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## Investment Dealers Assn. of Canada, Re

Reference: Section 21.1

*In The Matter of the Securities Act, R.S.O. 1990, Chapter S.5, as amended (The "Act") and In The Matter of the Investment Dealers Association of Canada (The "IDA")*

Citation: **18 O.S.C.B. 5293**

Tribunal: Ontario Securities Commission

Panel: Edward J. Waitzer, J. Smart

Date: October 27, 1995

Year: 1995

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*WHEREAS* on December 14, 1994 the Commission recognized the IDA as a self-regulatory organization pursuant to section 21.1 of the Act subject to the condition that such recognition, unless theretofore extended by the Commission, would terminate on August 31, 1995;

*AND WHEREAS* on August 18, 1995 the Commission recognized the IDA as a self-regulatory organization pursuant to section 21.1 of the Act in respect of the period on and after August 31, 1995 subject to the condition that such recognition, unless theretofore extended by the Commission, would terminate on October 31, 1995;

*AND WHEREAS* the IDA has formally applied for recognition as a self-regulatory organization in respect of the period on and after October 31, 1995;

*AND WHEREAS* Commission staff has conducted a review of the IDA's compliance and enforcement operations and of its rules;

*AND WHEREAS* the IDA has agreed to the undertakings attached hereto as Schedule "B";

*AND UPON* considering the recommendation of staff and the submissions of the IDA;

*AND UPON* the Commission being satisfied that the recognition of the IDA in respect of the period on and after October 31, 1995 would be in the public interest;

The Commission hereby recognizes the IDA as a self-regulatory organization pursuant to section 21.1 of the Act in respect of the period on and after October 31, 1995 subject to the terms and conditions attached hereto as Schedule "A".

## — Schdule “A”

### Terms and Conditions

1. The IDA shall enforce as a matter of contract compliance by its members and their Approved Persons with the rules of the IDA, without prejudice to any discipline by the Commission under Ontario securities law.
2. The IDA must provide the Commission and CIPF with prompt notice of material or critical cases and reportable conditions, and the IDA shall promptly advise the Commission when any member has failed to file on a timely basis any required financial or operational report. For greater certainty, the Commission shall be notified forthwith of the triggering of all early warning thresholds which would reasonably be expected to raise concerns about a member's liquidity, risk-adjusted capital or profitability, and on a quarterly basis of the triggering of all early warning thresholds which did not raise such concerns, and in each case the Commission shall be advised of the circumstances and the IDA's response thereto, together with the identity of the member in the former case.
3. The IDA shall promptly report to the Commission misconduct or apparent misconduct by members and their Approved Persons and others where investors, clients, creditors, members, CIPF or the IDA may reasonably be expected to suffer serious damage as a consequence thereof, including where the solvency of a member is at risk, serious fraud is present or there exist serious deficiencies in supervision or internal controls. In addition, the IDA must advise the Commission promptly following the taking of any action by it with respect to any member in financial difficulty.
4. (a) The public and media shall be advised of any disciplinary or settlement hearing by way of press release not less than 10 days prior to the date of any such hearing, and such information shall also be published in the Ontario Securities Commission Bulletin unless the Commission determines otherwise.
- (b) In the event that a settlement proposal is accepted in full at a settlement hearing, the terms of the settlement, including any discipline imposed, and any written decision and reasons, shall be promptly disclosed to the public and media by way of press release and, unless the Commission determines otherwise, publication in the Ontario Securities Commission Bulletin, after notice having been given to the Commission under paragraph 5(e).
- (c) The public and media shall be promptly notified by way of press release and, unless the Commission determines otherwise, publication in the Ontario Securities Commission Bulletin of the disposition of any and all disciplinary actions, including any discipline imposed, and of any written decision and reasons, after notice having been given to the Commission under paragraph 5(e).
- (d) Any notification under sub-paragraphs (a) through (c) shall include, in addition to any other information specified therein, the names of the member and relevant Approved Persons together with a summary of the circumstances.
- (e) The IDA shall maintain a register available to the public and media briefly summarizing the

information contained in notifications given under sub- paragraphs (a) through (c).

- (f) IDA disciplinary hearings shall be open to the public and media except where required for the protection of confidential matters. IDA settlement hearings shall be open to the public and media except insofar as necessary for the confidential presentation, review and consideration of the settlement proposal and except where required for the protection of confidential matters.
5. (a) The Commission shall be notified on a monthly basis of all new investigations, operational reviews and similar matters (collectively, “investigations”), and such notice shall indicate the date the investigation started, identify the member and relevant Approved Persons involved and summarize the misconduct alleged. The Commission shall also be provided with notice of all complaints which lead to investigations being commenced promptly after the commencement thereof together with detailed information concerning the complaint and the names of IDA staff assigned to investigate it.
- (b) The Commission shall be notified on a monthly basis of all investigations which do not lead to disciplinary or settlement proceedings and which are closed, and such notice shall indicate the date the investigation started, summarize the conduct involved, identify the member and relevant Approved Persons and summarize the disposition of the investigation. The Commission shall also be provided with notice of all such investigations promptly following the closing of the investigation together with detailed information concerning the investigation and a copy of the final investigation report and recommendations.
- (c) The IDA shall provide to the Commission annually or more frequently upon request a summary of all open investigations, and such notice shall indicate the date the investigation started, identify the member and relevant Approved Persons involved and summarize the misconduct alleged. The IDA shall advise the Commission of the status of any investigation upon specific request.
- (d) The Commission shall be notified as soon as practicable and not less than 10 days prior to the date of any disciplinary or settlement hearing.
- (e) The Commission shall be provided with detailed information concerning all investigations which lead to disciplinary or settlement proceedings forthwith following the disposition thereof, including a copy of the final investigation report, a copy of the proposed press release or other public and media notification and information as to the disposition thereof, any discipline imposed, the terms of any settlement proposal accepted and any written decision and reasons.
- (f) The IDA shall keep a record of all complaints and shall provide to the Commission annually or more frequently upon request a summary of all complaints and the disposition thereof (for greater certainty including anonymous complaints), together with an analysis of any emerging problems or trends. The IDA shall not refrain from investigating complaints due to the anonymity of the complainant where the complaint is otherwise worthy of investigation and sufficiently detailed to permit investigation. The IDA shall at least annually review all material settlements involving its members and their clients with a view to determining

whether any action is warranted, and the IDA shall preclude members from imposing confidentiality restrictions on clients vis-a-vis the IDA, whether as part of a resolution of a dispute or otherwise.

