

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 Amendments to IDA By-law 2 - Eliminating the Reference to District Association Auditors and Other Housekeeping Amendments

INVESTMENT DEALERS ASSOCIATION OF CANADA AMENDMENTS TO BY-LAW 2 – ELIMINATING THE REFERENCE TO DISTRICT ASSOCIATION AUDITORS AND OTHER HOUSEKEEPING AMENDMENTS

I OVERVIEW

A Current Rules

Effective July 12, 2004, all references to District Association Auditors and Alternate District Association Auditors (collectively, “DAAs”) in the rules were to be eliminated, thereby removing from the DAAs those functions mandated by the rules. As such, many amendments were made to the rules to reflect this change. However, these amendments were not entirely applied to By-law 2, which sets out the membership application process. By-law 2 still contains two references to DAAs and continues to impose duties upon them. In addition, By-law 2 contains incorrect rule cross references associated with the pre-July 12, 2004 amendments, which should have also been changed but were overlooked during the amendment process.

Furthermore, effective January 1, 2005, the Bourse de Montréal Inc. (the “Bourse”) and the IDA entered into an agreement to transfer the member regulation functions of the Bourse to the IDA. As such, the Bourse no longer regulates its approved participants. However, By-law 2.13 provides that where an applicant is an approved participant of the Bourse, the applicant may, in lieu of financial statements, submit to the Association a copy of its last monthly report filed with the Bourse along with a comfort letter from the Bourse.

B The Issue

While the Association removed most of the references to DAAs in the rules, two references to DAAs were overlooked and were not removed during the process. By-law 2 still refers to DAAs and imposes functions upon them. As DAAs are no longer to be referenced in the rules and are no longer to have any functions mandated by the rules, the references to DAAs should be removed and any associated cross reference errors in By-law 2 should be corrected.

Moreover, since the Bourse is no longer responsible for the regulation of members, By-law 2.13, which envisages reliance on member regulation work performed by the Bourse, is obsolete and should be repealed.

C Objective

The objective of the proposed amendments is to ensure that all references to DAAs are eliminated from the rules and that there remains consistency throughout the rules. The proposed amendments also serve to remove the option of relying on member regulation work performed by the Bourse that is set out in current By-law 2.13.

D Effect of Proposed Rules

The proposed amendments will remove the remaining references to DAAs that currently exist in By-law 2 and thereby remove the functions that the By-law erroneously imposes upon DAAs. In addition, the amendments will remove the option of relying on member regulation work performed by the Bourse that is set out in current By-law 2.13.

II DETAILED ANALYSIS

A Present Rules, Relevant History and Proposed Regulation

Present Rules

By-law 2 sets out the process for application for membership into the Association. By-law 2.11 sets out the conditions relating to an application for membership for those applicants that qualify for an exemption from payment of the Association’s entrance fee; By-law 2.12 discusses the financial information required from an applicant that is a related company of a Member; and By-law 2.14 describes the circumstances under which the Membership approval process as set out in By-law 20 applies.

On May 10, 2004, the IDA announced that all references to DAAs were to be removed from the rules and that the amendments to the rules would become effective on July 12, 2004. DAAs were removed from the rules because while DAAs used to be mandated by the securities commissions at a time when the Association had few, if any, Financial Compliance staff, DAAs are no longer required by the Association. Rather, the Association's Financial Compliance staff now complete the DAAs' responsibilities. However, not all of the references to DAAs in By-law 2 were removed and a number of associated rule number changes were not made.

Furthermore, effective January 1, 2005, the member regulation responsibilities of the Bourse were transferred to the IDA. However, By-law 2.13 provides that, where an applicant is an approved participant of the Bourse, the applicant may, in lieu of financial statements, submit to the Association a copy of the last financial report it filed with the Bourse along with a "comfort" letter from the Bourse. Since the Bourse no longer regulates members, By-law 2.13 is redundant and should be repealed.

Proposed Rule Amendment

The proposed amendment will eliminate all remaining references to DAAs, correct the rule number errors in By-law 2, and eliminate the option of relying on member regulation work performed by the Bourse in By-law 2.13.

B Issues and Alternatives Considered

No other alternatives were considered.

C Comparison With Similar Provisions

No similar provisions were considered as this matter is particular to the Association.

D Systems Impact of Rule

There are no systems issues associated with the proposed amendment.

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

The proposal will not impact the public.

