

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 IDA By-law Nos. 21 and 41 and Form 1 - Amendments to Reflect Changes to CIPF Oversight Role

INVESTMENT DEALERS ASSOCIATION OF CANADA – BY-LAW NOS. 21 AND 41 AND FORM 1 - AMENDMENTS TO REFLECT CHANGES TO CIPF OVERSIGHT ROLE

I OVERVIEW

The Association and the Canadian Investor Protection Fund (CIPF) have recently agreed to make changes to the oversight role that CIPF performs over the affairs of the Association. Rule changes are necessary to reflect the role changes and to ensure that CIPF has adequate ongoing access to Member premises, information and personnel, should the need arise due to an insolvency or for other reasons.

A Current Rules

The current rules refer in a number of instances to CIPF Minimum Standards and CIPF rules. The CIPF Minimum Standards are minimum regulatory requirements relating to:

- Member firm capital adequacy, minimum books and records, internal controls and insurance coverage requirements;
- Customer account information collection, margin and security position segregation requirements;
- External auditor selection and audit requirements; and
- Self-regulatory organization compliance examination, Member firm early warning reporting and Reportable Condition requirements.

These standards were first developed in the 1970s when there were five Canadian self-regulatory organizations with member regulation responsibilities (Alberta Stock Exchange, Investment Dealers Association of Canada, Montreal Exchange, Toronto Stock Exchange and Vancouver Stock Exchange) and there was need for CIPF to ensure that there was investor protection related rule uniformity across the country. At that time, the CIPF also commenced sample reviews of Canadian self-regulatory organization compliance examination files to ensure adequacy and uniformity of compliance examinations amongst the member regulation self-regulatory organizations.

B The Issue(s)

The need for the CIPF Minimum Standards is now significantly diminished because the Association is now the sole remaining Canadian self-regulatory organization with member regulation responsibilities (refer to table below):

Self-regulatory organization	Member regulation responsibilities
Alberta Stock Exchange	Merged with VSE to form Canadian Venture Exchange (now the TSX Venture Exchange) and transferred member regulation function to IDA in November 1999
Investment Dealers Association	Ongoing
Montreal Exchange	Transferred member regulation function to IDA in January 2005
Toronto Stock Exchange	Transferred member regulation function to IDA in February 1997
Vancouver Stock Exchange	Merged with ASE to form Canadian Venture Exchange (now the TSX Venture Exchange) and transferred member regulation function to IDA in November 1999

The Association also has specific rules that address each of the items listed in the CIPF Minimum Standards. The CIPF Minimum Standards are therefore no longer needed to ensure that there are consistent and adequate investor protection related rules in place. The CIPF has therefore agreed to eliminate the CIPF Minimum Standards, which are included in a schedule to the current Industry Agreement between the CIPF and the Association.

The securities commissions that have formally recognized the Association as a self-regulatory organization have increasingly been involved in the direct oversight of the Association's activities. In the area of rulemaking, all rules are submitted for commission staff review and comment and must be formally approved by four commissions (in British Columbia, Alberta, Ontario and Quebec). There is therefore no longer the same need for the commissions to rely on CIPF's rulemaking oversight process, which today involves the submission of Association rules that relate to the CIPF Minimum Standards to the CIPF Minimum Standards Committee (a committee of the CIPF Board of Governors) for approval. The CIPF has therefore agreed to disband the CIPF Minimum Standards Committee.

With the making of these changes, the CIPF has concerns that they continue to require members to pay CIPF premiums, and have access to Member firm premises, information and personnel should the need arise due to an insolvency or for other reasons.

C Objective(s)

The objectives of the rule proposals are as follows:

1. By-law No. 21 - No Actions Against the Association and Others

This by-law currently limits the ability of Member firms and their employees to sue the Association, its Board or Directors and any of its committees, employees or agents. The objective of the proposed rule change is to extend this limitation to include the CIPF, its Board or Directors and any of its committees, employees or agents.

2. By-law No. 41 - Canadian Investor Protection Fund

The objective of this new by-law is to specifically codify existing Association and individual Member firm obligations to the CIPF. Individual Member firm obligations include:

- The requirement to pay regular and special CIPF assessments to the Association, as the current practice is that the Association collects CIPF fees on their behalf;
- The granting of permission for the CIPF and the Association to share financial and other information relating to the Member firm's operations or its customer's affairs;
- The granting to CIPF of Member firm premises, information and personnel access; and
- The agreeing to comply with actions the Member firm is requested by the CIPF (or the Association on behalf of CIPF) to take.

