

13.1.2 Amendments to IIROC Rule 20 Corporation Hearing Processes to Eliminate IIROC's Appeal Panels and Response to Public Comment

RULE 20

CORPORATION HEARING PROCESSES

PART 1 – DEFINITIONS

20.1 In this Rule:

"Applicant" means:

an individual or Firm that applies for approval or membership pursuant to Part 7 of this Rule or an Approved Person or Dealer Member that applies for an exemption pursuant to Part 8 of this Rule.

"Business days" means:

a day other than Saturday, Sunday or any officially recognized Federal statutory holiday or any officially recognized Provincial statutory holiday in the applicable District. In calculating the number of business days, the days on which the events happen are excluded.

"Calendar days" means:

all days in a calendar year. In calculating the number of calendar days, the days on which the events happen are excluded.

"Decision" means:

a determination, including reasons, arrived at after consideration of facts and/or law by a Decision-maker pursuant to this Rule. Decision includes rulings and orders.

"Decision-maker" means:

the person or body making the decision under the respective provision of Rule 20. The Decision-maker can be: Corporation Staff (20.18 Part 7 Rule 20, 20.24 Part 8 Rule 20); the District Council or a sub-committee of the District Council (20.18 and 20.20 Part 7 Rule 20, 20.24 and 20.25 Part 8 Rule 20); the Board of Directors; (20.21 Part 7 Rule 20), a Board Panel; (20.22 Part 7 Rule 20), a District Council Panel; (20.26 Part 8 Rule 20); and a Hearing Panel; (20.13 Part 6 Rule 20); and an Appeal Panel; (20.51 Part 11 Rule 20).

"Disciplinary Hearing" means:

A hearing held by a Hearing Panel, under Rule 20.33 or Rule 20.34, that is not a settlement hearing, to determine whether the imposition of penalties against an Approved Person or Dealer Member is warranted for any of the reasons set out in Rule 20.33(1) or Rule 20.34(1).

"Former Judge" means:

an individual who has served as a judge in any provincial or federal court in Canada or an individual who is or has been qualified to practice law and has served as an adjudicator on an administrative tribunal in Canada.

"Hearing Panel" means:

a panel that is appointed pursuant to the Hearing Committees and Hearing Panels Rule to perform an approval review hearing (20.19 Part 8 Rule 20), an early warning level 2 review hearing (20.29 Part 9 Rule 20), a Disciplinary Hearing (20.33 and 20.34 Part 10 Rule 20), a settlement hearing (20.36 Part 10 Rule 20), an expedited hearing (20.45 and 20.46 Part 10 Rule 20), or an expedited review hearing (20.47 Part 10 Rule 20).

"Monitor" means:

a Monitor appointed pursuant to Rule 20.46 to monitor the company's business and financial affairs and to act in furtherance of powers granted by a Hearing Panel.

"Panel" means:

a Hearing Panel, and a District Council Panel (20.26 Part 8 ~~Rule 20~~) and an Appeal Panel (20.51 Part 14 ~~Rule 20~~).

"Release of Decision" means:

when a decision made under this Rule is made available to the Respondent, Applicant, Approved Person or Dealer Member pursuant to the Corporation Practice and Procedure.

"Respondent" means:

an Approved Person or Dealer Member who is the subject of a disciplinary hearing, settlement hearing, expedited hearing, or appeal hearing under Rule 20.

"Settlement Agreement" means:

an agreement reached by the Corporation and the Respondent whereby the parties agree to disciplinary charges, facts and penalty.

Terms used in this Rule 20 which are not defined herein shall have the same meanings as used or defined in the Hearing Committees and Hearing Panels Rule.

PART 2 – GENERAL AUTHORITY OF PANELS

20.2 Exercise Of Authority

- (1) A Panel may 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 Rule 20 or under the Corporation Practice and Procedure.
- (2) A Panel is not bound by any legal or technical rules of evidence and may admit as evidence in a hearing, whether or not given or proven under oath or affirmation, anything that is relevant to the proceedings.
- (3) A Panel may require presentation of evidence or testimony under oath or affirmation.

PART 3 – DECISION-MAKING AND EFFECTIVENESS OF DECISIONS

20.3 Repealed.

20.4 Territorial Application of Decisions

- (1) Any decision made under this Rule shall have effect in all of the Districts, unless otherwise ordered by the Decision-maker or unless such extension or application of the decision is limited by law.

20.5 Effective Date of Decision

- (1) Any decision made pursuant to Rule 20 shall become effective on the date that the decision is made, unless it provides otherwise.
- (2) Notwithstanding subsection (1), a decision made pursuant to Rule 20.28 shall become effective as prescribed in Rule 20.29(3).

20.6 Effective Date of Penalties

- (1) Suspensions, bars, expulsions, restrictions or other conditions or terms imposed on approval or Membership commence as of the effective date of the decision, unless otherwise determined by the Decision-maker.
- (2) Any fine imposed on a Respondent shall be payable immediately when the decision becomes effective unless otherwise agreed by the parties.

PART 4 – CONTINUING JURISDICTION

20.7 Former Dealer Members and Approved Persons

- (1) For the purposes of Rule 19 and Rule 20, any Dealer Member and any Approved Person shall remain subject to the jurisdiction of the Corporation for a period of five years from the date on which such Dealer Member or Approved Person ceased to be a Dealer Member or an Approved Person of the Corporation, subject to subsection (2).
- (2) An enforcement hearing under Part 10 of this Rule may be brought against a former Approved Person who re-applies for approval under Part 7 of this Rule, notwithstanding expiry of the time period set out in subsection (1).
- (3) An Approved Person whose approval is suspended or revoked or a Dealer Member who is expelled from membership or whose rights or privileges are suspended or terminated shall remain liable to the Corporation for all amounts owing to the Corporation.

