

IIROC NOTICE

Rules Notice Request for Comments

Dealer Member Rules and UMIR

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Consolidation of IIROC Enforcement, Procedural, Examination and Approval Rules

Summary of nature and purpose of proposed Rule

The primary objective of this project is to consolidate and rationalize enforcement-related rules that are currently contained within UMIR and the Dealer Member Rules. In addition to this consolidation exercise, several enforcement-related provisions have been amended in order to improve IIROC's overall regulatory policy framework. The most important of these amendments are discussed in this Rules Notice, while other less salient amendments are commented on within the table of concordance attached as "Attachment D". In addition to the project's primary objective, the project has also involved the relocation and, in certain cases, the updating of rules relating to compliance examinations as well as registration approvals and reviews.

These proposed Consolidated Rules reflect a years-long process that included staff from the Compliance, Enforcement, Policy and Registration departments, as well as the General Counsel's Office and external legal counsel, Philip Anisman, who performed a significant role in the formulation and drafting of the proposed Consolidated Rules.



Framework for the development of Consolidated Rules

Currently, IIROC has the following three sets of rules that govern the conduct of its Regulated Persons:

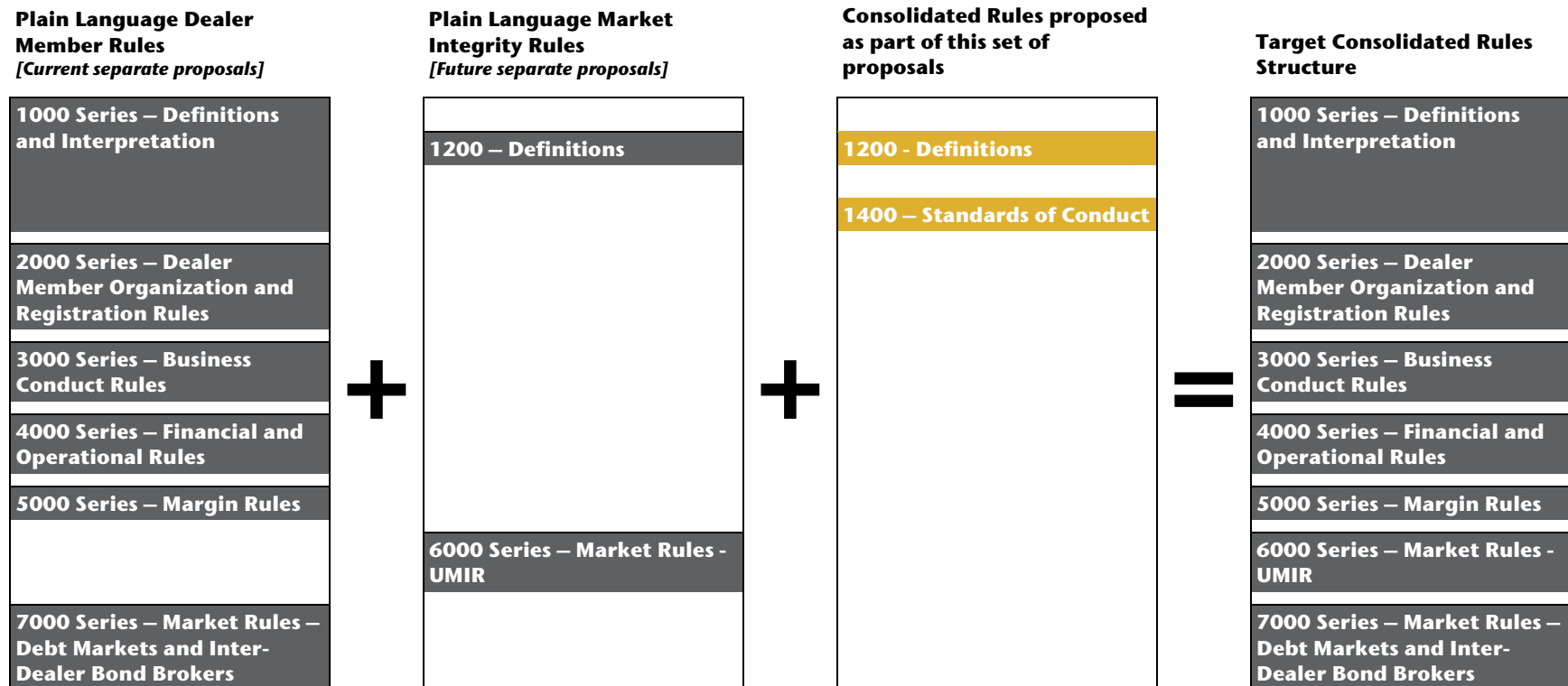
- Transition Rules
- Dealer Member Rules
- Market Integrity Rules

Ultimately, it is IIROC's intention to have one set of Consolidated Rules that governs the conduct of its Regulated Persons.

A separate project is also underway to rewrite the IIROC Rules in plain language. The first stage of this project is to rewrite the Dealer Member Rules in plain language with the exception of Dealer Member Rule 19, *Examinations and Investigations* and Dealer Member Rule 20, *Corporation Hearing Processes*.



