



INVESTMENT DEALERS  
ASSOCIATION OF CANADA

# bulletin



ASSOCIATION CANADIENNE DES  
COURTIERS EN VALEURS MOBILIÈRES

*Contact:*

Belle Kaura

Enforcement Policy Counsel

(416) 943-5878

*For distribution to relevant parties within your firm*

**BULLETIN #3325**

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## **By-Laws and Regulations IDA Hearing Processes - Amendments to By-law 20, amendments to corollary By-laws and establishment of Rules of Practice and Procedure**

The Board of Directors has approved amendments to By-law 20, corollary amendments to By-laws 2, 4, 11, 28, 30, 33, 35 and Policy 6 and the establishment of Rules of Practice and Procedure, to be effective October 1, 2004.

The amendments to By-law 20 serve to consolidate all IDA hearing processes within one By-law, streamline and improve the hearing processes and ensure that the Association can meet its regulatory mandate while balancing the needs of efficiency and meeting the principles of natural justice and fairness. By-laws 2, 4, 11, 28, 30, 33, 35 and Policy 6 have been amended so as to ensure consistency with By-law 20.

The IDA Rules of Practice and Procedure were developed to assist all parties and Panels in the conduct of hearings and matters related to hearings.

The amended By-laws and the Rules of Practice and Procedure are attached.

Kenneth A. Nason

*Association Secretary*

By-law 20 is repealed and replaced as follows:

## **BY-LAW 20**

### **ASSOCIATION HEARING PROCESSES**

#### **PART 1 - DEFINITIONS**

##### **20.1 In this By-law:**

**"Applicant"** means:

an individual or Firm that applies for approval or membership pursuant to Part 7 of this By-law or an Approved Person or Member that applies for an exemption pursuant to Part 8 of this By-law.

**"Business days"** means:

a day other than Saturday, Sunday or any officially recognized Federal statutory holiday or any officially recognized Provincial statutory holiday in the applicable District. In calculating the number of business days, the days on which the events happen are excluded.

**"Calendar days"** means:

all days in a calendar year. In calculating the number of calendar days, the days on which the events happen are excluded.

**"Decision"** means:

a determination, including reasons, arrived at after consideration of facts and/or law by a Decision-maker pursuant to this By-law. Decision includes rulings and orders.

**"Decision-maker"** means:

the person or body making the decision under the respective provision of By-law 20. The Decision-maker can be: Association Staff (20.18 Part 7 By-law 20, 20.24 Part 8 By-law 20); the District Council or a sub-committee of the District Council (20.18 and 20.20 Part 7 By-law 20, 20.24 and 20.25 Part 8 By-law 20); the Executive Committee of the Board of Directors; (20.21 Part 7 By-law 20), a Board Panel; (20.22 Part 7 By-law 20), a District Council Panel; (20.26 Part 8 By-law 20), a Hearing Panel; (20.13 Part 6 By-law 20); and an Appeal Panel; (20.51 Part 11 By-law 20).

**"Disciplinary Hearing"** means:

a hearing held by a Hearing Panel, under By-law 20.33 or By-law 20.34, that is not a settlement hearing, to determine whether the imposition of penalties against an Approved Person or Member is warranted for any of the reasons set out in By-law 20.33(1) or By-law 10.34(1).

**"Former Judge"** means:

an individual who has served as a judge in any provincial or federal court in Canada or an individual who is or has been qualified to practice law and has served as an adjudicator on an administrative tribunal in Canada.

**"Monitor"** means:

a Monitor appointed pursuant to By-law 20.46 to monitor the company's business and financial affairs and to act in furtherance of powers granted by a Hearing Panel.

**"Panel"** means:

a Hearing Panel (20.13 Part 6 By-law 20), a District Council Panel (20.26 Part 8 By-law 20), a Board Panel (20.22 Part 7 By-law 20) and an Appeal Panel (20.51 Part 11 By-law 20).

**"Release of Decision"** means:

when a decision made under this By-law is made available to the Respondent, Applicant, Approved Person or Member pursuant to the IDA Rules of Practice and Procedure.

**"Respondent"** means:

an Approved Person or Member who is the subject of a disciplinary hearing, settlement hearing, expedited hearing, or appeal hearing under By-law 20.

**"Settlement Agreement"** means:

an agreement reached by the Association and the Respondent whereby the parties agree to disciplinary charges, facts and penalty.

## **PART 2 - GENERAL AUTHORITY OF PANELS**

### **20.2 Exercise Of Authority**

(1) A Panel may make any determination, hold any hearing and make any decision, order, interim order or impose any terms required to implement such order, required or permitted under By-law 20 or under the IDA Rules of Practice and Procedure.

(2) A Panel is not bound by any legal or technical rules of evidence and may admit as evidence in a hearing, whether or not given or proven under oath or affirmation, anything that is relevant to the proceedings.

(3) A Panel may require presentation of evidence or testimony under oath or affirmation.

## **PART 3 - DECISION-MAKING AND EFFECTIVENESS OF DECISIONS**

### **20.3 Decision-making**

(1) For any decision made pursuant to By-law 20 where the Decision-maker consists of more than one individual, any action affirmed by a majority of persons that make up the Decision-maker, shall constitute the decision of the Decision-maker.

(2) Where a Panel is comprised of only two members pursuant to By-law 20.17, any action affirmed by both members shall constitute the decision of the Panel. Where an agreement is not reached, the matter shall be deemed dismissed as against the Respondent.

(3) All decisions of a Decision-maker pursuant to By-law 20, including dissent decisions, shall be in writing and shall contain reasons for the decision.

(4) Dissent decisions may be issued by a member of a Panel.

(5) Notwithstanding By-law 20.16(2), the other members of a Hearing Panel or Appeal Panel shall draft the decision where the Chair of the Panel dissents with the majority decision.

#### **20.4 Territorial Application of Decisions**

(1) Any decision made under this By-law shall have effect in all of the Districts, unless otherwise ordered by the Decision-maker or unless such extension or application of the decision is limited by law.

#### **20.5 Effective Date of Decision**

(1) Any decision made pursuant to By-law 20 shall become effective on the date that the decision is made, unless it provides otherwise.

(2) Notwithstanding subsection (1), a decision made pursuant to By-law 20.28 shall become effective as prescribed in By-law 20.29(3).

#### **20.6 Effective Date of Penalties**

(1) Suspensions, bars, expulsions, restrictions or other conditions or terms imposed on approval or Membership commence as of the effective date of the decision, unless otherwise determined by the Decision-maker.

(2) Any fine imposed on a Respondent shall be payable immediately when the decision becomes effective unless otherwise agreed by the parties.

### **PART 4 - CONTINUING JURISDICTION**

#### **20.7 Former Members and Approved Persons**

(1) For the purposes of By-law 19 and By-law 20, any Member and any Approved Person shall remain subject to the jurisdiction of the Association for a period of five years from the date on which such Member or Approved Person ceased to be a Member or an Approved Person of the Association, subject to subsection (2).

(2) An enforcement hearing under Part 10 of this By-law may be brought against a former Approved Person who re-applies for approval under Part 7 of this By-law, notwithstanding expiry of the time period set out in subsection (1).

(3) An Approved Person whose approval is suspended or revoked or a Member who is expelled from membership or whose rights or privileges are suspended or terminated shall remain liable to the Association for all amounts owing to the Association.

## **PART 5 - HEARING COMMITTEE**

### **20.8 Nominating Committee - Appointment of Hearing Committee Members**

(1) Each District Council shall establish a Nominating Committee. The Nominating Committee shall be composed of the Chair of the District Council, the Vice-Chair of the District Council and one other member of the District Council as appointed by the District Council.

(2) The Nominating Committee shall nominate individuals to be members of the Hearing Committee of the respective District, in accordance with By-laws 20.9 to 20.12, and present these nominations for approval by the respective District Council.

(3) The District Council must approve the appointment of members to the Hearing Committee by vote pursuant to By-law 11.

### **20.9 Appointment of Industry Members to Hearing Committees**

(1) The Nominating Committee shall nominate persons for appointment as industry members of the Hearing Committee.

(2) The Nominating Committee shall consider for nomination as an industry member of the Hearing Committee any District Council member, other than a member of the Nominating Committee, or any other persons who are:

- (a) resident in the District; and
- (b) an officer, partner, director or employee of a Member; or
- (c) a retired officer, partner, director or employee of a Member.

(3) The Nominating Committee shall review the suitability, fitness and qualifications of each person nominated as an industry member to the Hearing Committee.

(4) The District Councils of Alberta, Ontario, the Pacific and Quebec shall each appoint a minimum of seven industry members to their respective Hearing Committees.

(5) The District Councils of Manitoba, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island and Saskatchewan shall each appoint a minimum of four industry members to their respective Hearing Committees.

### **20.10 Appointment of Public Members to Hearing Committees**

(1) The Nominating Committee shall nominate public members of the Hearing Committee.

(2) The Nominating Committee shall consider for nomination as a public member only those persons who are:

- (a) resident in the District; and

(b) currently or have been qualified to practice law in any Canadian jurisdiction.

(3) No person shall be eligible to be appointed as a public member or be permitted to continue to serve his or her term of appointment as a public member if he or she represents any parties to hearings under By-law 20 during the course of his or her appointment to a Hearing Committee.

(4) The Nominating Committee shall review the suitability, fitness and qualifications of each person nominated as a public member of the Hearing Committee.

(5) The District Councils of Alberta, Ontario, the Pacific and Quebec shall each appoint a minimum of three public members, one of which shall be a former judge, to their respective Hearing Committees.

(6) The District Councils of Manitoba, New Brunswick, Nova Scotia and Saskatchewan shall each appoint a minimum of two public members, one of which shall be a former judge, to their respective Hearing Committees.

(7) The District Councils of Newfoundland and Prince Edward Island shall each appoint a minimum of one public member to sit on their respective Hearing Committees, between the Hearing Committees of these two Districts, there shall be one former judge.

#### **20.11 Chair of Hearing Committee**

(1) The Nominating Committee of each District shall nominate a public member to serve as Chair of the Hearing Committee.

(2) The District Council must approve the appointment of a Chair of the Hearing Committee by a vote pursuant to By-law 11.

(3) The Chair of the Hearing Committee shall play an advisory role with respect to any legal, administrative or procedural issues raised by Hearing Committee Members or any issues regarding selection of Hearing Panel members raised by the National Hearing Coordinator.

#### **20.12 Appointment To and Removal From Hearing Committees**

(1) Each person appointed to a Hearing Committee shall serve for a term of one year from the date of his or her appointment.

(2) If a Panel member is seized with a hearing at the expiration of their term of appointment, the term of that Panel member shall be automatically extended until a written decision is rendered in the matter.

(3) Upon expiration of the one-year term, members of the Hearing Committee may be re-appointed by District Council to serve on the Hearing Committee, pursuant to By-law 20.8.

(4) The District Council may remove Hearing Committee members from the Hearing Committee roster if the Hearing Committee member fails or is unable to perform the essential duties of his or her position.

(5) The District Council shall remove Hearing Committee members from the Hearing Committee roster if the Hearing Committee member:

(a) ceases to meet the applicable criteria prescribed by By-law 20.9 (2) for industry members and by By-law 20.10 (2) for public members; or

(b) is a public member who engages in the type of relationship or conduct prohibited by By-law 20.10(3).

## **PART 6 - DECISION-MAKERS**

### **20.13 Hearing Panel Composition and Quorum**

(1) Any hearing pursuant to:

- (a) By-law 20.19 (approval review hearings);
- (b) By-law 20.29 (early warning level 2 review hearings);
- (c) By law 20.33 and By-law 20.34 (disciplinary hearings);
- (d) By-law 20.36 (settlement hearings);
- (e) By-law 20.45 and By-law 20.47 (expedited hearings);
- (f) By-law 20.47 (expedited review hearings);

shall be heard by a Hearing Panel comprised of two industry members and one public member appointed to the Hearing Committee of the applicable District, subject to subsection (2).

(2) Hearing Committee members may serve on Hearing Panels in other Districts where both Chairs of the respective Hearing Committees consent.

### **20.14 Selection of Panel Members for Hearings**

(1) The National Hearing Coordinator shall be responsible for selection of members of Hearing Panels, District Council Panels, Board Panels and Appeal Panels, pursuant to By-law 20, and any other duties as prescribed by the IDA Rules of Practice and Procedure.

### **20.15 Conflicts of Interest**

(1) A member of a District Council, the Board of Directors, or a Hearing Committee shall not be a member of a Panel with respect to a matter under By-law 20 if he or she:

(a) is an officer, partner, director, employee or an associate of, or is providing services to, the Member, affiliate of the Member or related company of the Member, that is the Applicant or Respondent under By-law 20;

(b) is an officer, partner, director, employee or an associate of a Member, affiliate of the Member or related company of, or is providing services to the Member, affiliate of the Member or related company of the Member where an Approved Person, who is the Applicant or Respondent under By-law 20, is employed;



(c) represents any parties to hearings under By-law 20 during the course of his or her appointment to a Hearing Committee; or

(d) has or had such other relationship to the Approved Person, Member, affiliate of the Member or related company of the Member, or matter as may give rise to a reasonable apprehension of bias.

## **20.16 Chair of Panels**

(1) The following persons shall be appointed to serve as the Chair of the respective Panels:

(a) A public member of a Hearing Committee shall be appointed to be the Chair of any Hearing Panel.

(b) A public member of a Hearing Committee shall be appointed to be the Chair of any Appeal Panel pursuant to By-law 20.51(1)(c)(c) An industry member of the District Council shall be appointed to be the Chair of any District Council Panel, pursuant to By-law 20.26(4).

(c) An independent member of the Board of Directors shall be appointed to be the Chair of any Board Panel, pursuant to By-law 20.22(3).

(2) The Chair of a Panel, appointed pursuant to subsection (1), shall be responsible for conduct of a hearing in consultation with the other members of the Panel..

(3) The Chair of a Hearing Panel or Appeal Panel shall be responsible for drafting of decisions, with which he or she does not dissent, in consultation with the other members of the Hearing Panel or Appeal Panel.

## **20.17 Continuation of a Hearing With Two Panel Members**

(1) A hearing under By-law 20 shall not continue where the Chair of Panel is unable to continue to be a member of the Panel hearing the matter.

(2) If a member of a Panel, other than the Chair of a Panel, is unable to continue to be a member of a Panel presiding over a hearing, the Chair of the Panel may decide, in his or her discretion, whether or not to proceed with the hearing.

(3) If the Chair of a Panel is unable to continue to be a member of a Panel, pursuant to subsection (1), or the Chair of the Panel decides not to proceed with the hearing, pursuant to subsection (2), a new Panel shall be constituted to preside over the hearing.