PART 5 – HEARING COMMITTEE

- 20.8 Repealed.
- 20.9 Repealed.
- 20.10 Repealed.
- 20.11 Repealed.
- 20.12 Repealed.

PART 6 – DECISION-MAKERS

- 20.13 Repealed.
- 20.14 Repealed.
- 20.15 Repealed.
- 20.16 Repealed.
- 20.17 Repealed.

PART 7 – INDIVIDUAL AND MEMBERSHIP APPROVALS

APPROVAL APPLICATIONS

20.18 Powers of District Council

- (1) The District Council shall have the power, which it may delegate to a Sub-Committee of the District Council comprised of three industry members or to Corporation Staff, to:
 - (a) approve an application for approval as, or the transfer of a:
 - (i) sales manager, branch manager, assistant or co-branch manager, pursuant to Rule 4,
 - (ii) partner, director or officer, pursuant to Rule 7,
 - (iii) registered representative or investment representative, pursuant to Rule 18,
 - (iv) trader, pursuant to Rule 500, or
 - (v) portfolio manager, futures contracts portfolio manager and associate portfolio manager pursuant to Rule 1300.

- (2) The District Council shall have the power, which it may delegate to a Sub-Committee of the District Council, pursuant to subsection (1), to:
 - (a) approve an application for approval or transfer referred to in Rule 20.18(1)(a) subject to such conditions as may be considered just and appropriate;
 - (b) refuse an application for approval or transfer referred to in Rule 20.18(1)(a), if in its opinion:
 - (i) the Applicant does not meet any requirements prescribed by the Rules or Rulings;
 - (ii) the Rules and Rulings of the Corporation will not be complied with by the Applicant;
 - (iii) the Applicant is not qualified for approval by reason of integrity, solvency, training or experience; or
 - (iv) such approval is otherwise not in the public interest.

20.19 Review Hearings

- (1) Corporation Staff or the Applicant may request a review of an approval decision by a Hearing Panel within ten business days after release of the decision.
- (2) If a review is not requested within ten business days after release of the decision, the approval decision becomes final.
- (3) No member of a District Council who has participated in a decision to refuse an application or impose conditions on an application, pursuant to Rule 20.18, shall participate on the Hearing Panel.
- (4) A review hearing held under this Part shall be held in accordance with the Corporation Practice and Procedure.
- (5) The Hearing Panel may:
 - (a) affirm the decision;
 - (b) quash the decision;
 - (c) vary or remove any terms and conditions imposed on approval;
 - (d) limit the ability to re-apply for approval for such period of time as it determines just and appropriate; and
 - (e) make any decision that could have been made by the District Council pursuant to Rule 20.18.
- (6) ~~No appeal shall be available from the~~ A decision of the Hearing Panel is a decision for which no further review or appeal is provided in the Rules.

MEMBERSHIP APPLICATIONS

20.20 Recommendation of District Council

- (1) The District Council, or a Sub-Committee of the District Council comprised of three industry members established pursuant to Rule 11, shall make a recommendation to the Board of Directors to:
 - (a) approve an application for Membership made pursuant to Section 3.5 of General By-law No. 1;
 - (b) approve the application subject to such terms and conditions as may be considered just and appropriate; or
 - (c) refuse the Application if, in the opinion of the District Council or the Sub-committee of the District Council:

- (i) the Applicant does not meet any requirements prescribed by the Rules or Rulings;
- (ii) the Rules and Rulings of the Corporation will not be complied with by the Applicant;
- (iii) the Applicant is not qualified for approval by reason of integrity, solvency, or experience; or
- (iv) such approval is otherwise not in the public interest.

20.21 Applicant opportunity to be heard by the Board of Directors

- (1) Prior to the consideration of an application for Membership by the Board of Directors, the Applicant shall be:
 - (a) provided with copies of the Corporation staff recommendation, the District Council recommendation and any other documents to be provided to the Board of Directors relating to the consideration of its Application; and
 - (b) informed that it has an opportunity to be heard by the Board of Directors prior to the Board deciding on its Application.

The Applicant must inform the Corporation within ten (10) business days of its receipt of these recommendations and other documents whether it wants to be heard by the Board of Directors prior to the Board deciding on its Application.

20.22 Powers of the Board of Directors

- (1) The Board of Directors shall have the power to:
 - (a) approve an application for Membership made pursuant to Section 3.5 of General By-law No. 1;
 - (b) approve the application subject to such terms and conditions as may be considered just and appropriate;
 - (c) refuse the application if, in its opinion:
 - (i) the Rules and Rulings of the Corporation will not be complied with by the Applicant;
 - (ii) the Applicant is not qualified for approval by reason of integrity, solvency, or experience; or
 - (iii) such approval is otherwise not in the public interest.

20.23 District Council Powers – Exemption for Payment of Entrance Fee

- (1) Notwithstanding Rule 20.20 , Rule 20.21 and Rule 20.22, if an Applicant is exempted from payment of the Entrance Fee and has met all Membership application conditions pursuant to Section 3.5 of General By-law No. 1, except any conditions the District Council has waived in the circumstances, the District Council may approve the application for Membership without referral to the Board of Directors for final decision.

