

13.1.2 IDA – Definition of “Acceptable Securities Locations” – Transfer Agents, General Notes and Definitions to Form 1

INVESTMENT DEALERS ASSOCIATION OF CANADA – DEFINITION OF “ACCEPTABLE SECURITIES LOCATIONS” – TRANSFER AGENTS, GENERAL NOTES AND DEFINITIONS TO FORM 1

I Overview

A Current Rules

The definition of the term “acceptable securities locations” in the General Notes and Definitions to Form 1, specifies the entities that are considered suitable to hold securities on behalf of a Member without incurring a capital penalty provided a written custody agreement is executed. Although, the definition requires that a written custody agreement be executed, an exemption from this requirement is available in situations where the entities holding securities on behalf of the Member are banks and trust companies that are classified as “acceptable counterparties” and act as transfer agents for the securities involved.

B The Issue(s)

The exemption from the requirement to execute a written custody agreement was intended for situations where securities were sent to the transfer agent for re-registration, and not for situations where securities were sent to the transfer agent for general safekeeping. However, that intention is not clearly stated in the current definition of “acceptable securities locations” and could result in a Member interpreting and applying the exemption incorrectly. Therefore, the exemption requires clarification.

C Objective(s)

The objective of the housekeeping amendment is to clarify the intended situations in which the exemption from the requirement to obtain a custodial agreement applies.

D Effect of Proposed Rules

The proposed rule will have no impact on:

- market structure,
- members, non-members
- competition,
- costs of compliance and
- other rules.

II Detailed Analysis

A Present Rules, Relevant History and Proposed Policy

The current exemption, in the General Notes and Definitions of Form 1, part (d), line 4 reads as follows:

- “4. Banks and Trust Companies otherwise classified as Acceptable Counterparties – with respect to securities for which they act as transfer agent (in such case, a written custody agreement is not required).”

The proposed housekeeping amendment would insert the words “and for which custody services are not being provided” after the term “transfer agent” in the current exemption and would read as follows:

- “4. Banks and Trust Companies otherwise classified as Acceptable Counterparties – with respect to securities for which they act as transfer agent and for which custody services are not being provided (in such case, a written custody agreement is not required).”

B Issues and Alternatives Considered

No other alternatives were considered, because it was believed that the best place to provide the clarification was to amend the current exemption provided, as set out in the definition of “acceptable securities locations” in the General Notes and Definitions to Form 1.

C Comparison with Similar Provisions

No comparison with similar regulations of regulators and SRO’s both foreign and in Canada was conducted.

D Systems Impact of Rule

There are no systems implications.

The Bourse de Montreal is also in the process of passing this amendment. Implementation of this amendment will therefore take place once both the IDA and the Bourse de Montreal have received approval to do so from their respective recognizing regulators.

E Best Interests of the Capital Markets

The Board has determined that the housekeeping rule is not detrimental to the best interests of the capital markets.

F Public Interest Objective

According to subparagraph 14(c) of the IDA’s Order of Recognition as a self regulatory organization, the IDA shall, where requested, provide in respect of a proposed rule change “a concise statement of its nature, purposes (having regard to paragraph 13 above) and effects, including possible effects on market structure and competition. Statements have been made elsewhere as to

the nature and effects of the proposals with respect to the definition of "acceptable securities locations". The purpose of the proposal is to:

- standardize industry practices where necessary or desirable for investor protection.

The proposal does not permit unfair discrimination among customers, issuers, brokers, dealers, members or others. It does not impose any burden on competition that is not necessary or appropriate in furtherance of the above purposes.

The amendment is believed to be housekeeping in nature as it is intended to clarify an existing requirement.

III Commentary

A Filing in Other Jurisdictions

This proposed amendment will be filed for approval in Alberta, British Columbia and Ontario and will be filed for information in Nova Scotia and Saskatchewan.

B Effectiveness

As stated above, the purpose of the proposal is to provide clarification to the existing exemption within the definition of "acceptable securities locations". It is believed that the wording revisions proposed provide this clarity.

C Process

This proposal was developed at the Financial Administrators Section ("FAS") Capital Formula Subcommittee. In addition, it was reviewed and recommended by the FAS Executive Committee and finally by the FAS itself.

IV Sources

References:

- IDA Rulebook, Form 1, General Notes and Definitions, (d) "acceptable securities locations"

V OSC Requirement to Publish for Comment

The Association has determined that the entry into force of the proposed amendments is housekeeping in nature. As a result, a determination has been made that these proposed rule amendments need not be published for comment.