## **PART 7 - INDIVIDUAL AND MEMBERSHIP APPROVALS**

### **APPROVAL APPLICATIONS**

## **20.18 Powers of District Council**

(1) The District Council shall have the power, which it may delegate to a Sub-committee of the District Council comprised of three industry members and established pursuant to By-law 11, or to Association Staff, to:

- (a) approve an application for approval as, or the transfer of a:
  - (i) sales manager, branch manager, assistant or co-branch manager, pursuant to By-law 4,
  - (ii) partner, director or officer, pursuant to By-law 7,
  - (iii) registered representative or investment representative, pursuant to By-law 18,
  - (iv) trader, pursuant to Regulation 500, or
  - (v) portfolio manager, futures contracts portfolio manager and associate portfolio manager pursuant to Regulation 1300.

(2) The District Council shall have the power, which it may delegate to a Sub-committee of the District Council, pursuant to subsection (1), to:

- (a) approve an application for approval or transfer referred to in By-law 20.18(1)(a) subject to such conditions as may be considered just and appropriate;
- (b) refuse an application for approval or transfer referred to in By-law 20.18(1)(a), if in its opinion:
  - (i) the Applicant does not meet any requirements prescribed by IDA By-laws, Regulations, Rulings or Policies;
  - (ii) the By-laws, Regulations, Rulings and Policies of the Association will not be complied with by the Applicant;
  - (iii) the Applicant is not qualified for approval by reason of integrity, solvency, training or experience; or
  - (iv) such approval is otherwise not in the public interest.

### **20.19 Review Hearings**

(1) Association Staff or the Applicant may request a review of an approval decision by a Hearing Panel within ten business days after release of the decision.

(2) If a review is not requested within ten business days after release of the decision, the approval decision becomes final.

(3) No member of a District Council who has participated in a decision to refuse an application or impose conditions on an application, pursuant to By-law 20.18, shall participate on the Hearing Panel.

(4) A review hearing held under this Part shall be held in accordance with the IDA Rules of Practice and Procedure.

(5) The Hearing Panel may:

- (a) affirm the decision;
- (b) quash the decision;
- (c) vary or remove any terms and conditions imposed on approval;
- (d) limit the ability to re-apply for approval for such period of time as it determines just and appropriate; and
- (e) make any decision that could have been made by the District Council pursuant to By-law 20.18.

(6) No appeal shall be available from the decision of the Hearing Panel.

## **MEMBERSHIP APPLICATIONS**

### **20.20 Recommendation of District Council**

(1) The District Council, or a sub-committee of the District Council comprised of three industry members established pursuant to By-law 11, shall make a recommendation to the Executive Committee of the Board of Directors to:

- (a) approve an application for Membership made pursuant to By-law 2;
- (b) approve the application subject to such terms and conditions as may be considered just and appropriate; or
- (c) refuse the Application if, in the opinion of the District Council or the Sub-committee of the District Council:
  - (i) the Applicant does not meet any requirements prescribed by IDA By-laws, Regulations, Rulings of Policies;
  - (ii) the By-laws, Regulations, Rulings and Policies of the Association will not be complied with by the Applicant;
  - (iii) the Applicant is not qualified for approval by reason of integrity, solvency, or experience; or
  - (iv) such approval is otherwise not in the public interest.

### **20.21 Powers of the Executive Committee of the Board of Directors**

(1) The Executive Committee of the Board of Directors shall have the power to:

- (a) approve an application for Membership made pursuant to By-law 2;
- (b) approve the application subject to such terms and conditions as may be considered just and appropriate;
- (c) refuse the application if, in its opinion:
  - (i) the By-laws, Regulations, Rulings and Policies of the Association will not be complied with by the Applicant;
  - (ii) the Applicant is not qualified for approval by reason of integrity, solvency, or experience; or
  - (iii) such approval is otherwise not in the public interest.

## **20.22 Review Hearings**

- (1) Association Staff or the Applicant may request a review of a membership approval decision by a Board Panel within thirty business days after release of the decision.
- (2) If a review is not requested within thirty business days after release of the decision, the membership approval decision becomes final.
- (3) The review hearing shall be presided over by a panel of the Board of Directors comprised of one independent member of the Board of Directors and two industry members of the Board of Directors, and where the Applicant is a Quebec firm, at least one of the members of the Board Panel shall be resident in Quebec. No member of the Executive Committee of the Board of Directors who participated in the making of the membership approval decision shall be a member of the Board Panel.
- (4) A review hearing held under this Part shall be held in accordance with the IDA Rules of Practice and Procedure.
- (5) The Board Panel may:
  - (a) affirm the decision;
  - (b) quash the decision;
  - (c) vary or remove any terms and conditions imposed on Membership;
  - (d) limit the ability to re-apply for approval for such period of time as it determines just and appropriate; and
  - (e) make any decision that could have been made by the Executive Committee pursuant to By-law 20.21.
- (6) No appeal shall be available from the decision of the Board Panel.

## **20.23 District Council Powers -- Exemption for Payment of Entrance Fee**

Notwithstanding By-law 20.20, By-law 20.21 and By-law 20.22, if an Applicant is exempted from payment of the Entrance Fee pursuant to By-law 3.4 and has met all Membership application conditions pursuant to By-law 2, except any conditions the District Council has waived in the circumstances, the District Council may approve the application for Membership without referral to the Executive Committee of the Board of Directors for final decision.

## **PART 8 - EXEMPTION REQUEST APPLICATIONS**

### **PROFICIENCY EXEMPTIONS**

#### **20.24 Powers of District Councils**

- (1) Persons may apply for a proficiency exemption pursuant to Policy 6.
- (2) The District Council, or a sub-committee of the District Council comprised of three industry members and established pursuant to By-law 11, shall have the power, to:
  - (a) exempt any person or class of persons from proficiency requirements, pursuant to paragraph B of Policy 6 - Part I Proficiency Requirements on such terms and conditions, if any, as it may determine;
  - (b) exempt any person from writing or re-writing any required course or examination , pursuant to paragraph C of Policy 6 - Part II Course and Examination Exemptions, on such terms and conditions, if any, as it may determine; or
  - (c) exempt any person from the Continuing Education Program requirements, pursuant to Section A.3 of Policy 6 -- Part III The Continuing Education Program, on such terms and conditions, if any, as it may determine.
- (3) The District Council, or a sub-committee of the District Council comprised of three industry members and established pursuant to By-law 11, may delegate the power to approve or refuse proficiency exemptions to Association Staff.

### **INTRODUCING CARRYING BROKER ARRANGEMENT EXEMPTIONS**

#### **20.25 Powers of District Councils**

- (1) Members may apply for an exemption from the introducing carrying broker arrangement requirements pursuant to By-law 35.
- (2) The District Council, or a sub-committee of the District Council, established pursuant to By-law 11, shall have the power to:
  - (a) exempt any Member from any of the requirements of By-law 35 on such terms and conditions, if any, as it determines to be just and appropriate; and
  - (b) exempt any arrangements between a Member and a Member's foreign affiliate, pursuant to By-law 35.6, from the requirements of By-law 35 on such terms and conditions, if any, as it determines to be just and appropriate.

(3) The Member shall comply with any rules applicable to introducing carrying broker arrangement exemption applications prescribed by the IDA Rules of Practice and Procedure.

(4) The Member shall be provided with notice of the decision where the exemption is granted and the decision with reasons where the exemption is refused or granted subject to conditions.

## **EXEMPTION REVIEW HEARINGS**

### **20.26 Review Hearings**

(1) The Applicant or Association Staff may apply for a review of the District Council decisions pursuant to By-law 20.24 or By-law 20.25 within ten business days after release of the decision.

(2) If the Applicant does not request a review within the time period prescribed in subsection (1), the District Council decision to refuse the exemption request application or approve the exemption request application subject to terms and conditions, shall become final.

(3) If Association Staff requests a review within the time period prescribed in subsection (1), the request for review shall operate as a stay from the District Council decision.

(4) A review of a District Council decision shall be heard by a District Council Panel comprised of three members of the District Council. No member of a District Council who participated in the District Council decision shall sit on the District Council Panel.

(5) The District Council Panel may:

(a) affirm the decision;

(b) quash the decision;

(c) vary or remove any terms and conditions imposed on an Applicant; and

(d) make any decision that could have been made by the District Council or a sub-committee of the District Council pursuant to By-law 20.24 and By-law 20.25.

(6) No appeal shall be available from the decision of the District Council Panel.

### **20.27 Costs**

(1) The District Council Panel may order against the Applicant any costs associated with the exemption request review hearing determined to be appropriate and reasonable.

(2) Costs shall not be assessed where the District Council Panel grants the exemption request.

## **PART 9 - EARLY WARNING REVIEW PROCEEDINGS**

### **20.28 Imposition of Prohibitions - Early Warning Level 2**

(1) The Senior Vice-President Member Regulation, or his or her delegate may, in his or her discretion, order that a Member designated as being in Early Warning Level 2, pursuant to By-law 30, be prohibited from:

- (a) opening any new branch offices;
- (b) hiring any new registered representative, or investment representative;
- (c) opening any new customer accounts; or
- (d) changing, in any material respect, the inventory positions of the Member.

(2) Written notice of an order made under subsection (1) shall be provided to the Member.

### **20.29 Review of Early Warning Level 2 Prohibitions**

(1) The Member may request a review of a By-law 20.28 order by a Hearing Panel within three business days after release of the decision.

(2) If a request for review is made, the hearing shall be held as soon as reasonably possible and no later than twenty-one calendar days after the request for review, unless otherwise agreed by the parties.

(3) If a Member does not request a review within the time period prescribed in subsection (1), the By-law 20.28 order becomes effective and final.

(4) A Hearing Panel may:

- (a) affirm the order;
- (b) quash the order; or
- (c) vary or remove any prohibitions imposed on the Member; and
- (d) make any decision that could have been made by the Senior Vice-President Member Regulation, or his or her designate pursuant to By-law 20.28.

(5) No appeal shall be available from the decision of the Hearing Panel.

## **PART 10 - ENFORCEMENT HEARINGS**

### **INITIATION OF ENFORCEMENT HEARINGS**

#### **20.30**

(1) The Association may hold hearings, as set out under this By-law, in order to ensure compliance with and enforcement of Association By-laws, Regulations, Rulings and Policies and federal or provincial statutes, regulations, rulings or policies relating to trading or advising in respect of securities or commodities.

(2) The categories of enforcement hearings under By-law 20 are: disciplinary hearings; settlement hearings and expedited hearings. Enforcement hearings shall be conducted in accordance with this By-law and the IDA Rules of Practice and Procedure.

## **POWERS OF COMPULSION**

### **20.31 Members, Approved Persons and Association Staff**

(1) Every Member, Approved Person and Association Staff member shall:

(a) attend and give evidence respecting any matter relevant to hearings pursuant to By-law 20.33, By-law 20.34 or By-law 20.42 upon receipt of notice from the National Hearing Coordinator or his or her designate or order of a Hearing Panel; and

(b) produce for inspection and provide copies of any books, records, accounts and documents that are in the possession or control of the Member or Approved Person, to a Hearing Panel upon receipt of notice from the National Hearing Coordinator or order of the Hearing Panel.

(2) Failure to comply with subsections 1(a) or (b) constitutes a contravention of Association By-laws and may result in disciplinary action under By-law 20.33 or By-law 20.34.

### **20.32 Partners, Directors, Officers and Employees of Members**

(1) Where a Hearing Panel requires the attendance before it of any partner, director, officer or employee of a Member, who is not an Approved Person, the Member shall direct such employee to attend and to give information or make such production of documents as can be required of a person referred to in By-law 20.31.

(2) Failure by the Member to comply with subsection (1) constitutes a contravention of Association By-laws and may result in disciplinary action under By-law 20.34.

## **PENALTIES**

### **20.33 Approved Persons**

(1) Upon conclusion of a disciplinary hearing, a Hearing Panel may impose the penalties set out at 20.33(2) if, in the opinion of the Hearing Panel, the Approved Person:

(a) failed to comply with or carry out the provisions of any federal or provincial statute, regulation, ruling or policy relating to trading or advising in respect of securities or commodities;

(b) failed to comply with the provisions of any By-law, Regulation, Ruling or Policy of the Association; or

(c) failed to carry out an agreement or undertaking with the Association.

(2) Pursuant to subsection (1), a Hearing Panel may impose any one or more of the following penalties upon the Approved Person:



- (a) a reprimand;
- (b) a fine not exceeding the greater of:
  - (i) \$1,000,000 per contravention; and
  - (ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.
- (c) suspension of approval for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued approval;
- (e) prohibition of approval in any capacity for any period of time;
- (f) termination of the rights and privileges of approval;
- (g) revocation of approval;
- (h) a permanent bar from approval with the Association; or
- (i) any other fit remedy or penalty.

#### **20.34 Members**

(1) Upon conclusion of a disciplinary hearing, a Hearing Panel may impose the penalties set out at By-law 20.34(2) if, in the opinion of the Hearing Panel, the Member:

- (a) failed to comply with or carry out the provisions of any federal or provincial statute, regulation, ruling or policy relating to trading or advising in respect of securities or commodities;
- (b) failed to comply with the provisions of any By-law, Regulation, Ruling or Policy of the Association;
- (c) failed to carry out an agreement or undertaking with the Association; or
- (d) failed to meet liabilities to another Member or to the public.

(2) Pursuant to subsection (1), a Hearing Panel may impose any one or more of the following penalties upon the Member:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
  - (i) \$5,000,000 per contravention; and

- (ii) an amount equal to three times the profit made or loss avoided by the Member by reason of the contravention;
- (c) suspension of the rights and privileges of the Member (and such suspension may include a direction to the Member to cease dealing with the public) for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued Membership;
- (e) termination of the rights and privileges of Membership;
- (f) expulsion of the Member from membership in the Association; or
- (g) any other fit remedy or penalty.

## **SETTLEMENT HEARINGS**

### **20.35 Negotiation of Settlement Agreements**

- (1) Association Staff may negotiate a Settlement Agreement with any Approved Person or Member.
- (2) The parties to a Settlement Agreement may agree to the imposition of any of the penalties prescribed by By-law 20.33 or By-law 20.34.
- (3) Settlement discussions may occur at any time until the conclusion of a settlement hearing or a disciplinary hearing.
- (4) All negotiations of a Settlement Agreement are conducted on a without prejudice basis to the Association and all other persons involved in the negotiations and cannot be used as evidence or referred to in any proceedings.

### **20.36 Hearing Panel Powers**

- (1) Upon conclusion of a settlement hearing, the Hearing Panel may either:
  - (a) accept the Settlement Agreement; or
  - (b) reject the Settlement Agreement.
- (2) Settlement Agreements shall become effective and binding upon Association Staff and an Approved Person or Member upon acceptance by a Hearing Panel. An Approved Person or Member shall be deemed to have been penalized pursuant to By-law 20.33 or By-law 20.34 upon acceptance of a Settlement Agreement by a Hearing Panel.

### **20.37 Acceptance Of Settlement Agreement**

- (1) The decision of a Hearing Panel accepting a Settlement Agreement shall constitute final disciplinary action of the Association and no appeal shall be available from the decision.

