



INVESTMENT INDUSTRY ASSOCIATION OF CANADA  
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

Barbara J. Amsden  
Director, Special Projects  
416 687-5488/bamsden@iiac.ca

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Ms. Sherry Tabesh-Ndreka  
Senior Policy Counsel  
Investment Industry Regulatory Organization of Canada (IIROC)  
121 King Street West, Suite 1600  
Toronto, Ontario, Canada M5H 3T9  
Tel: (416) 943-4656/Fax: (416) 943-6760  
Email: stabesh@iiroc.ca

Manager of Market Regulation  
Ontario Securities Commission  
19th Floor, Box 55  
20 Queen Street West  
Toronto, Ontario M5H 3S8

Dear Ms. Tabesh-Ndreka:

**Re: Comments on Draft Guidance Note – “Disclosure and Approval of Outside Business Activities”**

The Investment Industry Association of Canada (IIAC) and its members appreciate the opportunity to respond to IIROC’s request for comments, issued as Notice 11-0150 (the Notice) and dated May 11, 2011, regarding disclosure and approval of outside business activities. We agree with the purpose and general substance of the Notice. We identified one material issue that we believe can be addressed in a reasonable and straightforward way and a number of technical points as outlined below.

**1. Definition of “Outside Business Activities”**

Wording in different parts of the Notice, when combined, appear to unintentionally extend the definition of outside business activities to capture a very broad range of non-business involvement, for example, the following (with emphasis added to highlight areas of concern):

“For the purpose of this Guidance Note, outside business activities include any business activity conducted outside of the Dealer Member by an approved person, for which direct

or indirect payment or compensation is received or expected, *as well as any other activity* by which a potential conflict of interest or client confusion may arise.” (*emphasis ours*)

And:

“The amendments codify IIROC expectations that Registered Representatives and Investment Representatives must disclose all outside business activities to their Dealer Member and obtain the approval of the Dealer Member *before* engaging in any outside business activities.” (*emphasis ours*)

And:

“Dealer Members are reminded that any outside business activity that places an approved person in a position of influence over a client *or potential client* must be disclosed, whether or not it is a paid position. Unpaid social, charitable and/or religious service is generally not considered employment or a business activity and therefore need not be disclosed on NRD. It should be noted however, that this does not extend to situations where an individual sits on the board (or similar body) of any organization, including charities or other social or religious organizations; such situations must be disclosed.” (*emphasis ours*)

Our concern is that approved persons can come into regular contact with what could be described as “potential clients” at any time outside work, including on public transit, in sports clubs, or at school or other events. Indeed, member firms often encourage charitable, sporting, cultural and other social involvement as a way to give back to the communities in which they operate and to contribute to the reputation of their firm and, by extension, industry.

**Charities:** The Notice recognizes that unpaid social, charitable and/or religious service would generally not need to be disclosed, presumably as many with whom an approved person would come into contact would not know a regularly-seen approved person’s position or employer, and, even if they did, would not experience confusion. We believe that a reasonable person would no more expect registered or investment representatives to provide professional financial advice, for which they typically would be compensated, than the person would expect passing acquaintances, who are doctors, lawyers or other professionals, to provide free medical, legal or other professional advice outside of their office.

**Executorship:** Executorships are cases where friends and relatives are potential clients. It can be the case that an approved person will not know or may not remember that he or she has been named an executor of a will and will not be in a position to disclose or seek approval on this before the fact.

**Board participation:** We think that sitting on the board of charitable, social or other not-for-profit organizations is not a type of activity that is likely, in the ordinary course, to give rise to potential conflicts of interest given that board decision-making is by definition consensual or majority-based rather than directive by a single member. The requirement to disclose and

seek approval of an approved person's membership on a not-for-profit board, in fact, may be seen as an inappropriate invasion of the person's privacy outside of work, especially to the extent that the organization relates to any of the 12 groups whose rights are protected under human rights legislation. It should be sufficient that approved persons be reminded of their responsibilities to meet ethical standards and not engage in activity that may reflect poorly on the Dealer Member or the industry in conduct unbecoming or detrimental to the public interest or that may cause consumer confusion.

