

## **Headnote**

Application under section 144 of the Act and section 78 of the CFA to amend and restate an order approving the Canadian Investor Protection Fund as a compensation fund pursuant to section 110 of the regulation to the Act and to section 23 of the regulation to the CFA.

## **Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am.

Commodity Futures Act, R.S.O. 1990, c. C.20, as am.

## **Regulations Cited**

Securities Act - R.R.O. 1990, Reg. 1015, as am.

Commodity Futures Act - R.R.O. 1990, Reg. 90, as am.

**IN THE MATTER OF**  
**THE SECURITIES ACT, R.S.O. 1990, c.S.5,**  
**AS AMENDED (the Act)**  
**AND**  
**IN THE MATTER OF**  
**REGULATION 1015 MADE UNDER THE ACT, R.R.O. 1990,**  
**AS AMENDED (the Regulation)**  
**AND**  
**IN THE MATTER OF**  
**THE COMMODITY FUTURES ACT, R.S.O. 1990,**  
**c. C.20, AS AMENDED (the CFA)**  
**AND**  
**IN THE MATTER OF**  
**REGULATION 90 MADE UNDER THE CFA, R.R.O. 1990,**

**AS AMENDED (the CFA Regulation)**

**AND**

**IN THE MATTER OF**

**THE CANADIAN INVESTOR PROTECTION FUND**

**AMENDMENT AND RESTATEMENT OF APPROVAL ORDER**

**(Section 144 of the Act and Section 78 of the CFA)**

**WHEREAS** the Commission issued an order on October 17, 2002, approving the Canadian Investor Protection Fund (CIPF) pursuant to section 110(1) of the Regulation and to section 23 of the CFA Regulation (Previous Order);

**AND WHEREAS** the Commission and the CIPF wish to amend the terms and conditions of the Previous Order to reflect changes to the CIPF's roles and responsibilities;

**AND WHEREAS** the Commission has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order to reflect changes to the CIPF's roles and responsibilities;

**IT IS HEREBY ORDERED**, pursuant to section 144 of the Act and section 78 of the CFA, that the Previous Order be amended and restated as follows:

**IN THE MATTER OF**

**THE SECURITIES ACT, R.S.O. 1990, c.S.5,**

**AS AMENDED (the Act)**

**AND**

**IN THE MATTER OF**

**REGULATION 1015 MADE UNDER THE ACT, R.R.O. 1990,**

**AS AMENDED (the Regulation)**

**AND**

**IN THE MATTER OF**

**THE COMMODITY FUTURES ACT, R.S.O. 1990,**

**c. C.20, AS AMENDED (the CFA)**

**AND**

**IN THE MATTER OF**

**REGULATION 90 MADE UNDER THE CFA, R.R.O. 1990,**

**AS AMENDED (the CFA Regulation)**

**AND**

**IN THE MATTER OF**

**THE CANADIAN INVESTOR PROTECTION FUND**

**APPROVAL ORDER**

**(Section 110 of the Regulation and Section 23 of the CFA Regulation)**

Pursuant to Section 110(1) of the Regulation, every dealer, other than a security issuer, shall participate in a compensation fund or contingency trust fund approved by the Commission and established by an organization referred to in Section 21 of the Act or a trust corporation registered under the Loan and Trust Corporations Act;

Pursuant to Section 23 of the CFA Regulation, every registered futures commission merchant (FCM) shall participate in either a compensation fund that a self-regulatory organization under Section 16 of the CFA or a commodity futures exchange registered under Section 15 of the CFA participates in or established, or a contingency trust fund established by a trust corporation registered under the Loan and Trust Corporations Act;

The Canadian Investor Protection Fund (CIPF) is approved as a compensation fund under Section 110 of the Regulation and under Section 23 of the CFA Regulation and has applied for amendments to such approvals;

The CIPF was established by its sponsoring self-regulatory organizations (SROs); currently, the Investment Industry Regulatory Organization of Canada (IIROC) (formerly the Investment Dealers Association of Canada (IDA)) is the only sponsoring SRO that carries on member regulation activities in respect of dealers and FCMs that participate in the CIPF;