PART 8 – EXEMPTION REQUEST APPLICATIONS

PROFICIENCY EXEMPTIONS

20.24 Powers of District Councils

- (1) Persons may apply for a proficiency exemption pursuant to Rule 2900.
- (2) The District Council, or a Sub-Committee of the District Council comprised of three industry members and established pursuant to Rule 11, shall have the power, to:
 - (a) exempt any person or class of persons from proficiency requirements, pursuant to paragraph B of Rule 2900 - Part I Proficiency Requirements on such terms and conditions, if any, as it may determine;
 - (b) exempt any person from writing or re-writing any required course or examination, pursuant to paragraph C of Rule 2900 - Part II Course and Examination Exemptions, on such terms and conditions, if any, as it may determine; or

- (c) exempt any person from the Continuing Education Program requirements, pursuant to Section A.3 of Rule 2900 -- Part III The Continuing Education Program, on such terms and conditions, if any, as it may determine.
- (3) The District Council, or a Sub-Committee of the District Council comprised of three industry members and established pursuant to Rule 11, may delegate the power to approve or refuse proficiency exemptions to Corporation Staff.

INTRODUCING CARRYING BROKER ARRANGEMENT EXEMPTIONS

20.25 Powers of District Councils

- (1) Dealer Members may apply for an exemption from the introducing carrying broker arrangement requirements pursuant to Rule 35.
- (2) The District Council, or a sub-committee of the District Council, established pursuant to Rule 11, shall have the power to:
 - (a) exempt any Dealer Member from any of the requirements of Rule 35 on such terms and conditions, if any, as it determines to be just and appropriate; and
 - (b) exempt any arrangements between a Dealer Member and a Dealer Member's foreign affiliate, pursuant to Rule 35.6, from the requirements of Rule 35 on such terms and conditions, if any, as it determines to be just and appropriate.
- (3) The Dealer Member shall comply with any rules applicable to introducing carrying broker arrangement exemption applications prescribed by the Corporation Practice and Procedure.
- (4) The Dealer Member shall be provided with notice of the decision where the exemption is granted and the decision with reasons where the exemption is refused or granted subject to conditions.

EXEMPTION REVIEW HEARINGS

20.26 Review Hearings

- (1) The Applicant or Corporation Staff may apply for a review of the District Council decisions pursuant to Rule 20.24 or Rule 20.25 within ten business days after release of the decision.
- (2) If the Applicant does not request a review within the time period prescribed in subsection (1), the District Council decision to refuse the exemption request application or approve the exemption request application subject to terms and conditions, shall become final.
- (3) If Corporation Staff requests a review within the time period prescribed in subsection (1), the request for review shall operate as a stay from the District Council decision.
- (4) A review of a District Council decision shall be heard by a District Council Panel comprised of three members of the District Council. No member of a District Council who participated in the District Council decision shall sit on the District Council Panel.
- (5) The District Council Panel may:
 - (a) affirm the decision;
 - (b) quash the decision;
 - (c) vary or remove any terms and conditions imposed on an Applicant; and
 - (d) make any decision that could have been made by the District Council or a sub-committee of the District Council pursuant to Rule 20.24 and Rule 20.25.
- (6) ~~No appeal shall be available from the~~ A decision of the District Council Panel is a decision for which no further review or appeal is provided in the Rules.

20.27 Costs

- (1) The District Council Panel may order against the Applicant any costs associated with the exemption request review hearing determined to be appropriate and reasonable.
- (2) Costs shall not be assessed where the District Council Panel grants the exemption request.

PART 9 – EARLY WARNING REVIEW PROCEEDINGS

20.28 Imposition of Prohibitions – Early Warning Level 2

- (1) The Corporation may order that a Dealer Member designated as being in Early Warning Level 2, pursuant to Rule 30, be prohibited from:
 - (a) opening any new branch offices;
 - (b) hiring any new registered representative, or investment representative;
 - (c) opening any new customer accounts; or
 - (d) changing, in any material respect, the inventory positions of the Dealer Member.
- (2) Written notice of an order made under subsection (1) shall be provided to the Dealer Member.

20.29 Review of Early Warning Level 2 Prohibitions

- (1) The Dealer Member may request a review of a Rule 20.28 order by a Hearing Panel within three business days after release of the decision.
- (2) If a request for review is made, the hearing shall be held as soon as reasonably possible and no later than twenty-one calendar days after the request for review, unless otherwise agreed by the parties.
- (3) If a Dealer Member does not request a review within the time period prescribed in subsection (1), the Rule 20.28 order becomes effective and final.
- (4) A Hearing Panel may:
 - (a) affirm the order;
 - (b) quash the order; or
 - (c) vary or remove any prohibitions imposed on the Dealer Member; and
 - (d) make any decision that could have been made by the Corporation pursuant to Rule 20.28.
- (5) ~~No appeal shall be available from the~~ decision of the Hearing Panel is a decision for which no further review or appeal is provided in the Rules.

PART 10 – ENFORCEMENT HEARINGS

INITIATION OF ENFORCEMENT HEARINGS

20.30

- (1) The Corporation may hold hearings, as set out under this Rule, in order to ensure compliance with and enforcement of the Rules and Rulings and federal or provincial statutes, regulations, rulings or policies relating to trading or advising in respect of securities or commodities.
- (2) The categories of enforcement hearings under Rule 20 are: disciplinary hearings; settlement hearings and expedited hearings. Enforcement hearings shall be conducted in accordance with this Rule and the Corporation Practice and Procedure.