6. The IDA shall maintain its ability to perform its self-regulatory functions, including those specified in paragraph 16 of the Recognition Criteria [(1995) 18 OSCB 2671 at 2675], and shall advise the Commission at least annually of its self-regulatory staff complement, by function, and of any material changes or reductions in self-regulatory staff, by function.

7. The IDA shall advise the Commission in advance of any proposed material changes or reductions in its financial audit or operational and sales compliance review programmes, including as to procedures or scope, of any proposed changes in its external audit instructions and of any proposed material changes or reductions in the operation of its investigation or enforcement programmes.

8. The IDA shall cooperate and assist with any surprise, regular or other reviews of its self-regulatory functions by CIPF and/or the Commission. In addition, in the event that the Commission is of the view that there has been a serious apparent failure in the IDA's fulfilment of its self-regulatory functions, the IDA shall upon the request of the Commission be required to undergo an independent third party review on terms and by a person or persons satisfactory to or determined by the Commission, which review shall be at the expense of the IDA, provided that where appropriate such reviews shall be conducted by or on behalf of CIPF.

9. The IDA shall provide the Commission with an annual report and with such information regarding its affairs, financial and other, as may be requested from time to time. The annual report shall be in such form as may be specified by the Commission from time to time.

10. Management of the IDA shall at least annually self-assess the IDA's performance of its self-regulatory responsibilities and report thereon to the executive committee, together with any recommendations for improvements. The executive committee shall be responsible for reporting to the Board as to the IDA's performance of its self-regulatory responsibilities, and the executive committee shall include at least one public director. The IDA shall provide the Commission with copies or summaries of such reports and advise the Commission of any proposed actions arising therefrom.

11. The IDA shall provide its budget and audited financial statements to the Commission on an annual basis following adoption thereof.

12. The IDA shall comply with paragraphs 14 and 15 of the Recognition Criteria [(1995) 18 OSCB 2671 at 2674-75] with respect to making, amending and revoking rules.

13. The IDA shall not make fundamental changes to its organizational structure which would affect its self-regulatory functions without prior Commission approval, and shall give the Commission notice of new directors, officers and committee chairpersons, including a 5 year employment history and information as to prior involvement in criminal (other than highway traffic), administrative or insolvency proceedings and civil proceedings involving business conduct or alleging fraudulent conduct or deceit in respect of each such person.

14. The IDA shall cooperate, by the sharing of information and otherwise, with CIPF, the Commission and its staff, and other Canadian federal, provincial and territorial recognized self-regulatory organizations and regulatory authorities, including without limitation those responsible for the supervision or regulation of securities firms, financial institutions and competition matters.

15. A copy of all written notices to members shall be provided to the Commission.

16. The IDA shall wherever practicable document its interpretations of its rules and distribute them to its members and the Commission

17. The IDA shall immediately advise each other self-regulatory organization to which a member is subject of any breach or apparent breach of the rules thereof of which the IDA becomes aware.

18. From and after the date hereof, activities which are identified by the IDA as being primarily of a trade association or lobbying character shall be appropriately structurally separated from the self-regulatory operations of the IDA and involve separate persons within the IDA. Such activities would include, for example, representations to governments concerning industry commission or fee structures, industry ownership and foreign participation in the Canadian securities industry. In addition, the IDA shall in its annual report include a statement as to its aggregate expenditures and the proportion of its total expenditures in the area of member regulation.

19. The IDA shall ensure that it is accessible to the public and shall designate and make public the names and telephone numbers of persons to be contacted for various purposes, including complaints and enquiries.

20. For the purposes hereof:

“CIPF” mean the Canadian Investor Protection Fund;

“including” and similar terms mean “including, without limiting the generality of the foregoing”;

“Ontario securities law” shall have the meaning defined in the Securities Act (Ontario); and

“rules” means the IDA's Constitution, By-laws, Regulations, Policies, Forms, guidelines and other instruments.

## **Schedule “B”**

### **Undertakings**

In connection with the recognition of the IDA as a self-regulatory organization pursuant to section 21.1(1) of the Securities Act (Ontario) in respect of the period on and after October 31, 1995:

1. Prior to June 30, 1996, to bring forward for Commission consideration a proposed amendment to its rules to include due process provisions for the review of membership applications, including giving standing before the IDA's Board to applicants unable to get the

two required sponsors.

2. To publish in a Notice to Members details of any exemptions given under IDA By- laws 6.1, 17.17 and/or 17.18.
3. To ensure that its “Guidelines for Investigations of Supervisory Practices” dated May, 1992 are followed and updated as necessary, and that in cases where disciplinary action is not taken against a Member or supervisory staff, reasons for such decision are outlined in the investigation report given to Commission staff.
4. Prior to November 1, 1996, to increase resources allocated to sales compliance by hiring 2 more sales compliance officers possessing relevant industry experience and who will be dedicated full time to reviewing members' sales compliance procedures. It will use these resources to implement its risk-based approach to Member branch office reviews.