

## Chapter 13

# SROs, Marketplaces and Clearing Agencies

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### 13.1 SROs

#### 13.1.1 IIROC Rules Notice 12-0385 – Request for Comment – Dealer Member Rules – Disclosure Requirements for Research Reports

#### DISCLOSURE REQUIREMENTS FOR RESEARCH REPORTS

12-0385  
December 20, 2012

#### Summary of Nature and Purpose of Proposed Amendments

On November 28, 2012, the Board of Directors (“Board”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) approved the publication, for comment, of proposed amendments (“Proposed Amendments”) to Requirement 15 of Dealer Member Rule 3400 (“Rule 3400”), in order to allow Dealer Members to direct readers to the disclosures required under Rule 3400 (“Rule 3400 Disclosures”) where the research report is delivered by electronic means.

The primary objective of the Proposed Amendments is to create a regulatory framework that facilitates the practical and effective disclosure of required information through the use of technology and in a way that promotes the protection of the investing public.

#### Issues and Specific Proposed Amendments

##### *Relevant History*

Over the past several years, technological advances have given rise to various means of delivering research reports and investors accessing research reports, which in turn afford Dealer Members a variety of ways to comply with their Rule 3400 Disclosure obligations. Through the embedding of hyperlinks in electronic versions of research reports, the Dealer Member is able to provide readers with quick and easy access to the Rule 3400 Disclosures that are not located in the research report itself. As such, Dealer Members are able to comply with their Rule 3400 Disclosure obligations in an efficient and practical way, without compromising the investor protections that flow from the Rule 3400 Disclosures. In furtherance of IIROC’s objective, it is appropriate to permit Dealer Members to direct readers to the Rule 3400 Disclosures in research reports that are transmitted electronically.

##### *Current Rules*

Currently, Rule 3400 requires Dealer Members to include the Rule 3400 Disclosures in all research reports in a clear, comprehensive and prominent form. Where, however, an electronic or paper-based research report covers six or more issuers (“Compendium Report”), Requirement 15 permits Dealer Members to direct readers to where the Rule 3400 Disclosures may be found (i.e. the Rule 3400 Disclosures do not have to be included in the body of the research report itself). As a result, readers of certain research reports must seek out the mandatory Rule 3400 Disclosures, as they are not included in the research report itself.

##### *Proposed Rules*

##### *Proposed Amendments*

The Proposed Amendments would result in the repeal of Dealer Member Rule 3400, Requirement 15 in its entirety and replace it with a requirement that in effect would:

- (a) where the research report is paper-based and covers less than six issuers, require the inclusion of the Rule 3400 Disclosures in the body of the report;
- (b) where the research report is a paper-based Compendium Report covering six or more issuers, permit Dealer Members to, in the body of the Compendium Report, direct readers to where the Rule 3400 Disclosures may be found; and

- (c) where the research report is delivered by electronic means, require Dealer Members to either (i) include the Rule 3400 Disclosures in the body of the research report; or (ii) allow readers to access the Rule 3400 Disclosures by electronic means from within the research report, such as through the provision of a hyperlink.

A copy of the Proposed Amendments is attached as Attachment A.

***Comparison with Similar Regulatory Requirements***

We have examined the treatment of this issue in the United States and the United Kingdom. In the United States, the Financial Industry Regulatory Authority (“FINRA”) permits its members to direct readers in a clear manner to the required disclosures in electronic or paper-based Compendium Reports. In addition, FINRA offers interpretative guidance permitting members to use hyperlinks to direct readers to the required disclosures in all electronically transmitted research reports, regardless of the number of subject companies covered in the report. The Proposed Amendments will align the IIROC Dealer Member Rule requirements with the FINRA requirements and guidance.

In the United Kingdom, the Financial Services Authority (“FSA”) requirements permit dealers to make clear and prominent reference in the research report to the place where the required disclosure can be directly and easily accessed by the public, if the length of the research report is disproportionate in relation to the length of the disclosures. The FSA requirements do not differentiate between research reports delivered in paper or electronic format, nor the number of issuers covered. Instead, the dealer is required to determine whether the length of the required disclosure is disproportionate to the length of the research report. It is IIROC’s view that, as regards the Proposed Amendments, a prescriptive approach, similar to FINRA requirements, will provide Dealer Members with greater clarity and guidance than would be achieved through a principles-based approach. This will facilitate better understanding of, and compliance with, such requirements. Furthermore, a major consideration in developing the Proposed Amendments, given the significant amount of research that is distributed within Canada from the United States, was to harmonize, where appropriate, with the FINRA requirements.