The primary objective of these proposals is to consolidate and rationalize enforcement-related rules that are currently contained within Dealer Member Rules 19 and 20 and certain sections within UMIR 10. To achieve this objective and to start the process of developing a consolidated set of IIROC rules, the proposed Consolidated Rules relating to standards of conduct, enforcement investigations, enforcement proceedings, hearing committees, rules of practice and procedure, compliance examinations, approvals and regulatory supervision, regulatory review proceedings and procedures for opportunities to be heard, are highlighted below in gold, and have been drafted and numbered with the following target Consolidated Rules structure in mind:





**Plain Language Dealer
Member Rules**
[Current separate proposals]

9500 – Alternative Dispute Resolution
9600 – Compliance Fees
9700 – Canadian Investor Protection Fund

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**Plain Language Market
Integrity Rules**
[Future separate proposals]

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**Consolidated Rules proposed
as part of this set of
proposals**

8100 - Enforcement Investigations
8200 - Enforcement Proceedings
8300 - Hearing Committees
8400 - Rules of Practice and Procedure
9100 - Compliance Examinations
9200 - Approvals and Regulatory Supervision
9300 - Regulatory Review Proceedings
9400 - Procedures for Opportunities to be Heard

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**Target Consolidated Rules
Structure**

8000 Series – Procedural Rules - Enforcement
9000 Series – Procedural Rules - Other

Issues and specific proposed rules

IIROC is publishing for public comment the proposed Consolidated Rules for a 90-day comment period. The rules include:

Consolidated

Rule Number	Title and Description
1200	Definitions - a consolidated set of definitions applicable to both Dealer Member and market matters
1400	Standards of Conduct - a consolidated set of principles of conduct that apply to all Regulated Persons
8100	Enforcement Investigations - updated and harmonized requirements for conducting enforcement investigations relating to Dealer Member and market matters
8200	Enforcement Proceedings - updated and harmonized processes for conducting disciplinary hearings relating to both Dealer Member and market matters
8300	Hearing Committees - updated and harmonized processes for appointing members of Hearing Panels drawn from IIROC's District Hearing Committees
8400	Rules of Practice and Procedure - updated practices and procedures to be followed by parties, Hearing Panels and the National Hearing Coordinator with respect to or in connection with disciplinary and regulatory review appeal proceedings
9100	Compliance Examinations - separate harmonized rules for conducting compliance examinations
9200	Approvals and Regulatory Supervision - separate and updated rules for the approval of individuals, the granting of individual and firm approval exemptions and the imposition of individual and firm approval terms and conditions
9300	Regulatory Review Proceedings - separate and updated rules for the conducting of regulatory review proceedings relating to approval rule (9200) and early warning rule decisions
9400	Procedures for Opportunities to be Heard - practices and procedures to be followed by District Councils (or their delegates) when making decisions impacting the status of an individual IIROC approved person and by the Corporation when making a decision to impose terms and conditions on the continued membership of a Dealer Member.

Analysis & Discussion

The remainder of this Rules Notice explains the most important proposed rule amendments. Less significant amendments are commented on briefly within the table of concordance attached to this Rules Notice (Attachment D). The proposed Consolidated Rules include changes to the following major areas:

- Definitions;
- Investigations;
- Disciplinary Hearings;
- Compliance; and
- Registration.

DEFINITIONS

Definitions [Consolidated Rule 1200]

A separate set of Consolidated Rule definitions has been drafted. These definitions incorporate definitions currently contained within UMIR and the Dealer Member Rules, as well as certain new definitions where necessary. In many cases, the definitions reflect those currently set forth in section 1.1 of IIROC General By-law No. 1. Where definitions are used throughout the Consolidated Rules, they are defined in proposed Consolidated Rule 1200; where they are used in only one Consolidated Rule, they are defined in that rule. Some of the new definitions also appear in a separate Rule proposal dated January 6, 2012 (*Plain language rule re-write project – Interpretation and standards; Proposed Rules 1100 through 1400*), currently pending Canadian Securities Administrators (“CSA”) approval. Since we cannot determine in advance which of these two proposals will be implemented first, we have included several of the same defined terms in both proposals.

The Consolidated Rules are drafted in a manner that attempts to ensure that the consistent use of defined terms is maintained. Where a defined term is unique to a particular rule, the definition has been tailored to the substance of that rule.

INVESTIGATIONS

Enforcement Investigations [Consolidated Rule 8100]

The proposed “Enforcement Investigations Rule” is essentially the same as the existing investigation rule, with a few changes to clarify the responsibilities of persons who are subject to IIROC’s jurisdiction. The most significant changes are:

1. Notification

The Enforcement Investigations Rule does not require IIROC staff to notify a person who is the subject of an investigation that an investigation has been initiated. A requirement of this

nature is currently contained in IIROC's Dealer Member Rules, but not in UMIR. While IIROC staff expects to follow its past practice in most cases relating to Dealer Members and their employees, the proposed rule adopts the position under UMIR because of the need in many cases to conduct the initial stages of an investigation without informing the person being investigated, for example, when fraud or manipulation may be involved. Under the Consolidated Rule, notification and the timing of notification of the subject of an investigation, or the Regulated Person employing the subject, are therefore left to the discretion of IIROC Enforcement Department staff to be exercised in light of the circumstances particular to an investigation.

2. *Timing of response*

The Enforcement Investigations Rule makes clear that the timing of a response required of a person who receives an investigation request, as well as other elements of the investigation, are within IIROC staff's discretion. IIROC's investigation staff has consistently taken the view that they must exercise their discretion in a reasonable manner [*Consolidated Rule subsection 8104(1)*].

3. *IIROC's jurisdiction over employees and other non-approved persons*

The Enforcement Investigations Rule authorizes IIROC enforcement staff to require cooperation not only from Regulated Persons, but also from their employees, as well as other persons who are not subject to IIROC's general or disciplinary jurisdiction, if authorized by law to do so. In particular, the rule obligates:

- a Regulated Person to require its non-approved employees, and
- a person required by legislation to comply with an investigation request from IIROC, as is the case in Alberta.

to provide documents and/or answer questions in connection with an IIROC investigation at staff's request [*Consolidated Rule subsection 8104(3)*].

4. *Right to counsel*

The Enforcement Investigations Rule also codifies IIROC's longstanding practice of providing a right to counsel to any person compelled to attend and give oral evidence. While investigation staff's practice is to reschedule to accommodate counsel's availability, a party should not be allowed to delay an investigation because his or her counsel is not available within a reasonable time. The rule makes clear that the right to counsel does not entitle a person to refuse to attend and answer questions at the time specified in an investigation staff request on the basis that his or her counsel is not available to attend with the person on the specified date.

