

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 IIROC Rules Notice – Request for Comments – Limitation on IIROC Enforcement Proceedings

IIROC RULES NOTICE REQUEST FOR COMMENTS LIMITATION ON IIROC ENFORCEMENT PROCEEDINGS

Summary of nature and purpose of proposed Rule

On September 15, 2010, the Board of Directors (the Board) of the Investment Industry Regulatory Organization of Canada (IIROC) approved the publication for comment of proposed amendments (Proposed Amendments) to the Dealer Member Rules (the Rules) that would provide for a six-year limitation period on IIROC enforcement proceedings.

The primary objective of the Proposed Amendments is to provide clarity within the Rules relating to the time frame within which IIROC may pursue enforcement proceedings.

Separately from this proposal, IIROC is in the process of completely rewriting Dealer Member Rules 19 and 20 relating to investigations and enforcement. Those rewrites will include the changes made in this proposal.

Issues and specific Proposed Amendments

Current Rules

Currently, IIROC Dealer Member Rule 20.7 allows IIROC to initiate enforcement proceedings within five years of the date a Dealer Member or Approved Person ceases to be an IIROC member. It also provides that IIROC may begin enforcement proceedings against a Former Approved Person who re-applies for registration with IIROC. There is currently no limitation on proceedings relating to current Dealer Members or Approved Persons. Dealer Member Rule 20.7 also allows for the extension of IIROC investigations under Rule 19 for a period of five years from the date a Former Dealer Member or Former Approved Person ceased to be registered.

Proposed Rules

The six-year limitation period in the Proposed Amendments would apply uniformly to Dealer Members and Approved Persons, as well as Former Dealer Members and Former Approved Persons.

To create a clear limitation period applicable to all IIROC enforcement proceedings, IIROC will repeal and replace Dealer Member Rule 20.7(1) and 20.7(2) with language under Part 10 of Rule 20 implementing a six-year limitation period. Furthermore, IIROC will move the extension of investigative powers over former members to Rule 19 – Examinations and Investigations, and simplify it to provide for a six-year period for former members that is consistent with the limitation period applicable to IIROC enforcement proceedings. Definitions of “Former Dealer Member” and “Former Approved Person” will also be added to Dealer Member Rule 1.1.

The language of the Proposed Amendment does not require that proceedings be completed within six years. Rather, it requires that IIROC commence proceedings within six years. Therefore, a proceeding, or a review or appeal from a proceeding, can extend beyond the six-year time frame, provided that it was commenced before the expiry of the six year period. This requirement will ensure that current and former Dealer Members and Approved Persons cannot attempt to avoid IIROC oversight by simply delaying proceedings for more than six years.

The Proposed Amendments and a blackline of the Dealer Member Rules affected by these amendments are set out in Attachments A and B.

Issues and Alternatives Considered

1) *Principles of natural justice*

Dealer Member Rule 20.7 allows an enforcement proceeding to be commenced against a current IIROC registrant for an indefinite period after the event giving rise to the enforcement proceeding. Consistent with the rules of natural justice, IIROC believes that it is appropriate that IIROC Rules impose a limitation period on proceedings against both current and former Dealer Members and Approved Persons to ensure that IIROC's enforcement process is fair and transparent. In addition, it is appropriate to do so in order to achieve consistency under the IIROC rules with regard to the treatment of current versus former IIROC registrants.

2) *Evidentiary issues and recordkeeping rules*

Limitations on enforcement proceedings must take into consideration the availability of evidence that can be used in those proceedings. Dealer Member Rule 3100 requires that Dealer Members retain records of internal investigations, civil claims, and settlements for two years after their resolution. Under Dealer Member Rule 29.7(5), Dealer Members must keep correspondence for five years, and sales literature and advertisements for two years. Rule 1300.1(n) requires Dealer Members to retain account opening documentation for five years after the account is closed. Rule 2500(I)(F)(1) requires that Dealer Members keep records of retail account supervisory reviews for seven years. Similarly, IIROC's complaint handling rules stipulate that Dealer Members retain documentation relating to complaints for seven years.

