

13.1.4 Investment Dealers Association of Canada – By-Law 15 - Association Accounts and Funds and Execution of Instruments

INVESTMENT DEALERS ASSOCIATION OF CANADA

BY-LAW 15 - ASSOCIATION ACCOUNTS AND FUNDS AND EXECUTION OF INSTRUMENTS

I OVERVIEW

A Current Rules

By-law 15 delegates the authority to transact certain daily banking functions of the Investment Dealers Association of Canada to specified Directors, Officers and District Council members of the Association.

B The Issue

The Canadian Institute of Chartered Accountants has prepared a document entitled "Guidance for Directors – Governance Processes for Control". That document focuses on the unique contributions of the board of directors to control within an organization, and describes how the board can discharge its control responsibilities. The guidelines set out six overriding control responsibilities for directors:

- (a) Approving and monitoring mission, vision and strategy;
- (b) Approving and monitoring the organization's ethical values;
- (c) Monitoring management control;
- (d) Evaluating senior management;
- (e) Overseeing external communications;
- (f) Assessing the board's effectiveness.

The guidance goes on to state that, in normal circumstances, the board should not intrude on the prerogatives and responsibilities of management: day-to-day management functions should not be performed, even partially, by the board. Members of the IDA's Board have suggested that, in their opinion, signing of cheques is a day-to-day management function and is inconsistent with the board's management oversight responsibilities. The control responsibilities set out above would seem to support this assertion.

IDA By-law No. 11, District Councils and Meetings, states that there shall be a District Council for each District and shall have supervision over the affairs of such District. While the By-law does not set out detailed responsibilities for or objectives of the District Councils it does state that District Councils may appoint Standing Committees to deal with matters such as the nomination of hearing committee members, education, provincial government legislation, tax policy, public information, stock exchange liaison and exemption requests. There does not seem to be any suggestion that the District Councils will have any active involvement with the management of the IDA's daily operations such as authorizing expenditures or signing cheques.

C Objective

The objectives of the changes are to update the language and simplify the rules so that they better reflect modern governance and operational practices whereby the board authorizes management, within specified levels of authority, to carry out the daily banking transactions of the Investment Dealers Association. In addition, the use of imprest bank accounts is archaic and is no longer required pursuant to current operational practices as presented in the resolution Attachment I. All other aspects of By-Law No. 15 will remain unchanged except as required to amend references to By-law 15.5. and 15.6., and some minor amendments to By-law 15.2, 15.3. and 15.9 are also required to reflect current operational practices as can be seen in the black lined version of the current By-law 15 as presented in Attachment II.

D Effect of Proposed Rules

The impact of the proposed rules on each of the following is minimal. As stated the proposed changes are a matter of housekeeping only. The following description outlines the changes on:

- market structure - none,
- members, non-members – none
- competition - none,
- costs of compliance – none and
- other rules –none.

II DETAILED ANALYSIS

A Present Rules, Relevant History and Proposed Policy

Present Rules

Due to the straight forward nature of the proposed amendments a detailed explanation and discussion of the relevant history and proposed policy was considered unnecessary.

