

13.1.5 IDA Amendments to By-law 20 – Elimination of the IDA Appeal Panel and Changes to Continuing Jurisdiction Provisions

INVESTMENT DEALERS ASSOCIATION OF CANADA
AMENDMENTS TO BY-LAW 20 – ELIMINATION OF THE IDA APPEAL PANEL
AND CHANGES TO CONTINUING JURISDICTION PROVISIONS

I OVERVIEW

A Current Rules

IDA Appeal Panel

There are two ways to appeal an IDA disciplinary hearing decision (“Disciplinary Decision”) and an expedited review hearing decision (“Expedited Review Decision”) (collectively referred to as “Decision”). The first option is to file an appeal of the Decision to the IDA’s appeal panel (“Panel” or “Appeal Panel”). An Appeal Panel is comprised of one independent member of the IDA’s Board of Directors, one industry member of the IDA’s Board of Directors, and one former judge.^{1,2} The other option is to by-pass the Appeal Panel and to appeal directly either to the securities commission with jurisdiction³ or to the provincial court for a review of the Decision.

Continuing Jurisdiction

By-law 20.7 describes the IDA’s continuing jurisdiction over persons that are no longer IDA Members or Approved Persons (“Former Member” and “Former Approved Person”, respectively and “Former Registrants”, collectively). By-law 20.7(1) states that “any Member and any Approved Person shall remain subject to the jurisdiction of the IDA for a period of five years from the date on which such Member or Approved Person ceased to be a Member or an Approved Person of the IDA”. The purpose of this by-law is to allow the IDA the right to bring enforcement proceedings against a Former Registrant for acts they committed while registered, so long as the enforcement proceedings are initiated no later than five years from the date on which the Former Registrant ceased to be registered.

B The Issue

IDA Appeal Panel

The process of appealing Decisions to an Appeal Panel (i.e. three-member panel) was only implemented in October 2004. Previously, appeals were made to a panel consisting of all of the members of the Board of Directors. However, when the Appeal Panel procedure was introduced, the IDA did not anticipate that there would be many appeals to the Appeal Panel, because in the past, Decisions were always appealed to the securities commission with jurisdiction.

Recently, however, there have been a number of appeals made to the Appeal Panel. The resulting scheduling impracticalities and significant usage of the Board members’ limited time committed to the IDA has precipitated the IDA’s review of the efficiency and on-going need of an internal appeals process.

Appeal hearings can be lengthy and require considerable time demands from panel members. As such, the recent appeals to the IDA Appeal Panel have resulted in an increasing use of the limited availabilities of some Board members towards the hearing of appeals. Moreover, there are many scheduling impracticalities as it is often difficult to find Board members who can dedicate the time to appear on Panels. As well, because there are only a limited number of former judges who are public members of the IDA’s Hearing Committee in certain provinces, there are difficulties in identifying available former judges. With more significant sanctions and serious types of allegations being heard by the IDA, it is anticipated that the number of internal appeals is only likely to rise.

Continuing Jurisdiction

Recently, there have been judicial challenges to the IDA’s continuing jurisdiction over Former Registrants, on the basis that the true intent and meaning of By-law 20.7(1), is that if an enforcement proceeding is not *completed* five years from the date on

¹ By-law 20.51.

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 (By-law 20.51(2)).

³ By-law 33.1.

which the Former Registrant ceased to be a Registrant, then the IDA loses its authority to discipline the Former Registrant for the acts committed while the person was registered.⁴

This interpretation is patently incorrect, however, to resolve any uncertainties, the IDA seeks to make clearer the language in this provision to unequivocally state that the IDA continues to have jurisdiction over Former Registrants so long as an enforcement proceeding has *commenced* (i.e. a Notice of Hearing is issued) no later than five years from the date on which the Former Member or Approved Person ceased to be registered. In other words, By-law 20.7(1) does not provide a time limit for the IDA to *complete* an enforcement proceeding, but rather, it is the limitation period for *initiating* enforcement proceedings.

C Objective

IDA Appeal Panel

The proposed amendment is designed to ensure that the limited time of the Board of Directors is used efficiently and towards fulfilling their corporate governance functions. The amendments are also designed to avoid a situation where the IDA would not be able to provide a respondent or the IDA with an appeal hearing without undue delay based on simply not being able to identify members to appear on a Panel.

Continuing Jurisdiction

The objective of the proposed amendment is to make clearer that the IDA maintains jurisdiction over Former Members and Former Approved Persons for acts committed while they were registered, so long as enforcement proceedings are *commenced*, not resolved, no later than five years from the date the Former Registrant ceased to be registered.

D Effect of Proposed Rules

IDA Appeal Panel

The suggested changes would cause all such appeals to be directed to the securities commissions or a provincial court, rather than to an Appeal Panel.

