

MEMBER REGULATION



INVESTMENT
DEALERS
ASSOCIATION
OF CANADA



ASSOCIATION
CANADIENNE DES
COURTIERS EN
VALEURS MOBILIÈRES

notice

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GUIDELINES FOR THE ELECTRONIC DELIVERY OF DOCUMENTS

This Notice sets forth the policy of the Investment Dealers Association applicable to the electronic delivery of information between Member firms and their clients as required or permitted by the By-laws, Regulations, Interpretations, Policies and Forms of the Association.

GENERAL PRINCIPLE

The Association will permit Members to electronically transmit documents that they are required or permitted to furnish to clients under the rules of the Association, provided they consider the Canadian Securities Administrators' ("CSA") National Policy 11-201 Delivery of Documents by Electronic Means, which states the CSA's views on how obligations imposed by Canadian securities legislation to deliver documents can be satisfied by electronic means. Members are urged to review National Policy 11-201 Delivery of Documents by Electronic Means, published on December 17, 1999, Issue 22/50, in its entirety to understand the view of the CSA as to the basic components which would satisfy good delivery through electronic means.

It should be recognized, however, that National Policy 11-201 is not a mandatory rule. As a result, the National Policy does not mandate any particular procedure or rules regarding the use of the electronic medium by market participants. The intent of the Policy is to instead set out *guidelines* while allowing securities participants to determine how they wish to comply with corporate and securities law requirements for the delivery of materials to securityholders.

The Association, like the CSA, recognizes that technology is an important tool and that electronic delivery of documents should be encouraged as it provides a more cost efficient, timely and widespread manner of disseminating information than the current paper regime.

Protection of Personal Information

With respect to personal financial information, such as confirmations and account statements, Members sending this information through electronic means should take reasonable precautions to ensure the integrity, confidentiality, and security of that information. Members transmitting personal financial information electronically must tailor those precautions to the medium used in order to ensure that the information is reasonably secure from tampering or alteration.

IDA Review of Member's Implementation of Electronic Delivery System

Members shall notify the Association prior to the implementation of an electronic delivery system. Such notification shall include a description outlining the degree to which the guidelines contained in CSA National Policy 11-201 are intended to be satisfied through the Member's electronic delivery system and an explanation of any deviations from those guidelines. The Member shall also include the following information and documents:

- The documents to be transmitted electronically and the information contained therein;
- The method of electronic delivery of documents;
- A copy of electronic forms and/or Web site screens to be utilized by the Member;
- Procedures for obtaining client consent and the form of such consent;
- Procedures outlining adequate record retention and audit trails;
- Back-up procedures in the event of technical failure(s);
- Intended time periods of the availability and access to electronic documents;
- Procedures to address the availability of access to third parties (i.e. custodians, executors, lawyers, accountants of clients, etc.); and
- Members should identify situations where it is important that notice to clients is appropriately acknowledged and back-up procedures are in place to ensure that the matter comes to the attention of the client (see below, *IDA By-laws, Regulations and Policies that Require or Permit Delivery of Information Between Member Firms and Clients*).

Amendment to Regulation 200.1(h) – Electronic Confirmations

On January 19, 2000, the Board of the Association approved an amendment to Regulation 200.1(h), which provided that confirmations by electronic means by Members were permissible to customers where such customers were acceptable counterparties or acceptable institutions. The provision required that the Member apply to the Association for permission and supplied, among other things, a description of the system and data to be communicated. As a result of this Notice, the Board repealed this paragraph and, subject to securities commission approval, has proposed that this paragraph be replaced with a reference to the guidelines contained herein.

Summary of National Policy 11-201 Delivery of Documents by Electronic Means

As a general principle, the delivery requirements of Canadian securities legislation may be satisfied by electronic means. The CSA state that there are four components to electronic delivery that should be satisfied in order to constitute good delivery:

1. *Notice of Delivery*

The intended recipient of the document should have notice of the electronic delivery of the document. Notice may be effected in any manner, electronic or non-electronic, such as electronic mail, telephone or communication in paper form.

