

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 IIROC Rules Notice – Request for Comments – Proposed Amendment of Sections 5.4 and 5.7 of IIROC By-law No. 1 – Director Election and Term – Filling Vacancies

RULES NOTICE

REQUEST FOR COMMENTS

PROPOSED AMENDMENT OF SECTIONS 5.4 AND 5.7 OF IIROC BY-LAW NO. 1

11-0050
February 4, 2011

Proposed Amendment of Sections 5.4 and 5.7 of IIROC By-law No. 1 – Director Election and Term – Filling Vacancies

Summary of nature and purpose of proposed Amendments

On August 11, 2010, the Board of Directors (the Board) of the Investment Industry Regulatory Organization of Canada (IIROC) passed proposed amendments to section 5.4 and 5.7 of IIROC By-law No. 1 to permit the Board to appoint a director to fill a Board vacancy for a term less than the remainder of the term of the retired director. The proposed amendments were subject to Member, regulatory and Industry Canada approvals and were subsequently approved by resolution of the Members at the Annual Meeting of Members held on September 15, 2010.

Under IIROC's current By-law No. 1, where a member of the Board retires before the end of his or her two year term, the remaining Board members have the authority to appoint an individual to fill the vacancy for the remainder of the retiring director's term of office. There is currently no procedure which would allow the Board to make a Board appointment for a shorter term of office, or for Members to approve the appointment. For example, if a director retires six months into her 2 year term, the Board is limited to appointing an individual for the remaining 18 months.

The proposed amendments passed by the Board would permit the Board to appoint a director to fill a Board vacancy for a shorter period of time than the remainder of the term of the retiring director. This amendment would address circumstances in which a retiring member left the Board with more than a year remaining in his/her term, allowing the Board to make a shorter term appointment and allowing Members to vote on individuals nominated to replace the retiring director at the next Annual General Meeting.

The proposed amendments will not affect the staggering of terms or the maximum length of terms under By-law No. 1.

Issues and specific proposed amendments

Specifically, the proposed amendments will:

- permit the Board to fill a vacancy for less than the remainder of the term; and
- enable Members to vote on the election of such individual to the Board at the Annual General Meeting immediately following the filling of the vacancy and maintain the staggering of the terms.

The proposed amendments will not affect the intended normal length of terms for directors of IIROC, which will continue to be two year terms, subject to a maximum of four terms. The proposed amendments will, however, provide greater flexibility in filling vacancies and allow for participation of Members in the election process for directors filling vacancies.

Analysis and Alternatives considered

By-law No. 1 provides that where a director vacancy has occurred mid-term, the Board may appoint a director to fill the vacancy for the remainder of the term of the retiring director. The Members are only permitted to vote on the election of such individual to the Board at the Annual General Meeting held upon the expiration of the term where the director is nominated to continue in

office. Where a director has resigned in the first year of a two year term, the Members do not vote on the election of such individual at the Annual General Meeting immediately following the filling of the vacancy, but at the Annual General Meeting following the expiration of the term.

The current provisions set out in sections 5.4 and 5.7 of By-law No. 1 were implemented at the time of the merger between the Investment Dealers Association of Canada (IDA) and Market Regulation Services Inc. (RS) in 2008. It was not contemplated at the time that the provisions in the event of a director's retirement during the first year of a two year term would result in Members not being entitled to vote on the election of such individual at the Annual General Meeting immediately following the filling of the vacancy. IIROC has introduced the proposed procedural amendments to sections 5.4 and 5.7 to deal with this situation. These amendments ensure that the same Member election process is followed regardless of whether a director has resigned in the first or second year of a two year term. The amendment would permit Members to vote on the election of a director who was appointed to fill a vacancy at the Annual General Meeting immediately following his/her appointment.

Proposed Rule classification

The purpose of the proposed amendments is to ensure that the relevant provisions of IIROC By-law No. 1 allow for engagement of IIROC members earlier in the governance process and thereby enhance IIROC's ability to fulfill its functions and responsibilities as a self-regulatory entity.

The Board, therefore, has determined that the proposed amendments are not contrary to the public interest.

The proposed amendments have been classified as Public Comment amendments.

Effects of the proposed amendments on market structure, Dealer Members, non-Dealer Members, competition and costs of compliance

IIROC has determined that the proposed amendments will only result in changes to the routine internal processes, practices and administration of IIROC and will have no material impact on investors, issuers, members, registrants or the capital markets in any province or territory of Canada.

Technological implications and implementation plan

The proposed amendments will not result in any technological implications for Dealer Members. IIROC anticipates that the proposed amendments will be made effective on a date to be determined by IIROC following receipt of all approvals required pursuant to applicable securities legislation or by Industry Canada.

Request for public comment

Comments are sought on the proposed amendments. Comments should be made in writing. Two copies of each comment letter should be delivered by March 7, 2011 (30 days from the publication date of this Notice).

