

**Investment Dealers Association of Canada**  
**Response to the**  
**2006 Alberta Securities Commission Oversight**  
**Review**  
**Prairie Regional Office**

**July 11, 2007**

## Summary Response to the ASC Oversight Review of the Calgary office of the IDA

### Background

The IDA has a long and productive regulatory partnership with the Alberta Securities Commission (ASC) which has benefited the investing public in Alberta.

On September 10, 1987, the ASC recognized the IDA as a self-regulatory organization (SRO) for the limited purpose of the registration of its members and authorized and appointed the IDA to administer Part 5 of the Act (Registration) with respect to its members. The transfer of registration authority was re-issued on November 3, 1998.

On November 23, 1999, the ASC recognized the IDA as a self-regulatory organization (SRO) pursuant to the Securities Act, S.A. 1981. c. S-6.1. The Securities Act requires that a recognized SRO:

*“shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with the bylaws, rules, regulations, policies, procedures, interpretations and practices of the self-regulatory organization.”*

On June 5, 2001, the IDA signed the CSA Coordination of Oversight Agreement which described the oversight plan developed by the CSA. Pursuant to the terms of the agreement the IDA has:

- Filed all its by-laws, policies and regulations for approval according to the Joint Rule Protocol,
- Filed an annual self assessment for each calendar year,
- Filed annually and quarterly 19 separate schedules summarizing sales compliance, registration and enforcement activities,
- Submitted for review and approval any IDA material changes to IDA operations<sup>1</sup>,
- Cooperated with the ASC respecting three previous on-site examinations of the IDA Calgary office:
  - Between October 2000 and September 2001 (Calgary office),
  - Between May 2002 and November 2002 (Enforcement only) and
  - Between October 2003 and July 2004 (Calgary office)

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<sup>1</sup> Two examples of material changes to IDA operations were the decision to provide supervision of the Calgary office from Vancouver in February 2002, and the decision to create a separate and independent trade association in December 2005.

In terms of Enforcement, the Alberta Securities Act provides three important powers to the IDA in Alberta that are not available to SROs in any other Canadian jurisdiction:

- the power to file disciplinary decisions with the courts so they have the same effect as a court order in order to more effectively collect fines from individuals who are no longer in the industry, and
- the power to compel documents and testimony from third parties at IDA discipline hearings.

We believe these powers increase our effectiveness in protecting investors in Alberta and we have advocated their adoption in other Canadian jurisdictions.

## **The 2006-07 Oversight Review**

### Format of the Report

According to the on-site examination of the Calgary office, completed in July 2004, the ASC was overall, satisfied with the operations of the Sales Compliance, Financial Compliance, Registration, Membership and Enforcement departments. The report was formatted as a “Report Card” highlighting both positive and negative aspects of the regulatory operations. While the rest of the CSA “Principal Regulators”, for the purposes of on-site examinations (the BCSC for Vancouver, the OSC for Toronto and the AMF for Montreal), have decided to continue with the “Report Card” approach, we understand that the ASC has decided to publish its report separately from the other Principal Regulators and in a different format that identifies only deficiencies. We encourage a co-coordinated approach to the CSA oversight of IDA activities and appreciate and encourage the report card approach as a useful management tool to identify not only areas for improvement but also what is working well.

Many IDA staff were interviewed to prepare the Review and to assist the ASC in understanding the processes and issues, which is appropriate. We encouraged our staff to be open and cooperative. The ASC has included and attributed quotes within the document knowing that the document will be made public. We question the utility and fairness of this approach as it may hinder open dialogue in the future.

### Oversight versus Management

CSA oversight must ensure compliance with the terms and conditions of recognition without, in effect, attempting to manage the day-to-day affairs of the SRO. The importance of this distinction was reflected in OSC Staff comments on the criteria for recognition:

“Self-Regulation will work well only if members of an industry believe they have a real responsibility for carrying out self-regulatory activities. Accordingly, a recognized SRO should not be subject to undue second-guessing or micro-management by the OSC. At the same time, the Commission cannot step away from its regulatory responsibilities as established by the Act - **“Recognition of IDA as an SRO – Background to Staff’s Proposal for Initial Recognition Criteria and ongoing Monitoring and Request for Comments” – June 16, 1995.**)

The Oversight Review identifies a number of issues that are the direct responsibility of management. For example: (1) whether there is sufficient communication between Registration, Sales Compliance and Enforcement staff in the Calgary office, (2) whether maternity leaves and internal transfers should be counted in determining staff turnover, (3) whether and the extent to which Calgary staff should be able to consult with IDA staff outside Alberta in making decisions or recommendations, (4) whether there are sufficient staff to manage a volume of work within a defined benchmark, and (5) whether the Managers conduct enough reviews of front-line Examiners work, are all management decisions. While there is no bright line separating management from oversight, nevertheless, we believe for oversight to work effectively, management must be given sufficient flexibility to manage the day-to-day affairs of the SRO.

We appreciate that ASC staff have opinions and suggestions on how we can improve and we are open to that feedback. Fundamentally we believe our operations should be evaluated against the Conditions of Recognition described in Appendix A of the Recognition Order. They are:

*“The IDA acknowledges that the following are conditions of this Recognition and that failure to satisfy those conditions may result in the revocation of this Recognition.*

- a) *The IDA will maintain within the Province of Alberta a staff complement sufficient to ensure that all necessary investigations, disciplinary actions, and enforcement proceedings are conducted and concluded within a reasonable period of time following receipt of a complaint or other information that leads to the investigation, disciplinary action, or enforcement proceeding.*
- b) *The IDA will maintain within the Province of Alberta a staff complement sufficient to ensure that all financial reviews and audits, and sales practices reviews and audits that the IDA is required to perform on its member firms operating in Alberta are performed in a timely and thorough manner.*
- c) *The IDA will not alter, in any material way, its functions or objectives, without the consent of the Commission.*
- d) *The IDA will enter into an agreement with the Commission providing for the ongoing oversight of the self-regulatory function of the IDA. The form and content of the agreement are to be approved by the Executive Director, and that approval will not be unreasonably withheld.”*

We believe we are in compliance with these conditions of recognition. Our staff complement has been increased, our staff is appropriately trained, and the level of turnover is no greater than reasonably expected.