3. Form 1 - Joint Regulatory Questionnaire and Report

The objective of the amendments to Form 1 is to remove all references to CIPF Minimum Standards and CIPF rules as these will no longer exist once the Industry Agreement between the CIPF and the Association is modified.

D Effect of Proposed Rules

The rules will have no effect on market structure, Member firm versus non-Member firm competition and competition generally. Overall industry costs will be reduced to the extent there are cost savings at the CIPF resulting from their reduction of their oversight role.

II DETAILED ANALYSIS

A Present Rules, Relevant History and Proposed Policy

Refer to Section I of this paper. A detailed analysis was considered unnecessary.

B Issues and Alternatives Considered

No other alternatives were considered.

C Comparison with Similar Provisions

As far as we are aware, the CIPF is the only securities industry related investor protection fund in the developed world that carries out regulation oversight activities. We are aware of no other investor protection fund in Canada in any industry that carries out regulation oversight activities. The changes agreed to between the Association and the CIPF bring the CIPF in line with these other investor protection funds.

D Systems Impact of Rule

There will be no systems impacts associated with the implementation of this rule.

E Best Interests of the Capital Markets

The Board has determined that this public interest rule is not detrimental to the best interests of the capital markets.

F Public Interest Objective

According to the Association's Order of Recognition as a self regulatory organization, the Association shall, where requested, provide in respect of a proposed rule change "a concise statement of its nature, purposes (having regard to paragraph 13 above) and effects, including possible effects on market structure and competition". Statements have been made elsewhere as to the nature and effects of the proposals. The purposes of the proposals are to "standardize industry practices where necessary or desirable for investor protection".

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 proposals have been determined to be public interest in nature.

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

As the proposed rule amendments either reflect changes to the CIPF oversight role or codify existing practice they have been determined to be effective.

C Process

These proposals were developed by Association staff in consultation with CIPF staff as part of discussions to amend the Industry Agreement involving the CIPF and the Association.

IV SOURCES

References:

- IDA By-law No. 21
- IDA Form 1
- Canadian Investor Protection Fund Industry Agreement (dated December 14, 2001; effective January 1, 2002)
- Study of the Canadian Securities Industry Regulatory Framework – Louis Piergeti, Vice President, Financial Compliance and Richard Corner, Vice President, Regulatory Policy

V OSC REQUIREMENT TO PUBLISH FOR COMMENT

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

SRO Notices and Disciplinary Proceedings

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 Richard J. Corner, Vice President, 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:

Richard J. Corner
Vice President, Regulatory Policy
Investment Dealers Association of Canada
(416) 943-6908
rcorner@ida.ca

**INVESTMENT DEALERS ASSOCIATION OF CANADA
BY-LAW NOS. 21 AND 41 AND FORM 1 -
AMENDMENTS TO REFLECT CHANGES TO CIPF OVERSIGHT ROLE**

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 No. 21 is repealed and replaced as follows:

**“BY-LAW NO. 21
NO ACTIONS AGAINST THE ASSOCIATION AND OTHERS**

- 21.1 No Member (including in all cases a Member whose rights and privileges have been suspended or terminated and a Member who has been expelled from the Association or whose Membership has been forfeited) or any other person who is subject to the jurisdiction of the Association, shall be entitled, subject to the provisions of By-law 33, to commence or carry on any action or other proceedings against the Association or against the Board of Directors, the National Advisory Committee, the Executive Committee, any District Council, any Business Conduct Committee, any District Audit Committee, or any other National, District or other committee, council or section of the Association, or against any member of the staff or officer of the Association or member or officer of any such Board, committee, council or section or against any Member's Auditor, or against the Canadian Investor Protection Fund, its Board of Directors, any of its committees or its officers, employees and agents, in respect of any penalty imposed or any act or omission done or omitted under the provisions of and in compliance with or intended compliance with the provisions of any By-law, Regulation, Ruling or Policy and, in addition, in the case of the Canadian Investor Protection Fund, its letters patent, by-laws and policies and all legislation or regulatory directives or agreements thereunder.”