POWERS OF COMPULSION

20.31 Dealer Members, Approved Persons and Corporation Staff

- (1) Every Dealer Member, Approved Person and Corporation Staff member shall:
 - (a) attend and give evidence respecting any matter relevant to hearings pursuant to Rule 20.33, Rule 20.34 or Rule 20.42 upon receipt of notice from the National Hearing Coordinator or his or her designate or order of a Hearing Panel; and
 - (b) produce for inspection and provide copies of any books, records, accounts and documents that are in the possession or control of the Dealer Member or Approved Person, to a Hearing Panel upon receipt of notice from the National Hearing Coordinator or order of the Hearing Panel.
- (2) Failure to comply with subsections 1(a) or (b) constitutes a contravention of the Rules and may result in disciplinary action under Rule 20.33 or Rule 20.34.

20.32 Partners, Directors, Officers and Employees of Members

- (1) Where a Hearing Panel requires the attendance before it of any partner, director, officer or employee of a Dealer Member, who is not an Approved Person, the Dealer Member shall direct such employee to attend and to give information or make such production of documents as can be required of a person referred to in Rule 20.31.
- (2) Failure by the Dealer Member to comply with subsection (1) constitutes a contravention of the Rules and may result in disciplinary action under Rule 20.34.

PENALTIES

20.33 Approved Persons

- (1) Upon conclusion of a disciplinary hearing, a Hearing Panel may impose the penalties set out at 20.33(2) if, in the opinion of the Hearing Panel, the Approved Person:
 - (a) failed to comply with or carry out the provisions of any federal or provincial statute, regulation, ruling or policy relating to trading or advising in respect of securities or commodities;
 - (b) failed to comply with the provisions of any Rule or Ruling of the Corporation; or
 - (c) failed to carry out an agreement or undertaking with the Corporation.
- (2) Pursuant to subsection (1), a Hearing Panel may impose any one or more of the following penalties upon the Approved Person:
 - (a) a reprimand;
 - (b) a fine not exceeding the greater of:
 - (i) \$1,000,000 per contravention; and
 - (ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.
 - (c) suspension of approval for any period of time and upon any conditions or terms;
 - (d) terms and conditions of continued approval;
 - (e) prohibition of approval in any capacity for any period of time;
 - (f) termination of the rights and privileges of approval;
 - (g) revocation of approval;

- (h) a permanent bar from approval with the Corporation; or
- (i) any other fit remedy or penalty.

20.34 Dealer Members

- (1) Upon conclusion of a disciplinary hearing, a Hearing Panel may impose the penalties set out at Rule 20.34(2) if, in the opinion of the Hearing Panel, the Dealer Member:
 - (a) failed to comply with or carry out the provisions of any federal or provincial statute, regulation, ruling or policy relating to trading or advising in respect of securities or commodities;
 - (b) failed to comply with the provisions of any Rule or Ruling of the Corporation;
 - (c) failed to carry out an agreement or undertaking with the Corporation; or
 - (d) failed to meet liabilities to another Dealer Member or to the public.
- (2) Pursuant to subsection (1), a Hearing Panel may impose any one or more of the following penalties upon the Dealer Member:
 - (a) a reprimand;
 - (b) a fine not exceeding the greater of:
 - (i) \$5,000,000 per contravention; and
 - (ii) an amount equal to three times the profit made or loss avoided by the Dealer Member by reason of the contravention;
 - (c) suspension of the rights and privileges of the Dealer Member (and such suspension may include a direction to the Dealer Member to cease dealing with the public) for any period of time and upon any conditions or terms;
 - (d) terms and conditions of continued Membership;
 - (e) termination of the rights and privileges of Membership;
 - (f) expulsion of the Dealer Member from membership in the Corporation; or
 - (g) any other fit remedy or penalty.

SETTLEMENT HEARINGS

20.35 Negotiation of Settlement Agreements

- (1) Corporation Staff may negotiate a Settlement Agreement with any Approved Person or Dealer Member.
- (2) The parties to a Settlement Agreement may agree to the imposition of any of the penalties prescribed by Rule 20.33 or Rule 20.34.
- (3) Settlement discussions may occur at any time until the conclusion of a settlement hearing or a disciplinary hearing.
- (4) All negotiations of a Settlement Agreement are conducted on a without prejudice basis to the Corporation and all other persons involved in the negotiations and cannot be used as evidence or referred to in any proceedings.

20.36 Hearing Panel Powers

- (1) Upon conclusion of a settlement hearing, the Hearing Panel may either:
 - (a) accept the Settlement Agreement; or

(b) reject the Settlement Agreement.

- (2) Settlement Agreements shall become effective and binding upon Corporation Staff and an Approved Person or Dealer Member upon acceptance by a Hearing Panel. An Approved Person or Dealer Member shall be deemed to have been penalized pursuant to Rule 20.33 or Rule 20.34 upon acceptance of a Settlement Agreement by a Hearing Panel.

20.37 Acceptance Of Settlement Agreement

- (1) ~~The~~A decision of ~~a~~the Hearing Panel accepting a Settlement Agreement ~~shall constitute final disciplinary action of the Corporation and no appeal shall be available from the decision~~ is a final decision for which no further review or appeal is provided in the Rules.