## Supervision of the Calgary Office

Of particular concern is the conclusion by ASC Staff that the Calgary office has not received appropriate attention from the Vice President, Western Canada (who is resident in Vancouver) resulting in “a detrimental impact on organizational cohesion”. This organizational structure has been in place since August 2001. The second triennial Calgary office oversight review, completed in July 2004, made no mention of this organizational structure as a possible deficiency. We believe the Calgary office has received an appropriate level of supervision. We are not aware of any explicit instances in the test samples or any physical findings of the Oversight Review that demonstrate insufficient supervision.

Nevertheless, given the additional work assigned to the Vice President, Western Canada arising from the dual mandate split in early 2006, we decided to increase the management staff in the Calgary office. The high importance attached to this particular issue in the Oversight Review by ASC Staff is an additional reason to move forward with this re-organization. We have taken the first step to increasing and improving the supervision of the Calgary office with the appointment of a Director, Calgary to provide on-site supervision and leadership to the IDA staff in Calgary, effective July 16, 2007.

## Philosophical Differences Concerning the Objectives of Registration

We do not believe there are any philosophical differences between the ASC and the IDA concerning the importance of registration. Registration is a critical component of regulation. To the extent that a different view has been conveyed to ASC Staff, we will work to change that view through a review and revision of our registration procedures.

The IDA has a good record of not allowing people who lack integrity from being allowed to sell securities to the public. One measure of our success is the relatively small number of complaints received against persons we approve compared with the total number of IDA registrants. The ComSet data found in Appendix 1 supports this statement.

We are continuing to improve our registration systems by introducing a Registration Risk Model. The objective of the model is to assess the risk of each individual submission based on a large number of factors including the employee’s firm’s risk profile and filing history, the submission type, the risk of the individuals and the content of the submission. The intention is to give the Registration Officer more information to determine whether the submission deserves extra consideration or if it is routine and can be processed quickly.

In developing the Model, a considerable amount of registration filing history will be collected. We will seek ASC approval for the consequential business process changes.

We will also be able to use the Model to provide feedback to firms as to the accuracy and quality of their submissions over time so that they too can improve their processes.

The objectives are to further improve our regulatory assessment of each submission and to make the registration process more effective in screening out unsuitable applicants.

## Going Forward

The CSA SRO Project Report identified a number of criteria by which to assess the degree of reliance that may be placed on an SRO:

- (1) Governance structure – an SRO or market infrastructure entity should have an appropriate governance structure that allows it to manage conflicts of interest and to ensure different stakeholders are fairly represented;
- (2) Rule-making and policy development processes – the processes for rule-making and policy development should foster investor protection and promote fair, efficient and competitive capital markets;
- (3) Membership or access – an SRO or market infrastructure entity should have processes and policies for granting membership or access to its facilities or regulation services to prevent unfair discrimination among members and to avoid the creation of undue barriers to entry;
- (4) Systems and controls – an SRO or market infrastructure entity should have systems and internal controls to ensure that it is carrying out its functions effectively and efficiently;
- (5) Fees or costs – an SRO or market infrastructure entity’s fee setting process should be fair and the fees proportionate to ensure the entity has adequate financial resources and staffing for performing its functions without creating undue barriers to entry;
- (6) Information sharing and transparency – SROs and market infrastructure entities should, when appropriate, share information with each other and with the securities commissions to the extent possible under applicable laws, to ensure effective oversight, minimize duplications and inconsistencies, and maximize coordination; and
- (7) Accountability to recognizing regulators – an SRO or market infrastructure entity must be accountable to its recognizing regulators by demonstrating that it is meeting its mandate and these high level standards.<sup>2</sup>

We agree with these criteria and we will work with ASC staff to ensure the IDA is fully compliant.

Furthermore, we believe we must be accountable to the ASC and be able to demonstrate that we are meeting the standards described.

In order to demonstrate accountability, we support the recommendation of the CSA SRO Project Report that the CSA and the SROs develop high level performance benchmarks. We further support the recommendation that to the extent that SROs already have performance benchmarks in place, they should be considered.<sup>3</sup>

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<sup>2</sup> CSA Notice 24-303 – CSA SRO Oversight Project – Review of Oversight of Self-Regulatory Organizations and Market Infrastructure Entities (2006) 29 OSCB 9470

<sup>3</sup> Ibid at 9485

The IDA has developed a number of high-level performance measures which show the risk and the trend in the risk of: (1) firms incurring a capital deficiency, (2) a firm incurring significant business conduct findings, and (3) firms incurring frequent and severe client complaints (see Appendix I). We will work with the CSA and the ASC to modify current performance measures or implement new performance measures to provide the necessary degree of accountability for the public interest mandate delegated to the IDA by the ASC.

The responses that follow match the sections in the Report.

## **Section 2.0 Regional Deficiencies**

### **2.1 Supervision**

We take seriously the ASC Staff's view that there are some significant deficiencies in the supervision of the Calgary office. We will work hard to change that view. As noted earlier, as a first step we have hired a director for the Calgary office effective July 16, 2007.

We will examine each area of concern at a general level at this stage and in more detail as the issues arise later in the Review.

### **2.2 Communication Between Departments**

We will look for opportunities to have more communication within the Calgary office, both formal and informal. The new Director will facilitate this process.

### **2.3 Staff Turnover**

The ASC notes that the IDA recognition order requires that the IDA maintain sufficient staff in the region to perform all functions within a reasonable period of time. During the period we increased regulatory staff from 28 to 29. We substantially achieved all our benchmarks in Calgary for all critical functions identified in Appendix A – Conditions of Recognition of the Recognition Order. In order to stay ahead of the work load, we have added three full-time and one part-time staff subsequent to the review period.

## **Section 3.0 Registration**

### **3.1 Philosophical differences**

As noted in the introduction, we share the view of the ASC that the registration department is the gatekeeper to the capital markets and registration decisions are critical to upholding the integrity of the capital markets. Some aspects of the registration process are administrative in nature, due to the high number of registration transactions and the complexity of the registration requirements. We agree, however, that the administrative nature of some of the processes involved in reviewing a registration application should not lead staff to conclude that the objectives of registration are purely administrative.

The ASC has identified the issue of registrants doing business in another jurisdiction, without registration. We recognize that such activity is contrary to securities legislation. Generally, when we find an individual operating in another jurisdiction without registration, we require that the situation be rectified. We do not automatically bring an enforcement action against the individual to accomplish this goal. We agree however that in some circumstances an enforcement action is justified assuming the situation is not addressed by the firm or individual or is otherwise required for deterrence.

