

RULE 3200

MINIMUM REQUIREMENTS FOR DEALER MEMBERS SEEKING APPROVAL UNDER RULE 1300.1(T) TO OFFER AN ORDER-EXECUTION ONLY SERVICE

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

In this Rule, “order-execution only service” means the acceptance and execution of orders from customers for trades that the Dealer Member has not recommended and for which the Dealer Member takes no responsibility as to the appropriateness or suitability of orders accepted or account positions held.

In this Rule “automated order system” has the same meaning as defined in National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces*.

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

1. Business Structure and Compensation

- (a) The Dealer Member must operate either as a legal entity or a separate business unit which provides order-execution only services.
- (b) The legal entity or separate business unit of the Dealer Member offering an order execution only service must not allow its order execution only service clients to:
 - (i) use their own automated order system to generate orders to be sent to the Dealer Member or send orders to the Dealer Member on a pre-determined basis; or
 - (ii) manually send orders or generate orders to the Dealer Member that exceed the threshold on the number of orders as set by the Corporation from time to time.
- (c) If operated as a separate business unit of the Dealer Member, the order-execution only service must have separate letterhead, accounts, registered representatives and investment representatives and account documentation.
- (d) The registered representatives and investment representatives of the Dealer Member or separate business unit of the Dealer Member shall not be compensated on the basis of transactional revenues.

2. Written Policies and Procedures

- (a) The Dealer Member or separate business unit of the Dealer Member must have written policies and procedures covering all of the matters outlined in this Rule.
- (b) The Dealer Member or separate business unit of the Dealer 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 Dealer Member or separate business unit of the Dealer Member must make a written disclosure to the customer advising that the Dealer Member or separate business unit of the Dealer 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 Dealer 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 Dealer Member or separate business unit of the Dealer 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 Dealer Member must obtain an acknowledgement from all beneficial owners.
- (c) Prior to operating any existing accounts under the approval, the Dealer Member or separate business unit of the Dealer 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 Dealer 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 Dealer Member or separate business unit of the Dealer 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 Dealer Member and with another separate business unit of the Dealer Member or with the Dealer Member itself.
- (b) The Dealer Member or separate business unit of the Dealer Member must have written procedures and systems in place to review customer trading and accounts for those concerns listed in Rule 2500 other than those related solely to suitability.
- (c) The Dealer Member or separate business unit of the Dealer Member must ensure that its written policies and procedures and systems of supervision and control to review client trading takes into account the risks associated with the method of order entry and the absence of intermediation by staff of the Dealer Member.
- (d) The Dealer Member or separate business unit of the Dealer Member must maintain an audit trail of supervisory reviews as required in Rule 2500.

- (e) The Dealer Member or separate business unit of the Dealer Member must have sufficient supervisory resources allocated at head office and branch levels to effectively implement the supervisory procedures required under this Rule.

5. Identification of Certain Clients

- (a) The Dealer Member must ensure that a client identifier is assigned to each client that trades on a Marketplace for which the Corporation is the regulation services provider:
 - (a) whose trading activity on Marketplaces for which the Corporation is the regulation services provider exceeds a daily average of 500 orders per trading day in any calendar month,
 - (b) that is not an individual and is registered as a dealer or adviser in accordance with applicable securities legislation, or
 - (c) that is not an individual and is in the business of trading securities in a foreign jurisdiction in a manner analogous to a dealer or adviser.
- (b) The Dealer Member must provide each client identifier assigned pursuant to Rule A.5(a) and the name of the corresponding client to the Corporation.
- (c) The Dealer Member must ensure that each order entered on a Marketplace for which the Corporation is the regulation services provider by or on behalf of a client for whom a client identifier must be assigned pursuant to Rule A.5(a) contain the client identifier assigned to that client.

6. Systems and Books and Records

- (a) The order-entry systems and records of the Dealer Member or separate business unit of the Dealer 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 Dealer Member shall not be consolidated with the account statements of any other business unit of the Dealer Member or of the Dealer Member itself.

B. Minimum requirements for Dealer 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 Rule 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 Rule.

2. Business Structure

The Dealer Member offering both an advisory and an order execution only service must not allow its order execution only service clients to:

- (a) Use their own automated order system to generate orders to be sent to the Dealer Member or send orders to the Dealer Member on a pre-determined basis; or
- (b) Manually send orders or generate orders to the Dealer Member that exceed the threshold on the number of orders as set by the Corporation from time to time.