### **20.38 Rejection of Settlement Agreement -- Proceeding to a Subsequent Settlement Hearing**

- (1) If a Settlement Agreement is rejected by a Hearing Panel, the parties may agree to enter into another Settlement Agreement.
- (2) No member of the Hearing Panel that presided over the initial settlement hearing shall sit on the Hearing Panel presiding over the subsequent settlement hearing.
- (3) The reasons for rejecting a Settlement Agreement shall not be made public upon rejection of the initial settlement hearing, but shall be made available to a Hearing Panel presiding over the subsequent settlement hearing.

### **20.39 Rejection of Settlement Agreement -- Proceeding to A Disciplinary Hearing**

- (1) If a Settlement Agreement or a subsequent Settlement Agreement is rejected by a Hearing Panel, the Association may proceed to a disciplinary hearing based on the same or related disciplinary charges pursuant to By-law 20.33 or By-law 20.34.
- (2) No member of the Hearing Panel that presided over the settlement hearing or subsequent settlement hearing shall sit on a Hearing Panel constituted for a disciplinary hearing on the same or related disciplinary charges.

### **20.40 Rejection of Settlement Agreement**

- (1) There shall be no appeal from a decision of a Hearing Panel rejecting a Settlement Agreement.

## **EXPEDITED HEARINGS**

### **20.41 Expedited Hearings**

- (1) Expedited hearings are held upon application by Association Staff and without notice to the Respondent in the circumstances prescribed in By-law 20.42 and By-law 20.43.

### **20.42 Types of Expedited Hearings- Members**

- (1) A Hearing Panel may impose any of the penalties prescribed by By-law 20.45 upon a Member in any of the following circumstances:

#### *Bankruptcy*

- (a) a Member makes a general assignment for the benefit of its creditors, makes an authorized assignment or a proposal to its creditors; is declared bankrupt, or a winding-up order is made in respect of a Member or a receiver or other officer with similar powers is appointed in respect of all or any part of the undertaking and property of the Member.

#### *Suspension or Cancellation of Registration or Membership*

(b) the registration of a Member as a dealer in securities or commodities under any statute respecting trading or advising in respect of securities or commodities or as an underwriter in any statute in respect of securities or commodities has lapsed or is suspended or cancelled;

(c) a recognized stock exchange, securities commission, securities regulatory authority, self-regulatory organization or any recognized trading or quotation system suspends the Membership or privileges of a Member;

*Financial or Operating Difficulty*

(d) where a Member is in such financial or operating difficulty that the Hearing Panel determines the Member cannot be permitted to continue to operate without risk of imminent harm to the public, other Members or the Association;

*Failure to Cooperate With Association Compliance Examinations or Investigations*

(e) where a Member fails to cooperate with Association compliance examinations or investigations pursuant to By-law 19 and the Hearing Panel determines that the Member cannot be permitted to continue to operate without risk of imminent harm to the public, other Members or the Association;

*Criminal Charges*

(f) where a Member has been charged with a criminal offence relating to theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or unauthorized trading, and such criminal charge likely brings the capital markets into disrepute.

*Non-Compliance With Conditions*

(g) where a Member fails to comply with terms or conditions imposed pursuant to By-law 20.33, By-law 20.34 or By-law 20.38 or By-law 20.29.

**20.43 Types of Expedited Hearings - Approved Persons**

(1) A Hearing Panel may impose any of the penalties set out in By-law 20.45 upon an Approved Person in any of the following circumstances:

*Suspension or Cancellation of Registration or Approval*

(a) the registration or approval of an Approved Person under any statute respecting trading or advising in respect of securities or commodities has lapsed, is suspended or cancelled;

(b) a recognized stock exchange, securities commission, securities regulatory authority, self-regulatory organization or recognized trading or quotation system suspends an Approved Person;

*Failure to Cooperate With Association Compliance Examinations and Investigations*

(c) failure to cooperate with Association compliance examinations and investigations pursuant to By-law 19 and the Hearing Panel determines that the Approved Person cannot be permitted to continue to be an Approved Person without risk of imminent harm to the public, other Members or the Association;

#### *Criminal Charges*

(d) where an Approved Person has been charged with a criminal offence relating to theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or unauthorized trading, and such criminal charge likely brings the capital markets into disrepute;

#### *Non-Compliance With Conditions*

(e) where an Approved Person fails to comply with terms or conditions imposed pursuant to By-law 20.33, By-law 20.34, or By-law 20.38.

### **20.44 Non-payment of Fines or Costs**

(1) In the event that a fine or costs imposed by a Hearing Panel are not paid within the prescribed time, the Senior Vice-President Member Regulation, or his or her designate may summarily, without further notice, suspend a Member or Approved Person, until such fine or costs are paid.

### **20.45 Powers Of Hearing Panel**

(1) A Hearing Panel has the power to impose any of the following penalties upon a Respondent who is an Approved Person or Member in the circumstances prescribed in By-law 20.42 and By-law 20.43:

- (a) suspension of approval or Membership;
- (b) imposition of terms or conditions on a suspension of approval or Membership;
- (c) imposition of terms or conditions on continued approval or Membership;
- (d) direction to immediately cease dealing with the public;
- (e) an order with terms and conditions to facilitate the orderly transfer of client accounts from a Member suspended under this By-law;
- (f) termination of the rights and privileges of approval or Membership;
- (g) expulsion of an Approved Person or Member from the Association; or
- (h) imposition of a Monitor pursuant to By-law 20.46.

### **20.46 Powers Of Hearing Panel To Impose A Monitor**

(1) A Hearing Panel may order the imposition of a Monitor, on such terms and conditions as it deems just and appropriate, where it is in the interest of the public, and the Hearing Panel determines that:

- (a) the Member is at financial risk and may become insolvent;
- (b) client accounts are at risk of financial loss due to a Member's financial condition, inadequate internal controls or deficient operating procedures;
- (c) the Member has failed to maintain regulatory capital requirements as prescribed by Association By-laws, Rules, Regulations or Policies or any federal or provincial statute, Regulation, Ruling or Policy relating to trading or advising in respect of securities or commodities; or
- (d) the securities firm has been suspended by the Association or other regulatory or self-regulatory organization for failure to meet regulatory capital requirements.

(2) A Monitor appointed pursuant to subsection (1) shall monitor the Member's business and financial affairs in accordance with the terms and conditions specified by the Hearing Panel.

(3) A Hearing Panel may assign any of the following terms and conditions to the Monitor, for such period of time as the Hearing Panel determines is just and appropriate in the circumstances:

- (a) to enter and re-enter the Member's premises and to remain on site to conduct day-to-day monitoring of all of the Member's business activities, including but not limited to, monitoring and review of accounts receivable, accounts payable, client accounts, margin, client free credits, the Member's banking, any books or records of the Member, trading conducted by or on behalf of the Member for its' own account or the account of its' clients, payment of any debts or the creation of new debt and any reconciliation required to be completed by the Member;
- (b) to make copies of information and to provide copies of such information to Association Staff or any other agency the Hearing Panel determines appropriate;
- (c) to provide ongoing reporting of the Monitor's findings or observations to Association Staff or any other agency the Hearing Panel determines appropriate;
- (d) to monitor compliance by the Member with any terms or conditions which have been imposed on the Member by the Association or any other regulator, including but not limited to, compliance with early warning terms and conditions;
- (e) to verify and assist with the preparation of any regulatory filings, including but not limited to, the calculation of risk adjusted capital;
- (f) to conduct or have conducted an appraisal of the Member's net worth or valuation of any part of the Member's assets;
- (g) to assist the staff of the Member to facilitate the orderly transfer of client accounts;
- (h) to pre-authorize any issuance of cheques or payments made by or on behalf of the Member or distribution of any of the Member's assets; or
- (i) any other such terms or conditions that the Hearing Panel determines is just and appropriate to assign to the Monitor.

(4) The expenses related to a Monitor appointed pursuant to By-law 20.46 shall be borne by the Member.

#### **20.47 Review Hearing**

(1) The Respondent may file a written request for review of any decision made pursuant to By-law 20.45 within thirty calendar days after release of the decision of the Hearing Panel.

(2) If a request for review is made, pursuant to subsection (1), a hearing shall be held as soon as reasonably possible and no later than twenty-one calendar days after filing of the written request for review unless otherwise agreed by the parties.

(3) No member of a Hearing Panel who presided over a hearing held pursuant to By-law 20.45 shall sit on a Hearing Panel constituted for review of that decision.

(4) If a Respondent does not request a review within the time period prescribed in subsection (1), the Hearing Panel decision shall become final.

(5) Unless the Hearing Panel orders otherwise, a request for a review shall not operate as a stay from a decision made pursuant to By-law 20.45, notwithstanding By-law 20.53 (1).

(6) The review decision of a Hearing Panel may be appealed by either party pursuant to By-law 20.50.

#### **20.48 Powers of The Hearing Panel - Review Hearing**

(1) The Hearing Panel presiding over the review hearing may:

(a) affirm any decision;

(b) quash any decision;

(c) vary any decision or penalty; and

(d) make any decision that could have been made by a Hearing Panel pursuant to By-law 20.45.

### **ASSESSMENT OF COSTS**

#### **20.49 Assessment of Costs**

(1) In addition to imposing any of the penalties set out in By-law 20.33, By-law 20.34 or By-law 20.45, the Hearing Panel may assess and order any Association Staff investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

(2) Costs shall not be assessed where the Hearing Panel has not made a finding against the Respondent based on any of the grounds set out at By-law 20.33(1) or By-law 20.34(1) or where an expedited decision is quashed upon review pursuant to By-law 20.48(1).

## **PART 11 - APPEALS OF DISCIPLINARY AND EXPEDITED REVIEW DECISIONS**

#### **20.50 Right of Appeal**

(1) The Association and a Respondent may appeal a disciplinary decision made by a hearing Panel to an Appeal Panel.

(2) A Respondent may appeal an expedited review hearing decision made by a Hearing Panel to an Appeal Panel.

(3) An appeal may be made on questions of law or fact or both.

#### **20.51 Composition of Appeal Panel**

(1) The Appeal Panel shall be comprised of:

(a) one independent member of the Board of Directors;

(b) one industry member of the Board of Directors; and

(c) one former judge, who is a public member of a Hearing Committee of the District in which the disciplinary hearing or expedited review hearing was heard, or a former judge who is a public member of a Hearing Committee of a District, other than that in which the hearing or expedited review hearing was heard, if the two chairs of the respective Hearing Committees consent.

#### **20.52 Appeal Process**

(1) An application for appeal to the Appeal Panel must be made within thirty calendar days after release of the decision of the Hearing Panel.

(2) An application for appeal shall state the basis for such appeal pursuant to the IDA Rules of Practice and Procedure.

#### **20.53 Effect of Appeal Application**

(1) An appeal to the Appeal Panel from a decision of a Hearing Panel shall operate as a stay from the decision, unless ordered otherwise by the Appeal Panel.

(2) Notwithstanding subsection (1), an appeal to the Appeal Panel from an expedited review hearing decision shall not operate as a stay from the decision, unless ordered otherwise by the Appeal Panel.

(3) If the decision or order of the Hearing Panel suspends, expels or revokes registration of an Approved Person, the Approved Person shall be subject to strict supervision until release of the appeal decision.

#### **20.54 Powers of Appeal Panel**

(1) A hearing held under this Part shall be an appeal on the record, however, the Appeal Panel may receive new or additional evidence as it considers just.

(2) The Appeal Panel may:

(a) affirm any decision;



- (b) quash any decision;
- (c) vary any decision or penalty;
- (d) make any decision that could have been made by a Hearing Panel pursuant to By-law 20.33, By-law 20.34, By-law 20.45 and By-law 20.49
- (e) extend or limit the decision's application and effect to any Districts of the Association;
- (f) order a new hearing; or
- (g) make any order or decision that is considered just.

## **PART 12 - PUBLIC HEARINGS**

### **20.55 Public Hearings**

- (1) The following types of hearings shall be open to the public subject to subsection (2):
  - (a) settlement hearings, after a Settlement Agreement has been accepted by Hearing Panel, pursuant to By-law 20.36;
  - (b) disciplinary hearings pursuant to By-law 20.33 and By-law 20.34;
  - (c) expedited review hearings pursuant to By-law 20.47; and
  - (d) enforcement appeal hearings pursuant to By-law 20.50.
- (2) The hearings prescribed in subsection (1) shall be held in the absence of the public where the Hearing Panel or Appeal Panel is of the opinion that the desirability of avoiding disclosure, of intimate financial, personal or other matters, in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be public.

## **PART 13 - RULE MAKING POWERS**

### **20.56 Rule-making Powers of the Member Regulation Oversight Committee**

- (1) The Member Regulation Oversight Committee of the Association may enact, amend, repeal and re-enact, Rules of Practice and Procedure related to By-law 20.

## **PART 14 - TRANSITIONAL PROVISIONS**

### **20.57 Transitional Provisions**

- (1) Subject to subsection (2), any provision of any By-law, Regulation, Ruling or Policy of the Association in effect immediately prior to the coming into effect of these Rules shall remain in full force and effect until such By-law, Rule, Regulation, Ruling or Policy, has been repealed.

(2) In the event of a conflict between this By-law and the provisions of any By-law, Regulation, Ruling or Policy of the Association that remains in effect after this By-law comes into effect, the provisions of this By-law shall prevail.

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# **RULES OF PRACTICE AND PROCEDURE**

## **PART A: GENERAL MATTERS**

### **RULE 1: INTERPRETATION AND APPLICATION**

#### **1.1 Application**

- (1) Part A of the Rules applies to all proceedings brought pursuant to By-law 20.
- (2) Part B of the Rules applies to enforcement proceedings brought pursuant to By-law 20, Part 10.
- (3) Part C of the Rules applies to appeals from decisions of Hearing Panels in disciplinary hearings and expedited hearing, brought pursuant to By-law 20.50.
- (4) Part D of the Rules applies to approval and exemption request review hearings brought pursuant to By-law 20, Parts 7 and 8.
- (5) Part E of the Rules applies to early warning proceedings brought pursuant to By-law 20, Part 9.

#### **1.2 General Principle**

These Rules shall be interpreted and applied to secure a fair hearing and a just determination in the interests of justice, with a view to securing such result in a timely and cost effective manner.

#### **1.3 Definitions**

In these Rules:

"Appeal Panel" means a panel presiding over an appeal as set out in By-law 20.50.

"Appellant" means a party bringing an appeal.

"Association" means the Investment Dealers Association of Canada.

"Board Panel" means a Panel presiding over a membership approval review hearing as set out in By-law 20.22(3).

"Chair" means a public member of the Hearing Panel.

"Commencing document," means Notice of Hearing, Notice of Application, Notice of Motion, Notice of Request for Review and Notice of Appeal.

"District Council Panel" means a panel presiding over an exemption review hearing as set out in By-law 20.26(4).

"Document" means any information recorded or stored by means of any device including audiotape, videotape, chart or graph.

"Hearing" means any hearing conducted pursuant to By-law 20.

"Hearing Committee" means public and industry members of a District Council of the Association or other individuals, as prescribed by Part 5 of By-law 20, appointed for the purpose of selection to Hearing Panels and Appeal Panels.

"Hearing Panel" means a Panel presiding over individual approval review hearings, early warning level 2 review hearings, disciplinary hearings, settlement hearings, expedited hearings and expedited review hearings as set out in By-law 20.13.