The proposed amendment would result in the IDA's Board members being able to continue to focus on their corporate governance responsibilities. The amendment would also ensure that respondents are able to continue to appeal Decisions without undue delay. This would result in greater strength, fairness and efficiency in the capital markets, in which investors will have greater confidence. Moreover, the IDA's appeals process will be more consistent with the processes used by other Canadian SROs.

Continuing Jurisdiction

The proposed amendments would allow the IDA to continue to fulfill its mandate, that is, to enforce compliance with standards and requirements relating to capital market participants for the protection of Members, their clients and the public. It would confirm the IDA's jurisdiction to prosecute Former Registrants for conduct that occurred while they were registered. It would also ensure that there is sufficient time for parties to resolve issues, rather than allowing for proceedings to be arbitrarily ruled out of time.

II DETAILED ANALYSIS

A Present Rules, Relevant History and Proposed Regulation

Present Rules

IDA Appeal Panel

By-law 20 is the primary rule for the IDA hearing process. Disciplinary hearings are held pursuant to By-laws 20.30 to 20.34 and expedited hearings are held pursuant to By-laws 20.41 to 20.48. For expedited hearings, a respondent may file a request for a review of the hearing panel's decision pursuant to By-law 20.47, in which case a review hearing will be held before a different hearing panel (the "expedited review hearing").

⁴ *Decision in the Matter of Wade Douglas MacBain, Karl Edward Neufeld and Fredrick Henry Smith and the Investment Dealers Association*, (Saskatchewan Financial Services Commission, February 6, 2006), currently under appeal to the Saskatchewan Court of Appeal ("*MacBain*").

Disciplinary hearing and expedited review hearing decisions may be appealed to either (a) the IDA's Appeal Panel (By-law 20.50); or (b) directly to the appropriate securities commission (By-law 33) or, if the latter option is not available, to the appropriate provincial court.

The Appeal Panel is comprised of one independent member of the IDA's Board of Directors, one industry member of the IDA's Board of Directors, and one former judge.^{5,6}

Relevant History

The process of appealing Decisions to a three-member Appeal Panel was only implemented in October 2004. Previously, appeals of Decisions were to be made to a quorum of the IDA's Board of Directors ("Former Appeals Board"). Given the scheduling difficulties raised by this procedure, the IDA installed a process whereby appeals would be made to an Appeal Panel, which required the presence of only two Board members and one former judge. At the time, the IDA did not anticipate that there would be many appeals to the Appeal Panel, because there had never been an appeal to the Former Appeals Board. In fact, all of the 15 IDA District Council Decisions appealed between January 1, 2000 and October 18, 2005 were directed to the securities commissions; none of the Decisions were appealed to the IDA Appeal Panel or to the Former Appeals Board.

Recently, however, there have been numerous appeals to the IDA Appeal Panel. Given the considerable time demands required for appeal hearings, it is very difficult to identify Board members who can dedicate the time to conduct such hearings. This recent trend has precipitated the IDA's review of the efficiency and on-going need of an appeals process involving the IDA Board members.

Proposed Rule Amendment

The proposed amendment would eliminate the Appeal Panel. All Decisions would be appealed directly to the appropriate securities commission or, in the rare case where this option is not available, to the provincial court with jurisdiction. In Canada, most securities statutes provide that persons affected by an SRO decision may apply for a review to the appropriate securities regulator.⁷ For the few provinces that do not have such a provision in their securities legislation, respondents may appeal to the provincial court for a review of the Decision.⁸

Continuing Jurisdiction

By-law 20.7 describes the IDA's continuing jurisdiction over Former Registrants. By-law 20.7(1) states that "any Member and any Approved Person shall remain subject to the jurisdiction of the IDA for a period of five years from the date on which such Member or Approved Person ceased to be a Member or an Approved Person of the IDA". The by-law's objective is to allow the IDA to bring enforcement proceedings against Former Registrants so long as the IDA initiates the proceedings no later than five years from the date the Former Registrant ceased to be registered. A proceeding is considered initiated once a Notice of Hearing⁹ is issued to the Former Registrant. By-law 20.7(1) does not provide a time limit for the IDA to *complete* an enforcement proceeding; it is simply a time limit to *initiate* a proceeding.

Relevant History

In October 2004 the IDA changed the continuing jurisdiction provisions in By-law 20. Prior to these changes, however, the continuing jurisdiction provisions were clearer and better portrayed the IDA's objective. The former provision read:

"No proceedings shall be commenced pursuant to By-law 20.11 against a former Member or person who is no longer approved unless a notice of hearing and particulars has been served upon such Member or person no later than five years from the date upon which such Member or person ceased to be a Member or approved, respectively."

⁵ By-law 20.51.