### **3.2 Mind and Management**

The ASC notes that the current chain of authority does not achieve their expectation that registration decisions would be made by Prairie Region Staff. We do not believe it would be in the public interest to prevent Prairie Region Staff from drawing on the considerable experience and expertise of the Director of Registration and the Vice-President, Sales Compliance and Registration in Toronto on difficult registration questions. Nevertheless, the Prairie Region Staff make the front line decision and if further authority is required for a difficult application, it is provided by the Vice President, Western Canada.

None of the file references include any language referring to the approval from senior staff in Toronto. Emails to the Director of Registrations generally seek advice. There may be emails regarding exemptions in which we ask if the IDA would support the exemption. In these cases, we are not seeking ‘approval’ but rather looking for consistency in IDA policies and past precedents. We believe this is necessary and appropriate.

We understand that the ASC requires registration decisions to be made in Alberta and we will continue to do so. The appointment of the Director, Prairies will add one more senior person who will help in that role.

### **3.3 Supervision**

We viewed the 2003 recommendation to be similar to a quality assurance review. That is, we would review a sampling of filings after they had been processed, look for patterns and take remedial action as needed. For new Registration Officers, all decisions are reviewed prior to acceptance of the filing until we have confidence in their knowledge and judgment. The ASC’s concern must, therefore, be with the review of the work of more experienced Registration Officers. We will change our processes to review a larger number of files. If a small sample size indicates problems with our procedures or training, the issues will be addressed as they arise. If there are indications of a problem with an Officer we will review a larger number of transactions and if appropriate review transactions prior to acceptance.

### **3.4 Number of Staff**

The table as formatted by the ASC does not represent a benchmark for the IDA. None of our benchmarks are based on the number of submissions processed. Our benchmarks are based on the elapsed time to complete key processes.



Calgary has always processed the most submissions per reviewer per month. The main reason for the difference is the larger number of head offices and registrants in Ontario, BC and Québec. Head office location determines the lead reviewer in applications. We devote more time to submissions in the lead jurisdiction than the non-lead and this type of submission is more complicated. Therefore, the efficiency of the Calgary office is explained in part by the mix of submissions received.

We have also added a new Registration Officer to Calgary in 2006.

We do not agree that average number of submissions per month suggest that the Prairie Region staff complement is inadequate to handle the volume of submissions. The benchmark results for the quarter ended March 31, 2007 indicate we missed one benchmark, which is the result of recent turnover. However, when fully staffed and trained, the registration benchmarks are attained. More comments on the benchmarks are made in Section 3.6.

### **3.5 Quality, Training and Turnover of Staff**

The ASC has made a number of observations and asked four specific questions concerning registration staff training and turnover:

Generally, we believe we are hiring the right level of qualification and experience. Our education requirements for Registration Officers are the same as the provincial securities commissions. We agree staff should have an understanding of high-level registration concepts, however, we do not believe these concepts are difficult to understand.

In terms of training, there are no specific courses for Registration Officer training so we are unaware of any practical alternative to one-on-one training.

We continue to believe that checklists have their place in the registration review process. Registration, although founded on concepts, is a detailed, high volume area of regulation. In a repetitive function, it is easy to become distracted and accidentally miss a key step in a process or a key piece of information. The function is well-suited for checklists, although we agree that they should not be blindly followed. Discretion is needed and, we believe, appropriately applied.

The ASC notes the extended period of time that we have maintained a contract position. We agree. All positions are now permanent in Registration although an arrangement is in place whereby one Registration Officer is covering for a maternity leave in another department and the registration position has been temporarily filled.

The Senior Registration Officer and Manager train new Officers in a 6-month period to ensure that all relevant topics are covered during the training period. The checklists are one of the training tools used and each item on the checklist is explained in detail so the new Officer understands why the question is being asked. In addition to the checklists, the department maintains a database of reference materials including a required reading list, links to rules and regulations, guide to IDA categories, Continuing Education, and Multi-Lateral Instruments 33-101 & 33-109.

The responses to the questions are:

*Question 1) What analysis was performed to determine the proficiency requirements for new Registration Officers?*

We have not formally reviewed proficiency requirements nor have we seen the need to do so. We do note that no formal background in law, accounting or the detailed knowledge of the securities industry is required to perform the function. Furthermore, our experience has shown that our most proficient, effective and experienced registration staff do not have a professional background or higher proficiencies than the people we are hiring today. Our analysis is based on our experience.

*Question 2) How was the training program developed in the Prairie Region and what analysis has been performed to assess its effectiveness?*

Training has evolved with our experience in Calgary and across the country. Our assessment of training is based on our assessment of how quickly staff can be trained to operate independently and make the right, informed decisions on a submission. Usually this takes up to six months depending upon the employee.

*Question 3) What initiatives are being undertaken to address turnover in the Registration department?*

Turnover does occur more frequently with more junior positions. Much of the turnover in Registration has been due to internal promotions and maternity leaves. Some have left for other positions. We agree that the lower the turnover rate, the better. We have improved technology support for registration and plan on doing more. The Registration Risk Model is intended to help staff focus on the higher risk files, and therefore increase job satisfaction. Also as mentioned previously, an IDA-wide compensation review is underway.

*Question 4) Why has the contract position not been converted to a permanent position?*

The contract position was not converted to full-time as we did not think the position would be required for an extended period of time. We were mistaken. The position is now permanent.

### **3.6 Benchmarks**

In setting benchmarks we try to gauge what can be accomplished in the normal course with an element of “stretch” built in. Benchmarks are a diagnostic tool that assists management in determining whether normal operations are continuing as expected. An unexplained drop in performance against benchmarks or a prolonged failure to meet benchmarks is a signal to management to investigate and resolve the problem.

For example, Benchmark 5.4 – “All transfers of registration will be completed within 2 business days” – is set at a 100% target. No office has ever maintained 100% performance over an entire year. It is only performance that falls consistently and substantially below the benchmark that raises concern. For example, although Calgary Registration achieved its 5.4 benchmark for only five of the first nine months of 2006, it completed 98% of transfers within the target time – close enough, in management’s assessment, to the 100% benchmark. Similarly, although in 2004 it met its 5.3 benchmark – “80% of all applications will be either approved or deficiencies identified and returned within 5 business days” – in only eight out of twelve months, it fell only 1% below the 80% benchmark for the year.

