

Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

## **POLICY REGARDING THE USE, DISCLOSURE AND REDACTION OF PERSONAL INFORMATION IN DISCIPLINARY AND REGULATORY PROCEEDINGS**

(January 2023)

### **Purpose**

The purpose of this Policy is to provide guidance and assistance regarding the use, disclosure and redaction of personal information in proceedings brought before hearing panels under the Interim Rules of the New Self-Regulatory Organization of Canada (**New SRO**), Procedural Rules Series 8000 and 9000 of the [Investment Dealer and Partially Consolidated Rules](#) and Rules 7.3 and 7.4 of the [Mutual Fund Dealer Rules](#).

This Policy does not apply to documents exchanged between Enforcement staff and respondent(s) subject to New SRO proceedings.

The open-hearing principle is fundamental in all proceedings. The New SRO hearings are open to the public (with limited exceptions discussed below), panel decisions are published online, and hearing records are made available to the public upon request. In some circumstances, the openness principle has to be balanced with individuals' rights to privacy. The Policy discusses such exceptions and how sensitive personal information may be disclosed and protected in disciplinary and regulatory proceedings before the New SRO hearing panels.

For the purposes of this Policy, personal information includes recorded information about individuals who are not subject to the New SRO proceedings. See **Appendix** for a non-exhaustive list of examples.

### **Openness and Transparency of Public Proceedings and Limited Exceptions**

Generally, hearings held by New SRO hearing panels are open to the public. In limited circumstances, the New SRO Interim Rules allow for hearings to be conducted in absence of the public.

In particular, Rule 7.3.5 of the [Mutual Fund Dealer Rules](#) provides:

#### Open to the Public

A hearing pursuant to Rule 7.3 shall be open to the public except where the Hearing Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case the Hearing Panel may hold the hearing in camera.

Similarly, Rule 8203(5) of the [Investment Dealer and Partially Consolidated Rules](#) provides:

- (i) a settlement hearing, in which case it will be opened to the public only after a settlement agreement has been accepted by the hearing panel
- (ii) a hearing to consider a temporary order under Section 8211

- (iii) a hearing or part of a hearing where the hearing panel is of the opinion that the desirability of avoiding disclosure of intimate, personal or other matters outweighs the desirability of allowing the hearing or part of the hearing to be open to the public or
- (iv) a hearing held in Québec where the hearing panel, on its own initiative or on the request of a party, orders the hearing or part of the hearing to be closed or prohibits the publication or release of documents in the interest of good morals or public order.

### **Documents filed with the NHO or CSO**

Parties to the New SRO proceedings filing documents with the National Hearing Officer (**NHO**) for matters conducted under the Investment Dealer and Partially Consolidated Rules or the Corporate Secretary's Office (**CSO**) for matters conducted under the Mutual Fund Dealer Rules should make all reasonable efforts to limit the disclosure of personal information in accordance with this Policy.

Documents containing third parties' sensitive personal information filed with the NHO or CSO should be redacted to remove personal information. See **Appendix** for guidance and examples of personal information. An unredacted version of all document filed should be available for viewing at the request of a hearing panel.

### **The Hearing Record**

The record of a proceeding includes the following documents:

- the application or notice of hearing by which a proceeding was commenced
- settlement agreements accepted by a hearing panel
- interim orders made by a hearing panel
- documentary evidence filed and entered as exhibits at the hearing
- transcripts, if any, of any oral evidence given at the hearing
- orders and reasons for a decision rendered by hearing panels.

#### **(Hearing Record)**

The Hearing Record does **not** contain:

- hearing notes, personal notes, legal opinions, memoranda, drafts of reasons and similar documents and information prepared and used by members of hearing panels
- written submissions and briefs submitted by the parties and
- internal records maintained by the New SRO staff.

Consistent with the open-hearing principle, the New SRO makes the Hearing Record available to members of the public, where the exceptions do not apply.