Since IIROC Rules do not require Dealer Members to keep records indefinitely, and records are generally needed to advance investigations and enforcement proceedings, it is not practical to impose a limitation period on enforcement actions that materially exceeds the recordkeeping requirements for documents that would be used in such a proceeding.

3) *Provincial legislation*

Statutes of limitation and securities legislation in each province provide for various limitation periods. Although there is variation among these periods and often uncertainty as to which limitation period applies, most limitation periods are six years. The proposed six year limitation on IIROC enforcement proceedings is similar to the limitations contained in most legislation.

4) *Re-applications for approval*

Under current Rule 20.7, IIROC reserves the right to bring an enforcement action against any Former Approved Person who re-applies for approval. This provision is not consistent with the proposed limitation period. Furthermore, it is possible to deny a Former Approved Person's application for reinstatement based on their failure to satisfy the fit and proper test, regardless of whether or not the person has been subject to a hearing relating to previous conduct. In light of this fact, this provision is of limited use, and it is removed in the Proposed Amendments.

5) *Event occurrence versus discoverability*

Calculation of a limitation period can be based on when an event occurs (occurrence), or when the aggrieved party should have reasonably learned of the occurrence (discoverability). The Proposed Amendments impose a limitation period based on the occurrence of an event. In other words, under the proposal, the clock would start ticking when the last event giving rise to the proceeding occurred. For non-compliance that is continuing, the time starts on the last occurrence of the conduct in question.

6) *Investigations*

IIROC intends to amend Dealer Member Rule 19 relating to IIROC's power to investigate Former Dealer Members and Former Approved Persons along with Rule 20. The current rule allows IIROC to investigate Former Dealer Members and Former Approved Persons for up to five years after they cease to be IIROC members. The proposed amendments will extend this to six years in order to be consistent with the proposed limitation period.

7) *Alternatives considered*

IIROC considered including a provision in the proposed amendments that would allow an extension of the limitation period in a particular instance if agreed to by both IIROC and the Dealer Member or Approved Person. Such a provision is not included in the proposed amendments. A six-year limitation period is both long enough to allow sufficient time for enforcement proceedings to be properly initiated, and is also similar to most legislated limitation periods.

Proposed Rule classification

Statements have been made elsewhere as to the nature and effects of the proposed rule, as well as analysis of the proposed rule. The purposes of the proposed rule are to:

- establish and maintain rules that are necessary or appropriate to govern and regulate all aspects of IIROC's functions and responsibilities as a self-regulatory entity,
- ensure compliance with securities laws, and
- provide for appropriate discipline of those whose conduct IIROC regulates.

The Board therefore has determined that the Proposed Amendments are not contrary to the public interest.

Due to the extent and substantive nature of the Proposed Amendments, they have been classified as Public Comment Rule proposals.

Effects of the proposed Rule on market structure, Dealer Members, non-Dealer Members, competition and costs of compliance

The effect of the Proposed Amendments is to limit the time within which IIROC enforcement proceedings can be brought against Dealer Members and Approved Persons. There will be no impact on market structure. Dealer Members will benefit from the certainty of the Rules relating to the time limits within which IIROC may commence an enforcement proceeding. There will be no effect on non-Dealer Members or competition. Compliance costs may decrease slightly since enforcement proceedings cannot be commenced beyond the time frame specified.

The Proposed Amendments do not impose any burden or constraint on competition or innovation that is not necessary in furtherance of IIROC's regulatory objectives. They do not impose costs or restrictions on the activities of market participants (including Dealer Members and non-Dealer Members) that are disproportionate to the goals of the regulatory objectives sought to be realized.

Technological implications and implementation plan

The Proposed Amendments will have no impact on Dealer Members' systems. As such, it is intended that the Proposed Amendments will be implemented immediately after approval is received from IIROC's recognizing regulators.