⁶ 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 (By-law 20.51(2)).

⁷ Ontario *Securities Act*, R.S.O. 1990, c. S.5, s. 21.7(1); British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, s. 28; Manitoba *Securities Act*, C.C.S.M. c. S50, s. 31.1(4), New Brunswick *Securities Act*, S.N.B. 2004, c. S-5.5, s. 44; Nova Scotia *Securities Act*, R.S.N.S. 1989, c. 418, s. 30(5); Alberta *Securities Act*, R.S.A. 2000, c. S-4, s. 73; Quebec *Securities Act*, R.S.Q., c. V-1.1, s. 322; and Saskatchewan *Securities Act*, 1988, S.S. 1988-89, c. S-42.2, s. 21(7).

⁸ The IDA does not have recognition orders from the Yukon, the Northwest Territories, Prince Edward Island or Nunavut, and as such, the securities legislation of these provinces do not have a procedure for reviews of IDA decisions. Newfoundland & Labrador very recently recognized the IDA and its securities legislation does not provide for the review of SRO decisions.

⁹ A Notice of Hearing is a document that states the purpose of the hearing, the alleged violations of IDA rules, the facts in support of the allegations, the type and range of penalties that may be imposed by the hearing panel, and amongst other items, the date, time, and location of the hearing (Rule 6.5, IDA Rules of Practice and Procedure).

Unfortunately, when the former continuing jurisdiction provision was revised in October 2004, the new language (now By-law 20.7) failed to state that the IDA need only issue a Notice of Hearing to satisfy the five year time period.

Proposed Rule Amendment

The proposed amendment would make clearer the intent and objective of the continuing jurisdiction provisions in By-law 20. It would make express reference to the fact that the IDA maintains its jurisdiction over Former Registrants and may bring an enforcement hearing against a Former Registrant so long as it does so no later than five years from the date that the Former Registrant ceased registration.

B Issues and Alternatives Considered

Issues

IDA Appeal Panel

There are a number of practical inefficiencies with appealing Decisions to the IDA Appeal Panel, all of which could be avoided by adopting the proposed amendments.

The foremost inefficiency is that there is an increasing use of the Board of Directors' limited time to the IDA, towards participating in Appeal Panels. In fact, seven Decisions were appealed to the Appeal Panel over the past 18 months. The appeals can be quite lengthy, with each lasting up to several weeks. If the trend towards filing appeals with the Appeal Panel continues, which the IDA expects is likely, the focus of the role of Board members could shift from that of achieving effective corporate governance to that of acting in a quasi-judicial capacity.

Moreover, the escalating number of internal appeals has created significant scheduling impracticalities. Given the lengthy duration of appeal hearings, it is very difficult for the IDA to identify Board members who can dedicate the time to conduct such hearings. This is particularly the case when considering that the size of the Board has reduced considerably from 28 members in 2000 to 12 currently, therefore reducing the number of available Board members. In addition, the IDA must appoint an Appeal Panel within a very short time period.¹⁰ There are even more scheduling difficulties in Quebec, where both Board members and the former judge must be Quebec residents.¹¹ Similarly, in certain provinces, because there are only a limited number of former judges who are public members of the IDA's Hearing Committee, it is often difficult to find a former judge to appear on Panels.

Also, with the increasing severity of the securities breaches being committed, and the more significant sanctions being imposed, the IDA anticipates that the number of appeal requests to the Appeal Panel will only increase over time. This will only escalate the difficulties in appointing Appeal Panels, and demand even greater time commitments from the Board of Directors.

Continuing Jurisdiction

Recently, there were several judicial challenges to the IDA's rules on continuing jurisdiction.¹² One argument is that the IDA lacks jurisdiction over Former Registrants if enforcement proceedings are not completed within five years from the date that the Former Registrant's registration ceases.

This interpretation is clearly contrary to the intent and objective of By-law 20.7(1). If IDA enforcement proceedings were required to be resolved within five years from the date that a Former Registrant ceases to be a Registrant, respondents would simply escape disciplinary action by delaying as long as possible the disciplinary hearing process, to pass the five year time limit. This flagrant manner of escaping discipline would undermine the very pillars of the SRO system and the ability of the IDA to fulfill its mandate to enforce compliance with standards and requirements relating to capital market participants.

However, given the recent flow of judicial challenges, the IDA proposes to make clearer and unequivocal its continuing jurisdiction rules. In doing so, the new language to the rule would state expressly that the IDA continues to have jurisdiction over Former Registrants so long as an enforcement proceeding commenced (i.e. a Notice of Hearing is issued) no later than five years from the date on which the Former Member or Approved Person ceased to be registered.