III COMMENTARY

A Filing in Other Jurisdictions

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

B Effectiveness

Due to the housekeeping nature of these amendments, effectiveness is not a concern.

C Process

The proposed changes have been reviewed and approved by senior management.

IV Sources

IDA By-law Nos. 2.11, 2.12, 2.13 and 2.14.

IDA Bulletin Nos. 3282 and 3381.

V OSC requirement to publish for comment

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

Questions may be referred to:

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INVESTMENT DEALERS ASSOCIATION OF CANADA

**AMENDMENTS TO BY-LAW 2 – ELIMINATING THE REFERENCE TO
DISTRICT ASSOCIATION AUDITORS AND OTHER HOUSEKEEPING AMENDMENTS**

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 2.11 is amended by deleted the following:

“(a)”

2. By-law 2.12 is repealed and replaced as follows:

“Notwithstanding the provisions of By-law 2.10, if an applicant for Membership is a related company of a Member which confirms its intention to continue its Membership in the Association, the Vice-President, Financial Compliance may determine, in his or her discretion, what financial information is required.”

3. By-law 2.13 is repealed.

4. By-law 2.14 is repealed and replaced as follows:

“The Membership approval process as set out in By-law 20 shall apply once:

- (a) the Secretary has notified Members pursuant to By-law 2.9 and the fifteen day period referred to therein has expired;
- (b) the applicable District Council receives the Membership application from the Secretary; and
- (c) a period of six months or such lesser period as the District Council may in any particular case determine has expired.

PASSED AND ENACTED BY THE Board of Directors this 18th day of January 2006, to be effective on a date to be determined by Association staff.

APPENDIX "A" – BLACKLINED CHANGES TO BY-LAW 2

- 2.11 Notwithstanding the provisions of By-law 2.10~~(a)~~, if an applicant qualifies for exemption from payment of the Entrance Fee pursuant to By-law 3, the applicable District Council may waive any of the conditions relating to an application for Membership that it considers appropriate in the circumstances of the particular case.
- 2.12 Notwithstanding the provisions of By-law 2.7~~10~~, if an applicant for Membership is a related company of a Member which confirms its intention to continue its Membership in the Association, the Vice-President, Financial Compliance ~~and the District Association Auditors~~ may determine, in their his or her discretion, what financial information is required.
- ~~2.13. Notwithstanding the provisions of clause (a) of By-law 2.7, if an applicant is an approved participant of the Bourse de Montréal Inc. such applicant may, in lieu of the financial statements referred to in said clause (a), submit to the Association its latest audited Form 1 together with~~
- ~~(i) A copy of the last monthly financial report filed by such applicant with the Bourse de Montréal Inc.; and~~
- ~~(ii) A "comfort" letter from the Bourse de Montréal Inc. relating to the applicant's standing with the Bourse de Montréal Inc. in compliance, disciplinary and regulatory matters and in a form which is satisfactory to the Association. If such applicant wishes to transfer to the Association's audit jurisdiction, the applicant shall submit to the Association audited financial statements as of a date not more than 90 days prior to the date of application for transfer.~~
- 2.44~~13~~. The Membership approval process as set out in By-law 20 shall apply once:
- (a) the Secretary has notified Members pursuant to By-law 2.6~~9~~ and the fifteen day period referred to therein has expired;
- (b) the applicable District Council receives the Membership application from the Secretary; and
- ~~(c) the applicable District Council receives the notification from the District Association Auditors pursuant to By-Law 2.8; and~~
- ~~(d)~~ a period of six months or such ~~letter~~ lesser period as the District Council may in any particular case determine has expired.
- 2.45~~14~~. The Secretary shall compute the Annual Fee payable by the application pursuant to By-law 3.2 and provide such computation to the Board of Directors.
- 2.46~~15~~. The applicant shall become a Member if and when:
- (a) The application has been approved by the Board of Directors;
- (b) the applicant has been duly licensed or registered to carry on business as a securities dealer under the applicable law of the province or provinces or territories in which the applicant carries on or proposes to carry on business; and
- (c) the Entrance Fee and Annual Fee have been paid in full.
- 2.47~~16~~. The Secretary shall keep a register of the names and business addresses of all Members and of their respective Annual Fees. The Annual Fees of Members shall not be made public by the Association.
- 2.48~~17~~. The Secretary shall furnish to the securities commissions of all the provinces of Canada a list of Members and from time to time as changes occur in the Membership shall communicate such changes to such commissions.