"Holiday" shall include:

- (i) any Saturday or Sunday;
- (ii) any federal statutory holiday;
- (iii) any Provincial Civic holiday (applicable to the jurisdiction of the matter in consideration);
- (iv) any special holiday proclaimed by the Governor General or the Lieutenant Governor.

"Member" means a member firm of the Association.

"National Hearing Coordinator" means the individual responsible for the administration of all proceedings including being responsible for the selection of the Panels, the scheduling of hearings, and custody and control of documents.

"Panel" means a Hearing Panel, District Council Panel, Board Panel or Appeal Panel.

"Party" means the Association, Respondent, Requesting Party, Responding Party or Appellant.

"Presiding Officer" means a public member of the Hearing Committee appointed to hear a motion or Pre-hearing Conference.

"Proceedings" means all steps in enforcement, registration, appeal or early warning matters, from the issuance of the commencing document to the final disposition of the matter.

"Requesting Party" means a party requesting any review hearing pursuant to By-law 20.

"Respondent" means an approved individual or Member named in a Notice of Hearing, Settlement Agreement, Notice of Application or a party named in the Notice of Appeal against whom the appeal is brought.

"Responding Party" means a party responding to a Request for Review or a Notice of Motion.

"Rules" means the Association Rules of Practice and Procedure

#### **1.4 Interpretation of Rules**

(1) For the purpose of these Rules

any term in the singular includes the plural and any term in the plural includes the singular, if such use would be appropriate; and



## **1.5 Procedural Power of the Panel**

- (1) A Panel may:
  - (a) make any determination, hold any hearing and make any decision, order, interim order or impose any terms required to implement such order, required or permitted under these Rules;
  - (b) admit as evidence in a hearing, whether or not given or proven under oath or affirmation, anything that is relevant to the proceedings;
  - (c) require presentation of evidence or testimony under oath or affirmation; and
  - (d) waive any procedural requirement set out in these Rules upon the request of one or both parties.

## **1.6 Irregularity of Form**

- (1) No document, hearing, or decision in a proceeding is invalid only because of a defect or irregularity in form.

## **RULE 2: TIME**

### **2.1 Computation of Time**

- (1) In the computation of time under these Rules:
  - (a) if a period of less than 7 days is prescribed, holidays are not counted;
  - (b) if the time for doing an act under these Rules expires on a holiday, the act may be done on the next day that is not a holiday.

### **2.2 Extension or Abridgment of Time**

- (1) Any time period prescribed by these Rules may be extended or abridged as follows:
  - (a) on consent of the parties before the expiration of a prescribed time period; or
  - (b) upon order of the Panel before or after the expiration of a prescribed time period, on such terms and conditions as the Panel considers appropriate.

## **RULE 3: APPEARANCE AND REPRESENTATION**

### **3.1 Representation before a Panel**

In any proceeding before a Panel, a party may appear on her/his own behalf or may be represented by counsel or agent.

### **3.2 Change in Representation**

A party may change representation by serving and filing written notice pursuant to Rule 5.

### **3.3 Withdrawal by Counsel or Agent**

- (1) Counsel or agent for a party may withdraw as counsel or agent by serving and filing written notice pursuant to Rule 5 and by serving notice on the subject party.
- (2) Where counsel or agent for a party seeks to withdraw as counsel or agent less than 30 days prior to the matter being heard by a Panel, leave must be obtained on motion brought pursuant to Rule 8.
- (3) Where leave is granted and a party appoints new counsel or agent, the party shall then comply with Rule 3.2.

## **RULE 4: NATIONAL HEARING CO-ORDINATOR**

### **4.1 Role of National Hearing Coordinator**

The National Hearing Coordinator shall, pursuant to By-law 20.14, administer all proceedings brought in accordance with these Rules.

### **4.2 Parties to follow Practice Direction**

The parties shall communicate and file documents with the National Hearing Coordinator or her/his designate in accordance with these Rules and the Notes and Practice Direction contained in Schedule "A".

## **RULE 5: SERVICE AND FILING**

### **5.1 Parties to be Served**

Any document required to be served under these Rules shall be served on every adverse party to the proceeding.

### **5.2 Manner of Service - Notice of Hearing**

- (1) A Notice of Hearing shall be served by one of the following methods:
  - (a) by personal service on the Respondent;
  - (b) by delivering a copy of the Notice of Hearing by registered mail to the Respondent's last known address as recorded in the Association's Registration file; or
  - (c) where a Respondent is represented by counsel, by delivering a copy of the Notice of Hearing to the Respondent's counsel with the consent of counsel.

### **5.3 Manner of Service - Other Documents**

Where these Rules require a document other than a Notice of Hearing to be served, it may be served by mail, courier, facsimile, or by any other means effective to deliver a copy of the document.

### **5.4 Effective Date of Service**

- (1) Service of a document is deemed effective:
  - (a) if served personally, on the same day of service;

(b) if sent by mail, on the fifth day after the day of mailing;

(c) if sent by facsimile, on the same day as the transmission unless received after 4 p.m., in which case the document will be deemed to have been served on the next day that is not a holiday; or

(d) if sent by courier, on the second day after the day on which the document was given to the courier.

## **5.5 Proof of Service**

The Hearing Panel may accept proof of service of a document by a sworn statement of the person who served the document.

## **5.6 Filing**

A document required to be filed under these Rules shall be filed by delivering four (4) copies to the National Hearing Coordinator or her designate by personal delivery, mail, courier, or facsimile.

## **5.7 Required Information - Service and Filing**

(1) A party serving or filing a document shall include the following information:

(a) the name of the proceeding to which the document relates;

(b) the party's name, address, telephone number and facsimile number, unless the party has counsel or an agent;

(c) if the party has counsel or an agent, the name, address, telephone number and fax number of the counsel or agent; and

(d) the name of the party, counsel or agent to be served with the document.

# **PART B: ENFORCEMENT PROCEEDINGS**

## **I. Disciplinary Proceedings**

### **RULE 6: COMMENCEMENT OF PROCEEDINGS**

#### **6.1 Notice of Hearing**

Discipline proceedings pursuant to By-law 20.30 shall be commenced by a Notice of Hearing.

#### **6.2 Designation of Track**

When issuing a Notice of Hearing, the Association shall designate the discipline proceeding as on a Standard Track or Complex Track, considering the factors set out in Rule 6.3.

#### **6.3 Factors to Consider Regarding Track Designation**

(1) In designating a discipline proceeding as on the Standard Track or Complex Track, the Association shall consider:

- (a) the complexity of the factual and legal issues;
- (b) the anticipated number of documents to be introduced at the hearing;
- (c) the anticipated number of witnesses at the hearing;
- (d) the likelihood of expert evidence at the hearing;
- (e) the anticipated duration of the hearing; and
- (f) any other factors that the Association considers relevant to the procedural or substantive complexity of the proceeding.

#### **6.4 Service of Notice of Hearing**

- (1) For a discipline proceeding designated on the Standard Track, the Association shall serve a Notice of Hearing at least 45 days prior to the date of the hearing.
- (2) For a discipline proceeding designated on the Complex Track, the Association shall serve a Notice of Hearing at least 10 days before a first appearance before a Hearing Panel for purposes of setting a date for the hearing and considering any other scheduling matters.

#### **6.5 Contents of Notice of Hearing**

- (1) A Notice of Hearing shall state:
  - (a) the purpose of the hearing;
  - (b) the designation of the proceeding as on the Standard Track or Complex Track;
  - (c) the date, time and location of the hearing or a first appearance to set a date for a hearing;
  - (d) the alleged violations of Association By-laws, Regulations, Policies and any applicable statute or regulations thereof;
  - (e) the facts in support of the alleged violations;
  - (f) that, the Respondent shall provide a Response to the Notice of Hearing in accordance with Rule 7;
  - (g) that, if the Respondent does not provide a Response in accordance with Rule 7, the Hearing Panel may proceed without the Respondent's participation and the Respondent will not be entitled to any further notice of the hearing;
  - (h) the type and range of penalties that may be imposed by the Hearing Panel; and
  - (i) any other information the Association may consider advisable.

**RULE 7: RESPONSE TO NOTICE OF HEARING**

**7.1 Service of Response**

- (1) For a discipline proceeding designated on the Standard Track, the Respondent shall serve a Response within 20 days from the effective date of service of the Notice of Hearing.
- (2) For a discipline proceeding designated on the Complex Track, the Respondent shall serve a Response within 30 days from the effective date of service of the Notice of Hearing.

**7.2 Failure to Serve Response**

- (1) If a Respondent served with a Notice of Hearing fails to serve a Response in accordance with Rule 7.1:
  - (a) the Association may proceed with the hearing of the matter as set out in the Notice of Hearing without further notice to and in the absence of the Respondent; and
  - (b) the Hearing Panel may, accept as proven the facts and violations alleged by the Association in the Notice of Hearing, and may impose penalties and costs pursuant to By-laws 20.33, 20.34 and 20.49.

**7.3 Contents of Response**

- (1) A Response shall state:
  - (a) the facts alleged in the Notice of Hearing which the Respondent admits;
  - (b) the facts alleged in the Notice of Hearing which the Respondent denies and the grounds for denial; and
  - (c) all other facts relied upon by the Respondent.

**7.4 Deficient Response**

- (1) Where the Respondent fails to:
  - (a) specifically deny a fact; or
  - (b) provide grounds for denial of a fact,the Hearing Panel may accept as proven any facts alleged by the Association in the Notice of Hearing.

**RULE 8: MOTIONS**

**8.1 Notice of Motion**

Motions shall be commenced by a Notice of Motion.

**8.2 Timing of Motion**

A motion may be brought at any time prior to or after the commencement of a proceeding.

### **8.3 Motions - To Whom to be Made**

- (1) A motion shall be heard by a Presiding Officer prior to the commencement of the proceeding and shall be heard by the Hearing Panel after the commencement of the proceeding.
- (2) A Presiding Officer shall not be a member of the Hearing Panel presiding over the subsequent hearing of the proceeding unless all parties consent in writing.

### **8.4 Motion Hearing Date**

Prior to serving the Notice of Motion, the party bringing the motion shall obtain a date from the National Hearing Coordinator.

### **8.5 Contents of Notice of Motion**

- (1) The Notice of Motion shall state:
  - (a) the date of the motion;
  - (b) whether the motion is to be heard by a Presiding Officer or the Hearing Panel;
  - (c) the specific relief sought;
  - (d) the grounds for the relief sought, including reference to any Association By-laws, Regulations, Policies and Rules, and statutory provisions; and
  - (e) the list of evidence to be relied upon.

### **8.6 Motion Record**

- (1) A Motion Record shall contain:
  - (a) the notice of motion; and
  - (b) copies of the evidence to be relied upon.

### **8.7 Service and Filing of Motion Record**

- (1) Subject to Rule 8.7(2), a Motion Record shall be served and filed at least 14 days prior to the date of the motion.
- (2) When a motion is brought to determine an issue arising during the hearing, the period of notice shall be at the direction of the Hearing Panel.

### **8.8 Response to Notice of Motion**

The Responding Party may serve and file a Responding Record, at least 7 days prior to the date of the motion, subject to Rule 8.7 (2).

## **8.9 Contents of Responding Record**

- (1) The Responding Record shall contain:
  - (a) a statement of the reasons the relief ought not to be granted; and
  - (b) copies of additional evidence or other materials to be relied upon.

## **8.10 Public Domain**

- (1) All motions shall be open to the public unless the Presiding Officer or Hearing Panel orders the exclusion of the public.
- (2) An order excluding the public shall only be made where the Presiding Officer or Hearing Panel is of the opinion that the desirability of avoiding disclosure of intimate financial, personal or other matters, in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that motions be public.

## **RULE 9: PRE-HEARING CONFERENCES**

### **9.1 Initiation of Pre-hearing Conference**

- (1) At any time prior to the date of a hearing, a party may request a Pre-hearing Conference by serving and filing a Request for a Pre-hearing Conference.
- (2) A Request for a Pre-hearing Conference shall include the party's proposal as to the form of the Pre-hearing Conference pursuant to Rule 9.3.
- (3) If an adverse party objects to the proposed form of the Pre-hearing Conference, the adverse party shall advise all parties and the National Hearing Coordinator of the objection within 48 hours from the effective date of service of the Request for a Pre-hearing Conference.
- (4) No subsequent Pre-hearing Conference shall take place unless by consent of the parties.

### **9.2 Presiding Officer**

- (1) A Pre-hearing Conference shall be held before a Presiding Officer.
- (2) A Presiding Officer shall not be a member of the Hearing Panel presiding over the subsequent hearing of the same proceeding unless all parties consent in writing.

### **9.3 Form of Pre-hearing Conference**

- (1) A Pre-hearing Conference may be held in person or by telephone.
- (2) If the parties are unable to agree to the form of the Pre-hearing Conference, the Pre-hearing Conference shall be held in person.

#### **9.4 Pre-hearing Conference Date**

Notice of the date, time, location (if applicable) and the form of the Pre-hearing Conference will be provided to the parties by the National Hearing Coordinator.

#### **9.5 Issues to be Considered**

- (1) The Presiding Officer may consider any issue that may assist in the just and expeditious disposition of the proceeding including the following:
  - (a) settlement of the proceeding;
  - (b) simplification or clarification of any issues;
  - (c) disclosure of documents;
  - (d) agreed statements of fact;
  - (e) admissibility of evidence;
  - (f) identification and scheduling of motions;
  - (g) identification and scheduling of anticipated steps in the proceeding; and
  - (h) any other procedural or substantive matters.

#### **9.6 Orders at Pre-hearing Conference**

- (1) The Presiding Officer may make such order with respect to the conduct of the proceeding, as she/he deems appropriate.
- (2) Any orders made by the Presiding Officer shall be in writing and binding on all parties.
- (3) The Presiding Officer shall provide the order to the National Hearing Coordinator who shall then distribute copies of the order to the parties.

#### **9.7 Inaccessible to the Public**

A Pre-hearing Conference shall be held in the absence of the public.

#### **9.8 No Communication to Hearing Panel**

Communications made at a Pre-hearing Conference shall not be disclosed to the Hearing Panel presiding over the hearing of the proceeding except those communications that are disclosed in an order made pursuant to Rule 9.6.



**RULE 10: EXCHANGE OF DOCUMENTS**

**10.1 Association Duty to Disclose**

Nothing in this Rule 10 derogates from the Association's obligation to disclose all materials as required by common-law, as soon as reasonably practicable after the issuance of the Notice of Hearing.

**10.2 Obligation to Provide Documents and Other Items -- Association**

(1) The Association shall, as soon as practicable after service of the Notice of Hearing, and in any case no later than 14 days in a Standard Track proceeding and 60 days in a Complex Track proceeding, prior to the date of the hearing:

(a) serve upon the Respondent:

(i) copies of all documents; and

(ii) a list of items, other than documents intended to be relied upon at the hearing; and

(b) make available for inspection to the Respondent all items referred to in subsection (a) (ii).