One copy should be addressed to the attention of:

Rosemary Chan
Senior Vice-President, General Counsel & Corporate Secretary
Investment Industry Regulatory Organization of Canada
Suite 1600, 121 King Street West
Toronto, ON M5H 3T9

The second copy should be addressed to the attention of:

Manager of Market Regulation
Ontario Securities Commission
19th Floor, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
marketregulation@osc.gov.on.ca

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the IIROC website (www.iiroc.ca under the heading "IIROC Rulebook - Dealer Member Rules - Policy Proposals and Comment Letters Received").

Attachments

Attachment A – Black line copy of sections 5.4 and 5.7 of IIROC By-law No. 1 reflecting proposed amendments

Attachment A

**RESOLUTION OF THE BOARD OF DIRECTORS TO AMEND BY-LAWS –
AMENDMENTS TO IIROC BY-LAW NO. 1 – SECTIONS 5.4 AND 5.7 – DIRECTORS' TERMS**

BE IT RESOLVED THAT Sections 5.4 and 5.7 of the By-laws be amended to provide as follows (changes are marked for convenience only), such amendments to be effective on a date designated by the Board of Directors following receipt of any approvals required pursuant to applicable securities legislation or by Industry Canada:

Section 5.4 Election and Term

- (1) Subject to Section 5.2 and subsection 5.4(2), the term of each Dealer Director, Independent Director and Marketplace Director elected at a meeting of Members shall expire at the dissolution or adjournment of the second annual meeting of Members following the annual meeting of Members at which the Director was elected. **Notwithstanding the foregoing sentence, the Board of Directors shall be authorized pursuant to subsection 5.5 (2) to nominate for election by the Members a Director with a term that may expire before the second annual meeting of Members following such election.**
- (2) At the first annual meeting of Members, fourteen Directors shall be elected and the Board shall designate:
 - (a) Three of the positions of Independent Director, two of the positions of Dealer Director and one of the positions of Marketplace Director to be for a term that shall expire at the second annual meeting of Members; and
 - (b) Four of the positions of Independent Director, three of the positions of Dealer Director and one of the positions of Marketplace Director to be for a term that shall expire at the third annual meeting of Members.
- (3) With the exception of the President, a Director may be elected to serve four consecutive terms in office but shall not be eligible to be elected to serve a fifth consecutive term. For purposes of determining the number of consecutive terms in office of a Director elected by the First Members in accordance with Section 5.2 who is re-elected at the first annual meeting of Members in accordance with subsection 5.4 (2) , his or her term in office prior to the first annual meeting of Members shall not be included. Those Directors elected at the first annual meeting of Members to serve for an initial one year term shall be limited to three additional consecutive terms in office.

Section 5.7 Filling Vacancies

If a vacancy in the Board shall occur for any reason, the vacancy shall be filled (allowing a reasonable period of time for doing so) for the balance of the term, **or such shorter term as the Board shall determine pursuant to Section 5.4,** of the Director that vacated the office by a resolution passed by the Board appointing a Director, provided that:

- (a) If the vacancy is caused by the departure of the President, the person to be appointed to the office of the President has been appointed by the Board;
- (b) If the vacancy is caused by the departure of an Independent Director, Dealer Director or Marketplace Director, the person to be appointed has been identified and recommended by the Corporate Governance Committee and in the case of a vacancy of:
 - (i) an Independent Director, the person recommended is qualified as an Independent Director,
 - (ii) a Dealer Director, the person recommended is qualified as a Dealer Director, and
 - (iii) a Marketplace Director, the person recommended is qualified as a Marketplace Director;
- (c) In recommending a person for appointment to fill a vacancy the Corporate Governance Committee shall ensure that, if the person recommended is appointed, the Board would have:
 - (i) at least one Director, who need not be a Marketplace Director, with particular experience and expertise in respect of public venture equity markets,
 - (ii) a Marketplace Director recommended for appointment by TSX if, at the date of the recommendation:
 - (A) TSX is a Member, and

- (B) the aggregate of the Market Share of TSX and each Marketplace that is an associate or an affiliated entity of TSX is not less than forty percent, and
- (iii) at least one Director, who need not be a Marketplace Director, who is a partner, director, officer or employee of:
 - (A) a Marketplace,
 - (B) an associate of a Marketplace, or
 - (C) an affiliated entity of a Marketplace, other than TSX or a Marketplace that is an associate or an affiliated entity of TSX;
- (d) If a Marketplace Director recommended for appointment by TSX is to be appointed, TSX shall notify the secretary of the Corporation in writing of the recommendation of a qualified candidate for appointment; and
- (e) **If the vacancy is caused by the failure to elect the required number of Directors, the Board may appoint a Director to fill the vacancy on the basis that the vacancy arose by reason of the departure of an Independent Director, Dealer Director or Marketplace Director (including a Marketplace Director to be recommended by TSX) and the provisions of subsections 5.7 (b), (c) and (d) shall apply according to whether the vacancy relates to an Independent Director, Member Director or Marketplace Director, as the case may be.**