2. By-law No. 41 is added as follows:

**BY-LAW NO. 41
CANADIAN INVESTOR PROTECTION FUND**

- 41.1 The Association is authorized to enter into and perform its obligations under such agreements or other arrangements with Canadian Investor Protection Fund as may be, in the discretion of the Board of Directors, consistent with the objects of the Association including, without limitation, the Industry Agreement dated •, 2006 made between the Association and the Canadian Investor Protection Fund, as the same may be amended from time to time (the Industry Agreement). The President, his or her staff or any other person designated by the Board of Directors shall be authorized to execute and deliver any such agreements, or make any such arrangements, and to do all acts and things as may be necessary to permit the Association to exercise its rights or perform its obligations thereunder.
- 41.2 In respect of the Industry Agreement or other agreements and arrangements entered into by the Association in accordance with By-law 41.1 from time to time, each Member:
- (a) shall promptly pay to the Association its regular and special Canadian Investor Protection Fund assessments;
 - (b) shall provide to the Canadian Investor Protection Fund or to the Association all information required to assess its financial condition or Canadian Investor Protection Fund risk of loss;
 - (c) acknowledges and consents to the exchange of information relating to its operations, including information pertaining to its partners, directors, officers, shareholders, employees and agents, or any other persons permitted by law, or its customer's affairs, between the Association and the Canadian Investor Protection Fund, in accordance with any information sharing agreements or arrangements made by them;
 - (d) shall permit the Canadian Investor Protection Fund to conduct reviews of its operations in respect of Industry Agreement Reportable Conditions or other agreement or arrangement Reportable Conditions and shall fully cooperate with the Canadian Investor Protection Fund, and its staff and advisers, in connection with such reviews;

- (e) shall comply with such actions as the Canadian Investor Protection Fund may direct the Association to take, or with such actions as Canadian Investor Protection Fund may take on behalf of the Association as authorized."

3. Form 1 is amended as follows:

- (a) Within the General Notes and Definitions to Note 1:
 - (i) Delete the reference to "The Canadian Venture Exchange" as a Joint Regulatory Body
 - (ii) Remove the text "under Canadian Investor Protection Fund rules" from the end of the note.
- (b) Within the Notes and Instructions to Statement B, Notes to Line 21 removal the text "under Canadian Investor Protection Fund rules" from the end of the note.
- (c) Within the Notes and Instructions to Statement C, Notes to Lines 1, 3 and 5 remove the text "and the Canadian Investor Protection Fund" from the end of the note.
- (d) Within the Notes and Instructions to Schedule 2, Note 1 remove the text "and the Canadian Investor Protection Fund" from the end of the note.
- (e) Within the Notes and Instructions to Schedule 2B, Note 1 remove the text "and the Canadian Investor Protection Fund" from the second last sentence within the note.
- (f) Within the Notes and Instructions to Schedule 10, Note 1 remove the text "and Canadian Investor Protection Fund" from the end of the note.

BE IT RESOLVED THAT the Board of Directors adopt, on this (date), 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.

**INVESTMENT DEALERS ASSOCIATION OF CANADA
BY-LAW NOS. 21 AND 41 AND FORM 1 -
AMENDMENTS TO REFLECT CHANGES TO CIPF OVERSIGHT ROLE**

BLACK-LINE COPY

**BY-LAW NO. 21
NO ACTIONS AGAINST THE ASSOCIATION AND OTHERS**

- 21.1 ~~No Member and no partner, director or officer of a Member (including in all cases a Member whose rights and privileges have been suspended or terminated and a Member who has been expelled from the Association or whose Membership has been forfeited) or any other and no person who is subject, upon application for approval as a partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative or investment representative, submitted to the jurisdiction of the Association, shall be entitled, subject to the provisions of By-law 33, to commence or carry on any action or other proceedings against the Association or against the Board of Directors, the National Advisory Committee, the Executive Committee, any District Council, any Business Conduct Committee, any District Audit Committee, or any other National, District or other committee, council or section Committee or Council of the Association, or against any member of the staff or officer of the Association or member or officer of any such Board, committee, council or section Committee or Council or against any Member's Auditor, or against the Canadian Investor Protection Fund, its Board of Directors, any of its committees or its officers, employees and agents, in respect of any penalty imposed or any act or omission done or omitted under the provisions of and in compliance with or intended compliance with the provisions of any By-law, Regulation, Ruling or Policy and, in addition, in the case of the Canadian Investor Protection Fund, its letters patent, by-laws and policies and all legislation or regulatory directives or agreements thereunder.~~

