MEMBER REGULATION

INVESTMENT DEALERS ASSOCIATION OF CANADA

notice

ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

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MR0230

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ATTENTION:
Ultimate Designated Persons
Chief Financial Officers
Panel Auditors

Distribute internally to:

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Recognition of Contingent Loss arising from Litigation

The purpose of this Notice is to provide guidance on the capital requirements for contingent liabilities involving lawsuits where there is an enforceable judgment against the Member.

Capital requirement for Contingent Liability

For regulatory accounting purposes, the IDA staff considered the issue of whether capital charges should apply at the time of the judgment, and determined, based on the potential for the judgment amount becoming a definite liability, that a capital charge subject to the exception listed below, must be provided.

Adverse judgment and Member does not intend to appeal

In instances where there is an adverse judgment and the Member does not intend to appeal the decision, the IDA will require the Member to accrue a loss provision equal to the judgment amount.

Adverse judgment and Member intends to appeal

Where the Member intends to appeal the decision, the Member is required to:

a) Notify the IDA of its intention to appeal, and

b) Provide within 30 days of the judgment date, a legal opinion by an independent counsel outlining clear errors of fact and/or law that constitutes a reversible error on appeal. The IDA would regard an independent counsel as a person or firm that is not a party to the proceedings or the appeal.

If such a legal opinion is provided to the IDA, no capital charge is required until the time that the appeal is heard and ruled upon. If however, the Member does not obtain such an opinion or decides not to obtain an opinion within this 30- day period, the IDA will require the Member to either accrue a loss provision or provide a capital charge equal to the judgment amount less any loss provisions that have already been accrued by the Member until such time that the appeal is heard and ruled upon.

All Members are reminded:

a) the IDA may designate the firm in Early Warning Level 1 or 2, at its discretion, and impose applicable sanctions, if there is concern as to the future impairment in the Member's regulatory capital due to the judgment.

b) of the requirement to report any adverse judgment to the IDA pursuant to Policy 8, "Reporting and Record Keeping Requirements".