The current process that Enforcement Staff follow is to send a letter to Respondent's counsel with at least two proposed dates. Often counsel will respond, requesting new dates. Staff will often agree with a date requested by counsel if the proposed date doesn't unreasonably delay the enforcement process. Going forward, our approach of working with counsel to

arrive at mutually agreeable dates will not change. However, when counsel proposes dates that are months away, staff will remind them of section 8105 and will ask counsel to propose dates that are more timely. If staff and Respondent's counsel are not able to agree, then staff will set a date for an interview and send it to both the Respondent and the Respondent's counsel. The notice setting out the date for the interview will remind the Respondent of their obligations under section 8104 [*Consolidated Rule section 8105*].

5. *Confidentiality of investigations*

The Enforcement Investigations Rule prohibits a Regulated Person from disclosing to anyone other than their counsel, or to another person if required by law, any information related to an IIROC investigation, without the consent of IIROC enforcement staff. The purpose of this new rule is to protect the integrity of IIROC investigations and the reputation of persons who may be subject to them, except when disclosure of the investigation is necessary. The Rule is based on section 16 of the Ontario *Securities Act* [*Consolidated Rule section 8106*].

6. *Limitation*

Under a separate proposal to amend IIROC's limitation periods, currently awaiting CSA approval, IIROC will be able to investigate Dealer Members, Former Dealer Members, Approved Persons and former Approved Persons for up to 6 years from the date they ceased their activity regulated under Corporation requirements. The investigation related amendments of this proposal have been incorporated into the proposed Enforcement Investigations Rule and have been extended to apply to Regulated Persons [*Consolidated Rule section 8107*].

DISCIPLINARY HEARINGS

A. *Standards of Conduct* [*Consolidated Rule 1400*]

The proposed "Standards of Conduct Rule" prescribes standards of conduct by requiring that Regulated Persons observe high ethical standards in the conduct of their business and prohibiting them from engaging in any conduct that is unbecoming, detrimental to the public interest or inconsistent with just and equitable principles of trade. The Rule consolidates Dealer Member Rule 29.1 ("Rule 29.1") and UMIR 2.1 by including conduct that is unbecoming, conduct that is detrimental to the public interest and conduct that is inconsistent with just and equitable principles of trade in the same provision and making the various existing standards applicable to all Regulated Persons. Like Rule 29.1 and UMIR 2.1, Proposed Consolidated Rule 1400 is intended to impose high standards of conduct and to leave broad discretion to hearing panels to determine in specific circumstances whether the conduct of a Regulated Person requires sanctioning. The proposed rule recognizes that it is impossible to define in advance all circumstances that may require disciplinary action.

The rule also addresses issues raised by staff of the Ontario Securities Commission ("OSC Staff") in a CSA review of IIROC's disciplinary functions concerning the interpretation of Rule

29.1 by clearly stating that negligence may be a basis for a determination that a general standard of conduct has been violated.

The new Standards of Conduct Rule is not intended to create any new or different standards of conduct than those that exist under current IIROC rules, nor to expand IIROC's existing jurisdiction to enforce its rules on the firms and individuals who are presently subject to UMIR, the Dealer Member Rules, or both, as the case may be; rather, the proposed Rule is intended as a consolidation and codification of existing principles of law for all Regulated Persons under one succinct and comprehensive Rule. In this respect, the standards set forth in proposed Consolidated Rule subsection 1402(1), like the public interest jurisdiction of securities regulators or FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade"), comprise a "catch-all" rule that recognizes the impossibility of defining in advance all circumstances that may require disciplinary action. It is expected that hearing panels will continue to refer back to precedents decided under the various existing standards of conduct set forth in UMIR 2.1 and Dealer Member Rule 29.1, as well as their predecessor rules, all of which Staff believe, though different in wording, are substantively similar and likely to lead to a similar application on a given set of facts.

Rule 1400 applies to all Regulated Persons, including Access Persons. It incorporates the current requirement in UMIR 2.1 that trading in securities markets be conducted in accordance with just and equitable principles of trade in place of the overlapping standards, which also require that market participants and Access Persons "transact business openly and fairly" when trading on a marketplace or otherwise dealing in securities eligible to be traded on a marketplace. The rule is intended to consolidate and codify existing standards applicable to all Regulated Persons without:

- creating any new standards of conduct applicable to any such persons, or
- imposing any new requirements to comply with specific stand-alone UMIR or Dealer Member Rules that are not otherwise applicable to such persons.

For example, Access Persons will never be found to have violated a general standard of conduct for a failure to comply with a client-related duty imposed under another IIROC Rule, since Access Persons by definition have no clients to which such a duty could be owed.

Similarly, Dealer Members who do not trade on a marketplace subject to UMIR, will never be found to have violated a general standard of conduct for a failure to comply with a UMIR requirement.

The rule is also intended to make clear that Regulated Persons are obligated to exercise due diligence in complying with IIROC's requirements and other applicable legal, regulatory and contractual obligations. Finally, the rule is also intended to address IIROC's commitment to OSC Staff by making clear that negligent conduct may be conduct contrary to the specified standards.

Proposed Consolidated Rule subsection 1402(2) thus defines conduct that is unbecoming, detrimental to the public interest or inconsistent with just and equitable principles of trade as including (1) negligent conduct, (2) conduct resulting from a failure to exercise due diligence to comply or ensure compliance with IIROC requirements or a legal, regulatory, contractual or other obligation of a Regulated Person, including a firm's internal rules and policies, (3) conduct that displays an unreasonable departure from standards expected to be observed by a Regulated Person, and (4) conduct that is likely to diminish investor confidence in the integrity of the securities market. All of these standards have been applied in decisions of hearing panels.

The remainder of this summary describes significant elements of this rule in greater detail.