When the Registration department is operating with a full complement of trained staff, the benchmarks are met. For most of 2006, the department operated with one Senior Registration Officer, two fully trained Officers and one new Officer. In 2004, two Officers left the department and another two staff members left in 2005. New Officers replaced them, but were in training, and therefore could not meet the benchmarks.

Management reports benchmark and performance measurement to the IDA Board quarterly. The benchmarks themselves are reviewed at least annually as part of the business planning process. Changes to the benchmarks are usually based on recommendations of senior staff based on the national performance.

Management believes that the benchmarks can be achieved with current staffing levels. The most effective solution to temporary “misses” due to staffing volatility would be to temporarily transfer some firm’s submissions to another office. If the ASC were to permit this flexibility even temporarily we believe it would assist us in dealing with temporary shortfalls in capacity.

As you know, we are developing a risk assessment model for registration. The objective of this initiative is to allow us to identify with more certainty the low-risk submissions. We will then re-direct our current resources more efficiently to the higher risk submissions.

To address your specific questions

*What action is taken when benchmarks are not met?*

- 1) When benchmarks are not met for two consecutive quarters management ascertains whether the performance is temporary or systemic. If the shortfall is systemic, management reviews the business processes, compensation and staffing to determine how to address the problem and makes recommendations to the board for authority to implement remedial action.

*What action will the IDA take to address the above noted concerns?*

- 2) We have re-allocated work from the Manager of Registrations in Calgary and we have hired an additional part-time Registration Officer.

## **3.7 Quality of Processes**

### **3.7.1 Checklists**

The ASC is concerned that checklists, an essential management tool, hinder our regulatory effectiveness.

The vast majority of registration transactions are straightforward; for example, changing a category of registration from Registered Representative Retail to a Registered Representative (Options) or adding Alberta to the jurisdictions in which an Ontario licensed sales person can do business. One of the key objectives of a review is to find the exceptions that do require “reasoned, critical thought”. Checklists are an effective means of identifying the exceptions. As noted in our previous response, we are also developing a Risk Model for Registration which will further assist in identifying high and low-risk transactions.

To ensure national standards, the same checklists are used by all IDA offices, edited to address any region specific requirements. The one-on-one training for new hires is more than simply checking off items on the checklist; the items on the application and checklist generate questions and discussions. Recognizing that not every new recruit may have the same questions concerning the registration process or level of understanding, we can make certain that whoever provides the training also ensures the philosophy of registrations is explained.

We use checklists for the following purposes:

- document the steps taken in a review to create a better audit trail
- act as a framework for training
- lead to provincial and national consistency
- ensure that important repetitive tasks are not missed
- identify transactions that require special consideration

We believe that the use of checklists is appropriate in these circumstances and assist in the application of “reasoned, critical thought”.

### **3.7.2 Opening Sub-Branches**

We agree that a situation where a registrant is disciplined and then re-offends deserve careful consideration about what can be done better. We will carefully review the regulatory decisions made to determine what can be learned from the case. This includes the issue of close supervision in a sub-branch. In our review so far we have concluded that we will not permit a registrant who is under close supervision as a result of a discipline hearing to be supervised in a sub-branch. We will amend our processes nationally as a result. We will keep you advised as we implement these amendments and any other amendments we make to our procedures. Furthermore, we will add as a trigger to our qualitative benchmark to “back test” any case when a person re-offends.

### **3.7.3 Reliance on Other Departments (Significant Issue)**

We agree that if the matter is clearly a registration decision, then after the appropriate consultation, registration staff should make the final decision. We will ensure that registration staff is aware of this view and that they document the decision in the file.

Some decisions involve more than one department, in these circumstances the decision will be made by the Director, Prairies or the Vice President, Western Canada.

### **3.7.4 District Council Exemption Process**

The ASC's concern is that the District Council sub-committee seldom has face-to-face meetings and instead relies on emails and informal telephone conversations to share views and make a decision. All exemption requests considered by the DC are accompanied by a staff summary.

The individuals who serve on this committee are experienced industry participants. If they have concerns, they will call a meeting or discuss the matter amongst themselves. The process currently in place is the same across the country and, we believe, works very well.

Nonetheless, we will ask the District Council whether there have been circumstances when they felt a meeting would have been advisable and if the DC members felt hindered by the current process. We will also make it clear that any member can call a meeting to discuss any application

### **3.8 Firm Registration**

The ASC's concern is that registration does not make the final determination as to whether staff will recommend a firm to the District Council as a potential new member.

We view the admission of a firm to the membership of the IDA and the simultaneous registration of the firm in one or more provinces as one of the most important decisions made by the IDA, hence the involvement of staff, a District Council and the Board.

The Calgary Registrations department conducts a full review of all registration requirements. They will not recommend membership until satisfied that the firm and individuals meets all registration requirements. Registration staff does not have the expertise to review and sign-off on Financial Compliance and Sales Compliance requirements for membership. Since no single department possesses all of the required expertise, the decision by staff to recommend membership to the Alberta District Council is made by the Vice President, Western Canada. He assesses and coordinates the recommendations of each department.

The ASC's interpretation of our processes leads to a conclusion that we are ignoring or downplaying the role of registration in our decision making. That is not correct. The importance of the decision being made requires the input of all departments and the involvement of senior management.

### **3.9 Registration of Alternative Trading Systems**

We agree that for the ASC to easily monitor the requirements of NI 21-101 as they relate to ATS, we should have alerted you to ATS applications in Alberta. We have addressed this issue by reviewing our checklist and we did so as soon as the matter was brought to our attention. There has been frequent communication whereby we confirm for the ASC whether a firm, when applying for a non-residency exemption, is an ATS.

To identify future policy changes and to improve the communication processes between our two organizations, we suggest a quarterly meeting as we have suggested in the past, and as we do with other Commissions.

### **Section 4.0 Sales Compliance**

#### **4.1 Benchmark is not sufficiently stringent**

The ASC has been consistent in recommending that we shorten the turn-around times on the completion of our Sales Compliance Review Reports.

We agree that faster turnaround time for the reports is desirable. We have attempted to improve our performance in this area by improving technology, changing review programs, and relying more on risk-based assessments. We have recently received authority to hire six additional sales compliance staff nationally. We will continue to re-assess our benchmarks at least annually and will adjust as necessary.