B Issues and Alternatives Considered

- Current By-law 15.2 requires that the budget of the Investment Dealers Association be presented to and approved by the Board on or before March 31st. The quarterly meeting of the Board takes place after the end of the calendar quarter. The Board meets in January and early to mid April and therefore Board approval of the budget does not take place until early to mid April. This may result in a technical breach of the by-law if the material for the budget is not in the hands of the Board until after March 31st. The proposed revised By-law requires a meeting of the Board to approve the budget for each fiscal year without a specific deadline.
- Current By-law 15.5 sets out specific cheque signing authorities and limits that may be approved by position and by authorization level. Over the last five years, banking resolutions setting out authorization levels by region and by specific position have been approved by the Executive Committee for each and every change. The proposed revised By-law continues the power of the Board to authorize specific individuals however it does so by resolution with simplified language empowering the Board to set the authorization levels and controls required to manage the banking facilities of the IDA.
- Current By-law 15.9 (proposed renumbered 15.8.) requires the management of the funds of the Investment Dealers Association to be under the direction of a sub-committee of the Board consisting of the Chair, Vice-Chair and the President. Banking and management of monies of the Investment Dealers Association is governed through internal controls that are reviewed by external independent auditors and approved by the Audit Committee. This By-law is inconsistent with modern governance practices such that Directors should not perform day-to-day management activities. The proposed revised By-law eliminates the requirement that the banking facility be governed by a committee of specific individuals named in the By-law as the governance of the IDA includes the Audit Committee who review and approve the financial statements of the IDA as well as approve internal control processes and systems. The proposed By-law specifically designates management to manage the Association's funds – this is a much simpler and more efficient process.
- Current By-Law 15.10 (proposed renumbered 15.9.) requires deeds, transfers, assignments, contracts, obligations and other instruments to be signed by specified Directors, Chairs of District Councils or by specified employees or to be signed by those authorized to do so by a resolution of the Board. As discussed earlier in this paper, neither Directors nor District Councils should be involved with the day-to-day operations of the Association. Requiring signatures for all significant contracts and obligations by those authorized to do so by a resolution of the Board is both practical and appropriate.

C Comparison with Similar Provisions

- The MFDA has similar authorization requirements to those proposed. Management signs all cheques subject to the Board's delegation and authorization by resolution.
- CIPF requires signing by a governor if a cheque exceeds \$25,000. If a change were required, it would be achieved through Board resolution.
- RS Inc. has similar authorization requirements to those proposed. Once authorization has been received, Management signs all cheques. Any changes are accomplished through Board resolution.

D Systems Impact of Rule

Whenever a change of signatories is required, a resolution will be tabled with the Board for approval, outlining levels of authorization and positions. Once approved, the bank will be notified of changes. There will be no impact on systems.

E Best Interests of the Capital Markets

These changes provide for more effective Board oversight by removing the necessity of the Board to be involved with daily management activities and will make the cash management and payments processes more efficient and save time.

F Public Interest Objective

The proposal is designed to provide for the efficient administration of the affairs of the IDA.

III COMMENTARY

A Filing in Other Jurisdictions

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 the proposed by-law amendments need not be published for comment.

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

B Effectiveness

The Board will approve a budget inclusive of certain implicit and explicit costs and projects. Management will manage the banking (deposits and expenditures) within those budget parameters and within an approved internal control process. For items approved within the budget, expenditures will be approved and cheques issue with management's approval. For items not previously approved in the budget, and that exceed specified limits, management will seek approval at the Executive Committee level prior to implementation in accordance with the purchasing policy. Certain other large expenditures or commitments will also require the approval of the Executive Committee and/or the Board of Directors. Once approval has been received, expenditures will be approved and cheques issued by management. The Board will not be involved in operational activities except at a governance level.

C Process

The internal control processes have been approved by the Audit Committee.

IV SOURCES

References:

- CICA Guidance for Directors – Governance Processes for Control
- The Mutual Funds Dealers Association
- Regulation Market Services Incorporated
- The Canadian Investor Protection Fund
- IDA By-law 15

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 the proposed by-law amendments need not be published for comment.

**CERTIFIED
INVESTMENT DEALERS ASSOCIATION OF CANADA
BY-LAW NO.15 ASSOCIATION ACCOUNTS AND FUNDS AND EXECUTION OF INSTRUMENTS
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 15.2 is amended by deleting and replacing the words "on or before the 31st day of March" with the words "for approval".
2. By-Law 15.3 is amended by:
 - (a) deleting and replacing the words "or other officer designated by the Board of Directors" with the words "or such others designated by the Board of Directors pursuant to By-Law 15.5";
 - (b) deleting the words "shall be the custodian of the funds of the Association, and"; and
 - (c) deleting and replacing the word "officer" with the word "persons".
3. By-law 15.5 is repealed and replaced with the following:

