

**13.1.11 IDA Bylaws 10.1 and 10.4 - Board of Directors, National Advisory Committee and Meetings**

**INVESTMENT DEALERS ASSOCIATION OF CANADA -**

**BY-LAWS 10.1 AND 10.4 - BOARD OF DIRECTORS, NATIONAL ADVISORY COMMITTEE AND MEETINGS**

**I OVERVIEW**

**A Current Rules**

IDA By-law 10.1 sets out the composition of the IDA Board of Directors. The bylaw specifies that at least two thirds of the Board be comprised of industry directors and gives the Board the authority to determine the number of members of the Board, which is confirmed each year at the Annual Meeting. The bylaw also states that a maximum of eight public directors can be appointed to the Board.

IDA Bylaw 10.4 requires that nine members of the Board of Directors must be present in person at a meeting of the Board in order to form a quorum and that any action taken by a majority of those members shall constitute an action of the Board.

**B The Issues**

Depending on the size of the Board, the effective maximum number of public directors may be less than eight, because two thirds of the Board must be comprised of industry directors. As such, the two-thirds requirement needs to be removed so that the percentage of public directors on the Board at any given time may be increased.

Because of the changes that are being made to the structure of the Board, an amendment is required to reduce what constitutes a quorum from nine members to seven members.

**C Objective**

The objective of the amendments is to enhance the corporate governance structure by creating a structure that is manageable in size for effective governance and decision making and which reflects a higher standard of independence than currently exists. Creating a more independent and transparent Board of Directors who is held responsible is necessary in today's corporate landscape.

**D Effect of Proposed Rules**

The proposed amendment strengthens the IDA's mission to protect investors and enhance the efficiency and competitiveness of the Canadian capital markets. By reducing the size of the Board and removing the requirement which specifies a minimum percentage of industry directors, the composition of the Board will likely shift to an increase in the percentage of public directors and in turn a more independent and transparent Board of Directors.

**II DETAILED ANALYSIS**

**A Present Rules, Relevant History and Proposed Policy**

**Present Rules**

By-law 10.1 requires that the Board of Directors include in its composition the Chair, the immediate Past Chair, the Vice-Chair, the President, the Chair of the National Advisory Committee, up to eight public directors, and up to thirteen other persons. In addition, a minimum of two thirds of the members of the Board of Directors must be Members or partners, directors or officers of Members. The size of the Board is determined by the Board of Directors and confirmed each year at the Annual Meeting.

The bylaw also states that the Board can be comprised of up to a maximum of eight public directors but also requires that a minimum of two thirds of the Board of Directors be Members or partners, directors or officers of a Member, which depending on the size of the Board of Directors may not allow for a significant number of public directors.

By-law 10.4 addresses the issue of what constitutes a quorum for the purposes of a meeting of the Board of Directors. The current rule states that nine members of the Board of Directors present in person at a meeting of the Board shall form a quorum and that any action taken by a majority of those members shall constitute an action of the Board.

## **Relevant History**

In November 2000, the IDA retained a consultant, Terence D. Dingle of Dingle and Associates Inc. to examine corporate governance issues. One recommendation made was that the size of the IDA Board should be reduced as it was felt to be unmanageable for effective governance or decision-making. In April 2001, the IDA Board of Directors unanimously approved a reduction of the Board's aggregate size in order to increase the Board's effectiveness. The number of public directors was also increased from six directors to eight directors.

## **Proposed Policy**

If there were to be a further decrease in the size of the board, the number of public directors would be reduced unless the requirement that two thirds of the Board must be industry members is eliminated. Good corporate governance demands increased independence and transparency and for public directors to truly be effective they must constitute a sufficient proportion of the Board. As such, the two-thirds requirement needs to be taken out of the bylaw so that the percentage of public directors on the Board at any given time may be increased.

At the time the size of the IDA Board was last reduced, no change was made to By-law 10.4, which sets out what constitutes a "quorum" for the purposes of a Board meeting. The By-law currently states that a quorum of the Board is nine members but since the size of the Board was reduced, the number of members to form a quorum should have also been reduced. As such, an amendment is needed to reduce what constitutes a quorum from nine members to seven members.

## **B Issues and Alternatives Considered**

Consideration was given to requiring fifty percent public representation on the IDA Board. However, after careful consideration it was agreed that such a requirement may be appropriate for a "for-profit" company, but was not appropriate for an association such as the IDA, which is subject to a significant number of substantive checks and balances, including regulatory oversight. It was agreed that public directors do not need to constitute half of the Board to make their views effective.

The role of the IDA's public directors is fundamentally different from that performed by public directors of public "for-profit" companies, which is to represent the interests of minority shareholders and shareholders generally, as opposed to insiders or management. A key responsibility of the IDA's public directors is to protect the public interest, in the event that it conflicts with the interests of the Members.

As such, it was agreed that the size of the Board would be decreased, the two thirds industry director requirement would be removed which would in turn result in an increase in the percentage of public directors on the Board.

## **C Systems Impact of Rule**

There are no systems issues associated with the amendment.