From the perspective of timeliness we should, however, point out that the issuance of the final report is not the first time the firm hears about the deficiencies found. All deficiencies are brought to the attention of the firm at the time of the exit interview at the end of the completion of field work, except in rare instances in which they are not identified until later file reviews during the preparation and management review of the report. A draft report is issued before the final, to give the firm an opportunity to challenge any factual errors, so again the firm is made aware of the deficiencies before the final report. In many instances, firms have corrected the deficiencies right away, before they receive the draft report, although they nonetheless stay in the report. We have, in fact, sent the message to Members in presentations on our risk analysis process, in which firms are given credit for the speed with which they address deficiencies.

Finally, a referral to Enforcement can occur at any stage in the process.

#### **4.2 Inconsistent Quality of Reviews**

The ASC is concerned that field reviews are not consistent. Similar review programs are used for each firm, with adjustments made for the firm's business, risk profile, and findings in the field. We empower our staff to exercise their judgment concerning the focus of the review, which in our opinion, leads to a better review. A consequence of the exercise of this discretion is that the emphasis on certain topics may differ.

We believe the review cited is an example of our system working well. The results of a branch and a head office review were inconsistent and action was taken to verify the results. The detection of the inconsistency, and our reaction to it, was appropriate. Your concern is the branch review to begin with. We often use one person to review a branch and we intentionally rotate reviewers between firms and branches. In that way, we are able to identify if a person is not being as thorough as we expect or conversely is being too detailed. Then, management action can and does occur.

We believe the Manager of Sales Compliance is properly supervised. The Managers all have significant industry experience and qualifications usually in a regulatory role, e.g., past Chief Compliance Officer at a firm. There are frequent discussions, instigated sometimes by the Manager and sometimes by the Director of Sales Compliance in Toronto, or the Vice President, Western Canada, on difficult areas or when guidance is needed. The draft reports are approved by the Vice President, Western Canada and if there are any significant changes between the draft and final report, those too are approved.

We will continue to review our practices and will continue, to the extent reasonably possible, to rotate reviewers amongst firms and branches.

#### **4.3 Sales Compliance Program**

The ASC is concerned that we interview firm staff only after file testing has been completed. This is not correct. We split the interview process into a pre and post physical review interview.

The Sales Compliance Officer conducts the pre-physical interview prior to each module being started which is followed by the physical testing and depending on the results, a post-physical interview is conducted. The pre-physical interview confirms the information we have collected in the planning checklist, and if changes have occurred that we are not aware of, we adjust the review accordingly. The post-physical interview is only needed if the review contradicts our understanding from the planning checklist, first interview, and the physical review. The process also recognizes that we spend considerable time at a firm and, in addition to the formal interviews, there is considerable discussion between IDA and firm staff during the review process.

The rationale for the change was not only to speed up the examination process, but to allow the Sales Compliance Officer to be more productive in the field by concentrating on areas that were deemed through the physical testing stage to be of higher risk or demonstrate deficiencies. Historically, the Association noted that where the Member had no change in Supervisory Personnel or procedures, performing the full interview portion of the modules was an ineffective use of time, not only for Association Staff but also for supervisory staff at the firm.

Management believes that splitting the interview process does work better in the IDA environment.

#### **4.4 Staff Turnover**

The ASC's concern is the departure of two Managers over the period and what steps will be taken to retain Managers. The Managers left for career and family decisions – not because of any dissatisfaction with the IDA. The objective of our human resource and compensation policies is to attract and retain excellent staff. We will continue to do this in the challenging Calgary labour market.

### **Section 5.0 Case Assessment**

#### **5.1 Issue Identification**

We agree with the finding that a case that was referred to us justified further investigation.

In future, we will ensure senior management review of all Commission referrals and inform the ASC of the anticipated resolution before it is closed by Case Assessment, Investigations or Prosecutions as the case may be.

#### **5.2 Failure to Notify ASC Regarding Outcomes**

An error was made in not notifying the ASC regarding the disposition of one file. We have not been able to attribute the error to our procedures; it appears to be a case of human error. We will continue to review our procedures to identify improvements.

#### **5.3 Lack of Documentation**

We agree that concluded Case Assessment files should stand alone, offering a complete and accurate record of the reasons for taking action or closing a file. We will revisit our file documentation policy, including documentation standards for verbal conversations and report any changes.

#### **5.4 Staffing**

We will ensure that CAOs are appropriately supervised and receive appropriate training. Any steps taken to improve recruitment, retention and training will apply to all the staff and we will advise you of those initiatives and policies.

#### **5.5 Training**

See 5.4.



## **Section 6.0 Enforcement Counsel**

### **6.1 Staffing**

The Recognition Order requires the IDA to maintain sufficient resources to ensure all necessary enforcement proceedings are conducted and concluded within a reasonable period of time. Prosecution Benchmark 4.16 requires resolution of 60% of all prosecution cases within six months of referral to Enforcement Counsel. We are achieving this benchmark.

The answers to your specific questions are:

*Question 1) What initiatives are in place, or proposed, to ensure that sufficient staff can be attracted and retained?*

In order to attract and retain staff we strive to provide an excellent working environment, interesting work and competitive compensation. In addition we have started a compensation review of all positions and will provide appropriate adjustments as required.

*Question 2) How are staffing levels determined for this position?*

Staffing levels are determined based on the file load and adherence to benchmarks. A two lawyer office creates challenges in this area.

*Question 3) What consideration has been given to adding a third position in this department?*

We review staffing requirements regularly based on workload. The current workload does not justify an additional lawyer.

*Question 4) What steps will be taken in the meantime to deal with the caseload?*

Cases are distributed on a temporary basis to even out the workload

### **6.2 Lack of Available Hearing Panels**

We have recently doubled our hearing panel chairs by adding three additional chairs. We monitor this requirement on an ongoing basis.

### **6.3 Consistency of Settlement Agreements – Forgery**

The staff decisions for the files referred to were made approximately two years apart.