1. *Negligence standard*

Subsection 1402(2) addresses the issues raised by OSC Staff concerning the interpretation of Rule 29.1 by IIROC hearing panels to require intentional conduct or gross or aggravated negligence as a prerequisite to a finding that a Dealer Member or Approved Person engaged in conduct that is “unbecoming or detrimental to the public interest.” Over the past decade, a number of hearing panels have held that conduct that is “merely negligent” does not constitute “conduct unbecoming” and cannot, therefore, constitute a violation of Rule 29.1. A few hearing panels have treated Rule 29.1 as analogous to a criminal prohibition and have required intentional or knowing conduct or an improper purpose for a violation. A few other hearing panels on a similar basis have required at least “aggravated negligence” or “gross negligence” as a prerequisite to conduct unbecoming. OSC Staff recommended bringing proceedings to reverse these holdings.

In its response to OSC Staff's review, IIROC undertook to address this issue. IIROC staff concluded, however, that the issue is better addressed through the rulemaking process than on a case-by-case basis. An amended rule permits IIROC to clarify the standard of culpability for such conduct on a principled basis, in a manner that is consistent with and reinforces its regulatory mandate. In attempting to do so, it has taken into account the securities regulatory context and the disciplinary standards applicable to regulatory legislation and regulatory licensing regimes, as reflected in court and OSC decisions. Proposed Consolidated Rule 1400 is intended to establish, in principled terms, the standards of conduct expected of Regulated Persons and to define the standards that hearing panels must apply when determining whether conduct is “unbecoming, detrimental to the public interest or inconsistent with just and equitable principles of trade.”

As noted above, Rule 1400 is analogous to the public interest jurisdiction of securities commissions in Canada. It is also analogous to the quasi-criminal offences contained in securities and other regulatory legislation, which treat a failure to comply as a matter of strict liability, subject to a defence of due diligence or a reasonable mistake of fact;

accordingly, negligent conduct cannot constitute a defence to a failure to comply, even though a conviction may result in imprisonment in some circumstances. In view of the regulatory context and the customary treatment of regulatory offences in Canada, it would be anomalous if the rules of a self-regulatory organization like IIROC were interpreted more strictly. For these reasons, proposed clause 1402(2)(i) establishes negligence as a possible basis for a determination that a general standard of conduct has been violated.

While IIROC staff accept that not every negligent act or inadvertent error will constitute “conduct unbecoming” or be “detrimental to the public interest” or “inconsistent with just and equitable principles of trade,” staff are firmly of the view that a negligent failure to comply with IIROC rules or policies and other negligent conduct may justify disciplinary action. Hearing panels will continue to have discretion to make this determination in the circumstances of each case, taking into account the nature of the negligent conduct.

The definition states that negligent conduct *may be* prohibited in order to retain the discretion of a hearing panel to conclude that a single negligent act is not “conduct unbecoming ...” in the circumstances of a specific case, while making clear that it may be in others. It thus allows hearing panels to reach appropriate results in individual cases, taking into account the nature of the negligent conduct, its significance in terms of regulatory requirements and the factual context, and its relationship to a Regulated Person’s responsibilities to clients or to the market generally. Thus a hearing panel applying the general standards of conduct in section 1402 may take into account the position of a Regulated Person, including whether it is a securities professional or an Access Person.

2. *Failure to exercise due diligence*

The due diligence requirement codifies the accepted understanding that Regulated Persons have an obligation to exercise reasonable care to comply with IIROC’s rules and other regulatory requirements in connection with activities that may affect the integrity of the securities market. Unlike court and OSC decisions, however, Rule 1400 does not treat due diligence as a defence, which must be proved by a respondent; IIROC enforcement staff always bear the burden of proving that alleged conduct is contrary to the standards in Rule 1400.

Proposed Consolidated Rule subsection 1402(2) extends this due diligence obligation beyond IIROC’s rules and requirements to include legal, regulatory, contractual and other obligations, and thus codifies holdings in decisions of hearing panels that a breach of securities legislation, other legislation or a contractual obligation relating to a Regulated Person’s business conduct may be conduct that is unbecoming. In addition, it makes clear that a failure to comply with the rules, requirements and policies of a

Regulated Person, whether by the Regulated Person itself or one of its employees, is covered.

As Rule 1402 is permissive (“may be”), not every instance of a failure to comply with a regulatory, contractual or other obligation will violate it. Rather, a hearing panel will have a discretion not to impose discipline for insignificant errors that do not raise regulatory concerns.

3. *Unreasonable departure from expected standards*

The provision in Consolidated Rule subsection 1402(2) relating to an unreasonable departure from standards expected to be observed by a Regulated Person empowers hearing panels to take into account industry expectations, but in terms that make clear that the standard is based on that of a reasonable Regulated Person. The reasonable Regulated Person requirement emphasizes that the standard is one that is objective and negligence-based.

4. *Investor confidence in securities market integrity*

The standard relating to investor confidence in the integrity of securities markets derives from the basic purposes of securities legislation, namely, to foster “confidence in capital markets” (e.g., *Securities Act (Ontario)*, s. 1.1(b)). It thus encompasses conduct that is likely to diminish the reputation of members of the securities industry and the effect of their conduct on investors and others, held by hearing panels to be relevant to a determination of the public interest.

B. Enforcement Proceedings [*Consolidated Rule 8200*]

The proposed “Enforcement Proceedings Rule” integrates the existing provisions relating to disciplinary proceedings in the Dealer Member Rules and UMIR, and introduces amendments that are intended to rationalize the disciplinary process and codify existing practices. This summary describes the most significant amendments.

1. *Commencement of proceedings*

Going forward, a disciplinary proceeding will be commenced by either a notice of hearing or notice of application, issued by the National Hearing Coordinator, following a request by IIROC staff. A disciplinary proceeding will normally be commenced by the issuance of a notice of hearing. Where circumstances require an immediate order to protect investors or market integrity, IIROC staff may bring an application for a temporary order before a hearing panel, without first giving notice to a respondent [*Consolidated Rule sections 8205, 8211 and 8212*].