## **D Best Interests of the Capital Markets**

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

## **E 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 proposed amendments.

The purpose of the proposal is to ensure that the governance and organization structure is of paramount importance as it provides the platform from which the Association delivers upon its dual mandate. As a national not-for-profit Self-Regulatory Organization, the aim of the IDA's corporate governance structure must be to satisfactorily address the inherent conflicts between the public, Members and management. As a result the related general purpose of the amendment is:

- generally promote public confidence and public understanding of the goals and activities of the IDA

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.

### **III COMMENTARY**

#### **A Filing in Other Jurisdictions**

These proposed amendments will be filed for approval in Alberta, British Columbia, Quebec and Ontario and will be filed for information in Manitoba, Nova Scotia and Saskatchewan.

#### **B Effectiveness**

The proposed amendments are simple and effective.

#### **C Process**

The proposed amendments were developed by the Executive Committee of the IDA and have been approved by the IDA Board of Directors.

### **IV SOURCES**

References:

- By-law 10.1
- By-law 10.4
- Governance Review, D. Terence Dingle, Dingle & Associates, January 2001

### **V OSC REQUIREMENT TO PUBLISH FOR COMMENT**

The IDA is required to publish for comment the accompanying amendments to By-laws 10.1 and 10.4.

The Association has determined that the entry into force of the proposed amendments would be in the public interest. Comments are sought on the proposed amendments. Comments should be made in writing. One copy of each comment letter should be delivered within 30 days of the publication of this notice, addressed to the attention of Deborah Wise, Legal and Policy Counsel, Regulatory Policy, Investment Dealers Association of Canada, Suite 1600, 121 King Street West, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of the Manager of Market Regulation, Ontario Securities Commission, 20 Queen Street West, 19th Floor, Box 55, Toronto, Ontario, M5H 3S8.

Questions may be referred to:

Deborah Wise  
Legal and Policy Counsel, Regulatory Policy  
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**INVESTMENT DEALERS ASSOCIATION OF CANADA**

**BY-LAWS 10.1 AND 10.4 - BOARD OF DIRECTORS, NATIONAL ADVISORY COMMITTEE AND MEETINGS**

**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. By-law 10.1 is amended by deleting the following words in the third paragraph:

“A minimum of two thirds of the members of the Board of Directors shall at all times be Members or partners, directors or officers of Members.”

2. By-law 10.4 is amended by replacing the word “nine” with the word “seven.”

PASSED AND ENACTED BY THE Board of Directors this 26th day of June 2005, to be effective on a date to be determined by Association staff.

INVESTMENT DEALERS ASSOCIATION OF CANADA

BY-LAWS 10.1 AND 10.4 - BOARD OF DIRECTORS, NATIONAL ADVISORY COMMITTEE AND MEETINGS

BLACKLINE COPY OF AMENDED SECTIONS

**By-Law 10.1 – Amendment #1**

10.1. There shall be a Board of Directors of the Association composed of the Chair, the immediate Past Chair, the Vice-Chair, the President, the Chair of the National Advisory Committee, up to eight public directors, and up to thirteen other persons nominated by the Nominating Committee referred to in By-law 13.4 and approved by the Board of Directors or nominated by any Member at the Annual Meeting (which nomination shall be made by the Member if he or she is an individual or by the senior partner, director or officer of the Member present at the Annual Meeting) and confirmed at the Annual Meeting, all of such nominated and confirmed persons to hold office for such term not exceeding two years as may be prescribed in the resolution appointing them. The number of members of the Board of Directors to be confirmed at each Annual Meeting shall be fixed by the Board of Directors and notice thereof and of the names of those persons who have been nominated by the said Nominating Committee and approved by the Board of Directors shall be given to each Member at least thirty days prior to the Meeting.

The public directors shall be elected annually by the Board of Directors at its first meeting following the Annual Meeting to hold office for such term not exceeding two years as may be prescribed in the resolution electing them. Except as expressly provided otherwise, a public director shall be considered a member of the Board of Directors for the purposes of the By-laws. No person shall be eligible to be elected or remain as a public director if he or she is or becomes during his or her term of office a partner, director, officer or employee of a Member or associate or affiliate or related company of a Member. Nominations for public directors shall be made by the Nominating Committee referred to in By-law 13.4 and may be made by any member of the Board of Directors.

In the event that any person shall hold the office of Chair for two successive years, the immediate Past Chair shall continue to be a member of the Board of Directors during such Chair's second year of office. A retiring member of the Board of Directors shall be eligible for re-appointment. If a vacancy shall occur in the Board of Directors, the remaining members of the Board may appoint a person to fill the vacancy for the remainder of the term or until the next Annual Meeting whichever is the earlier, provided that a quorum is present at the meeting at which such appointment is made. ~~A minimum of two thirds of the members of the Board of Directors shall at all times be Members or partners, directors or officers of Members.~~ No Member shall have more than two partners, directors or officers as members of the Board of Directors at any one time, nor may both such members be from the same District, unless one of such members is either the Past Chair of the Association or the Chair of the National Advisory Committee. Where the Board selection process would result in more than two persons from a Member serving on the Board, the Chief Executive Officer of that Member shall decide which two persons will serve on the Board.

**By-law 10.4 – Amendment #2**

10.4 ~~Nine~~ Seven members of the Board of Directors present in person shall form a quorum at any meeting thereof and any action taken by a majority of those members of the Board present at any meeting of the Board at which a quorum is present shall constitute the action of the Board.