In response to varied application of the sanctions guidelines by IDA panels to forgery cases in a number of jurisdictions, the IDA reviewed the Sanction Guidelines. Discipline panels distinguished between situations where registrants endorsed documents on behalf of clients with their client's knowledge and consent (which is contrary to our rules) and situations where registrants forged signatures without client's knowledge and consent. Discipline panels

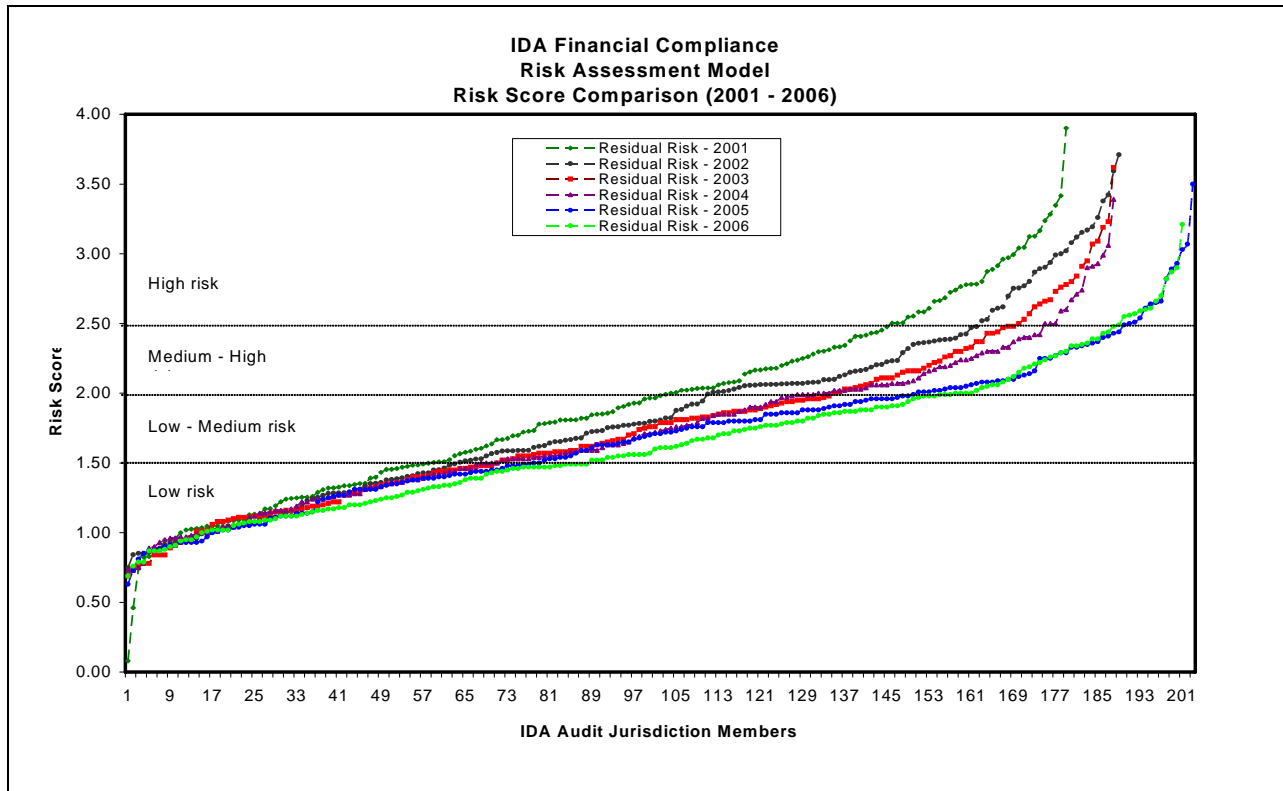
considered the former much less serious than the latter. As a result, in 2006 the Sanction Guidelines were amended. Now, an offence of False Endorsement provides for cases where registrants sign their clients name with their client's consent and knowledge. This type of offence is distinguished from deliberate forgery done with an intention to mislead or defraud. The first file referred to was a case of False Endorsement, contrary to our rules but with the knowledge and consent of the client. We believe counsel's recommendation was appropriate.

We did not believe we had sufficient evidence to proceed with a prosecution of the second matter. We require counsel to determine whether there is a reasonable prospect of conviction before proceeding. If the ASC believes there was sufficient evidence to proceed, or that we applied the wrong standard to the evaluation of the evidence, we should discuss.

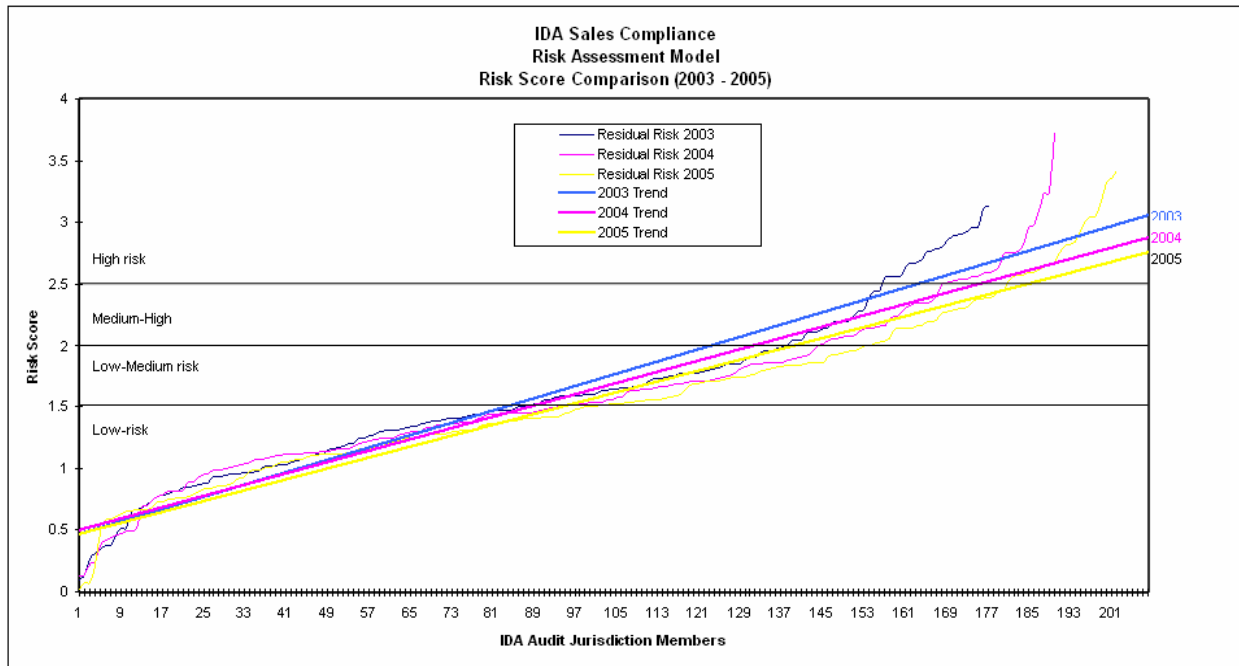
The purpose of the Sanction Guidelines is to: (1) provide a deterrent to misconduct, (2) provide guidance to the Hearing Panel and counsel, and (3) provide guidance to staff in recommending penalties. Any recommendation that is outside the guideline requires the approval of the Senior Vice-President.