Alternatives Considered

While there was not formal consultation with the membership on these issues alone because of the urgent need for the changes, the IDA did receive some feedback from the membership at our quarterly Compliance and Legal Section (CLS)

¹⁰ Rule 20.3 of the IDA's Rules of Practice and Procedure provides that the IDA's national hearing coordinator must provide notice of the date, time and location of the appeal within 21 days of the filing of a notice of appeal.

¹¹ *Supra*, note 2.

¹² For example, see *MacBain* (*supra*, note 4); *Re Dass* [2006] I.D.A.C.D. No. 21 (PDC); and *Re Taub* [2006] I.D.A.C.D. No. 22 (ODC).

meeting and through our initial round of consultations on the By-laws 19 and 20 project. There were mixed views from the membership on the elimination of the appeal panel. Some Members were of the view that the Board of Directors would be in a conflict of interest position to make a decision to eliminate the appeal process when it is the Board of Directors members themselves that are unable to appear on appeal panels. Some Members felt that rather than eliminate the appeal panel, an alternative to the current process should be considered instead, because the increasing use of the panel indicates a growing need for there to be an internal appeal mechanism. The following is a list of the suggested alternatives to the current appeal process:

- The appeal panel could consist of either: (a) retired members and a former judge; or (b) a former judge only (i.e. a one-person panel).
- Appeals could be made by way of written submissions rather than an oral appeal hearing.
- The length of an appeal panel hearing could be limited to a short time period so that the length of the panel hearings could be reduced.

The IDA considered these alternatives and determined that a change to the current composition of the appeal panel to a single former judge or retired members is not a suitable alternative because of the desire to have, where possible, an active industry member involved in the hearing of appeals. A Decision can be appealed to an appeal panel on an issue of fact or law or both. Appeal panels often hear very complex securities matters. As such, it would be best, where possible, to have an adjudicator with knowledge of the securities industry, to also hear the issues. In addition, the possibility of increasing the size of the Board of Directors was considered but it was agreed that to do so would make the Board unmanageable for effective corporate governance and decision-making.

The possibility of having written submissions as a substitute for the current oral appeal hearings and reducing the length of the duration of appeal panels was also considered, however, it was determined that it would be in the best interests of the industry to have the benefit of a full oral appeal, rather than to compromise the length of a hearing or the ability to make oral arguments.

C Comparison With Similar Provisions

IDA Appeal Panel

Both Market Regulation Services Inc. (“RS”) and the Mutual Fund Dealers Association of Canada (“MFDA”) require either that all appeals or certain appeals of their decisions be made directly to the securities commissions. By adopting the proposed amendments, the IDA’s process for appealing Decisions will be consistent with the approach used by other Canadian securities SROs.

RS does not have an internal appeals process; hearing panel decisions are appealed directly to the securities commissions. RS’s Universal Market Integrity Rules (“UMIR”) provide that if a regulated person seeks a hearing and review of a hearing panel’s decision, the person must apply directly to the securities commission, pursuant to the applicable provincial legislation or the provincial courts for review.¹³

In addition, the MFDA’s rules provide for a “two-track” review of hearing panel decisions; while members may appeal hearing panel decisions to the MFDA’s board of directors, approved persons may not. Rather, approved persons must direct their appeals to the securities commissions or the provincial courts for review.¹⁴

Continuing Jurisdiction

Both RS and the MFDA maintain continuous jurisdiction over former registrants. MFDA By-law 1, s. 24.1.4(b) states that the MFDA may commence an enforcement proceeding against a former registrant if a notice of hearing is provided five years from the date that the person ceased to be registered. Similarly, RS’s jurisdiction over former registrants is expressed in section 1.1 of UMIR, where a “Regulated Person” is defined as “any Participant or Access Person of a marketplace for which the Market Regulator is the regulation services provider or was the regulation services provider at the time of the conduct” [emphasis added].

The level playing field among the SROs would be bolstered by ensuring that the IDA maintains continuing jurisdiction over Former Registrants without the presence of unintentional and arbitrary timelines to achieve final resolution of enforcement proceedings.

¹³ UMIR, rule 11.3.

¹⁴ MFDA By-law 1, s. 24.6.2.

D Systems Impact of Rule

There are no systems issues associated with the proposed amendments.

E Best interests of the Capital Markets

The Board has determined that the public interest rule is not detrimental to the best interests of the capital markets.

F Public Interest Objective

According to the IDA's Order of Recognition as an SRO, the IDA shall, where requested, provide in respect of a proposed rule change "a concise statement of its nature, purposes and effects, including possible effects on market structure and competition". Statements have been made elsewhere as to the nature and effects of the proposal with respect to the IDA's Appeal Panel and continuing jurisdiction over Former Registrants. The purposes of the proposals are to:

- provide for the administration of the affairs of the IDA;
- ensure compliance with securities laws;
- promote the protection of investors, just and equitable principles of trade and high standards of operations, business conduct and ethics; and
- promote public confidence and public understanding of the goals and activities of the IDA.