We believe that this is the approach adopted in the U.S. Financial Industry Regulatory Authority (FINRA) Rule 3270, which requires registered persons to provide their firms with prior written notice of any outside business activity, but does not include non-business outside involvements in the definition of outside business activity or require disclosure, approval and reporting of such activities. This is evident in question 13 – Disclosure of Other Business – in the U.S.'s U4 form – Uniform Application for Securities Industry Registration or Transfer, which says the following:

“Are you currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise? ***(Please exclude non-investment-related activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.)*** If YES, please provide the following details: the name of the other business, whether the business is investment-related, the address of the other business, the nature of the other business, your position, title, or relationship with the other business, the start date of your relationship, the approximate number of hours/month you devote to the other business, the number of hours you devote to the other business during securities trading hours, and briefly describe your duties relating to the other business.”

**Recommendation:** The Notice should clarify that involvement in non-business outside activities, such as community, charitable, social, etc. participation, where there is no remuneration, should ***not*** be subject to the disclosure, approval, record-keeping and National Registration Database (NRD) reporting requirements ***unless***

- Individuals in outside non-business activities, or the organizations of which the individuals are a part, are – or are formally being marketed or prospected as – clients

OR

- The approximate number of hours devoted solely to the particular activity on a standard work week basis is greater than 10% on average of hours worked per week.

Consistent with this, we believe that reference in paragraph 2 of page 4 of the Request for Comments (page 2 of the Draft Guidance Note) should be amended as follows: “For the purpose of this Guidance Note, outside business activities include any business activity conducted outside of the Dealer Member by an approved person, for which direct or indirect payment or compensation is received or expected, ~~as well as any other activity by which a potential conflict of interest or client confusion may arise.~~” (proposed amendments in strike-out).

Also, paragraph 5 on page 8 of the Request for Comments (page 6 of the Draft Guidance Note) should be amended to avoid reference to potential clients, which are almost limitless, as follows: “Dealer Members are reminded that any outside business activity that places an approved person in a position of influence over a client or ~~potential~~ **future** client must be disclosed, whether or not it is a paid position.” (emphasis added), where ‘future client’ means once a registrant is formally marketing or prospecting an individual or organization (e.g., a KYC is being prepared)

In participating in such non-business outside work activities (involvement in charities or other community activities, whether on a board or in another capacity, and executorships), the approved persons must be able to confirm, if asked, that any such activities:

1. Are compatible with both the letter and spirit of the ethical standards of Dealer Member Rules 18.14(1) (e) and 29.1;
2. Do not materially impair the Dealer Member’s “duty of care” to its clients, preventing the Registered Representative from providing fully-informed and unbiased counsel to his or her clients;
3. Do not involve the use of client information; and
4. Are clearly outside the Dealer Member, e.g., do not involve other than inconsequential use of Dealer Member items, e.g., a golf umbrella or shirt with company logo as prizes for a charity.

The Dealer Member will ensure that the above clarification forms part of the Dealer Member’s policies and procedures and, when annually reminding employees of the importance of meeting the letter and spirit of Dealer Member Rules 18.14(1) (e) and 29.1, will:

- Prompt the approved person to notify the Dealer Firm of any changes in outside business activities or his/her role played in the approved activity, and of the need to advise the Dealer Firm before engaging in any outside business activity (or on being hired by a new Dealer Member when such activities are already underway);
- Repeat that for non-business outside activities *not* to be disclosed and approved, the activities must be undertaken in a way that is consistent with ethical standards, avoids consumer confusion and does not reflect poorly on the Dealer Member or the industry; and
- If an approved person has a question in regards to her or his non-business outside pursuits and/or should the approved person’s involvement in charitable or community activities become more material and/or change in character, remind him or her to speak with a named contact or person in an assigned role for guidance on whether/how the non-business outside activity should be disclosed, approved and reported.

