

IIROC NOTICE

Rules Notice
Notice of Approval/Implementation
Dealer Member Rules and UMIR

Please distribute internally to:
Legal and Compliance
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Implementation of the consolidated IIROC Enforcement, Examination and Approval Rules

The Canadian Securities Administrators (**CSA**) have approved the Investment Industry Regulatory Organization of Canada's (**IIROC**) rule amendments on IIROC's consolidated enforcement, examination and approval rules (the **Consolidated Rules**). These are attached as Appendix 1. The Consolidated Rules will be implemented on September 1, 2016 (the **Implementation Date**), except Rule 8300 which is effective immediately.

Implementation

The new Transition Rule (see Appendix 3 at 4-6) ensures that provisions of the Consolidated Rules affecting (or indirectly affecting) substantive rights of regulated persons apply only to conduct occurring on or after the Implementation Date. Consolidated Rules that are procedural in nature will apply as of the Implementation Date, regardless of when the conduct at issue took place. Any ongoing disciplinary proceedings as of today's date will continue under the procedural rules in force when those proceedings began, even though such rules will be repealed September 1, 2016. New proceedings that begin on or after the Implementation Date will be governed by the Consolidated Rules.



Where to Find the Consolidated Rules

The Consolidated Rules combine and replace various provisions of IIROC’s Dealer Member Rules and the Universal Market Integrity Rules and constitute a new (third) body of rules, with its own numbering system. They are now available through the [Rule Book](#) tab under the heading “IIROC Enforcement, Procedural, Examination and Approval Rules” in the right-hand column Tool Bar of the IIROC website (www.iiroc.ca).¹

The Rules of Practice of Procedure (the **Rules of Procedure**) have been elevated to the status of full IIROC Rules, embodied in Consolidated Rule 8400. As of the Implementation Date, the Rules of Procedure will not be housed in their former location (accessible through the Rule Book tab under the heading “IIROC Dealer Member Rules”).

IIROC has also revised certain forms to be used in proceedings under the new procedural rules. Those forms are available in PDF format at the bottom of IIROC’s [Consolidated Rules page](#).

History

The original proposal to consolidate certain enforcement, procedural, examination and approval rules was published for comment in a [Rules Notice](#) dated March 23, 2012 (the **Original Notice**). Following extensive comments, IIROC staff prepared [responses](#) to those comments and made changes contained in a [Rules Notice](#) dated November 14, 2013 (the **Republication Notice**).

Material changes set out in the Republication Notice include:

- defined terms
- the confidentiality of enforcement investigations
- the consolidated standards of conduct
- sanctions for Dealer Members and
- expedited hearings (replaced with the new concept of “protective orders”).

We also added a new provision to Rule 8300 which empowers a public member nominating committee to put forward public member nominees to the Hearing Committee in each IIROC district. Finally, we made revisions to the proposed transitional rule governing the coming into force of the Consolidated Rules.

¹ Separately, IIROC has published for comment its existing Dealer Member Rules in plain language (the “PLR Rulebook”), and the new numbering system of the Consolidated Rules (which includes provisions under the new 1000, 8000, and 9000 series) will eventually combine with the PLR Rulebook to create a new unified IIROC rulebook that will comprise Rules 1000 through 9000. When the PLR Rulebook is finalized, UMIR will be inserted as Rule 6000. For a more detailed explanation of this rule amendment and renumbering process, please see [IIROC Rules Notice 12-0104, Consolidation of IIROC Enforcement, Procedural, Examination and Approval Rules](#) (Mar. 23, 2012) at 2-4.



In response to the Republication Notice, IIROC staff received a single public comment letter from the Investment Industry Association of Canada (**IIAC**). In addition, we invited all commenters (on both the Original Notice and the Republication Notice) to a “roundtable” meeting in March 2014. Only the IIAC and the Foundation for the Advancement of Investor Rights of Canada chose to attend.

After reviewing the comments received, Policy and Enforcement staff consulted with external counsel and made a number of non-material changes. These are technical or non-substantive (improve drafting/clarity, consistency, etc.) and are highlighted in “blackline” form in Appendix 2.² We describe some of these non-material changes below.

Non-Material Changes

Definitions [*Consolidated Rule 1200*]

We changed the definition of “applicable” to more accurately reflect the existing definition.

We replaced the defined term “investor of a Dealer Member” with a simpler, more descriptive term (“approved investor”) and refined its definition.

We replaced the defined terms “Corporation” and “Corporation requirements” with “IIROC” and “IIROC requirements”, respectively.

Investigation Powers [*Consolidated Rule Section 8103*]

In assessing IIROC’s investigation powers, we expect hearing panels to read the provisions in section 8103 together, and in the context of well-settled case law relating to the scope of those powers. As a clarification, we repeated the phrase “that Enforcement Staff believe may be relevant to the investigation” in clause 8103(3) (ii) to mirror the identical phrase in clause 8103(1) (ii).³

Right to Counsel at Investigative Interview [*Consolidated Rule Section 8105*]

We deleted subsection 8105(2) from the new provision regarding the right to counsel at interviews.

Subsection 8105(1) is a permissive rule that allows counsel to be present at an IIROC investigative interview; it is not a mandatory condition of every interview. This mirrors the approach in provincial securities acts (e.g. subsection 42(5) of the *Alberta Securities Act*, subsection 144(4) of the *B.C. Securities Act*, subsection 13(2) of the *Ontario Securities Act*, and section 246 of the *Québec Securities Act*).

