

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 IDA By-Law No. 28 Discretionary Fund

Investment Dealers Association of Canada – By-Law No. 28 Discretionary Fund

I OVERVIEW

The implementation of By-Law 20 Association Hearing Process has caused the IDA to focus greater attention on the use of the Discretionary Fund (“DF”) and, in so doing, we have identified some matters that we believe require clarification in By-Law 28, in particular By-Law 28.4 (d). The issue relating to and the objectives of the proposed change is discussed in greater detail below.

A Current Rule

By-law 28.4 (d) specifies that payments from the DF may be made to pay the fees, expenses or other remuneration of retired industry and public members of a District Council Panel, Hearing Panel or Appeal Panel.

B The Issue

From time to time, the IDA incurs other costs related to hearings and appeals such as the rental of meeting rooms at a local hotel or mediation centre to facilitate hearings/appeals, transcript services, retention of experts by a panel, etc. All of these expenses are incurred directly pursuant to the IDA’s adjudicative process. We propose that such expenses could properly be charged to the Discretionary Fund. No costs relating to the IDA’s investigative or enforcement processes have or will be charged to the Discretionary Fund.

C Objective

The amendment proposed to By-law 28.4 (see Attachments #1 – Board Resolution and #2 – blacklined copy) is designed to clarify certain anomalies or inconsistencies pertaining to the practical implementation of the By-law.

D Effect of Proposed Rules

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 As a result, a determination has been made that these proposed rule amendment need not be published for comment.

II DETAILED ANALYSIS

A Present Rules, Relevant History and Proposed Policy

By-law 28.4 (d) specifies that payments from the DF may be made to pay the fees, expenses or other remuneration of retired industry and public members of a District Council Panel, Hearing Panel or Appeal Panel. From time to time, the IDA incurs other costs related to hearings and appeals such as the rental of meeting rooms at a local hotel or mediation centre to facilitate hearings/appeals, transcript services, retention of experts by a panel, etc. All of these expenses are incurred directly pursuant to the IDA’s adjudicative process. We propose that such expenses could properly be charged to the DF and, accordingly, a By-law amendment has been developed and is presented to the Board for approval.

B Issues and Alternatives Considered

No other alternatives were considered as the proposed amendment improves the current situation. The proposed amendment clarifies the original intent of By-law 28.4 d) whereby it was intended that the DF be used to fund expenses that are incurred directly in relation to the IDA’s adjudicative process. Where such expenses are funded by the DF their “separation” from the IDA’s operating costs is more apparent and the independence of the adjudicative function from the IDA’s enforcement and operating activities will be enhanced.

C Comparison with Similar Provisions

Not applicable.

D Systems Impact of Rule

No systems impact.

E Best Interests of the Capital Markets

The Association has determined that the entry into force of the proposed amendments is housekeeping in nature. The impact is thus neither beneficial to nor detrimental to capital markets.

F Public Interest Objective

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 as there is no public interest component related to the proposed changes.

III COMMENTARY

Attachment #1

A Filing in Other Jurisdictions

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

B Effectiveness

Not applicable.

C Process

The proposed change has been developed by IDA Finance, reviewed by Regulatory Policy and has been recommended by the Executive Committee of the Board of Directors for approval by the full Board of Directors.

IV SOURCES

IDA By-law 28.4.

V OSC REQUIREMENT TO PUBLISH FOR COMMENT

The Association has determined that the entry into force of the 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 as there is no public interest component related to the proposed change.

**INVESTMENT DEALERS ASSOCIATION OF CANADA
PROPOSED CHANGES TO BY-LAW 28.4**

The BOARD OF DIRECTORS of the Investment Dealers Association of Canada hereby make the following amendments to the By-laws, Regulations, Forms and Policies of the Association:

1. By-law 28.4 (d) is amended by adding the following paragraph following 28.4 (d) (ii) "Public members appointed pursuant to By-law 20.9":

"To pay other expenses relating directly to the activities of a (District Council Panel), Hearing Panel or Appeal Panel such as, but not limited to, the costs of meeting rooms for such hearings, transcript services, experts retained by a Hearing Panel or an Appeal Panel and costs of a Monitor appointed by a Panel."

PASSED AND ENACTED BY THE BOARD OF DIRECTORS this 26th day of October, 2005, to be effective April 1, 2006.

Attachment #2

**INVESTMENT DEALERS ASSOCIATION OF CANADA
PROPOSED CHANGES TO BY-LAW 28.4
BLACKLINED COPY**

28.4 Payments from the Discretionary Fund may be made at such times and in such amounts as the Board of Directors shall authorize for all or any of the following purposes, namely:

- (a) To fulfill all of the obligations of the Association to the Canadian Investor Protection Fund or under any guarantee given by the Association to a third party with respect to moneys payable by the Canadian Investor Protection Fund to such third party;
- (b) In the event of the insolvency or other inability of any Member to meet its financial obligations to the public (and whether or not claims against such Member have been considered by the persons administering the Canadian Investor Protection Fund), to compensate in whole or in part such creditors of any such Member as the Board of Directors in its discretion may determine;
- (c) Invest in the securities of, or provide financial assistance in such form and on such terms and conditions as the Board of Directors in its discretion may determine to, The Canadian Depository for Securities Limited;
- (d) To pay the fees, expenses or other remuneration of the following members of a District Council Panel, Hearing Panel or Appeal Panel:
 - (i) Members who have retired in good standing as employees of Members; and
 - (ii) Public members appointed pursuant to By-law 20.9.

To pay other expenses relating directly to the activities of a (District Council Panel), Hearing Panel or Appeal Panel such as, but not limited to, the costs of meeting rooms for such hearings, transcript services, experts retained by a Hearing Panel or an Appeal Panel and costs of a Monitor appointed by a Panel.

- (e) To make payments for special non-recurring projects that (1) benefit the public and/or (2) generally benefit Canadian Capital Markets, as determined

by the Board of Directors or Executive Committee.

- (f) For such other purposes (subject to the provisions of By-law 28.9) as the Board of Directors shall consider to be in the best interest of the Members of the Association.