

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

**OVER-THE-COUNTER SECURITIES FAIR PRICING RULE
AND CONFIRMATION DISCLOSURE REQUIREMENTS**

PROPOSED AMENDMENTS

1. A new Dealer Member Rule regarding the fair pricing of over-the-counter securities is enacted as follows:

“RULE XXXX

Fair Pricing of Over-the-Counter Securities

1. For purposes of this rule, “over-the-counter securities” does not include:
 - (a) primary market transactions in securities; and
 - (b) over-the-counter derivatives which are non-standardized contracts customized to the needs of a particular client and for which there is no secondary market.
2. Every Dealer Member, when executing a transaction in over-the-counter securities for or on behalf of a customer as agent, shall make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.
3. A Dealer Member must not:
 - (a) purchase over-the-counter securities for its own account from a customer or sell over-the-counter securities for its own account to a customer except at an aggregate price (including any mark-up or mark-down) that is fair and reasonable, taking into consideration all relevant factors, including the fair market value of the securities at the time of the transaction and of any securities exchanged or traded in connection with the transaction, the expense involved in effecting the transaction, the fact that the Dealer Member is entitled to a profit, and the total dollar amount of the transaction; and
 - (b) purchase or sell over-the-counter securities as agent for a customer for a commission or service charge in excess of a fair and reasonable amount, taking into consideration all relevant factors, including the availability of the securities involved in the transaction, the expense of executing or filling the customer's order, the value of the services rendered by the Dealer Member, and the amount of any other

compensation received or to be received by the Dealer Member in connection with the transaction.”

2. Dealer Member Rule 29 is amended by repealing sections 29.9 and 29.10 as follows:

“29.9. A Dealer Member which purchases debt securities taken in trade shall purchase the securities at a fair market price at the time of purchase.

A Dealer Member, in the course of a distribution of a fixed price offering of debt securities, shall ensure that any purchase of other debt securities taken in trade in relation to that offering is done at fair market price.

29.10. For the purpose of Rule 29.9, unless the subject matter or context otherwise requires, the expression:

"Taken in Trade" means the purchase by a Dealer Member as principal, or as agent, of a debt security from a customer pursuant to an agreement or understanding that the customer purchase other debt securities from or through the Dealer Member;

"Fair market Price" means a price not higher than the price at which the securities would be purchased from the customer or from a similarly situated customer in the ordinary course of business by a dealer in such securities in transactions of similar size and having similar characteristics but not involving a security taken in trade."

3. Dealer Member Rule 200.1(h) is repealed and replaced as follows:

“(h) Copies of confirmations 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 required to be sent promptly to customers and shall set forth at least the day and the stock exchange or commodity futures exchange upon which the trade took place; the commission, if any, charged in respect of the trade; the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade; the name of the salesman, if any, in the transaction; the name of the dealer, if any, used by the Dealer Member as its agent to effect the trade; and,

In the case of a trade in securities:

(1) The quantity and description of the security,

- (2) The consideration,
- (3) Whether or not the person or company registered for trading acted as principal or agent,
- (4) If acting as agent in a trade upon a stock exchange the name of the person or company from or to or through whom the security was bought or sold,

In the case of trades in commodity futures contracts:

- (5) The commodity and quantity bought or sold,
- (6) The price at which the contract was entered into,
- (7) The delivery month and year,

In the case of trades in commodity futures contract options:

- (8) The type and number of commodity futures contract options,
- (9) The premium,
- (10) The delivery month and year of the commodity futures contract that is the subject of the commodity futures contract option,
- (11) The declaration date,
- (12) The striking price;

And in the case of trades in mortgage-backed securities and subject to the proviso below:

- (13) The original principal amount of the trade,
- (14) The description of the security (including interest rate and maturity date),
- (15) The remaining principal amount (RPA) factor,
- (16) The purchase/sale price per \$100 of original principal amount,
- (17) The accrued interest,
- (18) The total settlement amount,
- (19) The settlement date,