Request for public comment

Comments are sought on the Proposed Amendments. In particular, comments are sought on the concept of allowing for the extension of the limitation period in a specific instance if both IIROC and the Dealer Member or Approved Person agree to the extension. Comments should be made in writing. Two copies of each comment letter should be delivered by January 25, 2011 (60 days from the publication date of this notice). One copy should be addressed to the attention of:

Brendan Hart
Policy Counsel, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
Suite 1600, 121 King Street West
Toronto, Ontario, M5H 3T9

The second copy should be addressed to the attention of:

Manager of Market Regulation
Ontario Securities Commission
19th Floor, Box 55
20 Queen Street West
Toronto, Ontario, M5H 3S8
marketregulation@osc.gov.on.ca

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the IIROC website (www.iiroc.ca under the heading "IIROC Rulebook - Dealer Member Rules - Policy Proposals and Comment Letters Received").

Questions may be referred to:

Brendan Hart
Policy Counsel, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
416-865-3047
bhart@iiroc.ca

Attachments

- Attachment A – Proposed Amendments to Dealer Member Rules
- Attachment B – Blackline of Proposed Amendments

Attachment A

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AMENDMENTS TO DEALER MEMBER RULES ON LIMITATION OF ENFORCEMENT PROCEEDINGS

PROPOSED AMENDMENTS

1. Dealer Member Rule 1.1 is amended by adding new definitions as follows:
“Former Approved Person” means a Person that was, but is not currently, an Approved Person of the Corporation;
“Former Dealer Member” means a Person that was, but is not currently, a Dealer Member of the Corporation;”
2. Dealer Member Rule 19 is repealed and replaced as follows:

“RULE 19

EXAMINATIONS AND INVESTIGATIONS

- 19.1. The Corporation shall make such examinations of and investigations into the conduct, business or affairs of any Dealer Member, Former Dealer Member, Approved Person, Former Approved Person, employee of a Dealer Member or any other person approved or seeking approval or under the jurisdiction of the Corporation pursuant to the Rules as he or she considers necessary or desirable in connection with any matter relating to compliance by such person with (i) the Rules or Rulings of the Corporation, (ii) any legislation applicable to such person concerning trading in securities or commodity contracts, including any rulings, policies, regulations or directives of any securities commission, or (iii) the by-laws, rules, regulations and policies of any self-regulatory organization. The Dealer Member shall require all employees to comply with Rule 19.
- 19.2. Any examination or investigation made pursuant to Rule 19.1 may be instituted upon the basis of (i) a complaint received by or directed to the Corporation, (ii) the direction of the Board of Directors, (iii) the request of a securities commission having jurisdiction, or (iv) any information received or obtained relating to the conduct, business or affairs of the Dealer Member, Former Dealer Member or person involved.

Complaints

- 19.3. A person making a complaint to the Corporation against a Dealer Member, Former Dealer Member, Approved Person, Former Approved Person or a person seeking approval pursuant to the Rules may be asked to put the complaint in writing.
- 19.4. Repealed.

Investigatory Powers

- 19.5. For the purpose of any examination or investigation pursuant to this Rule 19, a Dealer Member, Former Dealer Member, Approved Person, Former Approved Person, employee of a Dealer Member or any other person approved or seeking approval or under the jurisdiction of the Corporation pursuant to the Rules, may be required by the Corporation:
 - (a) To submit a report in writing with regard to any matter involved in any such investigation;
 - (b) To produce for inspection and provide copies of any books, records, accounts and documents, that are in the possession or control of the Dealer Member, Former Dealer Member or the person, that the Corporation determines may be relevant to a matter under examination or investigation and such information, books, records and documents shall be provided in such manner and form, including electronically, as may be required by the Corporation; and
 - (c) To attend and give information respecting any such matters;

And the person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any person subject to an investigation conducted pursuant to this Rule 19 shall be advised in writing of the matters under investigation and may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the

investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.