The proposal does not permit unfair discrimination among customers, issuers, brokers, dealers, members or others. It does not impose any burden on competition that is not necessary or appropriate in furtherance of the above purposes. The proposed amendment has been determined to be public interest in nature.

III COMMENTARY

A Filing in Other Jurisdictions

This proposed amendment will be filed for approval in Alberta, British Columbia, Ontario and Quebec and will be filed for information in Manitoba, Newfoundland and Labrador, Nova Scotia and Saskatchewan.

B Effectiveness

The IDA believes that the proposed amendments will adopt the most practical and logical solution to address the aforementioned inefficiencies. By removing the option to appeal to the Appeal Panel, Board members can continue to devote the majority of their time towards corporate governance activities. The amendments are also designed to avoid a situation where the IDA would not be able to provide a respondent with an appeal hearing without undue delay, due to the lack of available Panel members on a timely basis. The proposed amendments would ensure that respondents are able to continue to appeal Decisions without undue delay.

Both respondents and the IDA would maintain their pre-existing rights to file appeal requests with the securities commissions or provincial courts.

C Process

The proposed changes have been reviewed and approved by senior management.

IV SOURCES

IDA By-law Nos. 7, 10.1, 20.7, 20.30 to 20.34, 20.41 to 20.48, 20.51 and 33.1;

Proposed Amendments to By-law Nos. 2 and 20, Membership Application Process;

IDA Rules of Practice and Procedure, rules 6.5 and 20.3;

IDA Enforcement Annual Report 2005;

UMIR sections 1.1, 11.3;

MFDA By-law No. 1, s. 24.6.2 and s. 24.1.4(b);

Securities Exchange Act of 1934, s. 19(d)(1);

NASD Code of Procedure, ss. 9268, 9311, 9331, 9349, 9351 and 9370;

NASD 2004 Year in Review; and

Securities Act (Ontario), R.S.O. 1990, c. S.5, s. 21.7(1); *British Columbia Securities Act*, R.S.B.C. 1996, c. 418, s. 28; *New Brunswick Securities Act*, S.N.B. 2004, c. S-5.5, s. 44; *Nova Scotia Securities Act*, R.S.N.S. 1989, c. 418, s. 30(5); *Alberta Securities Act*, R.S.A. 2000, c. S-4, s. 73; *Quebec Securities Act*, R.S.Q., c. V-1.1, s. 322; *Saskatchewan Securities Act*, 1988, S.S. 1988-89, c. S-42.2, s. 21(7); and *Manitoba Securities Act*, C.C.S.M. c. S50, s. 31.1(4).

V OSC REQUIREMENT TO PUBLISH FOR COMMENT

The IDA is required to publish for comment the proposed amendments so that the issue referred to above may be considered by OSC staff.

The IDA has determined that the entry into force of the proposed amendments would be in the public interest. Comments are sought on the proposed amendments. Comments should be made in writing. One copy of each comment letter should be delivered within 30 days of the publication of this notice, addressed to the attention of Nancy N. Mehrad, Investment Dealers Association of Canada, Suite 1600, 121 King Street West, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of Manager of Market Regulation, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8.

Questions may be referred to:

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INVESTMENT DEALERS ASSOCIATION OF CANADA

AMENDMENTS TO BY-LAW 20 – ELIMINATION OF THE IDA APPEAL PANEL
AND CHANGES TO CONTINUING JURISDICTION PROVISIONS

BOARD RESOLUTION

THE BOARD OF DIRECTORS of the Investment Dealers Association of Canada hereby makes the following amendments to the By-laws, Regulations, Forms and Policies of the Association:

1. By-law 20.1 is amended by deleting the following words from the definitions of the terms “*Decision-maker*” and “*Panel*”:
“an Appeal Panel; (20.51 Part 11 By-law 20)”

2. By-law 20.1 is further amended by adding the following words:

““*Former Approved Person*” means:

A Person that is no longer an Approved Person of the Association.

“*Former Member*” means:

A Person that is no longer a Member of the Association.””

3. By-law 20.3(5) is amended by deleting the following words:

“or Appeal Panel”

4. By-law 20.7 is repealed and replaced as follows:

“20.7 Former Members

(1) For the purposes of By-laws 19 and 20, a Former Member remains subject to the jurisdiction of the Association for any act committed while a Member, notwithstanding that it is no longer a Member.

(2) The Association may commence an enforcement hearing under Part 10 of this By-law against a Former Member if a Notice of Hearing is issued on the Former Member no later than five years from the date that the Former Member ceased to be a Member.