#### Summary of Recommended Changes

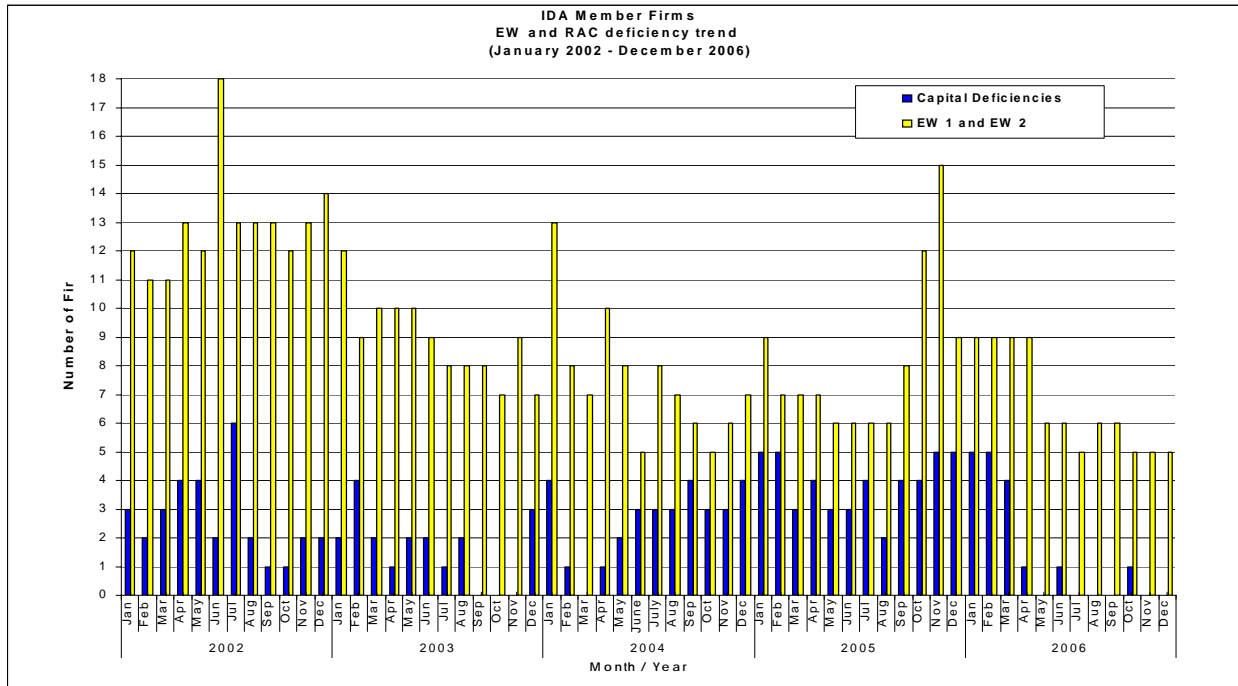
- 1) An offer to have quarterly IDA and ASC staff meetings.
- 2) The continued development of the Registration Risk Model.
- 3) The creation of the new position, Director Prairies and the addition of a Sales Compliance technician and the addition of a permanent part time Registration Officer.
- 4) Review our procedures regarding supervision of individuals in sub branches and prohibit sub-branch supervision when the supervision requirement flows from formal discipline.
- 5) We will review a larger number of registration files for quality assurance.
- 6) We will ensure senior management review of all Commission enforcement referrals and inform the ASC of the anticipated resolution before it is closed by Case Assessment, Investigations or Prosecutions as the case may be.
- 7) Review the need for face-to-face meetings with District Councils to consider exemption applications.
- 8) We will revisit our Case Assessment file documentation policies.
- 9) We will complete the nation-wide compensation review.



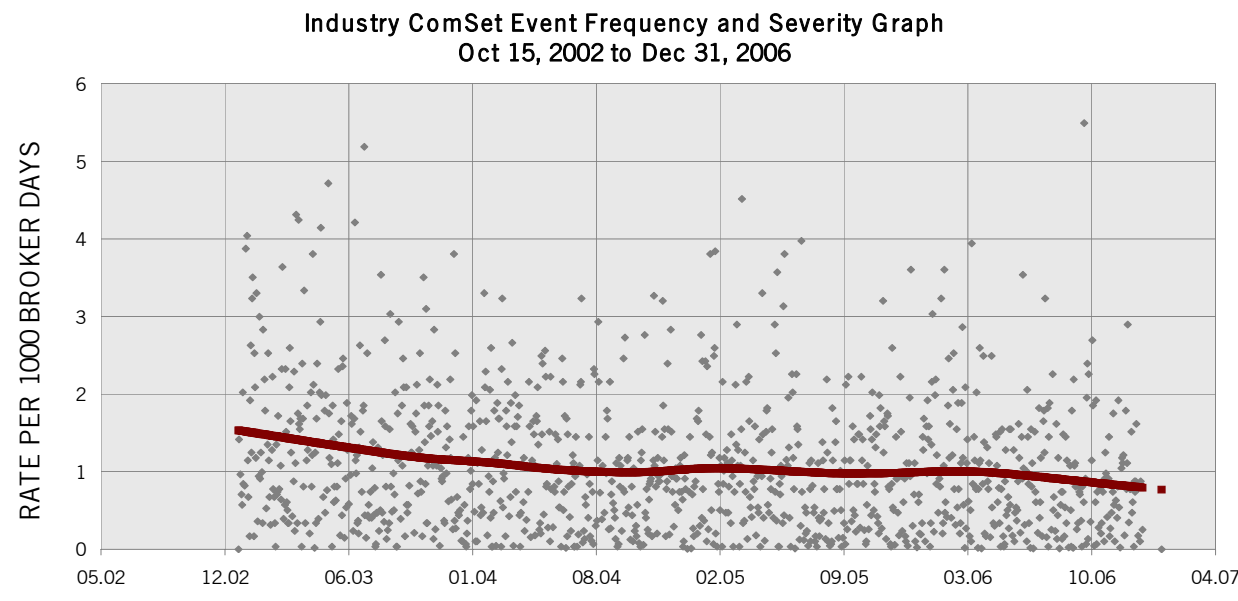
The same is true for the risk that member firms will generate significant sales compliance findings. Again, the number of high risk firms (as assessed by the IDA Sales Compliance risk model) and the Residual Risk Score of the firms that remain high risk has been trending down since 2003.