2. *Limitation Period*

Under a separate proposal to amend IIROC’s limitation periods, currently awaiting CSA approval, IIROC will be able to initiate enforcement proceedings against Dealer Members, Former Dealer Members, Approved Persons and former Approved Persons for

up to 6 years from the date of the occurrence of the last event on which the proceeding against them is based (the “limitation period”). The enforcement proceeding related amendments of this proposal have been incorporated into the proposed Enforcement Proceedings Rule and have been extended to apply to Regulated Persons.

If a proceeding is commenced within the limitation period, IIROC has the ability to continue a proceeding against a Regulated Person who has ceased their activity regulated under Corporation requirements until the completion of the proceeding, including reviews or appeals [*Consolidated Rule section 8206*].

3. *Sanctions*

Some modifications have been made to the current sanctions that may be imposed by a hearing panel following a disciplinary hearing. Under the proposed rule amendment, in addition to the sanctions currently available, a hearing panel will have the express authority to:

- order disgorgement of amounts obtained by a Regulated Person as a result of a rule contravention;
- appoint a monitor over the business and affairs of a Dealer Member (the current rules expressly permit appointment of a monitor only following an expedited hearing);
- prohibit an individual from being employed by a Regulated Person in any capacity, whether or not the position requires registration approval. This authority is complemented by a new provision prohibiting a Regulated Person from employing a person who has been so sanctioned. Regulated Persons will thus be expected, before hiring an individual, to review a list of such persons that IIROC will maintain.

[*Consolidated Rule sections 8209 and 8210*].

4. *Enforcement Staff*

As a result of a recent decision interpreting IIROC’s rules, “Enforcement Staff” will now be specifically referenced as being a party to a proceeding in order to:

- clarify the separate and distinct roles of Enforcement Staff and the hearing panel in conducting a proceeding;
- reaffirm the independence of hearing panels from IIROC and its Enforcement Staff; and
- reaffirm that Enforcement Staff, as a party to a proceeding and consistent with case law, have status to appeal a decision of a hearing panel.

C. *Hearing Committees* [*Consolidated Rule 8300*]

The “Hearing Committees Rule” provides for:

- the appointment of hearing committees in each District, from which members of hearing panels are selected by the National Hearing Coordinator, and

- the composition of hearing committees and the nomination, appointment, terms and removal of members of hearing committees.

This proposed rule is based largely on IIROC Transition Rule No. 1, Schedule C.1, with few changes. It expressly requires the appointment of a hearing committee in each District, a requirement that is implicit in the Transition Rule.

The proposed Hearing Committees Rule also contains a new provision concerning the qualification of individuals to serve as public members of a hearing committee. An individual who is or was employed within the past eighteen months by a Member or Regulated Person (including Access Persons) is not eligible to serve as a public member of a hearing committee. Such a person may, however, be appointed to a hearing committee as an industry member, if otherwise qualified.

D. Rules of Practice and Procedure [*Consolidated Rule 8400*]

By expressly incorporating the “Rules of Practice and Procedure” into the Consolidated Rules, the rules of practice are imbued with the full authority of IIROC Rules, as opposed to mere subordinate instruments or guidelines, which they may have appeared to be in the past.

The Rules of Practice and Procedure cover the major aspects of all proceedings relating to any form of hearing before a hearing panel. They thus apply not only to disciplinary proceedings, but also to regulatory review proceedings involving, for instance, a registration matter. While they generally follow IIROC’s Dealer Member Rules, they reflect, as well, consideration of the procedural rules in UMIR and those of the Ontario Securities Commission, the Mutual Fund Dealers Association, and in a few cases, Ontario’s *Rules of Civil Procedure*.

Although the proposed Rules of Practice and Procedure largely codify IIROC’s current practices, they contain the following significant amendments, which are intended to facilitate an expeditious and orderly handling of proceedings, while maintaining fairness for respondents:

1. *National Hearing Coordinator*

Proceedings are to be administered by the National Hearing Coordinator, who acts as a registrar with authority to administer all proceedings by:

- selecting members of hearing panels,
- scheduling hearings,
- controlling filing of documents,
- maintaining hearing records,
- dating and distributing decisions and reasons, and
- performing all other administrative functions necessary for the conduct of proceedings.

The National Hearing Coordinator is also expressly authorized to issue practice guidelines and prescribe the form and format of documents required to be filed [*Consolidated Rule section 8407*].

2. *Continuation of Panel*

The current rules permit a hearing panel to complete a hearing if one of its members retires during a proceeding, even if the member is the chair. As a result, the hearing panel may continue without a public member who has legal training and experience. Under the proposed rules, if a chair resigns, the remaining panel members are given discretion to retain their own legal counsel to advise them on procedural and legal issues, but not on the merits of a proceeding [*Consolidated Rule subsection 8408(10)*].

3. *Prehearing Conferences and Motions*

The expeditious conduct of disciplinary proceedings is encouraged under the Rules of Practice and Procedure through the use of prehearing conferences and case management. An initial prehearing conference will now be required immediately following the conclusion of an initial appearance in a disciplinary proceeding.

Similarly, a motion may be brought, with leave of a hearing panel, prior to the commencement of a proceeding in order to resolve issues that may expedite or resolve the proceeding. Motions and prehearing conferences may be heard by a single public member. The rules authorize the National Hearing Coordinator to:

- select a single public member to act as the hearing panel on preliminary motions and prehearing conferences, and
- appoint such a public member to case manage a proceeding at the request of the parties or at the instance of a hearing panel.

Hearing panels are expressly granted authority to control all procedural aspects of hearings over which they preside [*Consolidated Rule sections 8413 and 8416*].

4. *Compulsion of Witnesses*

The Rules of Practice and Procedure also provide a process for a hearing panel to exercise the authority conferred upon it under the Enforcement Proceedings Rule to compel certain persons to testify or produce documents. The rules distinguish between:

- persons who are subject to IIROC's contractual jurisdiction, including Dealer Members, Approved Persons, and other Regulated Persons, and
- persons who are not, but are obligated to comply by legislation, as is the case in Alberta,

and require the National Hearing Coordinator to serve notice on such persons.