20.38 Rejection of Settlement Agreement – Proceeding to a Subsequent Settlement Hearing

- (1) If a Settlement Agreement is rejected by a Hearing Panel, the parties may agree to enter into another Settlement Agreement.
- (2) No member of the Hearing Panel that presided over the initial settlement hearing shall sit on the Hearing Panel presiding over the subsequent settlement hearing.
- (3) The reasons for rejecting a Settlement Agreement shall not be made public upon rejection of the initial settlement hearing, but shall be made available to a Hearing Panel presiding over the subsequent settlement hearing.

20.39 Rejection of Settlement Agreement – Proceeding to A Disciplinary Hearing

- (1) If a Settlement Agreement or a subsequent Settlement Agreement is rejected by a Hearing Panel, the Corporation may proceed to a disciplinary hearing based on the same or related disciplinary charges pursuant to Rule 20.33 or Rule 20.34.
- (2) No member of the Hearing Panel that presided over the settlement hearing or subsequent settlement hearing shall sit on a Hearing Panel constituted for a disciplinary hearing on the same or related disciplinary charges.

20.40 Rejection of Settlement Agreement

- (1) ~~There shall be no appeal from a~~A decision of ~~a~~the Hearing Panel rejecting a Settlement Agreement is a final decision for which no further review or appeal is provided in the Rules.

EXPEDITED HEARINGS

20.41 Expedited Hearings

- (1) Expedited hearings are held upon application by Corporation Staff and without notice to the Respondent in the circumstances prescribed in Rule 20.42 and Rule 20.43.

20.42 Types of Expedited Hearings – Members

- (1) A Hearing Panel may impose any of the penalties prescribed by Rule 20.45 upon a Dealer Member in any of the following circumstances:

Bankruptcy

- (a) a Dealer Member makes a general assignment for the benefit of its creditors, makes an authorized assignment or a proposal to its creditors; is declared bankrupt, or a winding-up order is made in respect of a Dealer Member or a receiver or other officer with similar powers is appointed in respect of all or any part of the undertaking and property of the Dealer Member.

Suspension or Cancellation of Registration or Membership

- (b) the registration of a Dealer Member as a dealer in securities or commodities under any statute respecting trading or advising in respect of securities or commodities or as an underwriter in any statute in respect of securities or commodities has lapsed or is suspended or cancelled;

- (c) a recognized stock exchange, securities commission, securities regulatory authority, self-regulatory organization or any recognized trading or quotation system suspends the Membership or privileges of a Dealer Member;

Financial or Operating Difficulty

- (d) where a Dealer Member is in such financial or operating difficulty that the Hearing Panel determines the Dealer Member cannot be permitted to continue to operate without risk of imminent harm to the public, other Dealer Members or the Corporation;

Failure to Cooperate With Corporation Compliance Examinations or Investigations

- (e) where a Dealer Member fails to cooperate with Corporation compliance examinations or investigations pursuant to Rule 19 and the Hearing Panel determines that the Dealer Member cannot be permitted to continue to operate without risk of imminent harm to the public, other Dealer Members or the Corporation;

Criminal Charges

- (f) where a Dealer Member has been charged with a criminal offence relating to theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or unauthorized trading, and such criminal charge likely brings the capital markets into disrepute.

Non-Compliance With Conditions

- (g) where a Dealer Member fails to comply with terms or conditions imposed pursuant to Rule 20.33, Rule 20.34 or Rule 20.38 or Rule 20.29.

20.43 Types of Expedited Hearings – Approved Persons

- (1) A Hearing Panel may impose any of the penalties set out in Rule 20.45 upon an Approved Person in any of the following circumstances:

Suspension or Cancellation of Registration or Approval

- (a) the registration or approval of an Approved Person under any statute respecting trading or advising in respect of securities or commodities has lapsed, is suspended or cancelled;
- (b) a recognized stock exchange, securities commission, securities regulatory authority, self-regulatory organization or recognized trading or quotation system suspends an Approved Person;

Failure to Cooperate With Corporation Compliance Examinations and Investigations

- (c) failure to cooperate with Corporation compliance examinations and investigations pursuant to Rule 19 and the Hearing Panel determines that the Approved Person cannot be permitted to continue to be an Approved Person without risk of imminent harm to the public, other Dealer Members or the Corporation;

Criminal Charges

- (d) where an Approved Person has been charged with a criminal offence relating to theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or unauthorized trading, and such criminal charge likely brings the capital markets into disrepute;

Non-Compliance With Conditions

- (e) where an Approved Person fails to comply with terms or conditions imposed pursuant to Rule 20.33, Rule 20.34, or Rule 20.38.

20.44 Non-payment of Fines or Costs

- (1) In the event that a fine or costs imposed by a Hearing Panel are not paid within the prescribed time, the Corporation may summarily, without further notice, suspend a Dealer Member or Approved Person, until such fine or costs are paid.

20.45 Powers Of Hearing Panel

- (1) A Hearing Panel has the power to impose any of the following penalties upon a Respondent who is an Approved Person or Dealer Member in the circumstances prescribed in Rule 20.42 and Rule 20.43:
 - (a) suspension of approval or Membership;
 - (b) imposition of terms or conditions on a suspension of approval or Membership;
 - (c) imposition of terms or conditions on continued approval or Membership;
 - (d) direction to immediately cease dealing with the public;
 - (e) an order with terms and conditions to facilitate the orderly transfer of client accounts from a Dealer Member suspended under this Rule;
 - (f) termination of the rights and privileges of approval or Membership;
 - (g) expulsion of an Approved Person or Dealer Member from the Corporation; or
 - (h) imposition of a Monitor pursuant to Rule 20.46.

