

## **IIROC Business Conduct Investigation Process**

One of the most important ways that IIROC (“the Corporation”) protects the investing public is by enforcing its Dealer Member Rules. Enforcement measures are often, but not always, initiated by a complaint by a member of the public. IIROC examines all complaints to determine if there is any indication of a regulatory infraction and once it has determined that there is sufficient evidence of this, it will hold a formal public Enforcement Hearing.

This guide summarizes how the Enforcement process works. It is intended for members of the public, those who may be the subject of a complaint or an investigation, Hearing Panel members and others who may be interested in the IIROC Enforcement process.

However, this guide has no legal effect and is not intended to be used as a substitute for legal advice. Subjects of investigations are encouraged to seek legal advice at any point during the enforcement process. If this guide does not fully address your concerns, please contact IIROC at 1-877- 442-4322 for further information.

### **1. Investigatory Powers of the Corporation**

IIROC Dealer Member Rules 19 and 20 set out the overall authority of IIROC to investigate and discipline Approved Persons and Member Firms for misconduct. These investigations are conducted by members of IIROC’s Enforcement staff and may be undertaken on the basis of:

- a complaint received from a member of the public;
- a direction from IIROC's Board of Directors;
- a request from a Securities Commission or other regulatory organization; or
- any information obtained or received by IIROC.

For the purpose of any examination or investigation, an Approved Person or a Dealer Member and their employees, when asked by IIROC staff, are obligated to do the following:

- submit a report in writing with regard to any matter involved in an investigation;
- produce for inspection and provide copies of the books, records and accounts relevant to the matters being investigated; and
- attend and give information respecting any such matters.

The subject of an investigation will be advised in writing that they are the subject of an investigation. IIROC staff may request and if asked the registrant or firm may be required to submit a written statement, produce documentation and attend before the persons conducting the investigation to provide a statement. Any statement may be recorded and may be required to be given under oath. The failure to provide requested information or to respond to questions may result in disciplinary action.

### **2. The Corporation’s Enforcement Process**

The Enforcement process is comprised of three stages. All matters presented to the Corporation are initially considered during the Case Assessment process. Case Assessment determines if a matter is within the jurisdiction of IIROC, if it is a regulatory issue and whether it warrants further investigation or direct referral to enforcement counsel. If this initial review indicates that further investigation is warranted, the matter is referred to Investigations staff. If the investigation finds sufficient evidence of a regulatory breach, the matter is referred to Enforcement Counsel for disciplinary action. If matters are outside the scope of IIROC, they will be referred to the appropriate agency or organization. This may include the police or a securities commission or another regulatory organization having an interest. IIROC also immediately reports every complaint where there appears to be evidence of criminal activity to the appropriate policy authority.

## **2.1 Case Assessment Review**

IIROC's Case Assessment Officers receive complaints and inquiries from the public, the Corporation's Member Firms, Securities Commissions, the police, other self-regulatory organizations and other departments of IIROC. Typically, the Case Assessment Review process involves initial assessment of the matter to determine if the matter is about a regulatory breach within the jurisdiction of IIROC. If the allegation appears to relate to an IIROC Rule, a summary of the complaint may be forwarded to the Member Firm or individual for their comments. Case Assessment Staff will also initiate collecting whatever documentation is required to review the complaint. Once this information is obtained and reviewed, a recommendation is made to Enforcement managers as to what action should be taken. Enforcement management may recommend that the file be closed with no further action taken, the opening of a formal investigation, the issuance of a cautionary letter, referral to another agency with the proper jurisdiction, or if appropriate, to Enforcement Counsel for consideration of formal disciplinary action.

## **2.2 Investigations**

Investigators review the information provided by the Complaint Inquiries Officers, gather any additional documentation required and proceed with the formal investigation of the matter. An Investigator usually interviews the complainant and any other additional witnesses that might be indicated. This will usually involve supervisors, support staff, compliance staff or anyone else potentially having knowledge about the allegation. They will conduct an in depth analysis of the allegations, documents and ultimately interview the person who is the subject of the complaint. In all cases, investigators will also assess supervisory controls and whether supervision of an individual was adequate or whether an investigation for supervisory failure should be instigated. Analysts assist the Investigators by conducting an analysis of relevant information including account documentation and producing a variety of reports and demonstrative evidence for use in the investigation and a potential hearing. The Investigator then reviews the findings of the investigation and makes a recommendation as to whether there appears to be sustainable evidence that a breach of the Corporation's Rules has occurred. Files with insufficient evidence are closed and files with sufficient evidence are sent to the Corporation's Enforcement Counsel for prosecution.