**10.3 Obligation to Provide Additional Documents and Other Items -- Respondent**

(1) The Respondent shall, as soon as practicable after service of the Notice of Hearing, and in any case no later than 14 days in a Standard Track proceeding and 60 days in a Complex Track proceeding, prior to the date of the hearing:

(a) serve upon the Association:

(i) copies of documents; and

(ii) a list of items, other than documents, not provided by the Association, that are intended to be relied upon at the hearing; and

(b) make available for inspection to the Association items referred to in subsection (a) (ii).

**10.4 Failure to Exchange Documents**

If a party fails to provide a document or item pursuant to Rules 10.2 or 10.3, the party may not refer to or tender as evidence at the hearing the document or item without leave of the Hearing Panel and on such terms as the Hearing Panel considers appropriate.

**RULE 11: WITNESS LISTS AND STATEMENTS**

**11.1 Provision of Witness List and Statements**

(1) Subject to Rule 12, a party to a proceeding shall serve:

(a) a list of the witnesses the party intends to call at the hearing; and

(b) in respect of each witness named on the list, either:

(i) a witness statement signed by the witness;

(ii) a transcript of a recorded statement made by the witness (other than a Respondent); or

(iii) if no signed witness statement or transcript referred to in subsection (i) and (ii) is available, a summary of the evidence that the witness is expected to give at the hearing.

(2) The Association shall comply with the requirements of Rule 11.1(1), at least 10 days in a Standard Track proceeding and at least 45 days in a Complex Track proceeding, prior to the date of the hearing.

(3) The Respondent shall comply with the requirements of Rule 11.1(1), at least 7 days in a Standard Track proceeding and at least 40 days in a Complex Track proceeding, prior to the date of the hearing.

### **11.2 Contents of Witness Statements**

(1) A witness statement, transcript of a recorded statement or summary of anticipated evidence as required by Rule 11.1(1) shall contain:

(a) the substance of the anticipated evidence of the witness;

(b) a reference to documents it is anticipated the witness will refer to; and

(c) the name and address of the witness, or in the alternative, the name of a person through whom the witness can be contacted.

### **11.3 Failure to Provide Witness List or Statement**

If a party fails to comply with Rule 11.1, the party may not call the witness at the hearing without leave of the Hearing Panel and on such terms as the Hearing Panel considers appropriate.

### **11.4 Incomplete Witness Statement**

A party may not call a witness to testify to matters not disclosed pursuant to Rule 11.2 without leave of the Hearing Panel and on such terms as the Hearing Panel considers appropriate.

## **RULE 12: EXPERT WITNESS**

### **12.1 Expert Report**

A party that intends to call an expert witness shall serve a written expert report signed by the expert at least 60 days prior to the date of the hearing.

### **12.2. Expert Report in Response**

A party who intends to call an expert witness to respond to the expert witness of another party shall serve a written expert report at least 20 days prior to the date of the hearing.

### **12.3 Contents of Expert Report**

- (1) An expert report shall contain:
  - (a) the name, address and qualifications of the expert; and
  - (b) the substance of the opinion of the expert.

### **12.4 Failure to Provide Expert's Report**

A party that fails to comply with Rules 12.1, 12.2 or 12.3 may not refer to or tender as evidence the expert's report without leave of the Hearing Panel and on such terms as the Hearing Panel considers appropriate.

### **12.5 Abridgement of Time in Standard Track Proceeding**

In a Standard Track proceeding, a party may seek leave to abridge the time requirements as set out in Rules 12.1 and 12.2.

## **RULE 13: CONDUCT OF DISCIPLINARY HEARINGS**

### **13.1 Rights of Respondent**

- (1) A Respondent is entitled at the hearing:
  - (a) to attend and be heard in person;
  - (b) to be represented by counsel or an agent, as set out in Rule 3;
  - (c) to call and examine witnesses;
  - (d) to conduct cross-examination of witnesses; and
  - (e) to make submissions.

### **13.2 Order of Presentation**

- (1) The order of presentation at a hearing shall be as follows:
  - (a) the Association may make an opening address and shall then call evidence;
  - (b) at the conclusion of the Association's evidence, the Respondent may make an opening address and shall then call evidence;
  - (c) at the conclusion of the Respondent's evidence, the Association may call reply evidence;
  - (d) subject to paragraph (e), upon the conclusion of the evidence, the Respondent shall make a closing address, followed by the closing address of the Association; and
  - (e) if the Respondent calls no evidence, the Association shall make a closing address, followed by the closing address of the Respondent.

- (2) Where there are two or more Respondents separately represented, the order of presentation shall be as directed by the Hearing Panel.
- (3) Where a Respondent is represented by counsel or an agent, the right to address the Hearing Panel shall be exercised by the counsel or agent.

### **13.3 Evidence by Witnesses**

- (1) Subject to Rule 13.4, witnesses at a hearing shall provide oral testimony under oath or solemn affirmation.
- (2) The Chair of the Hearing Panel shall exercise reasonable control over the scope and manner of questioning of a witness to protect the witness from undue harassment or embarrassment and may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

### **13.4 Evidence by Sworn Statement**

The Hearing Panel may allow the evidence of a witness or proof of a particular fact or document to be given by sworn statement, unless an adverse party reasonably requires the attendance of the witness at the hearing for cross-examination.

### **13.5 Where Respondent Fails to Attend Disciplinary Hearing**

- (1) Where a Respondent, having been served with a Notice of Hearing, fails to attend a disciplinary hearing, the Hearing Panel may proceed in the absence of the Respondent and may accept as proven the facts and violations alleged by the Association in the Notice of Hearing.
- (2) Upon making a finding of the violations as alleged in the Notice of Hearing, the Hearing Panel may immediately hear submissions of the Association regarding an appropriate penalty and may impose such penalty, as it deems appropriate, pursuant to By-law 20.33 and 20.34.

## **II. Settlement Proceedings**

### **RULE 14: SETTLEMENT AGREEMENTS**

#### **14.1 Contents of Settlement Agreements**

- (1) A Settlement Agreement pursuant to By-law 20.35 shall be in writing, signed by or on behalf of the parties and contain:
  - (a) a statement of the violations admitted to by the Respondent with reference to specific By-laws, Regulations, or Policies of the Association, or any applicable statutory provisions;
  - (b) a statement of the relevant facts;
  - (c) a statement of the penalties and costs to be imposed upon the Respondent;
  - (d) a statement that the Respondent waives all rights to any further hearing, appeal and review;

(e) a statement that the Settlement Agreement is conditional upon the acceptance of the Hearing Panel;  
and

(f) such other matters not inconsistent with subsections (a) to (e).

## **RULE 15: SETTLEMENT HEARINGS**

### **15.1 Settlement Hearing Date**

- (1) Upon the entering into of a Settlement Agreement, the Association shall request a date for the settlement hearing from the National Hearing Coordinator.
- (2) The National Hearing Coordinator shall give written notice of the settlement hearing date to all parties.

### **15.2 Settlement Hearing Materials**

The Association shall serve and file a copy of the Settlement Agreement and any supporting materials as soon as practicable and in any case not later than 2 days prior to the date of the settlement hearing.

### **15.3 Facts not to be disclosed**

- (1) Unless the parties consent, facts not contained in the Settlement Agreement cannot be referred to or disclosed to the Hearing Panel.
- (2) If a Respondent is not present at the settlement hearing, the Association may disclose additional relevant facts, at the request of the Hearing Panel.

## **III. Expedited Proceedings**

### **RULE 16: EXPEDITED HEARINGS**

#### **16.1 Notice of Application**

An expedited proceeding pursuant to By-law 20.41, shall be commenced by Notice of Application.

#### **16.2 Contents of Notice of Application**

- (1) A Notice of Application shall:
  - (a) state the specific relief sought;
  - (b) state the grounds for the relief sought including reference to any Association By-laws, Regulations, Policies and Rules, and statutory provisions; and
  - (c) list the evidence to be relied upon.

#### **16.3 Expedited Hearing Date**

Prior to the issuance of the Notice of Application, the Association shall obtain from the National Hearing Coordinator a date, time and location for the expedited hearing.

#### **16.4 Evidence Relied Upon**

- (1) Evidence relied upon for the application may be provided by sworn statement.
- (2) The Hearing Panel may require the deponent of the sworn statement to attend and provide oral evidence at the hearing.

#### **16.5 Service Not Required**

The Notice of Application is not required to be served on the Respondent.

#### **16.6 Application Record**

- (1) An Application Record shall contain:
  - (a) the Notice of Application; and
  - (b) copies of the evidence to be relied upon,and shall be filed as soon as practicable.

#### **16.7 Order**

- (1) Where the Hearing Panel makes an order at the conclusion of an expedited hearing, the Association shall forthwith:
  - (a) file a copy of the order and reasons; and
  - (b) serve a copy of the order and reasons of the Hearing Panel and Application Record.
- (2) At the time of serving the order, the Association shall advise the Respondent in writing of the right to request a review pursuant to By-law 20.47.

### **RULE 17: APPOINTMENT OF MONITOR**

#### **17.1 Notice of Application**

An application for the appointment of a Monitor pursuant to By-law 20.46 shall be commenced by a Notice of Application.

#### **17.2 Application Procedure**

An application for the appointment of a Monitor shall follow the procedure set out in Rule 16.

#### **17.3 Factors to Consider in Appointment of Monitor**

- (1) In exercising its discretion under By-law 20.46 to appoint a Monitor, a Hearing Panel shall consider:
  - (a) the harm or potential harm to the investing public;
  - (b) the financial solvency of the Member;

- (c) the adequacy of internal controls and operating procedures;
- (d) the Member's ability to maintain regulatory capital requirements;
- (e) any previous suspension of the Member for failing to meet regulatory capital requirements;
- (f) the costs to the Member associated with the appointment of the Monitor; and
- (g) any other relevant factors.

#### **17.4 Eligible Monitors and Costs**

- (1) In exercising its discretion under By-law 20.46, a Hearing Panel shall:
  - (a) appoint a Monitor on such terms as it considers appropriate;
  - (b) appoint a Monitor from the roster of eligible Monitors set out in Schedule "B"; and
  - (c) fix the costs of the appointment of the Monitor in accordance with the fee schedule set out in Tariff "A".

### **RULE 18: EXPEDITED REVIEW HEARINGS**

#### **18.1 Notice of Request for Review**

- (1) A request for a review of an expedited hearing pursuant to By-law 20.47 shall be commenced by a Notice of Request for Review.
- (2) The Requesting Party shall serve and file a Notice of Request for Review within 30 days from the effective date of service of the order made at the hearing.

#### **18.2 Contents of Notice of Request for Review**

- (1) A Notice of Request for Review shall:
  - (a) state the specific relief sought;
  - (b) state the grounds for the relief sought, including reference to any Association By-laws, Regulations, Policies, and Rules, and statutory provisions; and
  - (c) list the evidence to be relied upon.

#### **18.3 Review Hearing Date**

- (1) Notice of the date, time and location of the review hearing will be provided to the parties by the National Hearing Coordinator.
- (2) The review hearing date shall be within 21 days after the filing of the Notice of Request for Review, as required by By-law 20.47(2).

#### **18.4 Review Record**

- (1) The Requesting Party shall serve and file a Review Record at least 10 days prior to the date of the review hearing.
- (2) The Review Record shall contain:
  - (a) the Notice of Request for Review;
  - (b) the Notice of Application filed in respect of the expedited hearing;
  - (c) the order and reasons made at the expedited hearing; and
  - (d) copies of the evidence to be relied upon.

#### **18.5 Reply**

- (1) The Association may serve and file a Reply at least 2 days prior to the date of the review hearing.
- (2) The Reply shall be restricted to statements and documents responding to new issues raised by the Respondent in the Review Hearing Record.

### **RULE 19: CONDUCT OF EXPEDITED REVIEW HEARING**

#### **19.1 Rights of Parties**

- (1) A party is entitled at the hearing:
  - (a) to attend and be heard in person;
  - (b) to be represented by counsel or agent;
  - (c) to introduce evidence; and
  - (d) to make submissions relevant to the issues in the review hearing.

#### **19.2 Order of Presentation**

- (1) The order of presentation shall be as follows:
  - (a) the Requesting Party shall present evidence and make submissions;
  - (b) the Responding Party shall then present evidence and make submissions;
  - (c) the Requesting Party may then reply to the submissions of the Responding Party.
- (2) Where a party is represented by counsel or agent, the right to address the Hearing Panel shall be exercised by the counsel or agent.



## **PART C: APPEALS**

### **RULE 20: COMMENCEMENT OF APPEAL**

#### **20.1 Notice of Appeal**

- (1) An appeal shall be commenced by a Notice of Appeal.
- (2) The Appellant shall serve and file a Notice of Appeal within 30 days from the effective date of service of the decision under appeal, as required by By-law 20.52(1).

#### **20.2 Contents of Notice of Appeal**

- (1) The Notice of Appeal shall state:
  - (a) the relief sought; and
  - (b) the grounds for the appeal.

#### **20.3 Appeal Date**

Notice of the date, time and location of the appeal will be provided by the National Hearing Coordinator within 21 days of the filing of the Notice of Appeal.

### **RULE 21: SUPPORTING MATERIALS**

#### **21.1 Appeal Record -- Disciplinary Hearing**

- (1) The Appellant shall serve and file an Appeal Record within 90 days from the date of filing of the Notice of Appeal.
- (2) The Appeal Record shall contain:
  - (a) the Notice of Appeal;
  - (b) all materials in respect of the original proceeding and relevant to the appeal, including:
    - (i) the Notice of Hearing;
    - (ii) the Response;
    - (iii) the decision and reasons;
    - (iv) any other order or decision;
    - (v) exhibits;
    - (vi) transcripts of the oral evidence; and
    - (vii) other excerpts from the transcript of the record.

- (3) The parties to the appeal may consent to the omission of any materials required by Rule 21.1(2).

### **21.2 Appeal Record -- Review of Expedited Hearing**

- (1) The Appellant shall serve and file an Appeal Record within 90 days from the date of filing of the Notice of Appeal.
- (2) The Appeal Record shall contain:
  - (a) the Notice of Appeal;
  - (b) all materials in respect of the original proceeding and relevant to the appeal, including:
    - (i) Notice of Application;
    - (ii) Notice of Request for Review;
    - (iii) Review Record;
    - (iv) Reply;
    - (v) decision and reasons that is the subject of the appeal;
    - (vi) any orders;
    - (vii) exhibits;
    - (viii) transcripts of oral testimony; and
    - (ix) other excerpts from transcript of the record.

- (3) The parties to the appeal may consent to the omission of any materials required by Rule 21.2(2).

### **21.3 New Evidence**

- (1) A party shall not introduce new evidence without leave of the Appeal Panel.
- (2) An Appeal Panel may allow the introduction of new evidence at the appeal upon any terms it considers appropriate.
- (3) A party who intends to seek leave to introduce new evidence at the appeal shall immediately and, in any case not later than 60 days prior to the date of the appeal serve a sworn statement of the proposed new evidence including copies of any documents.
- (4) The proposed new evidence shall not be filed prior to the date of the appeal.

