

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 IDA - Proposed Amendments to the Definitions of Acceptable Clearing Corporations and Acceptable Securities Locations in Form 1

INVESTMENT DEALERS ASSOCIATION OF CANADA – PROPOSED AMENDMENTS TO THE DEFINITIONS OF ACCEPTABLE CLEARING CORPORATIONS AND ACCEPTABLE SECURITIES LOCATIONS IN FORM 1

I OVERVIEW

Currently, the entities that qualify to be acceptable clearing corporations (ACCs) and acceptable securities locations (ASLs) are listed within their definitions in the General Notes and Definitions to Form 1. If there are any changes to the entities listed (e.g. name changes, additions or deletions), the IDA would need to go through the normal rule amendment process to make these changes, which can be lengthy. Consequently, in order to make it easier for these lists to be maintained and updated on a timely basis, the IDA proposes to remove the entities listed within these two definitions and separately publish them as lists that are issued by Member Regulation notice. These lists would also be made available on the Supporting Schedules section of the IDA website.

A Current Rules

The definitions of ACCs and ASLs in Form 1 list the entities that meet their definitions within the definitions themselves. ACCs are actually defined as the entities listed in its definition. ASLs are defined with stated criteria, entities (depositories) in Canada and the United States that meet the criteria are listed, and a separate list of other foreign depositories or clearing agencies that meet the definition's criteria is referred to. Some of the entities listed have had their names changed or have been restructured, merged or acquired, and the lists have not been updated frequently enough to reflect these changes. Moreover, there are entities that would otherwise qualify to be ACCs or ASLs that have not yet been added to the list.

B The Issue(s)

The issue is it is difficult for the IDA to administer changes to the lists of entities that qualify as ACCs and ASLs in order to maintain and update them on a timely basis. Maintaining and updating these lists on a timely basis is important to the IDA and its Members as the capital implications to them regarding dealing with entities that are on these lists versus entities that would otherwise qualify to be on these lists can be significant. By enabling IDA staff to readily make changes to these lists as needed, Members will be able to use their capital more efficiently, and the IDA would be able to react to changes in the markets more quickly.

C Objective(s)

The objective of the proposed amendments is to make it easier for the lists of entities that qualify as ACCs and ASLs to be maintained and updated on a timely basis by the IDA.

D Effect of Proposed Rules

The proposed amendments are expected to be beneficial to Members and the markets in general as Members would be able to use their capital more efficiently. In addition, the IDA would be able to react to market changes more quickly and efficiently as the timing and costs associated with avoiding the normal rule amendment process for these administrative changes will be reduced considerably.

II DETAILED ANALYSIS

A Present Rules, Relevant History and Proposed Policy

The definitions of ACCs and of ASLs (specifically the depositories section) in Form 1 list the entities that meet their definitions within the definitions themselves. ACCs are actually defined as the entities listed in its definition and ASLs are defined as entities that meet certain stated criteria. In addition, the definition of ASLs within its depositories section lists the entities in Canada and the United States that meet the criteria, and a separate list of other foreign depositories or clearing agencies that meet the definition's criteria is referred to.

A number of the entities in both definitions have had their names changed, been restructured, merged or acquired, and the lists have not been updated quickly enough to reflect these changes. Moreover, there are entities that would otherwise qualify to be ACCs or ASLs that have not yet been added to the list.

The proposed amendments, included as Attachment #1, would remove the entities listed within each definition and indicate that the entities are listed elsewhere. The lists of entities would be maintained, regularly updated, and published as Member Regulation notices by the IDA. Moreover, these lists would be made available on the Supporting Schedules section of the IDA website similar to the other IDA lists such as:

- List of Securities Eligible for Reduced Margin ("LSERM")
- List of financial institutions / entities / mutual funds with signed Custodial Agreement
- List of Acceptable Institutions / Acceptable Counterparties
- List of Exchanges / Associations whose members qualify as Regulated Entities
- List of Countries that qualify under the definition of Basle Accord Countries
- List of Floating and Tracking Error Margin Rates for Offsets Involving U.S. Index Products
- List of Foreign Exchange Margin Rates

B Issues and Alternatives Considered

The status quo alternative was not considered practical and no other alternatives were considered given the nature of the proposed amendments.

C Comparison with Similar Provisions

The self regulatory organizations or regulators in the U.S. and the U.K. set criteria that entities have to meet for various purposes within their rules and they separately list those entities that meet the criteria. For example, in the U.S., the NASD separately lists registered clearing agencies and depositories as a "Reference List" on its website; and in the U.K., the FSA separately lists recognised investment exchanges, recognised clearing houses, and regulated markets on its website as well.

D Systems Impact of Rule

The IDA believes that the proposed amendments will have no impact on systems. The Bourse de Montréal is also in the process of passing these amendments. Implementation of these amendments will therefore take place once both the IDA and the Bourse de Montréal have received approval to do so from their respective recognizing regulators.

E Best Interests of the Capital Markets

The Board has determined that the proposed amendments are not detrimental to the best interests of the capital markets.

F Public Interest Objective

According to 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 and effects, including possible effects on market structure and competition." Statements have been made elsewhere as to the nature and effects of the proposal with respect to the proposed amendments to the definitions of acceptable clearing corporations and acceptable securities locations. The purpose of the proposal is to: "provide for the administration of the affairs 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.

The proposed amendments are in the public interest as in general they will allow a more timely recognition of entities that qualify as acceptable clearing corporations and acceptable securities locations, which will be positive for Members, the IDA, and the capital markets as a whole.