Those persons or firms that are the subject of an investigation may retain counsel to assist them during the investigation.

## **2.3 Prosecution by Enforcement Counsel**

IIROC Enforcement Counsel reviews the investigation file and, if appropriate, prepares the matter for a formal Hearing which is conducted under IIROC's Rules of Practice and Procedure.

IIROC Enforcement Counsel first draft a Notice of Hearing that sets out, among other things, the time and date of the hearing, the specific allegations against the Approved Person or Member ("the Respondent"), whether the matter is on the Standard Track or the Complex Track, and possible penalties that might be imposed by a Hearing Panel if IIROC proves the allegations against the Respondent.

Enforcement Counsel makes sure that the Notice of Hearing is served on all of the Respondents identified in the Notice. The Notice of Hearing is then filed with IIROC's National Hearing Coordinator ("NHC").

Once a Respondent is served with the Notice of Hearing, the Respondent must serve a Response within either 20 or 30 days, depending on whether the case is on the Standard or the Complex Track. The Response must set out the facts in the Notice of Hearing that the Respondent admits, the facts that the Respondent denies and the reasons for denying them, and set out all of the other facts that the Respondent wishes to rely upon in defence of the allegations. Failure to deliver a Response may result in findings being made against the Respondent without further notice.

There are many other steps that both IIROC and the Respondent(s) must take, and in some cases may take, before the formal Hearing begins. For example, both sides must exchange documents that they intend

to rely upon at the Hearing, witness statements of people who might be called as witnesses at the Hearing, and any expert reports of experts who might be called as witnesses. Motions may also be brought for various orders before the Hearing.

In addition, a Pre-Hearing Conference may be held before the actual Hearing takes place. A Pre-Hearing Conference is held before a Presiding Officer who cannot later sit on the Hearing Panel that will decide the case at the formal hearing unless all parties consent in writing. The purpose of a Pre-Hearing Conference is to encourage the parties to settle or agree upon as many issues as possible such as concerns over the disclosure of documents or other information, witness scheduling, Hearing dates and other matters that will help the parties to expedite the hearing process. The parties also discuss whether the entire case can be settled or resolved.

Everything discussed at a Pre-Hearing Conference is "privileged" and confidential, which means that it cannot later be referred to or used in any way against any of the parties. The purpose of keeping these discussions confidential is to encourage the parties to openly discuss issues without being concerned about the information being used later or at the Hearing.

Once these preliminary matters have been dealt with, the next step is the hearing itself. Part 10 of Dealer Member Rule 20, or sections 20.30 to 20.49, govern Enforcement Hearings. There are three types of hearings: Settlement Hearings, Contested Hearings and Expedited Hearings.

Hearings are conducted before Hearing Panels, which are comprised of two industry representatives and a member of the public who acts as Chair. The public member is not associated with any investment dealer and has legal training, usually as an experienced securities lawyer or retired judge. All Hearings that take place before Hearing Panels are formal and resemble proceedings that take place before a Judge in a courtroom.

At all of these Hearings, IIROC is represented by Enforcement Counsel. In many cases the Respondent will retain a lawyer either during the course of the investigation or to represent the Respondent at the Hearing. Enforcement Counsel cannot provide legal advice to a Respondent who does not have a lawyer, nor can Enforcement Counsel provide advice as to whether the Respondent should retain counsel but, where possible, Respondents often find that retaining a lawyer is of considerable assistance to them.

### **Settlement Hearings**

In many cases, the parties are able to negotiate a settlement before the Hearing. However, that agreement is not binding on the Hearing Panel and so the parties must attend a formal Hearing, present the agreement to the Hearing Panel and explain why the Panel should accept it. After Hearing the parties' submissions, the Hearing Panel may:

- accept the settlement agreement; or
- reject the settlement agreement.

At the Settlement Hearing the Panel will consider the settlement and will provide reasons as to why it accepts or rejects the settlement. If a settlement agreement is not negotiated between Enforcement Counsel and the Respondent, a Contested Hearing usually takes place. In rare instances, further investigation may be called for or the parties identify reasons or evidence that may indicate why prosecution is not warranted.