The Rules of Practice and Procedure also set out a procedure for notifying both:

- an employee who is not subject to IIROC's contractual jurisdiction, as well as

- the employing Regulated Person, of the hearing panel’s order, in order to invoke the Regulated Person’s obligation under the Enforcement Proceedings Rule to require the employee to attend.

In addition, in a jurisdiction in which a hearing panel is granted statutory authority to compel compliance with a summons, as in Alberta, the rules specify that the hearing panel’s procedure must be the same as the procedure followed by a regulatory tribunal in that jurisdiction [*Consolidated Rule section 8421*].

COMPLIANCE

Compliance Examinations [*Consolidated Rule 9100*]

The proposed “Compliance Examinations Rule” is a free standing rule that authorizes Corporation staff to:

- conduct compliance examinations as well as trade review and analysis work, and
- request information necessary to conduct the examinations/work.

It also makes it clear that compliance examinations are aimed at regulatory compliance, rather than disciplinary matters. This approach differs from the approach in existing Dealer Member Rule 19, where enforcement investigations and compliance examinations are addressed in a single rule, blurring the distinction between an enforcement investigation and a compliance examination. While both the proposed Compliance Examinations Rule and the proposed Enforcement Investigations rule are derived from the same sections in IIROC’s existing rules, and parallel each other in many ways, the Compliance Examinations Rule differs in some material ways, including the fact that the Compliance Examinations Rule:

- does not authorize compliance staff to compel attendance of individuals for examination, but merely requires that questions be answered;
- expressly authorizes compliance staff to refer information obtained in the course of an examination to IIROC’s Enforcement Staff or other IIROC staff; and
- expressly authorizes compliance staff to take any other action that they consider appropriate based on such information, including for example, the imposition of terms or conditions on an approval or membership under the Approvals and Regulatory Supervision Rule.

REGISTRATION

A. Approvals and Regulatory Supervision [*Consolidated Rule 9200*]

The “Approvals Rule” sets out the authority of the Corporation to:

- approve applications for approval of individuals employed by Dealer Members, and
- adjudicate requests for exemptions from IIROC’s proficiency, examination or continuing education requirements.

It also authorizes the Corporation and its District Councils, or their delegates, to make decisions that will promote the continuing compliance of Approved Persons and Dealer Members with IIROC requirements.

For the most part, the sections of the Approvals Rule relating to individuals reflect the current Dealer Member Rules with respect to approval applications and exemption requests. The exemption application process has been moved to the Approvals Rule in order to provide a common and coherent process and procedure for all applications and other actions relating to approvals and Approved Persons. The standards governing the granting of an approval are contained in proposed section 9204, while the standards governing applications for exemptions will remain in Dealer Member Rule 2900, which governs proficiency and education generally.

The sections of the Approvals Rule relating to firm applications for membership as a Dealer Member have been modified to be consistent with the processes regarding the opportunity to be heard that apply to other such determinations as set out in Rule 9400.

The Approvals Rule also contains the provisions of the Dealer Member Rules authorizing District Councils to:

- impose terms and conditions on an Approved Person's continued approval, and
- suspend or revoke an approval (Dealer Member Rule subsections 20.18(3) and (4)). This authority was originally added to the Dealer Member Rules in September 2009 to parallel the registration authority over individuals that has been delegated to IIROC by a number of securities regulatory authorities.

The standard governing the imposition of terms and conditions upon granting of an approval, namely, that the District Council considers it appropriate to "ensure continuing compliance with Corporation requirements" serves to distinguish these decisions from disciplinary proceedings.

The most significant change contained within the Approvals Rule, found in section 9208, authorizes the Corporation to impose terms and conditions on a Dealer Member's membership, but not to suspend or revoke a membership. This new authority was included in order to address scenarios in which there are outstanding compliance issues that clearly require action by IIROC, but do not justify disciplinary proceedings. If a Dealer Member's circumstances warrant suspension or revocation of its membership, and thus its registration, it will be treated as a disciplinary proceeding subject to IIROC's enforcement rules. As a result, this rule also includes a standard reflecting the compliance focus of the authority to impose terms and conditions on a membership.

The rule requires that an Approved Person or Dealer Member who may be adversely affected by a decision made under it, has an opportunity to be heard before the decision is made. It is worth noting that all such hearings are conducted without public notice, in the absence of the public. Notice of all decisions and reasons for decisions that have an adverse effect on an

individual or Member must be provided to them. Affected parties, including Registration Staff, are entitled to have a decision reviewed by a hearing panel pursuant to the Regulatory Review Proceedings Rule, but staff may not seek the review of a staff decision made with respect to a Member or pursuant to a delegation by a District Council of its authority to make the decision.

B. *Regulatory Review Proceedings* [Consolidated Rule 9300]

As stated above, the Approvals Rule authorizes a party to request a review by a hearing panel of a decision made under the Approvals Rule. The “Regulatory Review Proceedings Rule” governs the conduct of such reviews, as well as reviews of early warning level 2 decisions. Review proceedings under this rule are similar to review proceedings of temporary orders and expedited hearings under the Enforcement Proceedings Rule and, like them, are open to the public and governed by the Rules of Practice and Procedure.

C. *Procedures for Opportunities to be Heard* [Consolidated Rule 9400]

Hearings held under the Approvals Rule are not subject to the Rules of Practice and Procedure, but follow more expeditious, less formal procedures. To date these procedures have not been published, but persons who request an opportunity to be heard are informed of the procedures by staff.

The “Opportunity to be Heard Procedures” are intended to codify the procedures that have generally been followed by Registration Staff with respect to decisions, including those covered by the Approvals Rule. They are intended to ensure that an affected party wishing to exercise their opportunity to be heard, is able to do so in a manner that, while informal, ensures a fair hearing process. These procedures are intended to be binding.