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, Newfoundland and Labrador, Nova Scotia and Saskatchewan.

B Effectiveness

An assessment of the effectiveness of the proposed rules in addressing the issues is discussed above.

C Process

This proposal was developed by IDA staff in consultation with the Financial Administrators Section (FAS) Capital Formula Subcommittee, the FAS Executive, and the FAS.

IV SOURCES

References:

- The General Notes and Definitions to the Joint Regulatory Financial Questionnaire and Report (Form 1)
- IDA's various published lists on its Supporting Schedules webpage
- U.S. NASD's Reference List of Registered Clearing Agencies and Depositories (http://www.nasd.com/Resources/InformationforFirms/NASDW_012777)
- U.K. FSA's List of Recognised Investment Exchanges; Recognised Overseas Investment Exchanges; Recognised Clearing Houses; Recognised Overseas Clearing Houses; Designated Investment Exchanges; and Regulated Markets (<http://www.fsa.gov.uk/register/exchanges.do>)
- Bourse de Montréal's Circular no: 026-2007, Changes to the Definitions of "Acceptable Clearing Corporations" and "Acceptable Securities Locations"

V OSC REQUIREMENT TO PUBLISH FOR COMMENT

The IDA is required to publish for comment the accompanying amendments.

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 Anwerd Ramcharan, Specialist, 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:

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**INVESTMENT DEALERS ASSOCIATION OF CANADA
PROPOSED AMENDMENTS TO THE DEFINITIONS OF ACCEPTABLE CLEARING CORPORATIONS
AND ACCEPTABLE SECURITIES LOCATIONS IN FORM 1**

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. The definition of acceptable clearing corporations is amended by deleting all the words immediately after the word "means" and adding the following words immediately after the word "means":

"those entities considered suitable to provide a Member with securities clearing and settlement services. The SROs will maintain and regularly update a list of those acceptable clearing corporations."
2. The depositories section of the definition of acceptable securities locations is amended by:
 - deleting all the words immediately after the word "1. Depositories" and ending the deletion immediately after the words "(c) Other Foreign";
 - adding the words "or Clearing Agencies" immediately after the word "1. Depositories";
 - replacing the words "Foreign securities" with the word "Securities";
 - deleting the word "the" immediately before the words "foreign country";
 - adding the words "Canada, the United States or other" immediately before the words "foreign country"; and
 - deleting the word "foreign" immediately before the words "depositories or clearing agencies" in the last sentence.

BE IT RESOLVED THAT the Board of Directors adopt, on this 6th day of June 2007, the English and French versions of these amendments. The Board of Directors also authorizes the Association Staff to make the minor changes that shall be required from time to time by the securities administrators with jurisdiction. These amendments shall take effect on the date determined by the Association Staff.

1. Proposed Amendments to Form 1 to the Definition of Acceptable Clearing Corporations

“(a) **“acceptable clearing corporations”** means the following ~~entities~~ those entities considered suitable to provide a Member with securities clearing and settlement services. The SROs will maintain and regularly update a list of those acceptable clearing corporations.

1. ~~Canada~~
 - ~~The Canadian Depository for Securities Limited~~
 - ~~Canadian Derivatives Clearing Corporation~~
 - ~~WCE Clearing Corporation~~

2. ~~United States~~
 - ~~National Securities Clearing Corporation~~
 - ~~Pacific Clearing Corporation~~
 - ~~Stock Clearing Corporation of Philadelphia~~
 - ~~Midwest Clearing Corporation~~
 - ~~Boston Clearing Corporation~~
 - ~~Board of Trade Clearing Corporation~~
 - ~~Options Clearing Corporation~~
 - ~~Chicago Mercantile Exchange Clearing Corporation~~
 - ~~New York Commodity Exchange Clearing Corporation~~

3. ~~Other Foreign~~
 - ~~Euroclear~~
 - ~~Cedel S.A.~~
 - ~~International Securities Clearing Corporation”~~

2. Proposed Amendments to Form 1 to the Definition of Acceptable Securities Locations

“(d) **“acceptable securities locations”** means those entities considered suitable to hold securities on behalf of a Member, for both inventory and client positions, without capital penalty, given that the locations meet the requirements outlined in the segregation bylaws, rules or regulations of the Joint Regulatory Bodies including, but not limited to, the requirement for a written custody agreement outlining the terms upon which such securities are deposited and including provisions that no use or disposition of the securities shall be made without the prior written consent of the Member and the securities can be delivered to the Member promptly on demand. The entities are as follows:

1. Depositories or Clearing Agencies
 - (a) ~~Canada~~
 - ~~The Canadian Depository for Securities Limited~~
 - ~~Canadian Derivatives Clearing Corporation~~
 - ~~WCE Clearing Corporation~~

 - (b) ~~United States~~
 - ~~Depository Trust Company~~
 - ~~Pacific Securities Depository Trust Company~~
 - ~~Midwest Securities Trust Company~~
 - ~~Stock Clearing Corporation of Philadelphia~~
 - ~~Options Clearing Corporation~~

(c) — Other Foreign

~~Foreign securities~~ Securities depositories or clearing agencies incorporated or organized under the laws of Canada, the United States or other the foreign country and operating a central system for handling securities or equivalent book-based entries in that country and subject to enabling legislation by a central government authority in the country of operation that provides for compliance and powers of enforcement over its members.

The SROs will maintain and regularly update a list of those ~~foreign~~ depositories or clearing agencies that comply with these criteria.”