### **21.4 Factum**

- (1) The parties to an appeal shall prepare a factum, which shall contain:
  - (a) a statement of the issues to be argued;

- (b) the facts and law relied upon; and
  - (c) the relief sought.
- (2) Facta shall be served and filed as follows:
- (a) for the Appellant, at least 30 days prior to the date of the appeal; and
  - (b) for the Respondent, at least 15 days prior to the date of the appeal.
- (3) The Appellant may serve and file a supplementary factum in response to new issues raised in a Respondent's factum at least 7 days prior to the date of the appeal.

## **PART D: APPROVAL AND EXEMPTION REVIEW HEARINGS**

### **RULE 22: APPROVALS - INDIVIDUALS**

#### **22.1 Request for Review**

- (1) A request for review pursuant to By-law 20.19 shall be commenced by a Notice of Request for Review.
- (2) A Notice of Request for Review shall be served and filed within 10 days after release of the approval decision, as required by By-law 20.19(1).

#### **22.2 Contents of Notice of Request for Review**

- (1) A Notice of Request for Review shall:
  - (a) state the specific relief sought;
  - (b) state the grounds for the relief sought; and
  - (c) list the evidence to be relied upon.

#### **22.3 Review Hearing Date**

- (1) Notice of the date, time and location of the review hearing will be provided to the parties by the National Hearing Coordinator.
- (2) The review hearing date shall not be later than 21 days after the filing of the Notice of Request for Review.

#### **22.4 Review Record**

- (1) The Requesting Party shall serve and file a Review Record at least 10 days prior to the date of the review hearing.
- (2) A Review Record shall contain:
  - (a) the Notice of Request for Review;

- (b) the decision under review; and
- (c) copies of the evidence to be relied upon.

### **22.5 Reply**

The Responding Party may serve and file a Reply at least 5 days prior to the date of the review hearing.

### **22.6 Contents of Reply**

- (1) A Reply shall:
  - (a) state the grounds upon which the relief ought not to be granted; and
  - (b) list the evidence to be relied upon.

### **22.7 Reply Record**

- (1) A Reply Record shall contain copies of any evidence the Responding Party intends to rely upon.
- (2) The Responding Party shall serve and file the Reply Record at least 5 days prior to the date of the review hearing.

## **RULE 23: APPROVALS - MEMBERS**

### **23.1 Request for Review**

- (1) A request for review pursuant to By-law 20.22 shall be commenced by a Notice of Request for Review.
- (2) A Notice of Request for Review shall be served and filed within 30 days after release of the approval decision, as required by By-law 20.22(2).

### **23.2 Contents of Notice of Request for Review**

- (1) A Notice of Request for Review shall:
  - (a) state the specific relief sought;
  - (b) state the grounds for the relief sought; and
  - (c) list the evidence to be relied upon.

### **23.3 Review Hearing Date**

- (1) Notice of the date, time and location of the review hearing will be provided to the parties by the National Hearing Coordinator.
- (2) The review hearing date shall not be later than 90 days after the filing of the Notice of Request for Review.

#### **23.4 Review Record**

- (1) The Requesting Party shall serve and file a Review Record not less than 30 days prior to the date of the review hearing.
- (2) A Review Record shall contain:
  - (a) the Notice of Request for Review;
  - (b) the decision under review; and
  - (c) copies of the evidence to be relied upon.

#### **23.5 Reply**

The Responding Party may serve and file a Reply at least 14 days prior to the date of the review hearing.

#### **23.6 Contents of Reply**

- (1) A Reply shall:
  - (a) state the grounds upon which the relief ought not to be granted; and
  - (b) list the evidence to be relied upon.

#### **23.7 Reply Record**

- (1) A Reply Record shall contain copies of any evidence the Responding Party intends to rely upon.
- (2) The Responding Party shall serve and file the Reply Record at least 7 days prior to the date of the review hearing.

### **RULE 24: EXEMPTION REVIEW HEARINGS**

#### **24.1 Request for Review**

- (1) A request for review pursuant to By-law 20.26 shall be commenced by a Notice of Request for Review.
- (2) A Notice of Request for Review shall be served and filed within 10 days after release of the decision, as required by By-law 20.26(1).

#### **24.2 Contents of Notice of Request for Review**

- (1) A Notice of Request for Review shall:
  - (a) state the specific relief sought;
  - (b) state the grounds for the relief sought; and
  - (c) list the evidence to be relied upon.

### **24.3 Review Hearing Date**

- (1) Notice of the date, time and location of the review hearing will be provided to the parties by the National Hearing Coordinator.
- (2) The review hearing date shall not be later than 21 days after the filing of the Notice of Request for Review.

### **24.4 Review Record**

- (1) The Requesting Party shall serve and file a Review Record at least 10 days prior to the date of the review hearing.
- (2) A Review Record shall contain:
  - (a) the Notice of Request for Review;
  - (b) the decision under review; and
  - (c) copies of the evidence to be relied upon.

### **24.5 Reply**

The Responding Party may serve and file a Reply at least 5 days prior to the date of the review hearing.

### **24.6 Contents of Reply**

- (1) A Reply shall:
  - (a) state the grounds upon which the relief ought not to be granted; and
  - (b) list the evidence to be relied upon.

### **24.7 Reply Record**

- (1) A Reply Record shall contain copies of any evidence the Responding Party intends to rely upon.
- (2) The Responding Party shall serve and file the Reply Record at least 5 days prior to the date of the review hearing.

## **RULE 25: CONDUCT OF APPROVAL AND EXEMPTION REQUEST REVIEW HEARINGS**

### **25.1 Application**

This Rule shall apply to all review hearings referred in Rules 22 to 24 in this Part D.

### **25.2 Rights of Parties**

- (1) A party is entitled at the hearing:
  - (a) to attend and be heard in person;

- (b) to be represented by counsel or agent;
- (c) to introduce evidence; and
- (d) to make submissions relevant to the issues in the review hearing.

### **25.3 Order of Presentation**

- (1) The order of presentation shall be as follows:
  - (a) the Requesting Party shall present evidence and make submissions;
  - (b) the Responding Party shall then present evidence and make submissions;
  - (c) the Requesting Party may then reply to the submissions of the Responding Party.
- (2) Where a party is represented by counsel or agent, the right to address the Hearing Panel shall be exercised by the counsel or agent.

### **25.4 Form of Evidence**

Evidence shall be in the form of a sworn statement or documentation unless an adverse party reasonably requires the attendance of a witness for cross-examination.

## **PART E: EARLY WARNING PROCEEDINGS**

### **RULE 26: COMMENCEMENT OF PROCEEDINGS**

#### **26.1 Request for Review**

- (1) A request for review pursuant to By-law 20.29(1) shall be commenced by a Notice of Request for Review.
- (2) A Notice of Request for Review shall be served and filed within 3 days after the Member was served with the early warning order, as required by By-law 20.29(1)

#### **26.2 Contents of Notice of Request for Review**

- (1) A Notice of Request for Review shall:
  - (a) state the specific relief sought;
  - (b) state the grounds for the relief sought; and
  - (c) list the evidence to be relied upon.

#### **26.3 Review Hearing Date**

- (1) Notice of the date, time and location of the review hearing will be provided to the parties by the National Hearing Coordinator.

- (2) The review hearing date shall not be later than 21 days after the filing of the Notice of Request for Review, as required by By-law 20.29(2).

**RULE 27: SUPPORTING MATERIALS**

**27.1 Review Record**

- (1) The Requesting Party shall serve and file a Review Record at least 10 days prior to the date of the review hearing.
- (2) A Review Record shall contain:
  - (a) the Notice of Request for Review;
  - (b) the early warning order;
  - (c) copies of the evidence to be relied upon.

**27.2 Reply**

The Responding Party may serve and file a Reply, at least 5 days prior to the date of the review hearing.

**27.3 Contents of Reply**

- (1) A Reply shall:
  - (a) state the grounds upon which the relief ought not be granted; and
  - (b) list the evidence to be relied upon.

**27.4 Reply Record**

- (1) A Reply Record shall contain copies of any evidence the Association intends to rely upon.
- (2) The Responding Party shall serve and file the Reply Record at least 5 days prior to the date of the review hearing.

**RULE 28: CONDUCT OF EARLY WARNING REVIEW HEARINGS**

**28.1 Rights of Parties**

- (1) A party is entitled at the hearing:
  - (a) to attend and be heard in person;
  - (b) to be represented by counsel or agent;
  - (c) to introduce evidence; and
  - (d) to make submissions relevant to the issues in the review hearing.



## **28.2 Order of Presentation**

- (1) The order of presentation shall be as follows:
  - (a) the Requesting Party shall present evidence and make submissions; and
  - (b) the Responding Party shall then present evidence and make submissions;
  - (c) the Requesting Party may then reply to the submissions of the Responding Party.
- (2) Where a party is represented by counsel or agent, the right to address the Hearing Panel shall be exercised by the counsel or agent.

## **28.3 Form of Evidence**

Evidence shall be in the form of a sworn statement or documentation unless an adverse party reasonably requires the attendance of a witness for cross-examination.

## **SCHEDULE "A"**

### **Notes & Practice Direction Re: National Hearing Coordinator**

#### **A. Duties**

##### **(i) Administration of Proceedings**

The National Hearing Coordinator is responsible for the administration of all proceedings brought pursuant to By-law 20, which includes the following:

- (a) the selection of Panel Members;
- (b) the scheduling and arrangement of Pre-hearing Conferences, motions, hearings and appeals;
- (c) the care, custody and distribution to panel members of all documents required to be filed pursuant to the Rules of Practice and Procedure;
- (d) the maintenance of the hearing record including original exhibits;
- (e) distribution of written panel decisions to all parties to the proceeding; and
- (f) any other administrative duties reasonably necessary for the efficient operation of a proceeding.

##### **(ii) Liaison as between Panel and Parties**

The National Hearing Coordinator shall also act as a liaison between the panel members and parties to the proceeding. Any party who wishes to communicate to the Panel must do so through the National Hearing Coordinator and copy the other parties to the proceeding.

#### **B. Scheduling of hearings, appeals and other related matters**

##### **(i) Requesting a Date**

The Rules of Practice and Procedure require a party to obtain a date from the National Hearing Coordinator for the following matters:

- (1) Disciplinary Hearings (request by the Association only)
- (2) Settlement Hearing (request by the Association only)
- (3) Expedited Hearings (request by the Association only)
- (4) Motions (any party)

Scheduling of all other matters (i.e. Pre-hearing Conferences, review hearings and appeals) will be initiated by the National Hearing Coordinator once she/he receives the relevant Request or Notice (i.e. Request for Pre-hearing Conference or Notice of Request for Review or Notice of Appeal).

## **Disciplinary, Settlement and Expedited Hearings**

The Association must request dates for a disciplinary, settlement or expedited hearing by completing the Hearing Request Form, attached as Appendix A to these notes.

### **Motions**

A party bringing a motion must request a date for a motion by completing the Motion Request Form, attached as Appendix B to these Notes.

#### **(ii) Selection of Panel or Presiding Officer**

In selecting panel members or a Presiding Officer, the National Hearing Coordinator will perform the following steps:

1. Perform a conflict check to ensure panel members or Presiding Officers are completely independent and without bias.
2. Contact those potential panel members or Presiding Officers to determine availability.
3. Confirm final appointment of panel members or Presiding Officers by providing written confirmation to selected panel members or Presiding Officers.

#### **(iii) Notice and Confirmation to Parties**

Once a date has been obtained, the National Hearing Coordinator will provide written notice and confirmation of the date to all parties to the proceeding via mail, email or facsimile in the form attached as Appendix C to these notes.

### **C. Filing of Documents**

#### **(i) Request for Pre-hearing Conference**

A Request for a Pre-hearing Conference shall be filed by sending the Request to:

121 King Street West, Suite 1600

Toronto, Ontario M5H 3T9

Fax (416) 943-6759

**Attention: National Hearing Coordinator**

#### **(ii) Notice of Request for Review**

A Notice of Request for Review for any review hearing brought pursuant to By-law 20, shall be filed by sending the Notice to:

121 King Street West, Suite 1600

Toronto, Ontario M5H 3T9

Fax (416) 943-6759

**Attention: National Hearing Coordinator**

**(iii) Notice of Appeal**

A Notice of Appeal shall be filed by sending the Notice to:

121 King Street West, Suite 1600

Toronto, Ontario M5H 3T9

Fax (416) 943-6759

**Attention: National Hearing Coordinator**

**(iv) All other Documents**

All documents except for those mentioned in above items (i)-(iii), required to be filed pursuant to the Rules of Practice and Procedure shall be filed by sending them to the following address:

For matters in the Pacific (British Columbia) Region:

[To be determined]

For matters in the Prairie Region:

[To be determined]

For matters in the Ontario or Atlantic Regions:

121 King Street West, Suite 1600

Toronto, Ontario M5H 3T9

Attention: National Hearing Coordinator

For matters in the Quebec Region:

[To be determined]

National Hearing Coordinator or her designate will be responsible for distributing the filed documents to the appropriate panel members or Presiding Officer, as the case may be.

## COROLLARY AMENDMENTS TO By-law NO. 2

### MEMBERSHIP

2.1. The Executive Committee of the Board of Directors shall, in its discretion and pursuant to By-law 20, decide upon all applications for Membership but shall not consider or approve any application unless and until it has been considered or approved by the applicable District Council.

- 2.2. Any individual, firm or corporation shall be eligible to apply for Membership if:
- (a) In the case of an individual, the applicant is a resident of Canada; in the case of a firm, it is formed under the laws of one of the provinces or territories of Canada and, in the case of a corporation, it is incorporated under the laws of Canada or one of its provinces;
  - (b) The applicant carries on, or proposes to carry on, business in Canada as a securities dealer to an extent acceptable to the applicable District Council and is registered or licensed in each jurisdiction in Canada where the nature of its business requires such registration or licensing, and is in compliance with such legislation and the requirements of any securities commission having jurisdiction over the applicant; and
  - (c) The applicant and its directors, officers, partners, investors and employees, and its holding companies, affiliates and related companies (if any), would comply with the By-laws and Regulations and Rulings and Policies and Forms of the Association that would apply to them if the applicant were a Member.

2.3. For the purposes of this By-law, the business of an individual, firm or corporation having a head office or principal place of business outside of Canada but carrying on business at one or more branch offices in Canada or through a subsidiary in Canada means only the portion of the business relating to operations in Canada.

2.4. An application for Membership shall be in such form and executed in such manner as the Board of Directors may prescribe and shall contain or be accompanied by such information and material as the By-laws, the Board of Directors and the applicable District Council may require.