In essence, the Opportunity to be Heard Procedures require staff to advise an applicant, Approved Person or Dealer Member of staff’s intention to oppose an application or seek a decision under the rule and at the same time, to provide a copy of the procedures. Although arguments are generally expected to be submitted in writing, an affected person may request an oral hearing before a decision maker. Decisions must be made and issued in writing no more than thirty days after the conclusion of a hearing.

The Opportunity to be Heard Procedures make it clear that hearings relating to the imposition of terms and conditions on a Dealer Member’s membership will be considered by a senior officer of IIROC and not a District Council. This follows from the fact that, under proposed Consolidated Rule section 9208 of the Approvals Rule, such decisions are to be made by the Corporation, rather than a District Council, in order to protect the confidential information of Dealer Members. Nevertheless, any terms and conditions that are imposed on an Approved Person or on a Dealer Member’s registration will be made available to the public. Staff is currently considering how to ensure that terms and conditions imposed only on a Dealer Member’s membership, but not on its registration, can be made publicly available.

The Opportunity to be Heard Procedures also make it clear that hearings relating to the consideration of an application for Dealer Member membership will be considered by the Board of Directors, which is consistent with the current process.

OTHER CHANGES

Some of the other changes included in the proposed Consolidated Rules are as follows:

- *Temporary Orders [Consolidated Rule section 8211]:* The authority to make temporary orders is new. It is based on the authority given to securities regulators to issue temporary orders, where necessary, in the public interest and is intended to be used in similar circumstances. An example of a temporary order under this rule would be an order requiring an Approved Person to cease trading to prevent an ongoing manipulation.
- *Expedited Hearings [Consolidated Rule section 8212]:* The types of hearings that may be brought as expedited hearings have been restricted to achieve greater fairness by limiting their availability to circumstances in which contested facts are unlikely to arise. (For example, an expedited hearing can no longer be based upon the laying of a criminal charge, but only a conviction.) Also, the respondent must now be given notice that an expedited hearing is being held. Both temporary orders and expedited hearings are treated as disciplinary. IIROC's regulatory orders relating to continuing approvals of Members and Approved Persons and market integrity and other trading orders are now found under separate rules as matters of regulatory compliance.
- *Exhausting all Remedies for Judicial Review [Consolidated Rule sections 8217 and 9210]:* The proposed Rules codify the long-standing principle of administrative law that a party who seeks judicial review of an administrative decision must first exhaust all review procedures available within the administrative tribunal itself.

CONSEQUENTIAL AMENDMENTS TO DEALER MEMBER RULES

As a result of the introduction of the Consolidated Rules relating to standards of conduct, enforcement investigations, enforcement proceedings, hearing committees, rules of practice and procedure, compliance examinations, approvals and regulatory supervision, regulatory review proceedings and procedures for opportunities to be heard, the following Dealer Member requirements will be repealed:

- Dealer Member Rule sections 19.1, 19.2 and 19.4 through 19.7;
- Dealer Member Rule sections 20.1 through 20.27, and 20.30 through 20.52;
- Dealer Member Rule sections 29.1; and
- Dealer Member Rules of Practice and Procedures.

In addition, the following Dealer Member requirements are repealed and, in some cases, replaced:

- Dealer Member Rule section 19.3 requires that complaints received by the Corporation against a Dealer Member or a person approved or seeking approval may be required to be put in writing and signed by the complainant. Since the requirement to request that a complaint be submitted in writing is unnecessary, the section will be repealed.
- Dealer Member Rule section 19.8 sets out requirements for Dealer Members to provide information to certain exchanges when requested. This requirement will be retained as the only remaining section within Rule 19 and the rule will be renamed “Provision of Information.”
- Dealer Member Rule sections 20.28 and 20.29 set out the authority to impose Early Warning Level 2 prohibitions on Dealer Members. Since the remainder of Dealer Member Rule 20 will be repealed, and these provisions are not enforcement-related items, they will be moved to Dealer Member Rule 30 which deals with the Early Warning System. Also, the reference in Dealer Member Rule 30 to Rule 20 regarding Early Warning Level 2 prohibitions will be repealed.

CONSEQUENTIAL AMENDMENTS TO UMIR

The most significant consequential amendments to UMIR would be the repeal of numerous provisions that are currently found in Part 10 of UMIR. The majority of these provisions are procedural in nature.

In addition, UMIR 2.1 (“Just and Equitable Principles”) would be repealed and replaced with a new Rule that would prohibit a Participant and/or an Access Person from engaging in certain “unacceptable activities”. Certain of these prohibitions would apply only to Participants.

Accordingly, the consequential amendments to UMIR in reference to the Consolidated Rules are:

- Rule 1.1 UMIR definitions of “Hearing Committee” and “Hearing Panel” are repealed as they are included in the definitions to the Consolidated Rules and referenced in the new Hearing Committees Rule 8300.
- Rule 1.1 UMIR definition of “Regulated Persons” is preserved but to alleviate confusion with the term “Regulated Person” adopted from the IIROC General By-law for the purposes of the Consolidated Rules, the term will be amended to “Subject Persons”.
- Rule 2.1 of UMIR is repealed and replaced with a new Rule, setting out “Specific Unacceptable Activities”.
- Rule 10.1 of UMIR is amended to repeal discrete provisions referencing compliance with the conduct of “investigations and hearings” by IIROC, as the obligation is included in the new consolidated compliance examinations rule 9100 and enforcement investigations and proceedings rules 8100 and 8200.
- Rule 10.2 of UMIR concerning investigations is repealed as covered by the new consolidated investigations rule 8100.
- Rule 10.3 of UMIR concerning extension of responsibility generally to Regulated Persons for the conduct of their employees is repealed as covered under the new consolidated Standards of Conduct Rule 1400 which sets out the responsibility of Regulated Persons for the acts or

omissions of their employees as well as included in the new consolidated enforcement rule 8200.