- 19.6. For the purpose of any examination or investigation pursuant to this Rule 19, the Corporation shall be entitled to free access to, and to make and retain copies of, all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person concerned, and no such person shall withhold, destroy or conceal any information, documents or thing reasonably required for the purpose of such examination or investigation.
- 19.7. The Corporation may, in accordance with any information received:
- (a) Refer a matter to the applicable District Council for consideration in accordance with the provisions of Rule 20; or
 - (b) Take such other action under the Rules or Rulings which he or she considers appropriate in the circumstances.
- 19.8. A Dealer Member, Former Dealer Member, Approved Person, or Former Approved Person, that is requested by The TSX Venture Exchange, The Montreal Exchange or The Toronto Stock Exchange to provide information in connection with an investigation of trading of a security listed on that exchange shall submit the requested information, books, records, reports, filings and papers to the exchange making the request in such manner and form, including electronically, as may reasonably be prescribed by such exchange.

Former Dealer Members and Former Approved Persons

19.9 Former Dealer Members and Former Approved Persons remain subject to examination and investigation by the Corporation under this Rule 19 for six years from the date they ceased to be a Dealer Member or Approved Person.

3. Dealer Member Rule 20.7, and related headings, are repealed and replaced as follows:

“PART 4 – AMOUNTS OWING TO THE CORPORATION

20.7 Former Dealer Members and Approved Persons

- (1) 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.”

4. Dealer Member Rules 20.30 through 20.36, and related headings, are repealed and replaced as follows:

“PART 10 – ENFORCEMENT PROCEEDINGS

INITIATION OF ENFORCEMENT PROCEEDINGS

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.
- (3) The Corporation may commence a proceeding under this Rule 20 against a Dealer Member, Former Dealer Member, Approved Person, or Former Approved Person up to 6 years after the date of the occurrence of the last event on which the proceeding is based.

POWERS OF COMPULSION

20.31 Dealer Members, Former Dealer Members, Approved Persons, Former Approved Persons and Corporation Staff

- (1) Every Dealer Member, Former Dealer Member, Approved Person, Former 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, Former Dealer Member, Approved Person or Former 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 Dealer 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 and Former 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 or Former 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 or Former 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 and Former 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 or Former 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 a third party, including another Dealer Member or another Former Dealer Member.
- (2) Pursuant to subsection (1), a Hearing Panel may impose any one or more of the following penalties upon the Dealer Member or Former 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 or Former 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, Former Approved Person, Dealer Member, or Former 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, Former Approved Person, Dealer Member, or Former Dealer Member, upon acceptance by a Hearing Panel. An Approved Person, Former Approved Person, Dealer Member or Former 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.”

Attachment B

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AMENDMENTS TO DEALER MEMBER RULES ON LIMITATION OF ENFORCEMENT PROCEEDINGS

BLACK-LINE OF PROPOSED AMENDMENTS TO

RULE 19, RULE 20.7, AND RULES 20.30 THROUGH 20.36

RULE 19

EXAMINATIONS AND INVESTIGATIONS

- 19.1. The Corporation shall make such examinations of and investigations into the conduct, business or affairs of any Dealer Member, ~~registered representative, investment representative, sales manager, branch manager, assistant or co-branch manager, partner, director or officer, investor or~~ Former Dealer Member, Approved Person, Former Approved Person, employee of a Dealer Member or any other person approved or seeking approval or under the jurisdiction of the Corporation pursuant to the Rules as he or she considers necessary or desirable in connection with any matter relating to compliance by such person with (i) the Rules or Rulings of the Corporation, (ii) any legislation applicable to such person concerning trading in securities or commodity contracts, including any rulings, policies, regulations or directives of any securities commission, or (iii) the by-laws, rules, regulations and policies of any self-regulatory organization. The Dealer Member shall require all employees to comply with Rule 19.
- 19.2. Any examination or investigation made pursuant to Rule 19.1 may be instituted upon the basis of (i) a complaint received by or directed to the Corporation, (ii) the direction of the Board of Directors, (iii) the request of a securities commission having jurisdiction, or (iv) any information received or obtained relating to the conduct, business or affairs of the Dealer Member, Former Dealer Member or person involved.