**BY-LAW NO. 41
CANADIAN INVESTOR PROTECTION FUND**

- ~~41.1 The Association is authorized to enter into and perform its obligations under such agreements or other arrangements with Canadian Investor Protection Fund as may be, in the discretion of the Board of Directors, consistent with the objects of the Association including, without limitation, the Industry Agreement dated •, 2006 made between the Association and the Canadian Investor Protection Fund, as the same may be amended from time to time (the Industry Agreement). The President, his or her staff or any other person designated by the Board of Directors shall be authorized to execute and deliver any such agreements, or make any such arrangements, and to do all acts and things as may be necessary to permit the Association to exercise its rights or perform its obligations thereunder.~~
- ~~41.2 In respect of the Industry Agreement or other agreements and arrangements entered into by the Association in accordance with By-law 41.1 from time to time, each Member:~~
- ~~(a) shall promptly pay to the Association its regular and special Canadian Investor Protection Fund assessments;~~
 - ~~(b) shall provide to the Canadian Investor Protection Fund or to the Association all information required to assess its financial condition or Canadian Investor Protection Fund risk of loss;~~
 - ~~(c) acknowledges and consents to the exchange of information relating to its operations, including information pertaining to its partners, directors, officers, shareholders, employees and agents, or any other persons permitted by law, or its customer's affairs, between the Association and the Canadian Investor Protection Fund, in accordance with any information sharing agreements or arrangements made by them;~~
 - ~~(d) shall permit the Canadian Investor Protection Fund to conduct reviews of its operations in respect of Industry Agreement Reportable Conditions or other agreement or arrangement Reportable Conditions and shall fully cooperate with the Canadian Investor Protection Fund, and its staff and advisers, in connection with such reviews;~~
 - ~~(e) shall comply with such actions as the Canadian Investor Protection Fund may direct the Association to take, or with such actions as Canadian Investor Protection Fund may take on behalf of the Association as authorized.~~

FORM 1

GENERAL NOTES AND DEFINITIONS

1. Each Member shall comply in all respects with the requirements outlined in this prescribed Joint Regulatory Financial Questionnaire and Report as approved and amended from time to time by the Board of Directors of the Joint Regulatory Bodies and Canadian Investor Protection Fund.

These statements are to be prepared in accordance with generally accepted accounting principles, except as modified by the requirements of the appropriate regulatory body.

These statements and schedules are to be completed by members of the Joint Regulatory Bodies as follows:

- ~~_____ The Canadian Venture Exchange~~
- The Montreal Exchange
- The Toronto Stock Exchange
- Investment Dealers Association of Canada

Firms may have multiple memberships in the above bodies. When this is the case and the requirements of such bodies are not consistent in a specific area, the firm must adhere to the most stringent requirement. The "appropriate Joint Regulatory Body" refers to the institution that maintains the primary audit jurisdiction for the firm and its affiliates ~~under Canadian Investor Protection Fund rules.~~

Notes and Instructions to Statement B, Notes to Line 21

Line 21 - This item should include all margin requirements not mentioned above as outlined in the bylaws, rules and regulations of the Joint Regulatory Bodies ~~and the Canadian Investor Protection Fund.~~

Notes and Instructions to Statement C, Notes to Lines 1, 3 and 5

Line 1 - If Risk Adjusted Capital of the firm is less than:

- (a) 5% of total margin required (line 4 above), then the firm is designated as being in Early Warning category **Level 1**, or
- (b) 2% of total margin required (line 4 above), then the firm is designated as being in Early Warning category **Level 2**,

and the applicable sanctions outlined in the bylaws, rules and regulations of the Joint Regulatory Bodies ~~and the Canadian Investor Protection Fund will apply.~~

Line 3 - If Early Warning Excess is negative, the firm is designated as being in Early Warning category **Level 2** and the sanctions outlined in the applicable bylaws, rules and regulations of the Joint Regulatory Bodies ~~and the Canadian Investor Protection Fund will apply.~~

Line 5 - If the Early Warning Reserve is negative, the firm is designated as being in Early Warning category **Level 1** and the sanctions outlined in the applicable bylaws, rules and regulations of the Joint Regulatory Bodies ~~and the Canadian Investor Protection Fund will apply.~~

Notes and Instructions to Schedule 2, Note 1

1. All securities are to be valued at market (see General Notes and Definitions) as of the reporting date. The margin rates to be used are those outlined in the bylaws, rules and regulations of the Joint Regulatory Bodies ~~and the Canadian Investor Protection Fund.~~

Notes and Instructions to Schedule 2B, Note 1

1. The purpose of this schedule is to disclose all unsold portions of new and secondary issues held by underwriters, other than issues disclosed on Statement A, lines 9 and 53, **that are margined at less than the normal margin rates** applicable to those securities as permitted in the bylaws, rules and regulations of the Joint Regulatory Bodies ~~and the Canadian Investor Protection Fund.~~ Expiry date refers to the date of any out clause or the expiry date on a bank letter.

Notes and Instructions to Schedule 10, Note 1

1. Member firms must maintain minimum insurance in type and amounts as outlined in the bylaws, rules and regulations of the Joint Regulatory Bodies and Canadian Investor Protection Fund.