Provided that in the case of trades entered into from the third clearing day before month end to the fourth clearing day of the following month, inclusive, a preliminary confirmation shall be issued showing the trade date and the information in clauses (13), (14), (16) and (19) and indicating that the information in clauses (15), (17) and (18) cannot yet be determined and that a

final confirmation will be issued as soon as such information is available. After the remaining principal amount factor for the security is available from the central payor and transfer agent, a final confirmation shall be issued including all of the information required above;

And in the case of stripped coupons and residual debt instruments:

- (20) The yield thereon calculated on a semi-annual basis in a manner consistent with the yield calculation for the debt instrument which has been stripped,
- (21) The yield thereon calculated on an annual basis in a manner consistent with the yield calculation for other debt securities which are commonly regarded as being competitive in the market with such coupons or residuals such as guaranteed investment certificates, bank deposit receipts and other indebtedness for which the term and interest rate is fixed.

And in the case of all other debt instruments, other than stripped coupons and residual debt instruments:

- (22) The yield to maturity calculated in a manner consistent with market conventions for the security traded. Where the debt security is subject to call prior to maturity through any means, a notation of "callable" shall be included; and for debt securities carrying a variable coupon rate, the following notation must be included: "The coupon rate may vary."

And in the case of all over-the-counter traded securities where the amount of the mark-up or mark-down, commissions and other service charges applied by the Dealer Member has not been disclosed on the confirmation sent to retail clients, a statement as follows:

- (23) "The investment dealer's remuneration on this transaction has been added to the price in the case of a purchase or deducted from the price in the case of a sale."

Each such confirmation shall, in respect of transactions involving securities of the Dealer Member or a related issuer of the Dealer Member, or in the course of a distribution to the public, securities of a connected issuer of the Dealer Member, state that the securities are securities of the Dealer Member, a related issuer of the Dealer Member or a connected issuer of the Dealer Member, as the case may be. For the purposes of this paragraph, the terms "related issuer" and "connected issuer" shall have the same meaning as ascribed to them in the Regulation made under the *Securities Act* (Ontario).

Attachment A

In the case of a Dealer Member controlled by or affiliated with a financial institution, the relationship between the Dealer Member and the financial institution shall be disclosed on each confirmation slip in connection with a trade in securities of a mutual fund sponsored by the financial institution or a corporation controlled by or affiliated with the financial institution.

The Corporation's policies with respect to electronic delivery of documents are set out in the applicable guideline.

Notwithstanding the provisions of this Rule 200.1(h), a Dealer Member shall not be required to provide a confirmation to a client in respect of a trade in a managed account, provided that:

- (i) Prior to the trade, the client has consented in writing to waive the trade confirmation requirement;
- (ii) The client may terminate a waiver by notice in writing. The termination notice shall be effective upon receipt of the written notice by the Dealer Member, for trades following the date of receipt;
- (iii) The provision of a confirmation is not required under any applicable securities law, regulation or policy of the jurisdiction in which the client resides or the Dealer Member has obtained an exemption from any such law, regulation or policy by the responsible securities regulatory authority; and
- (iv)
 - (a) where a person other than the Dealer Member manages the account
 - (A) a trade confirmation has been sent to the manager of the account, and
 - (B) the Dealer Member complies with the requirements of Rule 200.1(c); or
 - (b) where the Dealer Member manages the account:
 - (A) the account is not charged any commissions or fees based on the volume or value of transactions in the account;
 - (B) the Dealer Member sends to the client a monthly statement that is in compliance with Rule 200.1(c) and contains all of the information required to be contained in a confirmation under this Rule 200.1(h) except:

Attachment A

- (1) the day and the stock exchange or commodity futures exchange upon which the trade took place;
 - (2) the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade;
 - (3) the name of the salesman, if any, in the transaction;
 - (4) the name of the dealer, if any, used by the Dealer Member as its agent to effect the trade; and,
 - (5) if acting as agent in a trade upon a stock exchange the name of the person or company from or to or through whom the security was bought or sold,
- (C) the Dealer Member maintains the information not required to be in the monthly statement pursuant to paragraph (B) and discloses to the client on the monthly statement that such information will be provided to the client on request.”