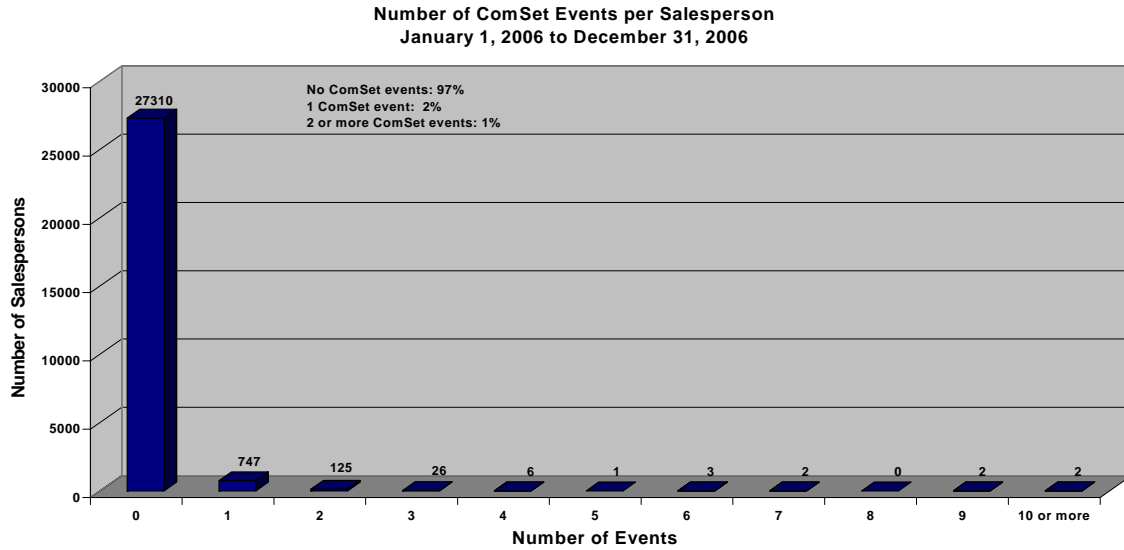
The number of low risk firms that have triggered Capital Deficiencies and Early Warnings has been decreasing. In addition, the total number of CDs and EWs is going down as well as the number of medium and high risk firms that have been triggering those events.



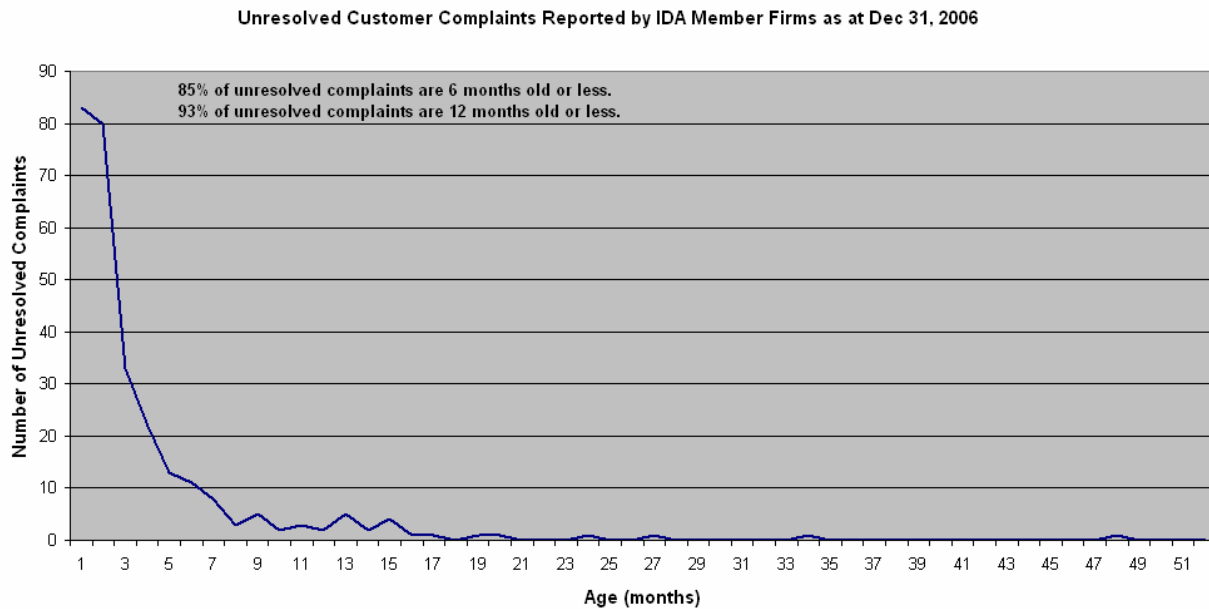
The following chart illustrates the severity of client complaints, civil claims and other regulatory events and the frequency of those events industry wide. In order not to bias the results against large firms the results are normalized using a rate of 1000 broker days. The severity and frequency of ComSet events, since October 2002 has been trending down.



Member regulation monitors the number of brokers employed by IDA member firms against whom complaints have been made as a percentage of the total number of registrants. This tells us that the vast majority of firms voluntarily comply with IDA rules and identifies those individuals with multiple complaints.



The timeliness within which members resolve client complaints is one important indicator of the firm’s compliance culture. Industry-wide, firms have been consistently resolving 85% of their client’s complaints within six months.



These results should confirm for the CSA that the IDA is carrying out its mandate to reduce industry risk and improve the level of industry compliance. While a detailed review of individual departments and their files is important, it should not be undertaken without reference to higher level performance outcomes.