

# RULES OF PRACTICE AND PROCEDURE

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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.