20.7A Former Approved Persons

(1) For the purposes of By-laws 19 and 20, a Former Approved Person remains subject to the jurisdiction of the Association for any act committed while an Approved Person, notwithstanding that she or he is no longer an Approved Person.

(2) The Association may commence an enforcement hearing under Part 10 of this By-law against a Former Approved Person if a Notice of Hearing is issued on the Former Approved Person no later than five years from the date that the Former Approved Person ceased to be an Approved Person.”

5. By-law 20.14 is amended by deleting the following words:

“Appeal Panels”

6. By-law 20.16 is repealed and replaced as follows:

“(1) The following persons shall be appointed to serve as the Chair of the respective Panels:

(a) A public member of a Hearing Committee shall be appointed to be the Chair of any Hearing Panel.

(b) An industry member of the District Council shall be appointed to be the Chair of any District Council Panel, pursuant to By-law 20.26(4).

(2) The Chair of a Panel, appointed pursuant to subsection (1), shall be responsible for conduct of a hearing in consultation with the other members of the Panel.

(3) The Chair of a Hearing Panel shall be responsible for drafting of decisions, with which he or she does not dissent, in consultation with the other members of the Hearing Panel.”

7. By-law 20.19(6) is repealed and replaced as follows:

“A decision of the Hearing Panel is a decision for which no further review or appeal is provided in the By-laws.”

8. By-law 20.26(6) is repealed and replaced as follows:

“A decision of the District Council Panel is a decision for which no further review or appeal is provided in the By-laws.”

9. By-law 20.29(5) is repealed and replaced as follows:

“A decision of the Hearing Panel is a decision for which no further review or appeal is provided in the By-laws.”

10. By-law 20.37(1) is repealed and replaced as follows:

“A decision of the Hearing Panel accepting a Settlement Agreement is a final decision for which no further review or appeal is provided in the By-laws.”

11. By-law 20.40(1) is repealed and replaced as follows:

“A decision of the Hearing Panel rejecting a Settlement Agreement is a final decision for which no further review or appeal is provided in the By-laws.”

12. By-law 20.47 is repealed and replaced as follows:

“(1) The Respondent may file a written request for review of any decision made pursuant to By-law 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 By-law 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 By-law 20.45.

(6) A review decision of the Hearing Panel is a decision for which no further review or appeal is provided in the By-laws.”

13. By-law 20.50 is repealed.

14. By-law 20.51 is repealed.

15. By-law 20.52 is repealed.

16. By-law 20.53 is repealed.

17. By-law 20.54 is repealed.

18. By-law 20.55 is repealed, replaced and renumbered as By-law 20.50 and Part 12 is renumbered as Part 11 as follows:

“(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 By-law 20.36;
- (b) disciplinary hearings pursuant to By-law 20.33 and By-law 20.34; and
- (c) expedited review hearings pursuant to By-law 20.47.”

(2) The hearings prescribed in subsection (1) shall be held in the absence of the public where the 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 hearings be public.

(3) Notwithstanding subparagraph (1) and (2), in Quebec, any disciplinary panel must be public. However, such disciplinary 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.”

- 19. By-law 20.56 is renumbered as By-law 20.51 and Part 13 is renumbered as Part 12.
- 20. By-law 20.57 is renumbered as By-law 20.52 and Part 14 is renumbered as Part 13.

Corollary Amendments to By-law 3

- 21. By-law 3.13 is amended by adding the following words:
“Former Member” and “Former Approved Person”

- 22. By-law 3 is amended by adding the following:

3.14 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, including an annual fee, fee, levy, assessment, fine, cost, expense or any other charge or amount.

Corollary Amendments to By-law 28

- 23. By-law 28.4 is amended by deleting the following words:
“Appeal Panel”

Corollary Amendments to By-law 33

- 24. By-law 33.1 is amended by deleting the following words:
“Appeal Panel”

BE IT RESOLVED THAT the Board of Directors adopt, on this 6th day of June 2007, the English and French versions of these amendments. The Board of Directors also authorizes the Association Staff to make the minor changes that shall be required from time to time by the securities administrators with jurisdiction. These amendments shall take effect on the date determined by the Association Staff.

INVESTMENT DEALERS ASSOCIATION OF CANADA

AMENDMENTS TO BY-LAW 20 – ELIMINATION OF THE IDA APPEAL PANEL
AND CHANGES TO CONTINUING JURISDICTION PROVISIONS

BLACKLINED VERSION

By-law 20.1

20.1 In this By-law:

"Decision-maker" means:

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

"Former Approved Person" means:

a Person that is no longer an Approved Person of the Association.

"Former Member" means:

a Person that is no longer a Member of the Association.

"Panel" means:

a Hearing Panel (20.13 Part 6 By-law 20), a District Council Panel (20.26 Part 8 By-law 20), and a Board Panel (20.22 Part 7 By-law 20) and an Appeal Panel (20.51 Part 11 By-law 20).