The Commission has recognized IIROC as an SRO under Section 21.1 of the Act and under Section 15 of the CFA;

The CIPF, the IDA, The Toronto Stock Exchange Inc., TSX Venture Exchange Inc. and Bourse de Montréal Inc. entered into an agreement dated December 14, 2001 (Original Industry Agreement), pursuant to which the CIPF, among other things, provides certain financial compliance oversight of these SROs and financial examination of members of these SROs;

IIROC became a party to the Original Industry Agreement as of June 1, 2008;

The parties to the Original Industry Agreement wish to terminate and replace the agreement with an agreement between the CIPF and IIROC as the sole SRO (Industry Agreement) that will reflect the realignment of their respective regulatory roles and responsibilities, including the elimination of the CIPF's SRO oversight role and member examination functions;

The Industry Agreement will contemplate that other SROs may become parties to the Industry Agreement (together with IIROC, Participating SROs);

Pursuant to the Industry Agreement, the Participating SROs must levy assessments on their members (Member Firms) and the Participating SROs must pay to the CIPF the amount of these assessments;

The CIPF entered into a Memorandum of Understanding (MOU) with twelve of the members of the Canadian Securities Administrators (CSA). The CIPF also entered into a MOU with the Commission des valeurs mobilières du Québec (now, the Autorité des marchés financiers (Autorité)). The CIPF and the twelve members of the CSA have amended and restated the MOU to reflect the proposed realignment of regulatory roles and responsibilities as between the CIPF and its Participating SROs. The Autorité will rescind its MOU with the CIPF and become a party to the amended and restated MOU between the CSA and the CIPF;

The CIPF provides protection on a discretionary basis to prescribed limits to eligible customers (Customers) of Participating SRO Member Firms suffering losses if Customer property comprising securities, cash and other property held by such Member Firms is unavailable as a result of the insolvency of the Member Firm and, in connection with such coverage, will engage in risk management activities to minimize the likelihood of such losses (CIPF Mandate);

Based on the application of the CIPF and the representations and undertakings the CIPF has made to the Commission, the Commission is satisfied that the continued approval of the CIPF would not be prejudicial to the public interest;

The Commission grants and continues the approval of the CIPF as a compensation fund pursuant to Section 110 of the Regulation and Section 23 of the CFA Regulation (Approval Order), subject to the terms and conditions set out in Schedule A:

Dated October 17, 2002, as amended on September 26, 2008, to be effective on September 30, 2008.

"James E.A. Turner"

"Mary G. Condon"

## **Schedule A -- Terms and Conditions**

### **1. -- Authority and Purpose**

The CIPF has, and must continue to have, the appropriate authority and capacity to carry out the CIPF Mandate.

### **2. -- Corporate Governance**

(a) The board of directors for the CIPF (Board of Directors) must be selected in a fair and reasonable manner and must fairly represent the interests of all Member Firms and their Customers and properly balance the interests of Member Firms and their Customers.

(b) The Board of Directors must be composed of an equal number of Industry Directors and Public Directors, as defined in the CIPF's By-law Number 1, together with the Chair and the President and Chief Executive Officer of the CIPF.

(c) The CIPF's governance structure must provide for:

(i) fair and meaningful representation on the Board of Directors and any committees of the Board of Directors, having regard to the differing interests between Member Firms and their Customers;

(ii) appropriate representation of persons independent of the Participating SROs or any of their Member Firms or of any affiliated or associated company of such Member Firm on the CIPF committees and on any executive committee or similar body;

(iii) appropriate qualification, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of the CIPF generally; and

(iv) an audit committee, the majority of which must be made of Public Directors.

(d) The CIPF must file any changes to the CIPF's By-law Number 1 with the Commission for prior approval, according to the provisions of the MOU between the CSA and the CIPF.