Some forms of electronic delivery may not require a separate notice, such as delivery by electronic mail as the transmission of the electronic mail itself will be sufficient notice to a recipient. However, if delivery is by means of placing the document on a Web site that recipients can download, notice should be given in order for recipients to be aware of its availability.

2. *Access*

The intended recipient of the document should have easy access to the document. Consequently, deliverers should ensure that electronic access to documents is not burdensome or overly complicated and that the document should remain available to recipients for an appropriate or relative period of time. The recipient should be able to retain a permanent record of the document. Deliverers should ensure that a paper version of every document delivered by electronic means is available upon request by a recipient. However, Members are not required to make available a paper version in the conduct of newly established businesses or divisions that operate only on an electronic basis without paper. These registrants, however, are cautioned that they remain responsible for continued compliance with all applicable securities legislation in the conduct of their business and a refusal to deliver a paper version of documents may constitute a breach of their obligations under securities legislation. Consequently, it is recommended that Members continue to make available, at no cost to clients, paper versions of documents delivered electronically if requested to do so.

3. *Evidence of Delivery*

Consent received from the recipient is evidence of delivery. In the absence of consent, deliverers should obtain evidence of delivery of a document to a recipient. For example, evidence that a document was sent via e-mail and not returned may be sufficient.

4. *Delivery of an Unaltered Document*

A deliverer should ensure, to the extent possible, that no alteration or corruption of a document occurs during electronic delivery. Deficiencies in the completeness or integrity of an electronically delivered document will raise questions as to whether the document has been delivered.

Consent

A deliverer may satisfy the notice, evidence and access components of electronic delivery by obtaining, in accordance with section 2.5 of the National Policy, the informed consent of an intended recipient and then delivering the document in accordance with that consent. The consent gives rise to the inferences that, if a document is sent by electronic delivery in accordance with the terms of the consent:

- (a) the recipient will receive notice of the electronic delivery of the document;
- (b) the recipient has the necessary technical ability and resources to access the document; and
- (c) the recipient will actually receive the document.

The CSA also permit the use of "blanket" consent where appropriate. This will permit a deliverer to obtain blanket consent rather than a separate consent each time a client invests in a new issuer's securities or purchases new funds through a broker or dealer.

If a deliverer intended to effect electronic delivery by placing a document on a Web site, the consent would indicate this fact and indicate how the deliverer would bring to the attention of the intended recipient that a document was available. Alternatively, the consent could evidence the agreement of the recipient to monitor the deliverer's Web site on a regular basis, thereby eliminating any need for the deliverer to provide separate notice to the recipient.

Consent is not necessary but the deliverer then risks the burden of proving that the intended recipient had notice of, and access to, the document and that the intended recipient actually received the document.

Appendix A of the National Policy contains a sample consent form that would evidence understanding of, and agreement to, the information that the CSA recommend that a consent should address. The CSA encourage deliverers to make use of this or a similar type of consent form.

A client may revoke consent at any time. Members are reminded that the client has the sole discretion to choose delivery of documents electronically or in paper form.

Timing of Electronic Delivery

Despite the possible capability of delivering the electronic version of materials to clients sooner than the paper version of such materials, the National Policy states that delivery should be made contemporaneously.

Outstanding Matters

The CSA intend to pursue matters not currently addressed in National Policy 11-201 such as the establishment of a mechanism by which issuers and other market participants can obtain relief from certain provisions in securities legislation that currently preclude the use of electronic methods of delivery (i.e. the use of terms such as "prepaid mail") and the examination of the use of authentication technologies such as "digital signatures".

Electronic Transmission of Non-Required Disclosure

The guidance provided above is intended to permit the compliance with required delivery obligations under Canadian securities legislation when using electronic means. The National Policy does not apply to the electronic delivery of non-required information that in some cases is being provided voluntarily by Members to clients, in that it is not necessary (although it is, of course, permitted) to conform the electronic delivery of such information to the guidance provided.

With respect to the permissibility of using various electronic media to disseminate advertisements for investment services or other information that is not subject to a delivery requirement, such communications are permissible, subject to the same requirements and restrictions that apply to such communications in paper.