- Rule 10.4 of UMIR is amended by repealing and replacing the text “just and equitable principles of trade” in clauses 1(a) and 2(a) with the text “specific unacceptable activities”.
- Rule 10.5 of UMIR is amended to repeal the powers and associated remedies that may be imposed following a determination of a contravention of a requirement under UMIR as covered under the new consolidated enforcement proceedings rule 8200, and refers to the consolidated enforcement proceedings rule 8200 regarding the commencement of hearing following the issuance of an interim order without notice by IIROC to suspend or restrict access to the marketplace.
- Rule 10.6 of UMIR relating to exercise of authority by a hearing panel will be repealed as covered under the new consolidated enforcement proceedings rule 8200.
- Rule 10.7 of UMIR concerning assessment of expenses will be repealed as covered under the new consolidated enforcement proceedings rule 8200.
- Rule 10.8 of UMIR governing practice and procedure related to disciplinary proceedings is repealed as covered by the new rule consolidated Rule 8400 Rules of Practice and Procedure.
- Rule 10.12 of UMIR is repealed in part as relates to the requirement to permit inspection of records by IIROC as this obligation is included in the new consolidated enforcement investigations and compliance examinations rules 8100 and 9100.
- Rule 10.16 of UMIR is amended by repealing and replacing the text in clauses (1) (a) and (2)(a) with text that includes references to the relevant provisions in Rule 2.1 (“Specific Unacceptable Activities”).
- Rule 11.8 of UMIR is repealed.

CONSEQUENTIAL AMENDMENTS TO TRANSITION RULES

As a result of the introduction of the new consolidated enforcement, procedural, examination and approval rules, a new Schedule C.1 to Transition Rule No. 1 (which sets out the transitional provisions relating to the consolidated enforcement rules) has been enacted.

Consultation and Alternatives Considered:

In addition to thorough consultation across the Compliance, Enforcement, Policy and Registration departments and the General Counsel’s Office at IIROC, input was sought from Dealer Members through the Compliance and Legal Section, District Councils, and National Advisory Committee.

The text of the proposed consolidated Rules, along with the existing Rules that they will replace, is set out in Attachment B. The text of the proposed consequential amendments (not otherwise included in Attachment B) is set out in Attachment C. A table of concordance showing precise equivalent provisions in the proposed consolidated Rules and the existing General By-law No. 1, Transition Rule No. 1, UMIR, Dealer Member Rules and Rules of Practice is set out in Attachment D.

In drafting the proposed consolidated rules, the issue of whether or not to require Dealer Members to include in their contracts with their third-party service providers a requirement that they and their employees subject themselves to IIROC's jurisdiction for the purposes of enforcement investigations and to give testimony in enforcement hearings was considered. IIROC staff determined that this would be a substantial change to existing practice and therefore will be pursued as a separate rule amendment project.

Proposed Rule classification

Statements have been made elsewhere as to the nature and effects of the proposed rule, as well as analysis. The purposes of the proposed rule are to:

- establish and maintain rules that are necessary or appropriate to govern and regulate all aspects of IIROC's functions and responsibilities as a self-regulatory entity,
- ensure compliance with securities laws,
- prevent fraudulent and manipulative acts and practices,
- promote just and equitable principles of trade and the duty to act fairly, honestly and in good faith,
- foster fair, equitable and ethical business standards and practices,
- promote the protection of investors, and
- provide for appropriate discipline of those whose conduct IIROC regulates.

IIROC proposes that the enforcement-related rules be consolidated and rewritten to:

- streamline enforcement processes between Market and Dealer Member matters;
- eliminate redundant provisions;
- update enforcement procedures to ensure fair and transparent enforcement hearings;
- separate the rules for compliance examinations;
- separate the rules for registration-related approvals or proficiency exemptions; and
- increase the clarity relating to an applicant's opportunity to be heard regarding a Corporation decision affecting registration-related approvals or proficiency exemptions.

The Board therefore has determined that the proposed amendments are not contrary to the public interest.

Due to the extent and substantive nature of the proposed amendments, they have been classified as Public Comment Rule proposals.

Effects of the proposed Rule on market structure, Dealer Members, non-Dealer Members, competition and costs of compliance

The proposed amendments do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in furtherance of IIROC's regulatory objectives. They do not

impose costs or restrictions on the activities of market participants (including Dealer Members and non-Dealer Members) that are disproportionate to the goals of the regulatory objectives sought to be realized.

All parties to enforcement proceedings, both IIROC and respondents, will benefit from the enhanced clarity and certainty that the proposed Consolidated Rules offer. Dealer Members, Approved Persons, and applicants will also benefit from the codification and transparency of a party's "opportunity to be heard".

Technological implications and implementation plan

IIROC does not anticipate that the Consolidated Rules will result in any noteworthy technological implications.

The proposed amendments relating to confirmation disclosure requirements will be made effective three months after IIROC staff issues a Notice indicating that approval has been received from IIROC's recognizing regulators.

Request for public comment

Comments are sought on the proposed amendments. Comments should be made in writing. Two copies of each comment letter should be delivered by June 21, 2012 (90 days from the publication date of this notice). One copy should be addressed to the attention of:

Robert Keller
Policy Counsel, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
Suite 1600, 121 King Street West
Toronto, ON M5H 3T9

The second copy should be addressed to the attention of:

Manager of Market Regulation
Ontario Securities Commission
19th Floor, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
marketregulation@osc.gov.on.ca

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the IIROC website (www.iiroc.ca under the heading "IIROC Rulebook - Dealer Member Rules - Policy Proposals and Comment Letters Received").

Questions may be referred to:

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Attachments

- [Attachment A](#) - Board resolution approving publication for comment of the Proposed Consolidated Rules
- [Attachment B](#) - Proposed Consolidated Rules and comparison to existing provisions
- [Attachment C](#) - Consequential Amendments to Dealer Member Rules, Universal Market Rules and Transition Rule No. 1
- [Attachment D](#) - Table of Concordance