"15.5. Subject to By-law 15.6, all cheques and orders for the payment of money and other instruments or instructions necessary or desirable in connection with the banking business and accounts approved in accordance with By-law 15.4 may be signed, given or authorized by such person or persons as designated by the Board of Directors by resolution from time to time to such extent and in such manner as the Board may determine at the time of such designation."
4. By-law 15.6 is repealed.
5. By-law 15.7 is renumbered 15.6 and is amended by:
 - (a) deleting and replacing the words "borrow money" with the words "authorize the borrowing of money";
 - (b) deleting and replacing the words "any two members of the Board of Directors who are authorized signing officers under By-law 15.5 or by any one of such members and the President" with the words "such person or persons as designated by the Board of Directors by resolution from time to time to such extent and in such manner as the Board may determine at the time of such designation."
6. By-law 15.8 is renumbered 15.7.
7. By-law 15.9 is renumbered 15.8 and is amended by deleting the words "under the direction of a sub-committee of the Board of Directors, consisting of the Chair, the Vice-Chair and the President."
8. By-law 15.10 is renumbered 15.9 and is repealed and replaced by:

"15.9. The Board of Directors may authorize deeds, transfers, assignments, contracts, obligations, certificates and other instruments shall be signed in the name of the Association by any two officers or employees of the Association from time to time authorized to do so by resolution of the Board of Directors."
9. By-law 15.11 is renumbered 15.10 and is amended by:
 - (a) changing the reference to By-law 15.7 is changed to 15.6; and
 - (b) deleting and replacing the words "by any two members of the Executive Committee of the Board of Directors provided that one of such members is the Chair, Vice-Chair or President, or by any other person or persons as may be authorized by the Board of Directors." with the words "by person or persons authorized by a resolution of the Board of Directors."

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

BY-LAW NO. 15
ASSOCIATION ACCOUNTS AND FUNDS AND EXECUTION OF INSTRUMENTS
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15.1. The fiscal year of the Association shall terminate on the 31st day of March in each year.

15.2. The President shall cause to be prepared and submitted to the Board of Directors ~~for approval on or before the 31st day of March~~ in each fiscal year a budget setting forth the estimated receipts and expenditures of the Association for the ensuing fiscal year together with such financial proposals as the Executive Committee may deem desirable.

15.3. The President or ~~such other officers~~ designated by the Board of Directors pursuant to By-law 15.5 ~~shall be the custodian of the funds of the Association,~~ and shall cause to be deposited to the credit of the Association in a chartered bank or a trust company approved as indicated in By-law 15.4 all moneys received. Such ~~persons officer~~ shall keep proper books of account and shall exhibit ~~them~~ them at all reasonable times to any member of the Board of Directors. A proper voucher shall be obtained for every expenditure made on behalf of the Association.

15.4. The Association may transact its banking business with and keep one or more bank accounts at any office or offices of any one or more chartered banks and/or trust companies in Canada (hereinafter called the "Bank") approved by the Board of Directors.

15.5. Subject to By-law 15.6, all cheques and ~~other orders for the payment of money up to and other instruments or instructions necessary or desirable in connection with the banking business and accounts approved in accordance with By-law 15.4 may be signed, given or authorized by such person or persons as designated by the Board of Directors by resolution from time to time to such extent and in such manner as the Board may determine at the time of such designation, including the sum of \$25,000 shall be signed in the name of the Association by any two of the Chair, the Vice Chair, any Chair, Vice Chair or Past Chair of a District Council, the President, Senior Vice President, the Secretary, and any Vice President or regional director of the Association, the Chair, Vice Chair or Past Chair of a District Council as authorized to do so by resolution of the Board of Directors (but without power to overdraw except as provided by By-law 15.7).~~ Cheques and other orders for the payment of money over \$25,000 shall be signed by

~~any two the President or a the Senior Vice President, Finance & Administration, and the Chair or Vice Chair, and any member of the Executive Committee with the exception of~~

~~_____ (i) Payments to the Canadian Investor Protection Fund which shall be signed by one Association Vice President and any of the Chair, Vice Chair or President; and or
Any employee group benefit payment or payroll benefit related payment or~~

~~(ii) Rent payments or remittance to securities commissions of fees collected on their behalf which shall be signed as described in the first sentence of this By-law 15.5, which shall be signed by those designated in the first paragraph of by-law 15.5.~~