IDA By-laws, Regulations and Policies that Require or Permit Delivery of Information Between Member Firms and Clients

A list of current By-laws, Regulations and Policies of the Association that require or permit communications between Members and their clients for which electronic delivery may be used in accordance with the standards in the National Policy is set forth below. The summary of delivery obligations provided is intended for reference only, and is not intended to be a statement of all requirements under the IDA By-laws, Regulations and Policies. The interpretation set forth in this Notice will also apply to a new regulation, by-law, policy or amendment to existing rules that require or permit communication between Members and their clients unless the Association specifies otherwise at the time of adoption of the By-law, Regulation or Policy.

Where the provision currently refers to written communication or delivery, Members may interpret such provision to expressly include electronic communication or delivery.

As a result of the CSA's continued examination of the use of digital signatures, any agreements/contracts referred to in the Association's By-laws, Regulations and Policies that require a client's signature must continue to be executed in paper form. Similarly, where provisions refer to a client's "consent", these documents shall also be in paper form. However, references to a "written acknowledgement" by the client or a "notice" furnished by the client or the Member, may be supplied electronically.

Confirmation of Over-the-Counter Options – Regulation 100.11(l)(i):

100.11(l)(i) – Every over-the-counter option shall be confirmed in writing as between the parties, such confirmation to be mailed or delivered on the day of the transaction.

Members are advised that all disclosures required on confirmations, including the fine print on the back of the confirmation, must be included if delivered electronically.

Confirmations – Regulation 200.1(h):

200.1(h) – Written confirmations are required of all purchases and sales of securities and of all trades in commodity futures contracts and commodity futures contract options and copies of notices of all other debits and credits of money, securities, property, proceeds of loans and other items for the account of customers. Such written confirmations are to be sent promptly to customers.

Members are advised that all disclosures required on confirmations, including the fine print on the back of the confirmation, must be included if delivered electronically.

Where a client has consented to waive the requirement for a Member to provide a trade confirmation if a managed account is managed by an external portfolio manager, the client may terminate the waiver by notice in writing. The termination notice shall be effective upon receipt for the written notice by the Member, for trades following the date of receipt.

Customer Account Statements - Monthly Statements – Regulation 200.1(c):

200.1(c) – Monthly statements must be sent to customers where a transaction has taken place, otherwise, quarterly.

Members are advised that all disclosures required on statements, including the fine print on the back of the statement, must be included if delivered electronically.

Disclosure of Financial Condition of Members to Clients – Regulation 1400.1:

1400.1 – Each Member must make available to clients, on request, a statement of its financial condition as of the close of its latest financial year.

Disclosure of Partners, Directors and Senior Officers – Regulation 1400.6:

1400.6 – Each Member must make available to clients, on request, a current list of the names of its partners or its directors and senior officers made up as of a recent date.

Discretionary Accounts – Regulations 1300.5(d), 1300.5(e) and Policy No. 2 Minimum Standards for Retail Account Supervision:

1300.5(d) – A discretionary account may only be terminated by the customer by notice in writing by the customer and such notice is effective on receipt by the Member.

1300.5(e) – A discretionary account may only be terminated by the Member by notice in writing by the Member and such notice shall be effective not less than 30 days from the date of mailing the notice to the customer by prepaid ordinary mail.

Policy No. 2 Minimum Standards for Retail Account Supervision, VII. Discretionary Account Supervision, Part D - Either the client or the Member may cancel the authorization for discretion provided that it is in writing. The Member must give the client 30 days notice.

Futures Contract Agreement or Futures Contract Options Trading Agreements – Regulations 1800.2(e)(ii), 1800.2(f)(ii) and Policy No. 2 Minimum Standards for Retail Accounts Supervision:

1800.2(e)(ii) - A Member may only trade in futures contracts if the Member distributes to each customer, prior to opening a futures contract options account, a copy of the current risk disclosure statement of the Member and obtains from the customer written acknowledgement of receipt thereof and thereafter distributes to each customer any amendments to the risk disclosure statement.