20.46 Powers Of Hearing Panel To Impose A Monitor

- (1) A Hearing Panel may order the imposition of a Monitor, on such terms and conditions as it deems just and appropriate, where it is in the interest of the public, and the Hearing Panel determines that:
 - (a) the Dealer Member is at financial risk and may become insolvent;
 - (b) client accounts are at risk of financial loss due to a Dealer Member's financial condition, inadequate internal controls or deficient operating procedures;
 - (c) the Dealer Member has failed to maintain regulatory capital requirements as prescribed by the Rules or any federal or provincial statute, regulation, ruling or policy relating to trading or advising in respect of securities or commodities; or
 - (d) the securities firm has been suspended by the Corporation or other regulatory or self-regulatory organization for failure to meet regulatory capital requirements.
- (2) A Monitor appointed pursuant to subsection (1) shall monitor the Dealer Member's business and financial affairs in accordance with the terms and conditions specified by the Hearing Panel.
- (3) A Hearing Panel may assign any of the following terms and conditions to the Monitor, for such period of time as the Hearing Panel determines is just and appropriate in the circumstances:
 - (a) to enter and re-enter the Dealer Member's premises and to remain on site to conduct day-to-day monitoring of all of the Dealer Member's business activities, including but not limited to, monitoring and review of accounts receivable, accounts payable, client accounts, margin, client free credits, the Dealer Member's banking, any books or records of the Dealer Member, trading conducted by or on behalf of the Dealer Member for its' own account or the account of its' clients, payment of any debts or the creation of new debt and any reconciliation required to be completed by the Dealer Member;
 - (b) to make copies of information and to provide copies of such information to Corporation Staff or any other agency the Hearing Panel determines appropriate;
 - (c) to provide ongoing reporting of the Monitor's findings or observations to Corporation Staff or any other agency the Hearing Panel determines appropriate;

- (d) to monitor compliance by the Dealer Member with any terms or conditions which have been imposed on the Dealer Member by the Corporation or any other regulator, including but not limited to, compliance with early warning terms and conditions;
 - (e) to verify and assist with the preparation of any regulatory filings, including but not limited to, the calculation of risk adjusted capital;
 - (f) to conduct or have conducted an appraisal of the Dealer Member's net worth or valuation of any part of the Dealer Member's assets;
 - (g) to assist the staff of the Dealer Member to facilitate the orderly transfer of client accounts;
 - (h) to pre-authorize any issuance of cheques or payments made by or on behalf of the Dealer Member or distribution of any of the Dealer Member's assets; or
 - (i) any other such terms or conditions that the Hearing Panel determines is just and appropriate to assign to the Monitor.
- (4) The expenses related to a Monitor appointed pursuant to Rule 20.46 shall be borne by the Dealer Member.

20.47 Review Hearing

- (1) The Respondent may file a written request for review of any decision made pursuant to Rule 20.45 within thirty calendar days after release of the decision of the Hearing Panel.
- (2) If a request for review is made, pursuant to subsection (1), a hearing shall be held as soon as reasonably possible and no later than twenty-one calendar days after filing of the written request for review unless otherwise agreed by the parties.
- (3) No member of a Hearing Panel who presided over a hearing held pursuant to Rule 20.45 shall sit on a Hearing Panel constituted for review of that decision.
- (4) If a Respondent does not request a review within the time period prescribed in subsection (1), the Hearing Panel decision shall become final.
- (5) Unless the Hearing Panel orders otherwise, a request for a review shall not operate as a stay from a decision made pursuant to Rule 20.45, notwithstanding Rule 20.53 (1); 20.45.
- (6) The review decision of the Hearing Panel may be appealed by either party pursuant to Rule 20.50 is a decision for which no further review or appeal is provided in the Rules.

20.48 Powers of The Hearing Panel - Review Hearing

- (1) The Hearing Panel presiding over the review hearing may:
 - (a) affirm any decision;
 - (b) quash any decision;
 - (c) vary any decision or penalty; and
 - (d) make any decision that could have been made by a Hearing Panel pursuant to Rule 20.45.

ASSESSMENT OF COSTS

20.49 Assessment of Costs

- (1) In addition to imposing any of the penalties set out in Rule 20.33, Rule 20.34 or Rule 20.45, the Hearing Panel may assess and order any Corporation Staff investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

- (2) Costs shall not be assessed where the Hearing Panel has not made a finding against the Respondent based on any of the grounds set out at Rule 20.33(1) or Rule 20.34(1) or where an expedited decision is quashed upon review pursuant to Rule 20.48(1).