~~Any one of the said persons or any one of any persons from time to time designated in writing by the President or the, a Senior Vice President, Finance or the Secretary shall have power on behalf of the Association to negotiate with, deposit with or transfer to the Bank (but for the credit of the account of the Association only) all cheques and other orders for the payment of money and for such purpose to endorse the same or any of them on behalf of the Association, and from time to time to arrange, settle, balance and reconcile certify all books and accounts between the Association and the Bank, to receive all paid cheques and vouchers and to sign and deliver the Bank's form of settlement of balances and release. Any endorsement in the name of the Association by rubberstamp or otherwise shall be valid and binding.~~

15.6. The Association may keep a special bank account, to be designated "Special Imprest Bank Account", at any office of any chartered bank in Canada, in which there may be desposited from time to time to the credit of the Association sums not in excess of \$10,000 in the aggregate and on which cheques may be drawn up to a maximum amount of \$500 per cheque. Cheques upon the Special Imprest Bank Account may be signed in the name of the Association either as provided by By-law 15.5 or by any two of the following: President, ~~Senior Vice Presidents,~~ Secretary or ~~any Vice President,~~ Financial Compliance.

15.7. The Board of Directors may from time to time (and either by way of overdrawing the Association's bank account or otherwise) authorize the borrowing of money on the credit of the Association up to but not exceeding fifty per cent of the principal amount of the securities for the time being constituting investments of the funds of the Association, and as security for any such borrowing may pledge any or all of such securities. ~~All promissory notes and other instruments necessary or desirable in connection with such borrowings and pledges shall be signed in the name of the Association by any two members of the~~

~~Board of Directors who are authorized signing officers under By law 15.5 or by any one of such members and the President. All promissory notes and other instruments necessary or desirable in connection with such borrowings and pledges shall be signed in the name of the Association by such person or persons as designated by the Board of Directors by resolution from time to time to such extent and in such manner as the Board may determine at the time of such designation.~~

15.78. The Board of Directors may from time to time authorize the investment of any funds of the Association in securities issued or guaranteed by a Canadian government with a single A or higher rating by any of Canadian Bond Rating Service, Dominion Bond Rating Service, Moody's Investors Service or Standard and Poor's Bond Rating Service and the sale of any such securities and the reinvestment of all or any part of the proceeds in any such securities. No individual security may have a term of more than ten years and the portfolio should have a balanced maturity schedule.

15.89. The President or other officer designated under By-law 15.3 shall manage the funds of the ~~Association~~ Association under the direction of a sub-committee of the Board of Directors, consisting of the Chair, the Vice Chair and the President.

15.910. Subject to By law 15.5, deeds, transfers, assignments, contracts, obligations, certificates and other instruments shall be signed in the name of the Association by ~~any two of the Chair, and the Vice Chair, the President, Senior Vice Presidents, Secretary or any Vice President or by any two the Chair, Vice Chair or Past Chair s of the District Councils or by any one of the foregoing and one of the President and Secretary or by any two of the officers or employees of the Association from time to time authorized to do so by resolution of the Board of Directors.~~

~~The Board of Directors may authorize deeds, transfers, assignments, contracts, obligations, certificates and other instruments which shall be signed in the name of the Association by any two officers or employees of the Association from time to time authorized to do so by resolution of the Board of Directors.~~

15.4104. Notwithstanding the provisions of By-law 15.67, the Board of Directors may from time to time for and on behalf of the Association:

(i) obtain or provide letters of credit as security; or

(ii) otherwise guarantee the obligations; or

(iii) otherwise provide financial assistance or support, to, of or in respect of any person or organization, except Members, engaged in regulation, education, registration, operations, trading, customer protection or other participation in or in respect of the Canadian capital markets and the business of Members of the Association and, without limitation, such persons or organizations shall include the Canadian Investor Protection Fund, Market Regulation Services Inc., any stock exchange in Canada, The Canadian Depository for Securities Limited, the Canadian Securities Institute, the Canadian Capital Markets Association and any other such person or organization as may be determined by the Board of Directors. Any documents or instruments necessary or desirable in connection with the foregoing may be executed and delivered by or on behalf of the Association by ~~any person or persons two members of the Executive Committee of the Board of Directors provided that one of such members is the Chair, Vice Chair or President, or by any other person or persons as may be authorized by a resolution of the Board of Directors.~~