***Prominence of Disclosure***

Disclosures, and references to disclosures, must be clear, comprehensive and prominent. Paper-based Compendium Reports must provide either a toll-free number to call or a postal address to write to for the required disclosures. Dealer Members may use hyperlinks to direct readers to the required disclosures in all electronically transmitted reports, including electronic Compendium Reports, or as an additional point of reference in paper-based research reports. Regardless of whether it is a paper-based or electronic research report, the disclosure section should include a heading such as “Important Disclosures” or “Required Disclosures” in a font size that is legible and distinguishable from the body text and disclaimers.

***Issues and alternatives considered***

IIROC staff has considered the possibility of maintaining the status quo; however, staff rejected this alternative and is committed to promoting and facilitating the efficient dissemination of research reports, including the required regulatory disclosures.

IIROC staff has also considered the possibility of, in addition to making the Proposed Amendments, requiring that all paper-based research reports include the appropriate Rule 3400 Disclosures in the body of the report. In considering whether to pursue this possibility or the approach we are proposing, IIROC staff consulted with IIROC advisory committees, including the Compliance and Legal Section (“CLS Quotes”), the CLS Executive Committee and the CLS Institutional Subcommittee. During these consultations, concerns were expressed that extending the current requirement to include the required disclosures to all paper-based research reports, including Compendium Reports, represents a new and unnecessary regulatory and cost burden to Dealer Members. Staff have assessed these concerns and have decided not to pursue this possibility, due primarily to the fact that we have received little to no complaints about the existing disclosure approach used for paper-based Compendium Reports.

***Classification of Proposed Amendments***

Statements have been made elsewhere as to the nature and effects of the Proposed Amendments. The purpose of the Proposed Amendments is to:

- foster fair, equitable and ethical business standards and practices.

Due to the extent and substantive nature of the Proposed Amendments, they have been classified as Public Comment Rule proposals.

**Effects of the Proposed Amendments on Stakeholders**

The Proposed Amendments will not have any significant effects on Dealer Members, market structure or competition. Furthermore, it is not expected that the Proposed Amendments will give rise to any incremental costs of compliance. Rather, the Proposed Amendments would:

- (a) promote the more efficient dissemination of electronic-based research reports without compromising investor protection concerns.

The Proposed Amendments do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in furtherance of IIROC's mandate.

The IIROC Board has determined that the Proposed Amendments are not contrary to public interest.

**Technological implications and implementation plan**

IIROC anticipates that the Proposed Amendments will be effective on a date to be determined by IIROC staff after receiving notification of approval by the recognizing regulators. Given that the Proposed Amendments do not introduce any new costs or compliance challenges to Dealer Member, the Proposed Amendments will be implemented without a transition period.

**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 within 90 days from the publication date of this notice. One copy should be addressed to the attention of:

Angie F. Foggia  
Policy Counsel, Member Regulation Policy  
Investment Industry Regulatory Organization of Canada  
Suite 1600, 121 King Street West  
Toronto, Ontario, M5H 3T9

The second copy should be addressed to the attention of:

Manager, Market Regulation  
Ontario Securities Commission  
19th Floor, Box 55  
20 Queen Street West  
Toronto, Ontario, M5H 3T9  
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](http://www.iiroc.ca)) under the heading "IIROC Rule Book – Dealer Member Rules – Policy Proposals and Comment Letters Received".

Questions may be referred to:

Angie F. Foggia  
Policy Counsel, Member Regulation Policy  
Investment Industry Regulatory Organization of Canada  
416.646.7203  
afoggia@iiroc.ca

**Attachments**

Attachment A – Board Resolution and Proposed Amendments to Requirement 15 of Dealer Member Rule 3400

**INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

**DISCLOSURE REQUIREMENTS FOR RESEARCH REPORTS**

**BOARD RESOLUTION**

BE IT RESOLVED ON THE 28 DAY OF NOVEMBER, 2012 THAT:

1. The English and French versions of the proposed amendments regarding disclosure requirements for research reports, in the form presented to the Board of Directors:
  - a. be approved for publication for public comment for 90 days;
  - b. be approved for submission to the Recognizing Regulators for review and approval;
  - c. be determined to be in the public interest; and
  - d. be approved for implementation if there are no material public comments or material comments from the Recognizing Regulators.
2. The President be authorized to approve such non-material changes to the proposed amendments prior to publication and/or implementation as the President considers necessary and appropriate.

**INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

**DISCLOSURE REQUIREMENTS IN RESEARCH REPORTS DELIVERED ELECTRONICALLY**

**PROPOSED AMENDMENTS**

1. Requirement 15 of Dealer Member Rule 3400 is repealed in its entirety and replaced as follows:
  - “15. When a Dealer Member distributes:
    - (i) a research report covering six or more issuers, the report may direct the reader to where the disclosures required under Rule 3400 may be found; or
    - (ii) a research report electronically, the report may direct the reader to where the disclosures required under Rule 3400 may be accessed by electronic means, such as through the use of a hyperlink.”