~~2.5. The application for Membership prescribed form shall be signed by the applicant and ~~also~~ by a proposer and seconder who are partners or directors of Members but not members of the Board of Directors. An Application for Membership without a proposer and seconder can be considered by the District Council and approved by the Executive Committee of the Board of Directors but they can take into consideration the absence of a proposer and seconder in exercising their respective powers regarding the application. which is not so signed by a proposer and seconder shall be eligible for consideration or approval by a District Council or the Board of Directors but the absence of a proposer or seconder may be considered by such Council or the Board, as the case may be, in exercising their respective powers in respect of the application.~~

~~2.6. An application for Membership shall be accompanied by a non-refundable deposit of \$10,000 deposit on account of the Entrance Fee ~~which shall not be refundable.~~~~

~~2.7. In addition, if in connection with the review or consideration of any application for Membership, If a District Council or the Board of Directors is of the opinion that the nature of the applicant's business, its financial condition, the conduct of its business, the completeness of the application, the basis on which the application was made or any staff review in respect of the application in accordance with the By-laws of the Association has required, or can reasonably be expected to require, excessive attention, time and resources of~~

the Association, such District Council or the Board of Directors may require the applicant to reimburse the Association for its costs and expenses which are reasonably attributable to such excessive attention, time and resources or provide an undertaking or security in respect of such reimbursement. If an applicant is to be required to make such reimbursement of costs and expenses, the Association shall provide to the applicant a breakdown and explanation of such costs and expenses in sufficient detail to permit the applicant to understand the basis on which the costs and expenses are to be calculated.

2.58. An application for Membership with any accompanying material shall be submitted to the Secretary, who shall make a preliminary review of the same and either:

- (a) If such review discloses substantial compliance with the requirements of the By-laws and Regulations, transmit a copy to the Chair of the applicable District Council; or
- (b) If such review discloses any substantial non-compliance with the requirements of the By-laws and Regulations, notify the applicant as to the nature of such non-compliance and request that the application for Membership be amended in accordance with the notification of the Secretary and refiled or be withdrawn. If the applicant declines so to amend the application for Membership or to withdraw the same, the Secretary shall forward the same to the Chair of the applicable District Council together with any accompanying material and a copy of the notification to the applicant.

2.69. The Secretary shall notify all Members of the receipt of the application for Membership. Any Member may within fifteen days from the date of the mailing of such notification ~~by the Secretary~~ lodge with the Secretary, an written objection in writing to the admission of the applicant. The objection shall be forwarded to the application District Council for consideration along with the Membership application. and in such event the objection shall be forwarded to the applicable District Council with the application for Membership pursuant to By-law 2.8.

2.710. The Secretary shall request the applicant to submit:

- (a) Financial statements of the applicant as of a date not more than 90 days prior to the date of application for Membership (or as of such other date as the Association may require), prepared in accordance with Form 1 and audited by a panel auditor;
- (b) Interim unaudited monthly financial statements, prepared in accordance with Form 1, for the period following the date of the audited financial statement submitted under subparagraph (a) up to the most recent month prior to the date of the Membership application;
- (c) An additional report by the applicant's auditor to the effect that, based on his examination of the affairs of the applicant, the applicant keeps a proper system of books and records; and
- (d) Such additional financial information, if any, relating to the applicant as the Association may, in its discretion, request.

2.11 Notwithstanding the provisions of By-law 2.10(a)7, if an applicant qualifies for exemption from payment of the Entrance Fee pursuant to By-law 3, the applicable District Council may waive any of the conditions relating to an application for Membership that it considers appropriate in the circumstances of the particular case.

2.12 Notwithstanding the provisions of By-law 2.7, if an applicant for Membership is a related company of a Member which confirms its intention to continue its Membership in the Association, the Vice-President, Financial Compliance and the District Association Auditors may determine, in their discretion, what financial information is required.

~~2.7A13.~~ Notwithstanding the provisions of clause (a) of By-law 2.7, if an applicant is an approved participant of the Bourse de Montréal Inc. such applicant may, in lieu of the financial statements referred to in said clause (a), submit to the Association its latest audited Form 1 together with

- (i) A copy of the last monthly financial report filed by such applicant with the Bourse de Montréal Inc.; and
- (ii) A “comfort” letter from the Bourse de Montréal Inc. relating to the applicant’s standing with the Bourse de Montréal Inc. in compliance, disciplinary and regulatory matters and in a form which is satisfactory to the Association. If such applicant wishes to transfer to the Association’s audit jurisdiction, the applicant shall submit to the Association audited financial statements as of a date not more than 90 days prior to the date of application for transfer.

2.814. The Membership approval process as set out in By-law 20 shall apply once:

- (a) the Secretary has notified Members pursuant to By-law 2.6 and the fifteen day period referred to therein has expired;
- (b) the applicable District Council receives the Membership application from the Secretary;
- (c) the applicable District Council receives the notification from the District Association Auditors pursuant to By-law 2. 8; and
- (d) a period of six months or such lesser period as the District Council may in any particular case determine has expired.

~~Upon notification of the Members by the Secretary pursuant to By-law 2.6 and the expiration of the fifteen day period referred to therein and upon receipt of the application for Membership from the Secretary, the applicable District Council may;~~

- ~~(a) — At the expiration of a period of six months or such lesser period as the Council may, in any particular case, determine, approve the application, notwithstanding any objection thereto that has been made by any Member;~~
- ~~(b) — Approve the application subject to such terms and conditions as may be considered appropriate by the District Council if, in the opinion of the District Council, such terms and conditions are necessary in order to ensure that the By-laws, Regulations, Rulings and Policies will be complied with by the applicant; and~~
- ~~(c) — Refuse the application if, in the opinion of the District Council, having regard to such factors as it may consider relevant including, without limitation, the past or present conduct, business or condition of the applicant;
  - ~~(i) It is not satisfied that the By-laws, Regulations, Rulings and Policies will be complied with by the applicant;~~
  - ~~(ii) The applicant is not qualified by reason of integrity, solvency, training or experience; or~~~~

~~(iii) Such approval is otherwise not in the public interest.~~

~~2.8A. If a District Council proposes to approve an application subject to terms and conditions pursuant to By-law 2.8(b) or to refuse an application pursuant to By-law 2.8(c):~~

~~(a) The applicant shall be provided with a statement of the grounds upon which the District Council proposes to approve the application subject to terms and conditions or to refuse an application, and the particulars of those grounds;~~

~~(b) The applicant shall be provided with a summary of the facts and evidence which are to be considered by the District Council; and~~

~~(c) The District Council shall permit the applicant to appear before it on reasonable notice, and with counsel or other representative, to call evidence and cross-examine witnesses in order to show cause why the application should not be subject to terms and conditions or should not be refused. A hearing held pursuant to this By-law 2.8A shall be open to the public except where the District Council determines that all or any part of the hearing should be held in camera in accordance with the principles set out in By-law 20.20.~~

~~2.8B. The applicable District Council shall have the power to vary or remove any such terms and conditions as may have been imposed on an applicant for Membership that may be considered appropriate by the District Council, if such terms and conditions are or are no longer, as the case may be, necessary to ensure that the By-laws, Regulations, Rulings and Policies will be complied with by the applicant. In the event that the District Council proposes to vary terms and conditions in a manner which would be more burdensome to the applicant, the provisions of By-laws 2.8A through 2.8G, inclusive, shall apply in the same manner as if the District Council was exercising its powers thereunder in regard to the applicant.~~

~~2.8C. If within 10 days of being notified of a proposal to approve an application subject to terms and conditions or to refuse an application, the applicant fails to request a hearing, the District Council may approve the application subject to the proposed terms and conditions or refuse the application. If the applicant requests a hearing, the District Council may, after permitting the parties to be heard, exercise any of its powers in accordance with By-law 2.8A.~~

~~2.8D. For a meeting of a District Council which is to be a hearing pursuant to this By-law 2, the appointment of members of the District Council for the hearing and the establishment of a quorum shall be in accordance with By-law 20.1. No member of a District Council who has participated in a decision to propose the imposition of terms and conditions on an applicant or the refusal of an application shall subsequently participate in a hearing pursuant to By-law 2.8A regarding that application.~~

~~2.8E. If, pursuant to the provisions of By-law 2.8A, a District Council approves an application subject to terms and condition or refuses to approve an application, the District Council may order that the applicant may not apply for removal or variation of terms and conditions or reapply for approval, for such periods as the District Council provides.~~

~~2.8F. Any decision of a District Council at a hearing held pursuant to By-law 2.8A shall be in writing and shall contain a concise statement of the reasons for the decision. Notice of a decision shall be delivered to the Secretary who shall then promptly give notice to the applicant. A copy of the decision shall accompany the notice.~~



~~2.8G. Any decision of a District Council pursuant to By-law 2.8A to either refuse to approve an application for Membership or to approve an application for Membership with terms and conditions attached, shall only have effect in the District where such District Council has jurisdiction unless and until otherwise ordered by the Board of Directors. In the event of such a decision by the District Council, the Board of Directors shall, upon application of either the Association or the applicant, made within 21 days of receiving notice of the decision of the District Council, review the said decision and either (a) confirm the decision in its application to that District, (b) confirm the decision of the District Council and extend its application and effect to all Districts of the Association, or (c) make such other decision as the Board of Directors considers proper.~~

~~The Board of Directors shall not, pursuant to this By-law 2.8G,~~

- ~~(i) Confirm any decision of a District Council in its application to the District in which such District Council has jurisdiction; or~~
- ~~(ii) Extend the application and effect of the decision to another District Council of a District; or~~
- ~~(iii) Make any other decision as the Board of Directors considers proper if the securities commission having jurisdiction in such District directs that such decision shall not be confirmed, extended or made in respect of the District where it has jurisdiction, as the case may be. Any review by the Board of Directors of a decision of a District Council pursuant to this By-law 2.8G shall be conducted in accordance with and subject to the provisions of By-laws 20.41, 20.42 and 20.43 and the Bylaws referred to therein, all of which shall apply mutatis mutandis.~~

~~2.915. If and when the application is approved by the applicable District Council, the Secretary shall compute the amount of the Annual Fee payable by the application to be paid by the applicant pursuant to By-law 3.2 and provide such computation to the Board of Directors.~~

~~2.10. Subject to the provisions of By-law 2.11, the Secretary shall submit to the next succeeding meeting of the Board of Directors each application which has been approved by the applicable District Council, together with the amount of the Annual Fee to be paid by the applicant.~~

~~2.11. Subject to the provisions of this By-law 2.11, the Board of Directors shall thereupon consider the application at such meeting at which its decision as to admission of the applicant and the Annual Fee payable by it shall be expressed by resolution passed by the affirmative vote of at least a majority of all of the members of the Board of Directors. The Board of Directors shall have the power to confirm the decision of the District Council, to exercise any of the powers that a District Council may exercise under By-law 2.8 or to make any other decision as the Board of Directors considers proper. Any review, consideration or determination by the Board of Directors in respect of an application for Membership shall be conducted in accordance with and subject to the provisions of By-laws 20.41, 20.42 and 20.43 and the By-laws referred to therein, all of which shall apply mutatis mutandis.~~

~~2.1216. The applicant shall become a Member if and when:~~

- ~~(a) If and when the The application has been approved by the Board of Directors;~~
- ~~(b) and the applicant has been duly licensed or registered to carry on business as a securities dealer under the applicable law of the province or provinces or territories in which the applicant carries on or proposes to carry on business; and~~
- ~~(c) upon payment of the balance of the Entrance Fee and Annual Fee have been paid in full, the applicant shall become and be a Member.~~

~~2.13. Notwithstanding the foregoing, if an applicant qualifies for exemption from payment of the Entrance Fee and if the applicable District Council approves of such exemption and gives its approval to the application for Membership, the applicant shall be admitted to Membership without reference to the Board of Directors for final decision if all other conditions relating to an application for Membership have been duly complied with except such conditions, if any, as such applicable District Council may deem appropriate to be waived under the circumstances of any particular case.~~

~~2.14. Notwithstanding the provisions of By laws 2.6, 2.8, 2.10, 2.11, and 2.12 wherever an applicant for Membership is a related company of a Member which confirms its intention to continue its Membership in the Association, the applicable District Council, after receipt of such financial information as the Senior Vice-President, Member Regulation may require, shall either approve or disapprove the application and notify the Secretary of their decision. The Secretary shall thereupon notify by writing each member of the Board of Directors and the Board of Directors may, in its discretion, forthwith approve the application by instrument in writing signed by a majority of the members thereof.~~

2.175. The Secretary shall keep a register of the names and business addresses of all Members and of their respective Annual Fees. The Annual Fees of Members shall not be made public by the Association.

2.186. The Secretary shall furnish to the securities commissions of all the provinces of Canada a list of Members and from time to time as changes occur in the Membership shall communicate such changes to such commissions.

## COROLLARY AMENDMENTS TO By-law NO. 4

### BRANCH OFFICE MEMBERS, BRANCH OFFICES AND SUB-BRANCH OFFICES

**4.9. No person shall act as a sales manager, branch manager, assistant or co-branch manager unless the person:**

- (a) Has satisfied the applicable proficiency requirements outlined in Part I of Policy No. 6; and
- (b) Has been approved by the Association pursuant to By-law 20.

## COROLLARY AMENDMENTS TO By-law NO. 11

### DISTRICT COUNCILS AND MEETINGS

#### District Councils and Meetings

~~11.14A. Each District Council shall, at its first meeting after the Annual Meeting, appoint a roster of Hearing Committee members, pursuant to By-law 20, who have been nominated for appointment by the Nominating Committee of the District Council in accordance with Part 5 of By-law 20. Public members and retired industry members who are part of a Hearing Committee shall be eligible to vote only at meetings which are hearings pursuant to By-law 20. individuals (herein called "public members") who shall be eligible only to vote at meetings which are hearings held by the District Council pursuant to By-law 20. Only persons who are resident in the District, who are legally trained and who are, or have been, qualified as legal practitioners shall be eligible for selection as public members. No person shall be eligible to be elected or remain a public member if he or she is or becomes during his or her term of office a Member, a partner, director, officer or employee of a Member or associate or affiliate or related company of a Member, an employee of the Association, a member of the District Council, or any associate thereof. The number of public members appointed to the roster shall be in the discretion of the District Council, and individuals may be added to or deleted from such roster from time to time in accordance with the requirements of the District Council.~~

~~11.1B Each District Council may, at its first meeting after the Annual Meeting, appoint a roster of retired industry members who shall be eligible only to vote at, meetings which are hearings, held by the District Council pursuant to By-law 20. Only persons who are resident in the District, who have retired in good standing as a partner, director, officer or employee of a Member and who were qualified to be appointed to District Council prior to retirement, shall be eligible for selection as retired industry members. The number of retired industry members appointed to the roster shall be at the discretion of the District Council, and individuals may be added to or deleted from such roster from time to time in accordance with the requirements of the District Council.~~

~~11.22. Each of the Ontario, Pacific and Quebec District Councils shall include, in addition to the members referred to in By-law 11.1, a member of the Financial Administrators Section of the Association as a voting member of such District Council.~~

~~11.33. The Chair of a Group Committee in a District shall be ex-officio a member of the District Council and either with or without voting power, as may be determined at the annual meeting of Members of the District.~~

11.4. Each District Council may make and from time to time amend or repeal such Regulations, not inconsistent with the Constitution or By-laws or Regulations of the Board of Directors, as it deems advisable for the organization and management of the affairs of such District. Regulations made by a

District Council shall be effective and remain in force unless and until amended or repealed and all such Regulations for the time being in force shall be binding upon all Members of the District.