PART 11—APPEALS OF DISCIPLINARY AND EXPEDITED REVIEW DECISIONS

20.50—Right of Appeal

- ~~(1) The Corporation and a Respondent may appeal a disciplinary decision made by a hearing Panel to an Appeal Panel.~~
- ~~(2) A Respondent may appeal an expedited review hearing decision made by a Hearing Panel to an Appeal Panel.~~
- ~~(3) An appeal may be made on questions of law or fact or both.~~

20.51—Composition of Appeal Panel

- ~~(1) The Appeal Panel shall be comprised of:
 - ~~(a) one independent member of the Board of Directors;~~
 - ~~(b) one industry member of the Board of Directors; and~~
 - ~~(c) one former judge, who is a public member of a Hearing Committee of the District in which the disciplinary hearing or expedited review hearing was heard, or a former judge who is a public member of a Hearing Committee of a District, other than that in which the hearing or expedited review hearing was heard, if the two chairs of the respective Hearing Committees consent.~~~~
- ~~(2) In Quebec, the Appeal Panel shall be comprised of three members resident in Quebec, one of them being a former judge appointed by the Quebec District Council as a public member.~~~~(3) Any hearing required by the present Rule in Quebec should be held in Quebec and the parties can present in French both verbally and in writing.~~

20.52—Appeal Process

- ~~(1) An application for appeal to the Appeal Panel must be made within thirty calendar days after release of the decision of the Hearing Panel.~~
- ~~(2) An application for appeal shall state the basis for such appeal pursuant to the Corporation Practice and Procedure.~~

20.53—Effect of Appeal Application

- ~~(1) An appeal to the Appeal Panel from a decision of a Hearing Panel shall operate as a stay from the decision, unless ordered otherwise by the Appeal Panel.~~
- ~~(2) Notwithstanding subsection (1), an appeal to the Appeal Panel from an expedited review hearing decision shall not operate as a stay from the decision, unless ordered otherwise by the Appeal Panel.~~
- ~~(3) If the decision or order of the Hearing Panel suspends, expels or revokes registration of an Approved Person, the Approved Person shall be subject to strict supervision until release of the appeal decision.~~

20.54—Powers of Appeal Panel

- ~~(1) A hearing held under this Part shall be an appeal on the record, however, the Appeal Panel may receive new or additional evidence as it considers just.~~
- ~~(2) The Appeal Panel may:
 - ~~(a) affirm any decision;~~
 - ~~(b) quash any decision;~~~~

- ~~(c) — vary any decision or penalty;~~
- ~~(d) — make any decision that could have been made by a Hearing Panel pursuant to Rule 20.33, Rule 20.34, Rule 20.45 and Rule 20.49~~
- ~~(e) — extend or limit the decision's application and effect to any Districts of the Corporation;~~
- ~~(f) — order a new hearing; or~~
- ~~(g) — make any order or decision that is considered just.~~

PART 12 – PUBLIC HEARINGS

20.5520.50 Public Hearings

- (1) The following types of hearings shall be open to the public subject to subsection (2):
 - (a) settlement hearings, after a Settlement Agreement has been accepted by Hearing Panel, pursuant to Rule 20.36;
 - (b) disciplinary hearings pursuant to Rule 20.33 and Rule 20.34;
 - (c) expedited review hearings pursuant to Rule 20.47; and
 - (d) enforcement appeal hearings pursuant to Rule 20.50.
- (2) The hearings prescribed in subsection (1) shall be held in the absence of the public where the Hearing Panel or Appeal 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 hearings be public.
- (3) Notwithstanding subparagraph (1) and (2), in Quebec, any disciplinary or disciplinary appeal panel must be public. However, such disciplinary or disciplinary appeal panel may on its own initiative or on request, order a closed-door hearing or prohibit the publication or release of information or documents in the interest of good morals or public order.

PART 13 12 – RULE MAKING POWERS

~~20.56~~20.51 Repealed.

PART 44 13 – TRANSITIONAL PROVISIONS

~~20.57~~20.52 Transitional Provisions

- (1) Subject to subsection (2), any provision of any Rule or Ruling of the Corporation in effect immediately prior to the coming into effect of these Rules shall remain in full force and effect until such Rule or Ruling, has been repealed.
- (2) In the event of a conflict between this Rule and the provisions of any Rule or Ruling of the Corporation that remains in effect after this Rule comes into effect, the provisions of this Rule shall prevail.

COROLLARY AMENDMENTS TO BY-LAWS 3, 28.4 AND 33.1

RULE 3

ENTRANCE, ANNUAL AND OTHER FEES

- 3.1. Repealed.
- 3.2. Repealed.
- 3.3. Repealed.
- 3.4. Repealed.
- 3.5. Repealed.
- 3.6. Repealed.
- 3.7. Repealed.
- 3.8. Repealed.
- 3.9. Repealed.
- 3.10. Repealed.
- 3.11. Repealed.
- 3.12. Repealed.
- 3.13. Repealed.

RULE 28

DISCRETIONARY FUND

- 28.1. Repealed.
- 28.2. Repealed.
- 28.3. Repealed.
- 28.4. Repealed.
- 28.5. Repealed.
- 28.6. Repealed.
- 28.7. Repealed.
- 28.8. Repealed.
- 28.9. Repealed.

RULE 33

REVIEW BY SECURITIES COMMISSIONS

- 33.1. Any Dealer Member or other person directly affected by a decision of the Board of Directors, a District Council, Hearing Panel, ~~or Board Panel or Appeal Panel~~ (other than a decision in respect of which the time for review or appeal under the Rules has elapsed) in respect of which no further review or appeal is provided in the Rules may request any securities commission with jurisdiction in the matter to review such decision and notice in writing of such appeal shall be given forthwith to the National Hearing Coordinator

Comments Received to Proposed Amendments to IIROC Rule 20 and IIROC's Response

On June 22, 2007, the Investment Dealers Association of Canada ("IDA") published for comment proposed amendments to IDA By-law No. 20 on the elimination of appeal panels and changes to the continuing jurisdiction provisions ("Publication for Comment"). On May 21, 2008, the Board of Directors of the Investment Industry Regulatory Organization of Canada (IIROC) adopted these proposed amendments as an IIROC proposal to amend IIROC Dealer Member Rule 20.