3. Written Policies and Procedures

- (a) The Dealer Member must have written policies and procedures covering all of the matters outlined in this Rule.
- (b) The Dealer 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.

4. Account Opening

- (a) At the time an account is opened, the Dealer Member must make a written disclosure to the customer advising that the Dealer Member will not be responsible for making a suitability determination when accepting an order from the customer which was not recommended by the Dealer Member or a representative of the Dealer 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 Dealer 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 recommendation 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 Dealer Member must obtain an acknowledgement from the customer that the customer has received and understood the disclosure described in Paragraph 4(a). For accounts such as joint and investment club accounts having more than one direct beneficial owner, the Dealer Member must obtain an acknowledgement from all beneficial owners.
- (c) Prior to operating any existing accounts under the approval, the Dealer Member must provide the disclosure described in Paragraph 4(a) to the customer and obtain the acknowledgement described in Paragraph 4(b).
- (d) The acknowledgements obtained under Paragraphs 4(b) and (c) must take the form of a positive act by the customer(s), a record of which must be maintained by the Dealer Member in an accessible form. Possible forms of the acknowledgement are:
 - ii) 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;
 - iii) The clicking of an appropriately labeled button on an electronic account application form, placed directly under the disclosure and acknowledgement text;
 - iv) The tape recording of a verbal acknowledgement made by telephone.

5. Supervision

- (a) The Dealer 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 Dealer 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 Rule 2500. 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 Dealer Member must ensure that its written policies and procedures and systems of supervision and control to review trading by order-execution only service clients takes into account the risks associated with the method of order entry and the absence of intermediation by staff of the Dealer Member.
- (d) The Dealer Member must maintain an audit trail of supervisory reviews as required in Rule 2500.
- (e) The Dealer Member must have sufficient supervisory resources allocated at head office and branch levels to effectively implement the supervisory procedures required under this Rule.

6. Identification of Certain Clients

- (a) The Dealer Member must ensure that a client identifier is assigned to each order-execution only service client that trades on a Marketplace for which the Corporation is the regulation services provider:
 - (a) whose trading activity on Marketplaces for which the Corporation is the regulation services provider exceeds a daily average of 500 orders per trading day in any calendar month,
 - (b) that is not an individual and is registered as a dealer or adviser in accordance with applicable securities legislation, or
 - (c) that is not an individual and is in the business of trading securities in a foreign jurisdiction in a manner analogous to a dealer or adviser.
- (b) The Dealer Member must provide each client identifier assigned pursuant to Rule B.6(a) and the name of the corresponding client to the Corporation.
- (c) The Dealer Member must ensure that each order entered on a Marketplace for which the Corporation is the regulation services provider by or on behalf of a client for whom a client identifier must be assigned pursuant to Rule B.6(a) contain the client identifier assigned to that client.

7. Systems and Books and Records

- (a) The Dealer 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 Dealer 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 Dealer Member must disclose on the confirmation for each trade by an account whether the transaction was recommended or non-recommended.
- (c) The Dealer 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 Dealer Member must maintain records of complaints or requests from customers to change the designation of a trade as recommended or non-recommended.
- (e) The Dealer 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 Rule.
- (f) The Dealer 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 Rule 2500 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 DEALER MEMBER FIRMS GRANTED APPROVAL UNDER RULE 1300.1(T)

Under section B.5 (a) of Rule 3200, Dealer 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.6(e) of Rule 3200, Dealer Members must have systems capable of generating reports which will enable supervisors to conduct such supervision.

While Dealer Members may, subject to the approval of the Corporation, design their own procedures and reports in compliance with the Rule, the following are examples of reports and procedures which the Corporation believes would meet the requirements of the Rule.

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 Dealer Member, or with respect to which the Dealer 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 Dealer Member's recommendations in dealings with customers;
 - (c) Crosses between customer accounts of the same [registered representative](#) both shown as non-recommended.
3. The Dealer 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 Dealer 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 Dealer 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 Dealer 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 Rule 2500.
- 5. Where compliance procedures under this Rule are conducted at the branch office level, the Dealer Member should have head office review procedures sufficient to ensure that the supervisory requirements are being properly executed at the branch level.

