
2002/03/01 — Amendments to By-law 29.27 Regarding Supervision and Compliance — Notice of Commission Approval

Issue: March 1, 2002

Citation: 25 O.S.C.B. 1351

Amendments to IDA By-law 29.27 regarding supervision and compliance have been approved by the Ontario Securities Commission. In addition, the Saskatchewan Securities Commission approved, the Alberta Securities Commission did not disapprove and the British Columbia Securities Commission did not object to these amendments. The amendments set out a general statement of the requirements placed on IDA member firms and their supervisors to ensure compliance with all the regulations covering the conduct of their securities and commodity futures business. Furthermore, the amendments include one provision that requires member firms to perform on-site reviews of activities at their branch offices. A copy and description of the amendments were published on November 9, 2001 at (2001) 24 OSCB6801.

One submission was received in response to the request for comments. The comments were made by BMO Nesbitt Burns and were sent by letter dated December 7, 2001. The IDA's summary of the comments received and the response of the IDA is set out below.

Summary of Written Questions and Comments Received on the Proposed Regulation

Question

Will Members be required to submit all written policies and procedures for approval at the time the by-law is enacted?

Response

Yes, all policies and procedures will need to be approved. However, the Association will only require submission of changes as most Members' policies and procedures are reviewed during the annual Sales Compliance Review and as such will not need to be reviewed for the implementation of the by-law.

Comment

We note that many policies and procedures regarding conduct of a Member firm are not committed to writing. If the purpose of this by-law is to suggest that all such policies and procedures must be in written form, then we disagree with the comment that the proposed rule will not impose any additional costs of compliance. Will the Association be providing any guidance with respect to the

matters which require written procedures?

Response

The Association is of the opinion that all policies and procedures designed to ensure compliance with Regulations governing a Members' business should be written. The Association would appreciate some expansion on the statement that some policies and procedures are not committed to writing. It may be that there are areas of exclusively business concern (not regulatory concern) that are subject to unwritten policies and procedures, and we do not mean to require that these be reduced to writing.

Comment

With respect to paragraph (a)(iii), we believe that the words “reasonably designed” should be added after the word “procedures” to be consistent with the other sections of the by-law. We have a similar comment with respect to paragraph (a)(iv) and (a)(vi).

Response

The Association does not disagree with the suggested amendment on “reasonably designed” but would like to point out that paragraph (a) says that the whole system has to be reasonably designated, and therefore the general rubric covers all the sub-paragraphs.

Comment

With respect to paragraph (a)(v), we believe that the term “supervisory personnel” should be defined to clarify whether it refers only to those individuals listed in By-law 38.

Response

It is the position of the Association that paragraph (a)(v) is clear in that the term “supervisory personnel” is meant to apply to all supervisors not just the two specified in By-law 38.

Comment

With respect to paragraph (b), it is our view that a standard of reasonableness should be applied. We also note that as drafted, paragraph (c) does not contain language which makes it clear that a supervisor would be absolved of responsibility for an error by a person to whom functions have been delegated if the supervisor can show that adequate efforts had been made to ensure that that person has otherwise been fulfilling the functions.

Response

In Paragraph (b), the supervisor is required to supervise in accordance with the written policies and procedures, which have to be reasonably designed, etc., and it is the position of the

Association that the reasonableness standard flows through. We believe that the same intention is apparent in (c), in that the only way a person could identify an error by someone they had delegated a function to would be to review absolutely everything they do, which would make delegation meaningless. It may be that we could make this explicit in a notice explaining the By-law, but the Association feels that the intent is plain enough already. As long as the delegator does a reasonable review of what the delegatee does to ensure that a good job is done then the delegator should not be held responsible for errors that the delegatee may make. Furthermore, the delegator would not be responsible for single errors or omissions that the delegatee may make in the ordinary course of performing their duties.