that they satisfy the requirements. A list containing the names of the legislation and their respective status is included with this Notice. However, where no electronic commerce legislation exists in a particular jurisdiction, electronic signatures would not be legally valid in that jurisdiction.

Furthermore, the use by the Member of electronic signatures is contingent upon the Member's technological capabilities.

Technological issues will require, among other things, that the capabilities of the technology guarantee non-repudiation, which entails the inability of the signer to repudiate his or her signature on or association with the document. However, the provincial legislation does not specify, at the present time, the digital signature technology that must be applied.

Members must also keep in mind that a consent is required prior to the use of an electronic signature. While the legislation does not define the method of consent, it does provide for implied consent. For example, the legislation generally states that consent may be inferred from a person's conduct if there are reasonable grounds to believe that the consent is genuine and is relevant to the information or document.

Most provincial legislation clarifies that an electronic signature does not have to look like a "physical" signature in order to be valid and binding. For example, the signature can be a code, sound or symbol of any kind and could be part of or separate from the document it signs, as long as the association with the document is clear.

There appears to be no restrictions or limitations on the use of electronic signatures in relation to the formation or operation of electronic contracts; as long as the association of the electronic signature with the person and the document is established and the intent to sign is demonstrated, an electronic signature so used will be valid.

In general, the legislation requires the following:

- A document or information in electronic form must be **accessible** by the other person so as to be usable for subsequent reference;
- A document or information in electronic form must be capable of being **retained** by the other person;
- A document or information in electronic form must be **organized** in the same or substantially the same way as the specific non-electronic form;
- The electronic signature is **reliable** for the purpose of identifying the person; and
- The **association** of the electronic signature with the relevant electronic document is reliable.

Consequently, in respect of the latter two points, these requirements will not be satisfied by the acceptance of an e-mail from a client or by a Member's use of a password protected website.

The Association will require Members to obtain a reliable legal opinion that confirms that the Member's digital signature technology and system satisfies the legislative requirements in the jurisdictions in which it is intended to be applied. A Member may supply its own legal opinion or one from a certification authority.¹

REFERENCE TO OTHER NOTICES

Members are also reminded of MR Notice 008 Guidelines for the Electronic Delivery of Documents, issued on February 15th, 2000. Members are advised to refer to that Notice in conjunction with the implementation of the use of electronic signatures.

¹ To ensure that digital signatures are generated in a secure manner, a public key infrastructure (or PKI) can be organized under which a trusted third party, known as a certification authority, generates and assigns keys and issues certificates which serve to identify and authenticate the signer and his/her associates with the public key. FundSERV is an example of a PKI initiative in the mutual fund industry where FundSERV acts as the certification authority.

*Examples of Signature Requirements under IDA By-laws, Regulations,
Policies and Forms*

Cross Guarantee Agreement – By-law 6.6

Introducing Broker/Carrying Broker Disclosure – By-law 35

Guarantee Agreement – Regulation 100.14

Guarantor Provision of Information – Regulation 100.15(i)

Margin Account Agreement – Regulation 200.1

Waiver of Receipt of Client Confirmation Statements for Managed Account – Regulation 200.1

Accounts of Employees of Other Members – Regulation 800.11

Managed or Discretionary Account Agreement – Regulation 1300.4 and Policy No. 2

Managed Account Consent for Specific Transactions – Regulation 1300.16

Futures Contracting Trading Agreement/Future Contract Options trading Agreement – Regulation 1800.9

Option Trading Agreement – Regulation 1900.6

Segregation Agreements – Regulation 2000

Cash and Securities Loan Transaction Agreements – Regulation 2200.2

Authorization to Transfer Account Form – Regulation 2300.3

Suitability Acknowledgement – Policy No. 9

Form 1 – Joint Regulatory Financial Questionnaire and Report

Form 2 – New Client Application Form

Provincial Electronic Commerce Legislation

ALBERTA	<i>Electronic Transactions Act – awaiting proclamation</i>
BRITISH COLUMBIA	<i>Electronic Transactions Act</i>
MANITOBA	<i>The Electronic Commerce and Information Act – awaiting proclamation</i>
NEW BRUNSWICK	<i>Electronic Transactions Act</i>
NEWFOUNDLAND	<i>Electronic Commerce Act</i>
NOVA SCOTIA	<i>Electronic Commerce Act</i>
ONTARIO	<i>Electronic Commerce Act</i>
PRINCE EDWARD ISLAND	<i>Electronic Commerce Act</i>
QUÉBEC	<i>An Act to establish a legal framework for information technology (see also article 2827 of the Civil Code of Québec)</i>
SASKATCHEWAN	<i>The Electronic Information and Documents Act, 2000</i>
YUKON	<i>Electronic Commerce Act</i>