### **3. -- Funding and Maintenance of the CIPF**

(a) The CIPF must institute a fair, transparent, and reasonable method of establishing assessments for each Member Firm's contribution. The assessments must:

(i) be allocated on an equitable basis among Member Firms and may be based on the amount of risk a Member Firm exposes the CIPF fund (Fund) to; and

(ii) balance the need for the CIPF to have sufficient revenues to satisfy claims in the event of an insolvency of a Member Firm and to have sufficient financial resources to satisfy its operations costs against the goal that there be no unreasonable financial barriers to becoming a member of an SRO.

(b) The CIPF must make all necessary arrangements for the notification to Member Firms of the CIPF assessments and the collection of such assessments, either directly or indirectly through a Participating SRO.

(c) The Board of Directors of the CIPF must determine the appropriate level of assets for the CIPF. The Board of Directors will conduct an annual review of the adequacy of the level of assets, assessment amounts, and assessment methodology and will ensure that the level of assets of the CIPF remains, in its opinion, adequate to cover potential claims.

(d) Moneys in the Fund must be invested in accordance with policies, guidelines or other instruments approved by the Board of Directors, who will be responsible for regular monitoring of the investments. All moneys and securities must be held by a qualified custodian, which are those entities considered suitable to hold securities on behalf of a Member Firm, for both inventory and client positions, without capital penalty, pursuant to the bylaws, rules or regulations of the Participating SROs.

(e) The CIPF must implement an appropriate accounting system, including a system of internal controls for maintaining CIPF assets.

### **4. -- Customer Protection**

(a) The CIPF must establish and maintain coverage policies (Coverage Policies) to provide for fair and adequate coverage, on a discretionary basis, for all Customers of Member Firms, who are not ineligible claimants as determined pursuant to the Coverage Policies, for losses of property comprising securities, cash, and other property held by Member Firms resulting from the insolvency of a Member Firm.

(b) The Coverage Policies must include fair and reasonable policies for assessing claims made to the CIPF. The CIPF will respond as quickly as practicable in assessing and paying claims made pursuant to those policies.

(c) The CIPF must establish within its Coverage Policies a fair and reasonable internal claim review process whereby claims that are not accepted for payment by the CIPF staff or by an appointed committee will be reconsidered by the Board of Directors or a review panel of one or more Directors, if requested by a Customer of a Member Firm or by the CIPF staff. The Coverage Policies must include criteria established by the Board of Directors for the selection of the review panel members, including criteria that no Director involved in the initial decision will be involved in reconsidering that decision.

(d) The CIPF must adequately inform Customers of Member Firms, either directly or indirectly through a Participating SRO, of the principles and policies on which coverage will be available, including, but not limited to, the process for making a claim and the maximum coverage available per Customer account.

## **5. -- Financial and Operational Viability**

The CIPF must maintain adequate financial and operational resources, including adequate staff resources or external professional advisers, to permit the CIPF to exercise its rights and perform its duties under the MOU between the CSA and the CIPF and this Approval Order and to conduct Member Firm reviews as required pursuant to Article 4 of the MOU.

## **6. -- Risk Management**

The CIPF must ensure that it has policies and procedures, including a process to identify and request all necessary information from a Participating SRO, in order for the CIPF to:

- (a) fulfill its mandate and manage risks to the public and to CIPF assets;
- (b) assess whether the prudential standards and operations of the CIPF are appropriate for the coverage provided and the risk incurred by the CIPF; and
- (c) identify and deal with Member Firms that may be in financial difficulty.

## **7. -- Agreement between the CIPF and IIROC**

The CIPF must enter into and comply with the Industry Agreement signed with IIROC and any Participating SRO.

## **8. -- Assistance to Participating SRO**

The CIPF must assist a Participating SRO when a Member Firm is in or is approaching financial difficulty. Such assistance will be provided in any way the CIPF determines to be appropriate.

**9. -- Collection of Information**

The CIPF must, subject to applicable legislation, collect, use and disclose personal information only to the extent reasonably necessary to carry out the CIPF Mandate.

**10. -- Memorandum of Understanding**

The CIPF must comply with the MOU between the CSA and the CIPF that takes effect on September 30, 2008.