Complaints

- 19.3. ~~A person making a~~ Any complaint made to the Corporation against a Dealer Member, Former Dealer Member, Approved Person, Former Approved Person or a person approved or seeking approval pursuant to the Rules may be required asked to be put in the complaint in writing and signed by the person making the complaint.
- 19.4. Repealed.

Investigatory Powers

- 19.5. For the purpose of any examination or investigation pursuant to this Rule 19, a Dealer Member, ~~registered representative, investment representative, sales manager, branch manager, assistant or co-branch manager, partner, director, officer, investor or~~ Former Dealer Member, Approved Person, Former Approved Person, employee of a Dealer Member or any other person approved or seeking approval or under the jurisdiction of the Corporation pursuant to the Rules, may be required by the Corporation:
- (a) To submit a report in writing with regard to any matter involved in any such investigation;
 - (b) To produce for inspection and provide copies of any books, records, accounts and documents, that are in the possession or control of the Dealer Member, Former Dealer Member or the person, that the Corporation determines may be relevant to a matter under examination or investigation and such information, books, records and documents shall be provided in such manner and form, including electronically, as may be required by the Corporation; and
 - (c) To attend and give information respecting any such matters;

And the person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any person subject to an investigation conducted pursuant to this Rule 19 shall be advised in writing of the matters under investigation and may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.

- 19.6. For the purpose of any examination or investigation pursuant to this Rule 19, the Corporation shall be entitled to free access to, and to make and retain copies of, all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person concerned, and no such person shall withhold, destroy or conceal any information, documents or thing reasonably required for the purpose of such examination or investigation.
- 19.7. The Corporation may, in accordance with any information received:
- (a) Refer a matter to the applicable District Council for consideration in accordance with the provisions of Rule 20; or
 - (b) Take such other action under the Rules or Rulings which he or she considers appropriate in the circumstances.
- 19.8. ~~A Dealer Member or any person approved by, or under the jurisdiction of, the Corporation, Former Dealer Member, Approved Person, or Former Approved Person,~~ that is requested by The TSX Venture Exchange, The Montreal Exchange or The Toronto Stock Exchange to provide information in connection with an investigation of trading of a security listed on that exchange shall submit the requested information, books, records, reports, filings and papers to the exchange making the request in such manner and form, including electronically, as may reasonably be prescribed by such exchange.

Former Dealer Members and Former Approved Persons

- 19.9 Former Dealer Members and Former Approved Persons remain subject to examination and investigation by the Corporation under this Rule 19 for six years from the date they ceased to be a Dealer Member or Approved Person.

RULE 20

CORPORATION HEARING PROCESSES

PART 4 - CONTINUING JURISDICTION AMOUNTS OWING TO THE CORPORATION

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 10 - ENFORCEMENT HEARINGS PROCEEDINGS

INITIATION OF ENFORCEMENT HEARINGS PROCEEDINGS

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.
- (3) The Corporation may commence a proceeding under this Rule 20 against a Dealer Member, Former Dealer Member, Approved Person, or Former Approved Person up to 6 years after the date of the occurrence of the last event on which the proceeding is based.

POWERS OF COMPULSION

20.31 Dealer Members, Former Dealer Members, Approved Persons, Former Approved Persons and Corporation Staff

- (1) Every Dealer Member, Former Dealer Member, Approved Person, Former 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, Former Dealer Member, Approved Person or Former 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 Dealer 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 and Former 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: or Former 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 or Former 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 and Former 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 or Former 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 a third party, including another Dealer Member or to the public another Former Dealer Member.
- (2) Pursuant to subsection (1), a Hearing Panel may impose any one or more of the following penalties upon the Dealer Member or Former 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 or Former 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~~ Former Approved Person, Dealer Member, or Former 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~~ Former Approved Person, Dealer Member, or Former Dealer Member, upon acceptance by a Hearing Panel. An Approved Person ~~or~~ Former Approved Person, Dealer Member, or Former 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.