The IDA (now IIROC) received one comment letter from Scotia Capital Inc. ("Scotia") relating to the IDA Publication for Comment. The following is a summary of the comments received and the IDA's (now IIROC's) response.

Appeal Panel

1. *Scotia suggests that measures aimed at controlling or reducing the length and number of IDA appeals may be more effective than eliminating the IDA appeal process altogether. In particular, Scotia suggests that, rather than re-direct hearings to the securities commission or courts, the following alternatives to eliminating the appeal process should be considered:*

- (a) *implement written appeal procedures;*
- (b) *limit the length of oral submissions during an appeal;*
- (c) *narrow the grounds for which an appeal can be brought.*

IIROC appreciates the alternatives proposed by Scotia. Unfortunately, our review of the proposals suggests that the alternatives will not address the outstanding corporate governance issue of Board members spending a significant amount of their time towards judicial appeals rather than to their corporate governance duties to the Corporation. In other words, even if these alternatives were introduced, Board members would still be required to commit a significant amount of time to the Corporation towards appeal panels.

For example, while we agree that reducing the length of oral submissions or introducing written appeals may *reduce* the amount of time the panel members contribute towards hearing an appeal, the actual hearing of an appeal is only one part of the appeal process. If the length of oral submissions were reduced or if written appeals were adopted in place of oral ones, the Board would still be imposed with the time-consuming duty of reviewing written arguments (including legal issues and jurisprudence), documents and materials, and making a decision. As you are aware, the review of decisions is a very serious exercise that often involves complex matters. As such, panel members should be afforded adequate time to carefully review all necessary aspects of an appeal. The time required for the review of decisions, even if by way of written submissions, should not be underestimated.

2. *Scotia states that the IDA [now IIROC] has not but should be required to disclose the number of appeals and the hours consumed by appeal panel hearings.*

As we mentioned in page 5784 of the Publication for Comment, "seven Decisions were appealed to the Appeal Panel over the past 18 months."¹ The hours consumed by appeal panel hearings differ and must be assessed on a case-by-case basis.

IIROC should not be required to sacrifice the corporate governance of the Corporation in order to provide an additional layer of appeal. We reiterate that both respondents and the Corporation would maintain the option to seek a review of a decision to either the securities commission or provincial court.

Continuing Jurisdiction

3. *Scotia questions why the IDA [now IIROC] is effectively extending the time period for it to conduct an investigation into the conduct of a former approved person or member to five years. Scotia suggests that a two or three year time period is more reasonable and consistent with the limitation period in Ontario.*

Please be reminded that IIROC is not increasing or extending its limitation period to five years; it already has jurisdiction over former approved persons and members for five years from the individual's last date of registration. Rather, the amendments propose to make clearer the intent of the language in IIROC Dealer Member Rule 20.7; that is, enforcement proceedings need not be *completed* by five years, but must be *initiated* no later than five years from the date on which the former member or approved person ceased to be registered.

¹ Ontario Securities Commission Bulletin (June 22, 2007), "IDA Amendments to By-law 20 – Elimination of the IDA Appeal Panel and Changes to Continuing Jurisdiction Provisions" (2007) 30 OSCB 5781 at 5784.

We would also like to point out that the limitation period under the Ontario *Securities Act* is in fact six years² and this is consistent with the limitation period of most securities regulators in Canada, including the British Columbia Securities Commission, the Alberta Securities Commission, and the Nova Scotia Securities Commission.³ Therefore, to reduce the IIROC's limitation period over former members and former approved persons to two or three years may in fact be *inconsistent* with many of the Securities Acts in Canada.

4. *Scotia suggests that "to the date of suspension" be added to proposed section 3.14, so that proposed section 3.14 would read:*

*"A Former Member, Former Approved Person, or a Member or Approved Person whose rights, approval or privileges are suspended, remains liable to the Association for all amounts owing to the Association **to the date of the suspension**, including an annual fee, fee, levy, assessment, fine, cost, expense or any other charge or amount."*

Most of the language in proposed IIROC Dealer Member Rule section 3.14 stems from IIROC Dealer Member Rule subsection 20.7(3) [previously IDA By-law 20.7(3)], which reads:

"An Approved Person whose approval is suspended or revoked or a Dealer Member who is expelled from membership or whose rights or privileges are suspended or terminated shall remain liable to the Corporation for all amounts owing to the Corporation."

The primary purpose of section 3.14 is to move IIROC Dealer Member Rule subsection 20.7(3), which is on the topic of fees, into IIROC's "fees" rule (i.e. IIROC Dealer Member Rule 3: Entrance, Annual and Other Fees). Otherwise, there has been very little change to the meaning of the provision. Without knowing the rationale for Scotia's proposed addition of the phrase, "to the date of suspension", we see no reason to change the draft proposed language as it stands.

² Ontario *Securities Act*, R.S.O. 1990, C. s.5, s. 129.1.

³ British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, s. 159; Alberta *Securities Act*, R.S.A. 2000, c. S-4, s. 201; Nova Scotia *Securities Act*, R.S.N.S. 1989, c. 418, s. 136.