## 2. Technical Recommendations

The following recommendations, we suggest, are both consistent with the purpose of the identification and disclosure of outside business activities, and more straightforward from a compliance perspective:

1. ***“Item 10 of Form 33-109F4 ... Individuals must treat each employment or outside business activity as a separate item and therefore, make separate entries addressing all elements ...*** We believe, where an individual plays a similar role in a number of affiliate/related/subsidiary companies of the Dealer Member, the individual should be able simply to include these affiliated roles in the Description of Duties section for their sponsoring firm in Item 10, with such information as the type of business, title/position and estimated time per week devoted solely to the outside business activity on a weekly basis.

As well, since insurance activities with an affiliate can be disclosed in the NRD under Item 13 – Regulatory Disclosure *only* (rather than under both Item 10 – Current Employment and Item 13 – Regulatory Disclosure), we would appreciate the same consideration be given to securities activities with a foreign affiliate of the member firm (e.g., U.S. dual licensing).

2. ***“The amendments codify IIROC expectations that Registered Representatives and Investment Representatives must disclose all outside business activities to their Dealer Member and obtain the approval of the Dealer Member before engaging in any outside business activities” (emphasis added):*** It is possible that an outside business activity may already be being engaged in prior to an Approved Person joining a Dealer Member. We therefore suggest that the draft guidance be amended to require, in the case of Approved Persons already engaged in a disclosable and approvable activity at the commencement of employment, to report it to their new employer within the specified time period.
3. ***“... changes to this item must be reported within seven (7) days of the change, pursuant to section 4.1 of National Instrument 33-109 – Registration Information Requirements (“NI 33-109”).*** Because we perceive the risk of a three-day reporting difference is negligible, we believe that the Notice should require reporting within ten (10) days, consistent with the 10-day reporting delay in other rules, to continue IIROC efforts to standardize where possible, simplifying compliance for Dealer Members and their employees. For example, filing timelines in NI 33-109 will be changed to 10 days as of July 11, 2011.

For greater clarity, the notification requirement should apply to the approved person’s obligation to disclose within 10 days of being notified of a new activity or change in activity, and the Dealer Member’s obligation to update the NRD should be within 10 days of being notified by the approved person of a change.

4. ***“... compelling evidence of the due diligence performed as part of their outside business activity approval process.”*** We recommend that the word ‘compelling’ be deleted as unclear and unnecessary given that “The Corporation reserves the right to satisfy itself as to the sufficiency of that evidence.”

### 3. Other

1. We note that the proposed rules on which IIAC commented last year were in regards to personal financial dealing, as well as outside business activities (IIROC Rules Notice 10-0155), and that the current draft Notice reflects outside business activities only. We hope that our comments on personal financial dealing as set out in our August 27, 2010 submission to IIROC on the subject will be taken into consideration (<http://www.iiac.ca/system/resources/766/original/request-for-comments-rules-notice-10-0155-proposed-personal-financial-dealing-and-outside-business-activities-proposals-08-27-2010.pdf?1302213619>), however, wanted to draw two matters to IIROC's attention with respect to the outside business activities Guidance Note. In our response, we requested that the definition of Related Persons be expanded beyond the definition in the *Income Tax Act* (ITA), which is too restrictive, to include at a minimum all extended family members, such as aunts, uncles and cousins. We also recommended that the definition of a Related Person as defined under the ITA be included in the Proposed Rule or as an attachment to the Proposed Rule for ease of reference by members. We request that both of these changes proceed.
2. We discussed the requirement to enter the name of the approving party in NRD and agreed that a role only would be more appropriate to avoid issues with staff changes, etc. We recommend that the requirements, as described under section 5. *Conflict of interest* of the Guidance Notice – "(ii)...Confirmation must include the name and title of the officer or Supervisor who performed the review" – as well as Schedule G of the updated Form 33-109F4, be amended to simply require the title of the officer. Should IIROC have questions with any particular approval, the approver can be easily verified with the Dealer Firm.

We hope that you find our comments helpful and would be pleased to elaborate on our issues at your convenience.

Yours sincerely,