### **Contested Hearings**

Contested Hearings resemble trials that take place in regular courtrooms. Enforcement Counsel must prove the allegations contained in the Notice of Hearing by presenting documentary evidence and by calling witnesses and the Respondent has the opportunity to challenge IIROC's case by cross-examining the IIROC's witnesses and calling their own evidence.

IIROC Enforcement Counsel starts the Hearing by making an Opening Statement. The Respondent may then make an Opening Statement or wait until Enforcement Counsel concludes the IIROC's case.

Enforcement Counsel then usually calls witnesses and tenders documents into evidence. Witnesses are examined "in chief" by Enforcement Counsel and the Respondent (or their counsel) can cross-examine, following which Enforcement Counsel may re-examine the witness. After IIROC concludes its case, the Respondent may then call witnesses and introduce documents in the same manner.

After the parties have presented their evidence, each side presents their closing arguments. The Hearing Panel then usually adjourns to decide the case and later issues written reasons explaining their decision.

If the Hearing Panel decides that Enforcement Counsel proves some or all of the allegations in the Notice of Hearing, the Hearing Panel will then hear evidence and argument from both sides as to the appropriate penalty.

Penalties for registered employees can include:

- a written reprimand;
- fines, up to a maximum of \$1 million per contravention or an amount equal to three times the profit made or loss avoided by reason of the contravention;
- suspension of approval for any period of time and upon any conditions or terms;
- terms and conditions of continued approval;
- prohibitions of approval in any capacity for a period of time;
- termination of the rights and privileges of approval;
- revocation of approval;
- a permanent bar from approval with the Corporation; or
- any other fit remedy or penalty (often includes re-writing of licensing courses).

Penalties for Member Firms can include:

- a written reprimand;
- fines, up to a maximum of \$5 million per contravention or an amount equal to three times the profit made or loss avoided by reason of the contravention;
- suspension of the rights and privileges of the Members (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;
- terms and conditions of continued Membership;
- termination of the rights and privileges of Membership;
- expulsion of the Member from membership in the Corporation; or
- any other fit remedy or penalty.

### **Expedited Hearings**

Expedited Hearings are different from other kinds of hearings in several ways:

- Expedited Hearings are commenced by a Notice of Application, not a Notice of Hearing;
- The Respondent is not usually given notice of the Hearing and is therefore not usually in attendance at the Hearing; and
- Any order that the Hearing Panel may make is usually temporary and is meant to address acute or serious risks that need to be arrested immediately.

If the Hearing Panel makes an Order at an Expedited Hearing, IIROC must serve the Respondent with a copy of the Application Record and the Hearing Panel's Order as soon as possible, and the Respondent has

a right to request an immediate review of the decision.

## **Appeals**

Following most Hearings (other than an Expedited Hearing), a party may appeal the Hearing Panel's decision to an Appeal Panel provided that the appeal is brought within 30 days of the decision being appealed.

## **National Hearing Coordinator**

As noted previously, the National Hearing Coordinator ("NHC") administers all proceedings at IIROC. The NHC receives and distributes to the Hearing Panel materials filed by the parties, sets hearing dates and performs other administrative functions. However, the NHC cannot decide issues that should be decided by the Hearing Panel, nor can the NHC provide legal advice.

## **3. Public Communications Process**

Whenever the Corporation imposes discipline on a Dealer Member Firm or an employee, notice of the penalty is published in the form of a Disciplinary Notice which is distributed to the Member Firms and within the securities industry, including Securities Commissions and other self-regulatory organizations. IIROC Public Affairs Department also distributes a Media Release which reports on the Disciplinary Notice findings.

The Corporation generally will not make any public comments regarding investigative matters until the issuing of a Notice to the Public regarding the date and location of a Hearing. The Notice to the Public regarding a Disciplinary Contested Hearing or a Settlement Hearing is issued via Media Release and is also posted on our website. Hearings are generally open to the public. The Corporation also posts the Notice of Hearing on the Website prior to the Hearing and, in the case of a Settlement Hearing, the Settlement Agreement is also posted after it has been approved. In both instances, the Reasons for Decision are also posted.

The enforcement process is an essential element in assuring investors that IIROC's Member Firms are effectively regulated and that each adheres to the highest standards of conduct.