² In both the clean and blackline versions of the Consolidated Rules (Appendices 1 and 2, respectively), the middle and right-hand columns show a blackline of equivalent existing rules to indicate deletions and other changes being made to those existing rules.

³ Please note that an identical conforming revision was made to clause 9104(3)(ii), which deals with IIROC staff’s ability to compel information in the context of a compliance examination.



Act). Subsection (2) did not add anything substantive to the long-standing practice of counsel attendance at an IIROC investigative interview. We do not intend to allow a person to unduly delay an interview because his or her counsel is not available for an unreasonably long period. Section 8105 now confirms that, where a person attends an interview, he or she may have counsel present.

Confidentiality of Investigations [*Consolidated Rule Section 8106*]

In response to the CSA's comments we removed the mandatory requirement to keep information regarding an investigation confidential and introduced the ability for IIROC to issue an order to that effect. The order would prohibit a person from communicating, for a specific period, some or all of the information related to an investigation to another person except the person's counsel. This resulted in several non-material changes, including to the structure of section 8106. Specifically, subsection 8106(1) contains the ability for the Corporation to make the relevant confidentiality order. Subsection 8106(2) contains the majority of the previous restrictions contained in subsections 8106(2) and 8106(3), except for the following previous clauses:

- (a) 8106(2)(ii), which was deleted
- (b) 8106(2) (iii), which was moved to current subsection 8106(3).

In response to the IIAC's comments on the previous clause 8106(3) (iii), we made a non-material clarification to the current clause 8106(2) (iv) to broaden how individuals may report IIROC investigations to appropriate Dealer Member personnel. Specifically, the exception to confidentiality applies when an individual communicates with a compliance officer with compliance responsibility for that individual's activities within the firm, whether or not the compliance officer has supervisory authority over, or is technically senior to, the individual. We also made non-material additions in:

- (a) Sub-clause 8106(2)(ii)(a) which now allows a person to disclose requests made in connection with an investigation to other staff (e.g. to personnel in the information technology department of a Dealer Member firm) in order to respond to the request
- (b) Clause 8106(2) (iv) which now allows a person to report the existence and nature of an investigation to their board of directors.

Standards of Conduct [*Consolidated Rule 1400*]

In response to the IIAC's comments, we amended subsection 1402(1) to expressly limit the standards of conduct to "business conduct". We view this as a non-material change, given our existing rules (UMIR 2.1 and Dealer Member Rule 29.1) refer to "business" conduct and are limited in the same way.

Privilege

For purposes of consistency and clarity we removed the five references to "legal privilege" (in subsections 8103(3), 8417(1), 9104(3), 9409(3), and 9416(3)) and one reference to "privilege" (in subsection 8203(3)). Our existing rules on IIROC staff's power to compel documents and information



(e.g. UMIR Rule 10.2 and Dealer Member Rule 19, with respect to investigations) do not expressly refer to this type of privilege. We believe the concept of privilege, primarily based on common law principles, is so well understood that it is unnecessary to refer to it expressly within our rules. We view this as a non-material change because it does not affect the law on proceedings under IIROC Rules.

Right of Dealer Members to Apply for Directions Concerning Monitor's Authority

To promote fairness, subsection 8213(5) now expressly grants Dealer Members the same right given to Enforcement staff and monitors, to request directions from a hearing panel regarding the monitor's authority. We view this change as non-material because the power to grant a Dealer Member this right is implicitly available in a hearing panel's procedural powers (e.g. subsection 8403(3)).

The Opportunity to be Heard and IIROC's Ability to Impose Terms and Conditions

Section 9208 of the Consolidated Enforcement Rules provides that IIROC may impose terms and conditions on a Dealer Member's membership to ensure continuing compliance with IIROC's requirements. The rule gives Dealer Members an opportunity to be heard before we impose terms and conditions.

Section 9400 of the Consolidated Rules allows an IIROC senior officer (**Senior Officer**) to impose terms and condition on a Dealer Member's membership, on behalf of IIROC. Specific Senior Officers have been delegated the authority to make a decision for the purpose of section 9208.

Before imposing terms and conditions, IIROC will provide notice to the Dealer Member, including written reasons for the recommendation and a description of the terms and conditions, follow up process and removal conditions. The Dealer Member will have an opportunity to be heard in writing or in person. Or, the Dealer Member can choose to agree to the recommended terms and conditions.

If a Senior Officer decides to impose terms and conditions on a Dealer Member, they will include written reasons. The Consolidated Rules also provide for a review of the Senior Officer's decision. Once all review periods have expired and/or appeal decisions have been finalized, the terms and conditions will be published on our website under the tab "[Who we regulate](#)" in the Tool Bar on the right hand side of the IIROC website. The text of the terms and conditions will appear beside the Dealer Member's name. Once the terms and conditions are removed, the link will be removed.

Other Changes

We made minor drafting and formatting changes to clarify certain provisions (e.g. clause 8215(2) (ix) and subsections 8203(5), (6), and (7), 8408(6), and 9205(4)).

In addition, we made non-substantive changes to the Consequential amendments, including deleting Dealer Member Rule 19.7, which we inadvertently omitted in the last publication.



Response to public comments

Appendix 5 contains a summary of the comments to [IIROC Rules Notice 13-0275](#) and our response.

Attachments

- [Appendix 1](#) – Revised Consolidated Rules (clean)
- [Appendix 2](#) – Revised Consolidated Rules (blackline)
- [Appendix 3](#) – Consequential amendments (clean)
- [Appendix 4](#) – Consequential amendments (blackline)
- [Appendix 5](#) – Response to public comments