By-law 20.3(5)

20.3 Decision-making

(5) Notwithstanding By-law 20.16(2), the other members of a Hearing Panel ~~or Appeal Panel~~ shall draft the decision where the Chair of the Panel dissents with the majority decision.

By-law 20.7

20.7 Former Members and Approved Persons

(1) For the purposes of By-laws 19 and By-law 20, ~~any Former Member and any Approved Person shall~~ remains subject to the jurisdiction of the Association for any act committed while a Member notwithstanding that it is no longer a Member. ~~for a period of five years from the date on which such Member or Approved Person ceased to be a Member or an Approved Person of the Association, subject to subsection (2).~~

(2) The Association may commence an enforcement hearing under Part 10 of this By-law against a Former Member if a Notice of Hearing is issued on the Former Member no later than five years from the date that the Former Member ceased to be a Member.

~~(2) An enforcement hearing under Part 10 of this By-law may be brought against a former Approved Person who re-applies for approval under Part 7 of this By-law, notwithstanding expiry of the time period set out in subsection (1).~~

~~(3) An Approved Person whose approval is suspended or revoked or a who is expelled from membership or whose rights or privileges are suspended, or terminated shall remain liable to the Association for all amounts owing to the Association.~~

20.7A Former Approved Persons

(1) For the purposes of By-laws 19 and 20, a Former Approved Person remains subject to the jurisdiction of the Association for any act committed while an Approved Person, notwithstanding that she or he is no longer an Approved Person.

(2) The Association may commence an enforcement hearing under Part 10 of this By-law against a Former Approved Person if a Notice of Hearing is issued on the Former Approved Person no later than five years from the date that the Former Approved Person ceased to be an Approved Person.

By-law 20.14

20.14 Selection of Panel Members for Hearings

(1) The National Hearing Coordinator shall be responsible for selection of members of Hearing Panels, District Council Panels and Board Panels and Appeal Panels, pursuant to By-law 20, and any other duties as prescribed by the IDA Rules of Practice and Procedure.

By-law 20.16

20.16 Chair of Panels

(1) The following persons shall be appointed to serve as the Chair of the respective Panels:

(a) A public member of a Hearing Committee shall be appointed to be the Chair of any Hearing Panel.

~~(b) A public member of a Hearing Committee shall be appointed to be the Chair of any Appeal Panel pursuant to By-law 20.51(1)(c).~~

~~(b)(1) An industry member of the District Council shall be appointed to be the Chair of any District Council Panel, pursuant to By-law 20.26(4).~~

~~(d) An independent member of the Board of Directors shall be appointed to be the Chair of any Board Panel, pursuant to By-law 20.22(3).~~

(2) The Chair of a Panel, appointed pursuant to subsection (1), shall be responsible for conduct of a hearing in consultation with the other members of the Panel.

(3) The Chair of a Hearing Panel or Appeal Panel shall be responsible for drafting of decisions, with which he or she does not dissent, in consultation with the other members of the Hearing Panel or Appeal Panel.

By-law 20.19

20.19 Review Hearings

(1) Association 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 By-law 20.18, shall participate on the Hearing Panel.

(4) A review hearing held under this Part shall be held in accordance with the IDA Rules of 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 By-law 20.18.

(6) No appeal shall be available from the decision of the Hearing Panel. A decision of the Hearing Panel is a decision for which no further review or appeal is provided in the By-laws.

By-law 20.26

20.26 Review Hearings

(1) The Applicant or Association Staff may apply for a review of the District Council decisions pursuant to By-law 20.24 or By-law 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 Association 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 By-law 20.24 and By-law 20.25.

(6) ~~No appeal shall be available from the decision of the District Council Panel.~~ A decision of the District Council Panel is a decision for which no further review or appeal is provided in the By-laws.

By-law 20.29

20.29 Review of Early Warning Level 2 Prohibitions

(1) The Member may request a review of a By-law 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 Member does not request a review within the time period prescribed in subsection (1), the By-law 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 Member; and

(d) make any decision that could have been made by the Senior Vice-President Member Regulation, or his or her designate pursuant to By-law 20.28.

(5) ~~No appeal shall be available from the decision of the Hearing Panel.~~ A decision of the Hearing Panel is a decision for which no further review or appeal is provided in the By-laws.

By-law 20.37

20.37 Acceptance Of Settlement Agreement

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

By-law 20.40

20.40 Rejection of Settlement Agreement

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

By-law 20.47

20.47 Review Hearing

(1) The Respondent may file a written request for review of any decision made pursuant to By-law 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 By-law 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 By-law 20.45 notwithstanding By-law 20.53 (1).

