

13.1.2 IDA Policy 8 Regarding Reporting and Record Keeping Requirements – Notice of Commission Approval

IDA POLICY 8 – REPORTING AND RECORD-KEEPING REQUIREMENTS

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission approved IDA Policy 8 regarding reporting and record-keeping requirements. In addition, the Saskatchewan Securities Commission approved, the Alberta Securities Commission did not disapprove and the British Columbia Securities Commission did not object to this policy. The purpose of the Policy is to set out what must be reported by the registrants to the IDA Member firms and what must be reported by the Member firms to the IDA. The Policy also sets out the record-keeping requirements for documentation associated with all the items that must be reported, the instances when an internal investigation must be conducted by a Member and the rule that registrants cannot enter into a settlement agreement without the consent of the Member. Finally, the amendments allow the IDA to impose a prescribed administrative fee for non-compliance with the Policy. A copy and description of the Policy was published on July 12, 2002 at (2002) 25 OSCB 4606. No comments were received.

One submission was received in response to the request for comments. The comments were made by Market Regulation Services Inc. and were sent by letter dated August 21, 2002. The IDA's summary of the comments received and its response to them are set out below.

SUMMARY OF WRITTEN QUESTIONS AND COMMENTS RECEIVED ON THE PROPOSED REGULATION

Comment

Under Policy 8, the Member would not be under an obligation to inform the SRO or regulatory agency whose rules were breached of either the investigation or the results of the investigation. While the "designated SRO" would in the ordinary course be expected to provide another SRO with particulars under information sharing arrangements, RS would suggest that the provision in Policy 8 be broadened to impose directly on the Member an obligation to report to the SRO whose rules were breached if a report has not been made to that SRO in accordance with clause (h) of section B.1. of Part I of the Policy.

Response

It would be inappropriate to amend Policy 8 to impose directly on Members an obligation to report to the SRO whose rules were breached. The basis for receipt of Policy 8 information by the IDA and compliance with Policy 8 by the Members is the contractual relationship by which the Members submit to IDA jurisdiction. The IDA does not have

the jurisdiction to require reporting to "other SROs whose rules were breached". Reporting requirements to RS Inc. is a matter between RS Inc. and those firms and individuals that fall within its regulatory jurisdiction.

Comment

RS would suggest that the list of reportable subject matters of investigations be broadened by providing a "basket clause" such as "other similar or related matters". For example, UMIR prohibits, "manipulative methods of trading" and activities which would constitute "frontrunning" or breaches of "just and equitable principles of trade". In the view of RS, the reporting obligation should be given an expansive interpretation that may take into account differences in wording and effect of various provisions from different self-regulatory organization".

Response

ComSet sets out a list of types of violations that Members may choose from with the option to use the "other" text box should the violation not be found in the list.

The list of the types of violations set out in ComSet is as follows:

Adequacy of books and records;
Churning and excessive trading;
Client priority rule violations;
Conflict of Interest;
Falsification/Forgery of Documentation;
Inappropriate personal financial dealings;
Insider trading/ self-dealing;
Internal control violations;
Manipulation and wash trading;
Misrepresentation;
Prospectus, Exemptions and Related matters;
Supervision;
Theft and fraudulent activities;
Trading outside jurisdiction;
Transfer of accounts;
Unauthorized or Discretionary Trading;
Unsuitable Investments;
Violation of IDA Order;
Violation of Commission or other SROs Order and Other.

The wording of this list is broad enough to cover most situations and Policy 8 does not specifically define these violations. For example, depending on the circumstances, "deceptive trading methods" could come under the category of fraud, while "frontrunning" could fall under the category of "client priority violations". The categories are believed to be adequate as currently set out and serve to encompass the types of offences referred to in the comment letter.