Investment Dealers Association of Canada Definition of "Acceptable Securities Locations" – Transfer Agents Board Resolution

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:

1. Item 4 within the definition of the term "acceptable securities locations" in the General Notes and Definitions to Form 1 is amended by adding the following words immediately following the words "transfer agent":

"and for which custody services are not being provided"

PASSED AND ENACTED BY THE Board of Directors this 13th day of June 2004, to be effective on a date to be determined by Association staff.

**Investment Dealers Association of Canada
Definition of "Acceptable Securities Locations" –
Transfer Agents
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(d) "acceptable securities locations" means those entities considered suitable to hold securities on behalf of a Member, for both inventory and client positions, without capital penalty, given that the locations meet the requirements outlined in the segregation bylaws, rules or regulations of the Joint Regulatory Bodies including, but not limited to, the requirement for a written custody agreement outlining the terms upon which such securities are deposited and including provisions that no use or disposition of the securities shall be made without the prior written consent of the Member and the securities can be delivered to the Member promptly on demand. The entities are as follows:

1. Depositories

(a) Canada

The Canadian Depository for Securities Limited
West Canada Depository Trust Company
Trans Canada Options, Incorporated

(b) United States

Depository Trust Company
Pacific Securities Depository Trust Company
Midwest Securities Trust Company
Stock Clearing Corporation of Philadelphia
Options Clearing Corporation

(c) Other Foreign

Foreign securities depositories or clearing agencies incorporated or organized under the laws of the foreign country and operating a central system for handling securities or equivalent book-based entries in that country and subject to enabling legislation by a central government authority in the country of operation that provides for compliance and powers of enforcement over its members. The SROs will maintain and regularly update a list of those foreign depositories or clearing agencies that comply with these criteria.

2. (a) Acceptable Institutions which in their normal course of business offer custodial security services; or

(b) Subsidiaries of Acceptable Institutions provided that each such subsidiary, together with the Acceptable Institution, has entered into a custodial agreement with the member containing a legally enforceable indemnity by the Acceptable Institution in favour of the member covering all losses, claims, damages, costs and liabilities in respect of securities and other property held for the member and its clients at the subsidiary's location.

3. Acceptable Counterparties - with respect to security positions maintained as a book entry of securities issued by the Acceptable Counterparty and for which the Acceptable Counterparty is unconditionally responsible.

4. Banks and Trust Companies otherwise classified as Acceptable Counterparties - with respect to securities for which they act as transfer agent and for which custody services are not being provided (in such case, a written custody agreement is not required).

5. Mutual Funds or their Agents - with respect to security positions maintained as a book entry of securities issued by the mutual fund and for which the mutual fund is unconditionally responsible.

6. Regulated entities.

7. Foreign institutions and securities dealers that satisfy the following criteria:

(a) the paid-up capital and surplus according to its most recent audited balance sheet is in excess of CDN \$150 million as evidenced by the audited financial statements of such entity;

(b) in respect of which a foreign custodian certificate has been completed and signed in the prescribed form by the member's board of directors or authorized committee thereof;

provided that:

(c) a formal application in respect of each such foreign location is made by the member to the relevant joint regulatory authority in the form of a letter enclosing the financial statements and certificate described above; and

(d) the member reviews each such foreign location annually and files a foreign custodian certificate with the appropriate joint regulatory authority annually.

and such other locations which have been approved as acceptable securities locations by the Joint Regulatory Body having prime jurisdiction over the Member.

Investment Dealers Association of Canada
Definition of "Acceptable Securities Locations" –
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The Canadian Depository for Securities Limited
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(b) United States

Depository Trust Company
Pacific Securities Depository Trust Company
Midwest Securities Trust Company
Stock Clearing Corporation of Philadelphia
Options Clearing Corporation

(c) Other Foreign

Foreign securities depositories or clearing agencies incorporated or organized under the laws of the foreign country and operating a central system for handling securities or equivalent book-based entries in that country and subject to enabling legislation by a central government authority in the country of operation that provides for compliance and powers of enforcement over its members. The SROs will maintain and regularly update a list of those foreign depositories or clearing agencies that comply with these criteria.

2. (a) Acceptable Institutions which in their normal course of business offer custodial security services; or

(b) Subsidiaries of Acceptable Institutions provided that each such subsidiary, together with the Acceptable Institution, has entered into a custodial agreement with the member containing a legally enforceable indemnity by the Acceptable Institution in favour of the member covering all losses, claims, damages, costs and liabilities in respect of securities and other property held for the member and its clients at the subsidiary's location.

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(d) the member reviews each such foreign location annually and files a foreign custodian certificate with the appropriate joint regulatory authority annually.

and such other locations which have been approved as acceptable securities locations by the Joint Regulatory Body having prime jurisdiction over the Member.