~~(6) The review decision of a Hearing Panel may be appealed by either party pursuant to By-law 20.50. A review decision of the Hearing Panel is a decision for which no further review or appeal is provided in the By-laws.~~

By-law 20.50

~~PART 11 — APPEALS OF DISCIPLINARY AND EXPEDITED REVIEW HEARING DECISIONS~~

~~20.50. — Right of Appeal~~

~~(1) The Association 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.~~

By-law 20.51

~~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 By-law in Quebec should be held in Quebec and the parties can present in French both verbally and in writing.

By-law 20.52

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 IDA Rules of Practice and Procedure.

By-law 20.53

20.53.— Effect of Appeal Application

(1) An appeal to the Appeal Panel from a decision of a Hearing Panel pursuant to By-law 20.50 shall operate as a stay from the decision, unless ordered otherwise by the applicable Securities Commission, Appeal Panel.

(2) Notwithstanding subsection (1), an appeal to the applicable Securities Commission Appeal Panel from an expedited review hearing decision shall not operate as a stay from the decision, unless ordered otherwise by the applicable Securities Commission 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.

By-law 20.54

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 By-law 20.33, By-law 20.34, By-law 20.45 and By-law 20.49;

(e) extend or limit the decision's application and effect to any Districts of the Association;

(f) order a new hearing; or

(g) make any order or decision that is considered just.

By-laws 20.55 to 20.57

PART 1211 - PUBLIC HEARINGS

20.5550 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 By-law 20.36;
- (b) disciplinary hearings pursuant to By-law 20.33 and By-law 20.34; and
- (c) expedited review hearings pursuant to By-law 20.47; and
- (d) ~~enforcement appeal hearings pursuant to By-law 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 1312 - RULE MAKING POWERS

20.5651 Rule-making Powers of the Member Regulation Oversight Committee

(1) The Member Regulation Oversight Committee of the Association may enact, amend, repeal and re-enact, Rules of Practice and Procedure related to By-law 20.

PART 1413 - TRANSITIONAL PROVISIONS

20.5752 Transitional Provisions

(1) Subject to subsection (2), any provision of any By-law, Regulation, Ruling or Policy of the Association in effect immediately prior to the coming into effect of these Rules shall remain in full force and effect until such By-law, Rule, Regulation, Ruling or Policy, has been repealed.

(2) In the event of a conflict between this By-law and the provisions of any By-law, Regulation, Ruling or Policy of the Association that remains in effect after this By-law comes into effect, the provisions of this By-law shall prevail.

Corollary Amendments to By-laws 3, 28.4 and 33.1

By-law 3

3.13. Any amount due and owing to the Association, a District Council, committee or other person or body under the By-laws, Regulations, Rules, Policies, Forms or other regulatory instrument authorized thereunder by a Member, Former Member, approved person, Former Approved Person or other person subject to the jurisdiction of the Association, whether an Annual Fee, fee, levy, assessment, fine, cost, expense or other charge or amount, shall bear interest at a rate per annum determined from time to time by the Board of Directors (calculated daily on the basis of a 365 day year, and payable and compounded monthly) from the date the amount is first due until paid, with interest on arrears calculated and payable in the same manner, such rate for any month not to be greater than one percent above the Canadian Chartered Bank prime lending rate at the end of each preceding month.

3.14. 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, including an annual fee, fee, levy, assessment, fine, cost, expense or any other charge or amount.

By-law 28.4

28.4. Payments from the Discretionary Fund may be made at such times and in such amounts as the Board of Directors shall authorize for all or any of the following purposes, namely:

- (a) To fulfill all of the obligations of the Association to the Canadian Investor Protection Fund or under any guarantee given by the Association to a third party with respect to moneys payable by the Canadian Investor Protection Fund to such third party;
- (b) In the event of the insolvency or other inability of any Member to meet its financial obligations to the public (and whether or not claims against such Member have been considered by the persons administering the Canadian Investor

Protection Fund), to compensate in whole or in part such creditors of any such Member as the Board of Directors in its discretion may determine;

- (c) Invest in the securities of, or provide financial assistance in such form and on such terms and conditions as the Board of Directors in its discretion may determine to, The Canadian Depository for Securities Limited;
- (d) To pay the fees, expenses or other remuneration of the following members of a District Council Panel or Hearing Panel ~~or Appeal Panel~~:
 - (i) Members who have retired in good standing as employees of Members; and
 - (ii) Public members appointed pursuant to By-law 20.9.
- (e) To make payments for special non-recurring projects that (1) benefit the public and/or (2) generally benefit Canadian Capital Markets, as determined by the Board of Directors or Executive Committee.

By-law 33.1

33.1. Any 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 By-laws has elapsed) in respect of which no further review or appeal is provided in the By-laws 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.