There are a number of cases where negligence has been found where investment advisors have failed to advise a client to diversify, to reduce an over-concentrated position or to adequately assess and alter the client's investment objectives and risk tolerances.

There have been recent cases dealing with supervisory obligations of branch managers and compliance departments of brokerage houses. Under paragraph 1300.2 of the IDA regulations, each member must designate a branch manager for each of its branch offices. The branch manager is responsible for the opening of new accounts and the supervision of account activity in the branch and must "ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the securities industry". New accounts must be opened pursuant to a new account form and the branch manager must specifically approve the opening of each account, in writing, on the form prior to or promptly after the completion of any transaction. These supervisory standards are contained in IDA Policy No. 2, entitled "Minimum Standards for Retail Account Supervision". The policy was initially adopted in March, 1993 and prescribed minimum standards which in certain situations are higher, as may be necessary to ensure proper supervision.

The twin obligations of an investment advisor and his supervisor as regards an investing client are the usual basis for negligence claims in the investment industry.

Regulatory Investigations and Prosecutions by Stock Exchanges

In the past year, the Ontario Securities Commission has commenced several high-profile investigations and prosecutions. These include insider trading and market manipulation charges. The IDA continues in its investigations and hearings concerning breaches of its rules by its members The fact that the securities industry is a "self-regulated" industry places an unusually high standard upon all of those who are licenced to do business in it.

In a recent case, In The Matter of The Investment Dealers Association of Canada and Richard Mills (September, 2000), the IDA found that a branch manager had failed to fulfill his supervisory obligations, even though the client was aware of the trading in his accounts, was pleased with the profits that he had made and never voiced a complaint prior to certain losses having occurred. The IDA concluded that there had been a dramatic departure from the investment objectives set out in the new account form, that the supervisor had not ensured that the investment advisor verified new objectives in a new account form with the client, was required to do more than simply talk to the investment advisor and failed to give due regard to a number of signals which were inconsistent with the objectives in the account, which required further steps of the supervisor.

In reading its decision, the IDA considered the supervisory obligations of branch managers, as set out in the IDA Regulations and Policies (described above) and also considered the Sales Compliance Manual of the brokerage house. The important factor in the case was that the supervisor was required to perform at a standard above those set out in the Regulations.