11.55. Each District Council shall meet at least once in each calendar month unless the Chair otherwise determines and shall report to the Association forthwith after each meeting in respect of any matters brought up at such meeting affecting the interests of the Association and shall from time to time report on all matters affecting the interests of the Association within its District. The Association shall submit all such reports to the Board of Directors.

11.65A. If all the members present at or participating in the meeting consent, a meeting of a District Council may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and a member of a District Council participating in such a meeting by such means is deemed for the purposes of the By-laws and Regulations to be present at that meeting.

11.76. Each District Council shall at its first meeting after the Annual Meeting select, in accordance with By-law 16.13, a panel of Members' Auditors for the ensuing year.

11.87. The Chair or any two members of a District Council may call a special meeting of such Council at any time.

11.98. A voting member of a District Council may by written proxy appoint a person to attend and vote as his or her representative at any meeting of such Council. No person shall be entitled to so act as a representative unless he or she is a member of the District Council or is a partner, director, officer or employee of a Member.

11.109. Three members of a District Council present in person shall form a quorum at any meeting thereof and any action taken by a majority of those members of the Council present at any meeting of the Council at which a quorum is present shall constitute the action of the Council.

11.119A. A resolution consented to in writing by 80% of the members of the District Council shall be as effective as if passed at a duly constituted meeting of the District Council. The consent in writing of a member of the District Council may be given by telex, telegram or other similar means of written communication.

11.129. Unless otherwise provided in the By-laws, a District Council shall not act for or in the name of the Association and shall not have any power to bind the Association except as may be authorized by resolution of the Board of Directors.

### **District Meetings**

11.134. A meeting of the Members of any District may be called by the District Council and shall be called by such Council on the requisition in writing of seven Members of such District. Notice of the time and place of any such meeting shall be given to the Members of the District. Two Members of the District entitled to vote, present personally or by a partner, director or officer shall be a quorum for any meeting of the Members of the District.

11.142. Voting at any meeting of the Members of a District may be carried out in the same manner as provided for voting at meetings of the Association. Instruments of proxy for such purpose shall be lodged with the Chair of the District Council not later than 10:00 a.m. of the day of the meeting or of any adjournment thereof, and unless so lodged no proxy shall be used or acted upon.

### **District Standing and Sub-Committees**

11.15~~3~~. Each District Council may appoint the following Standing Committees for its respective District to deal with the following matters:

(a) Nomination of Hearing Committee Members:

(ba) Education;

(cb) Provincial Government Legislation;

(de) Municipal Administration and Finance;

(ed) Tax Policy;

(fe) Public Information and Speakers' Panel;

(gf) Stock Exchange Liaison; and

(h) Exemption Requests.

And may combine any two, but not more, of such Standing Committees into one Committee, in which case the Committee shall bear a suitable name indicating that it is a Joint Standing Committee.

11.16. Each Standing Committee, including a Joint Standing Committee, shall consist of not less than three members, including one of the members of the District Council who shall be the Chair of such Standing Committee. The number of members of any Standing Committee which shall constitute a quorum at any meeting thereof shall be determined by the District Council.

11.17. The Chair of each District Standing Committee shall be appointed by the incoming District Council immediately after the latter has been elected, and the members of each such District Standing Committee shall be appointed as soon as practicable thereafter. The Chair of each District Standing Committee shall report to the Association at least three weeks before the Annual Meeting the names of the members of the Committee of which he or she is Chair.

11.18 Each District Council may also appoint such other Sub-Committees and for such other purposes within its District as it may in its discretion decide.

11.19 With the concurrence of the Board of Directors any District Council may authorize a Group Committee for any city or region within its respective District. A Group Committee shall bear the name of the city or region for which it is authorized coupled with the word "Group". Each such Group Committee and the Chair thereof shall be elected by the local Members in the city or region concerned.

11.20. The life of any Standing Committee or other District Sub-Committee shall not extend beyond the term of office of the District Council by which it is appointed or authorized.

## **COROLLARY AMENDMENTS TO By-law NO. 28**

### **DISCRETIONARY FUND**

28.4. Payments from the Discretionary Fund may be made at such times and in such amounts as the Board of Directors shall authorize for all or any of the following purposes, namely:

(a) To fulfill all of the obligations of the Association to the Canadian Investor Protection Fund or under any guarantee given by the Association to a third party with respect to moneys payable by the Canadian Investor Protection Fund to such third party;

(b) In the event of the insolvency or other inability of any Member to meet its financial obligations to the public (and whether or not claims against such Member have been considered by the persons administering the Canadian Investor Protection Fund), to compensate in whole or in part such creditors of any such Member as the Board of Directors in its discretion may determine;

(c) Invest in the securities of, or provide financial assistance in such form and on such terms and conditions as the Board of Directors in its discretion may determine to, The Canadian Depository for Securities Limited;

(d) To pay the fees, expenses or other remuneration of the following members of a District Council Panel, Hearing Panel or Appeal Panel~~District Council~~:

(i) Members who have retired in good standing as employees of Members; and

(ii) Public members appointed pursuant to By-law 20.944.1A.

(e) To make payments for special non-recurring projects that (1) benefit the public and/or (2) generally benefit Canadian Capital Markets, as determined by the Board of Directors or Executive Committee.

(f) For such other purposes (subject to the provisions of By-law 28.9) as the Board of Directors shall consider to be in the best interest of the Members of the Association

## **COROLLARY AMENDMENTS TO By-law NO. 30**

### **EARLY WARNING SYSTEM**

~~30.6 The Vice President, Financial Compliance may, in his or her sole discretion, propose that a Member which is designated as being in the early warning category level 2 be prohibited from opening any new branch offices, hiring any new registered representative or investment representative, opening any new customer accounts or changing in any material respect the inventory positions of the Member. If the Vice President, Financial Compliance proposes any such prohibitions pursuant to this By-law, he or she shall give written notice to the Member, and the Member may request in writing within 3 business days of receipt of notice that the proposal be reviewed by members of the applicable District Council. If no request for review is made, the prohibitions shall apply as of such date designated by the Vice President, Financial Compliance occurring on or after the expiration of the said 3 business days. In the event that such a request is made, the Chair or the Vice Chair of the applicable District Council shall designate at least two members of the District Council to review the order and to confirm, amend, or revoke the proposal of the Vice President, Financial Compliance within 7 business days of the request for review, or such longer time as may be agreed by the Member. The Member and the Vice President, Financial Compliance shall be permitted to make representations in such review in person (including by their respective staff, agents or counsel) or in writing. Pending the expiration of the said 3 business days notice by the Vice President, Financial Compliance and the result of the review, if applicable, the prohibitions shall not apply, but on becoming effective shall continue until the Member is so designated as not being in an early warning category Level 2.~~

30.6 The Senior Vice President, Member Regulation, or his or her delegate may impose prohibitions upon a Member who is designated, pursuant to By-law 30, as being in Early Warning Category Level 2 pursuant to Part 97 of By-law 20.

30.7 The ~~Senior Vice President Member Regulation, or his or her delegate, Vice President, Financial Compliance~~ shall promptly advise any other participating institution of the Canadian Investor Protection Fund of which a Member is also a member of the fact that the Member has been designated as being in early warning category level 2, the reasons for such designation and any sanctions or restrictions that have been imposed upon the Member pursuant to Part 9 By-law 20 ~~By-law 30.6~~ or By-law 19.

### **COROLLARY AMENDMENTS TO By-law NO. 33**

#### **REVIEW BY SECURITIES COMMISSIONS**

33.1. Any Member or other person directly affected by a decision of the Board of Directors, ~~or a District Council, Hearing Panel, Board Panel or Appeal Panel~~ (other than a decision in respect of which the time for review or appeal under the By-laws has elapsed) in respect of which no further review or appeal is provided in the By-laws may request any securities commission with given jurisdiction in the matter ~~under its enabling legislation~~ to review such decision and notice in writing of such appeal shall be given forthwith to the National Hearing Coordinator.~~Secretary.~~

### **COROLLARY AMENDMENTS TO By-law NO. 35**

#### **INTRODUCING BROKER/CARRYING BROKER ARRANGEMENTS**

##### **35.1. General**

(a) For the purposes of this By-law 35:

(i) "Carrying Broker" means the Member or member of a self-regulatory organization that is a participating institution in the Canadian Investor Protection Fund that carries client accounts, which at a minimum includes the clearing and settlement of trades, the maintenance of books and records of client transactions and the custody of some or all client funds and securities;

(ii) "Introducing Broker" means the Member or member of a self-regulatory organization that is a participating institution in the Canadian Investor Protection Fund that introduces client accounts to the carrying broker;

(iii) "Canadian Financial Institution" means a Schedule I or Schedule II Bank pursuant to the Bank Act (Canada), an insurance company governed by federal or provincial insurance legislation and a loan or trust company governed by federal or provincial loan and trust company legislation.

(b) A Member may, with the approval of the applicable District Council and if otherwise in compliance with the terms of this By-law and any requirements of the regulatory authority in the jurisdiction of the introducing broker, carry accounts of clients introduced to it by:

(i) Another Member; or

(ii) A member of a self-regulatory organization that is a participating institution in the Canadian Investor Protection Fund.

(c) A Member shall not introduce accounts to any person other than:

(i) Another Member; or

(ii) A member of a self-regulatory organization that is a participating institution in the Canadian Investor Protection Fund.

(d) For the purposes of this By-law 35, arrangements whereby employees of a Member's affiliated Canadian financial institution handle securities clearance and settlement, maintain records and perform operational functions on behalf of the Member shall not be considered to be introducing/carrying arrangements for the purposes of this By-law 35, provided that pursuant to the arrangement, the employees of the Member's affiliated Canadian financial institution handle custodial functions on a segregated basis in accordance with the segregation provisions of the By-law.

(e) Except as otherwise provided herein, an introducing broker may introduce clients to only one carrying broker. An introducing broker that introduces clients to a carrying broker shall enter into a written contract with the carrying broker to which it introduces clients defining, to an extent determined from time to time by the Association the rights and obligations between them.

(i) Members who enter into an introducing broker/carrying broker arrangement must enter into a written contract in a form prescribed from time to time by the Association and each such introducing broker/carrying broker arrangement shall come into effect only after it is approved by the Senior Vice-President, Member Regulation;

(ii) An introducing broker that is party to an Introducing Type 1 or Type 2 Arrangement cannot enter into more than one introducing broker/carrying broker arrangement other than one additional introducing broker/carrying broker arrangement exclusively for trading in futures contracts and options;

(iii) An introducing broker that is party to an Introducing Type 1 or Type 2 Arrangement shall not fully service any part of its securities-related activities, other than fully servicing trading in futures contracts and options;

(iv) An introducing broker that is party to an Introducing Type 1 Arrangement shall carry out trade settlement and custody of securities related to its principal trading through the facilities of the carrying broker; and

(v) An introducing broker that is party to an Introducing Type 3 or Type 4 Arrangement may enter into more than one introducing broker/carrying broker arrangement and may also fully service part of its securities-related activities.

(f) Each introducing or carrying broker that is a party to an introducing broker/carrying broker arrangement and that is not a Member, and each of such introducing or carrying brokers' partners, directors, officers, shareholders and employees, shall comply with all By-laws, Regulations, Rulings, Policies and Forms of the Association.

(g) Each introducing broker/carrying broker arrangement must be classified as an Introducing Type 1, Type 2, Type 3 or Type 4 Arrangement and must meet the requirements for such arrangement as set out in this By-law 35.

~~(h) A Member may apply for an exemption from the requirements of By-law 35 in accordance with By-law 20.25. The District Council, may, in its discretion, exempt a Member from any of the requirements of this By-law 35.~~

### **35.6. Exemption for Arrangements Between a Member and a Foreign Affiliate**



Notwithstanding the provisions of this By-law 35, on the application of a Member pursuant to By-law 20.25,~~7~~, the applicable District Council~~the applicable District Council~~ may exempt any arrangements between a Member and a Member's foreign affiliate pursuant to which the Member carries accounts of the foreign affiliate or its clients from the requirements of this By-law 35 (other than By-law 35.6) provided that the arrangements meet the following criteria:

(a) Exemption Applicable to Affiliates of the Member

The exemption in this By-law 35.6 shall apply only to arrangements between a Member and a foreign affiliate of the Member. The Member shall provide the Exchange with evidence satisfactory to the Exchange of such relationship and of the details of the arrangement between them.

(b) Disclosure of Relationship to Clients of Foreign Affiliate

The Member shall ensure that the foreign affiliate, at least annually, provides written disclosure, in a form satisfactory to the Association, to each of the foreign affiliate's clients whose accounts are being carried by the Member, outlining the relationship between the Member and the Member's foreign affiliate and the relationship between the Member and the client of the foreign affiliate, and outlining any limitations on coverage of such client accounts by the Canadian Investor Protection Fund.

(c) Approval by the Requisite Authority in the Foreign Affiliate's Jurisdiction

The exemption provided in this By-law 35.6 shall only be granted by the applicable District Council upon receipt by the Association of written approval from the regulatory authority in the foreign affiliate's jurisdiction acknowledging and approving the arrangement between the Member and the Member's foreign affiliate.

(d) Responsibility for Compliance with Association Requirements

Foreign affiliates of a Member that have an arrangement with the Member as set out in this By-law 35.6, are not required to comply with the requirements of the By-laws, Regulations, Rulings, Policies and Forms of the Association solely as a result of such an arrangement.

(e) Reporting of Balances

In calculating its risk adjusted capital required under By-law 17.1 and Form 1, the Member shall report one balance owing to or from its foreign affiliate in relation to the accounts of the clients which the Member is carrying on behalf of its foreign affiliate on its Form 1 or Monthly Financial Report.

(f) Segregation of Securities

The Member shall be responsible for segregating all securities which it holds for clients of its foreign affiliate in accordance with the segregation requirements of the By-laws and Regulations.

(g) Insurance

The Member shall include all accounts introduced to it by its foreign affiliate in its calculation of the asset measurement for minimum Financial Institution Bond coverage for Clauses (A) through (E) under Regulation 400.2.

## **COROLLARY AMENDMENTS TO POLICY NO. 6**

### **PROFICIENCY AND EDUCATION:**

#### **PART I -- PROFICIENCY REQUIREMENTS**

##### **B. GENERAL EXEMPTION**

Notwithstanding this Part I, the applicable District Council, pursuant to By-law 20.24, may ~~from time to time~~ exempt any person or class of persons from the proficiency requirements on such terms and conditions, if any, as the applicable District Council may see fit.

### **PROFICIENCY AND EDUCATION:**

#### **PART II -- COURSE AND EXAMINATION EXEMPTIONS**

##### **C. DISCRETIONARY EXEMPTIONS**

The applicable District Council, pursuant to By-law 20.24, may grant an exemption from the requirement to rewrite or write any required course or examination, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption, if the applicant demonstrates adequate experience and/or successful completion of industry courses or examinations that the applicable District Council, in its opinion, determines is an acceptable alternative to the required proficiency.

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