1800.2(f)(ii) – A Member may only trade in futures contract options if the Member distributes to each customer, prior to opening a futures contract options account, a copy of the current risk disclosure statement of the Member and obtains from the customer written acknowledgement of receipt thereof and thereafter distributes to each customer any amendments to the risk disclosure statement.

Policy No. 2 Minimum Standards for Retail Accounts Supervision, VI. Futures/Futures Options Account Supervision - All clients must acknowledge in writing receipt of the information statement and summary disclosure statements prior to trading.

Introducing/Service Arrangements – By-laws 35.2(k), 35.3(k), 35.3(m), 35.4(k), 35.4(m), 35.5(k), 35.5(m) and 35.6(b)

Introducing Type 1 Arrangement 35.2(k) – At the time of opening each client account, the introducing broker shall advise the client of the introducing broker's relationship to the carrying broker and of the relationship between the client and the carrying broker.

Introducing Type 2 Arrangement 35.3(k) – At the time of opening each client account, the introducing broker shall obtain from the person opening the account an acknowledgement, in a form satisfactory to the Vice-President, Financial Compliance, that the introducing broker has advised the client of the introducing broker's relationship to the carrying broker and of the relationship between the client and the carrying broker.

35.3(m) – At least annually, the introducing broker shall provide written disclosure, in the form satisfactory to the Vice-President, Financial Compliance, to each of its clients whose accounts are being carried by the carrying broker.

Introducing Type 3 Arrangement 35.4(k) - At the time of opening each client account, the introducing broker shall obtain from the person opening the account an acknowledgement, in a form satisfactory to the Vice-President, Financial Compliance, that the introducing broker has advised the client of the introducing broker's relationship to the carrying broker and of the relationship between the client and the carrying broker.

35.4(m) - At least annually, the introducing broker shall provide written disclosure, in the form satisfactory to the Vice-President, Financial Compliance, to each of its clients whose accounts are being carried by the carrying broker.

Introducing Type 4 Arrangement 35.5(k) - At the time of opening each client account, the introducing broker shall obtain from the person opening the account an acknowledgement, in a form satisfactory to the Vice-President, Financial Compliance, that the introducing broker has advised the client of the introducing broker's relationship to the carrying broker and of the relationship between the client and the carrying broker.

35.5(m) - At least annually, the introducing broker shall provide written disclosure, in the form satisfactory to the Vice-President, Financial Compliance, to each of its clients whose accounts are being carried by the carrying broker.

Foreign Affiliate Arrangement 35.6(b) – The Member shall ensure that the foreign affiliate, at least annually, provides written disclosure, in a form satisfactory to the Vice-President, Financial Compliance, to each of the foreign affiliate's clients whose accounts are being carried by the Members.

Managed Accounts – Regulations 1300.5(d), 1300.5(e) and Policy No. 2 Minimum Standards for Retail Account Supervision:

1300.5(d) – A managed account may only be terminated by the customer by notice in writing by the customer and such notice is effective on receipt by the Member.

1300.5(e) – A managed account may only be terminated by the Member by notice in writing by the Member and such notice shall be effective not less than 30 days from the date of mailing the notice to the customer by prepaid ordinary mail.

Policy No. 2 Minimum Standards for Retail Account Supervision, VII. Discretionary Account Supervision, Part H – The Member must receive and acknowledge in writing cancellation by the client. The Member may terminate the arrangement in writing provided that it is not earlier than 30 days from the time of the mailing.

Managed Accounts, Allocation of Investment Opportunities – Regulation 1300.12:

1300.12 – The Member must have standards directed to ensuring fairness in the allocation of investment opportunities among its managed accounts and a copy of the policies established shall be furnished to each client.

Options – Regulation 1900.2(f):

1900.2(f) – The Member must deliver or send by prepaid mail to each customer before their first trade of an option a copy of the current disclosure statement and deliver or send by prepaid mail each new disclosure statement.

Service Fees – By-law 29.8:

29.8 – No Member shall impose on any customer or deduct from the account of any customer any service fee or charge relating to services provided by the Member for the administration of the customer's account unless written notice shall have been given to the customer on the opening of the account or not less than 60 days prior to the imposing or revision of the fee or charge.