Public access may be limited to a redacted version of the Hearing Record with personal information redacted or anonymized. See below for the list of criteria used to determine when personal information will be redacted or anonymized.

### **Application to Hearing Panel Reasons for Decision**

This Policy is not intended in any way to impede or fetter the discretion of hearing panels to make rulings as they deem appropriate in the circumstances, or to make decisions regarding the use and disclosure of personal information of any party or participant in the proceedings. Hearing panels endeavour to take an

approach that least constricts the open-hearing principle. For example, where appropriate, and at the discretion of a hearing panel, rather than removing information, initials or similar anonymous identifiers will be used to substitute individuals' names and other personal information referred to in the decision.

When preparing reasons for decision, hearing panels determine whether or not to refer to any personal information, to redact or anonymize any personal information, or "seal" the Hearing Record or a portion thereof as set out in this Policy. In so doing, hearing panels endeavour to balance the openness principle and the need to include relevant information against the privacy interests of individuals involved.

In making that determination, hearing panels may consider the following factors:

- whether the personal information is necessary or relevant to the case
- whether the redaction/anonymization would minimally interfere with the public's ability to understand the decision
- whether the redaction/anonymization would be of a targeted nature and present a reasonable limit on the open-hearing principle and
- whether the salutary effects of the redaction/anonymization outweigh any deleterious effects, including the effects on the right to free expression, which includes the public interest in open and accessible proceedings.

The above list is non-exhaustive and other factors may be considered. However, a party making a request for redaction(s)/anonymization(s) or a confidentiality order and a hearing panel considering such request should prioritize these factors. This applies to all requests, made before, during or after the hearing.

### **Documents on the New SRO Website**

The New SRO is required to notify the public about its disciplinary and settlement proceedings and their disposition. The New SRO provides such notices through the news media and on its website.

As such, parts of the Hearing Record are available on the New SRO website, including notices of hearing, settlement agreements and hearing panels' reasons for decisions.

### **Requests for the Hearing Record**

The Hearing Record becomes publicly accessible at the close of the evidence in a proceeding.

The Hearing Record reflects the guidance under this Policy and any "sealing" or confidentiality orders made by hearing panels.

Requests for the Hearing Record must be made in writing and directed to the NHO at [NHO@iirc.ca](mailto:NHO@iirc.ca) or CSO at [corporatesecretary@mfd.ca](mailto:corporatesecretary@mfd.ca).

The NHO and the CSO may require the requester to pay costs of preparing a copy of the Hearing Record. In unusual cases where there are excessive costs to retrieve and to prepare the Hearing Record, the NHO and the CSO will provide an estimated cost and timeline. In these cases, the NHO and the CSO may request that a deposit or payment in full be received before the request is processed.

## **APPENDIX: PERSONAL INFORMATION**

For the purposes of the Policy, personal information includes recorded information about an identifiable individual and consists of, but is not limited to, the following:

- full name (could be anonymized with initials, i.e., the first initial of the given name and first initial of the surname)
- date of birth (but not the year of birth)
- social insurance numbers
- driver's licence numbers
- licence plate numbers
- passport numbers
- health card numbers
- residential addresses, including street names, numbers and postal codes (but not business addresses)
- personal telephone numbers (but not business telephone numbers)
- personal email addresses (but not business email addresses)
- names of spouses, children and other relatives
- sensitive financial information (e.g., account numbers, tax return information, insolvency documents etc.)
- sensitive medical information (e.g., diagnosis, medication administration, prescriptions etc.).

The full name of an individual, who is not party to the proceeding, is personal information, but where it appears together with a title and contact information that identifies the individual in a business, professional or official capacity, it may not need to be redacted.

The Policy does not require the redaction of the names of respondents subject to the New SRO proceedings. Other personal information of respondents may also be excluded from the Policy, if, in the discretion of a hearing panel, such information is relevant to the proceeding before it.