

FUNDSERV INC. (Fundserv)

RULES FOR SERVICE PROVIDERS

ACCESS STANDARDS

PROCESS FOR GRANTING, LIMITING, OR DENYING ACCESS TO FUNDSERV NETWORK, FUNDSERV STANDARDS, AND FUNDSERV'S CLEARING AGENCY SERVICES

SECTION 1 Definitions and Terms of Review

- 1.1 For the purposes of these Rules, the following terms shall have the following meanings:
- (a) **Clearing Agency Services** means the net settlement services offered by Fundserv to its Members, consisting of centralized payment exchange facilities allowing its Members to settle orders, on a net basis, through payment exchange currently handled by a Canadian chartered bank using the Large Value Transfer Systems operated by Payments Canada.
 - (b) **Code Registry Application** means an application, inclusive of all agreements and documents, required to be completed by a prospective Distributor Member, a Manufacturer Member, or a Service Provider, as the case may be, which allows Fundserv to establish a code for the particular applicant.
 - (c) **Customer Relations Staff** means the employees or agents of Fundserv who review Service Provider Applications.
 - (d) **Distributor Member** means a person or company which meets the criteria for a distributor set out in the Code Registry Application for a distributor, as amended from time to time, and which has been accepted as a Distributor Member by Fundserv. Distributor Member includes Intermediaries as that term is defined in the Member Contract.
 - (e) **Fundserv Standards** means the components of data standards and technology standards, from time to time, developed and owned by Fundserv and integral to the operation of the Network.
 - (f) **Manufacturer Member** means a person or company which meets the criteria for a manufacturer set out in the Code Registry Application for a manufacturer, as amended from time to time, and which has been accepted as a Manufacturer Member by Fundserv.

- (g) **Member** means a person or company which has entered into a Member Contract with Fundserv, as either a Manufacturer Member or a Distributor Member, and therefore has agreed to be responsible for the actions of any Service Provider authorized to give instructions to Fundserv on its behalf.
- (h) **Member Contract** means the standard form contract as the same may be amended from time to time, that all Members must enter into with Fundserv before being authorized as a Member.
- (i) **Network** means the electronic network maintained by Fundserv.
- (j) **Service Provider** means a person or company which has been authorized by one or more Members to assist the Member in providing or administering its products or services and, as such, has been authorized by Fundserv for access to the Network, the Fundserv Standards, and the Clearing Agency Services.
- (k) **Service Provider Applicant** means a person or company which wishes to become a Service Provider.
- (l) **Service Provider Application** means an application by a Service Provider Applicant to become a Service Provider.
- (m) **Service Provider Application Documents** includes the documents set out in section 2 hereof.
- (n) **Service Provider Contract** means the standard form contract as the same may be amended from time to time, that all Service Providers must enter into with Fundserv before being authorized as a Service Provider.
- (o) **Sponsor Form** means the standard form contract as the same may be amended from time to time, that all Service Providers must complete, to provide certain information to Fundserv.
- (p) **Third Party Authorization Form** means the standard form document as the same may be amended from time to time, that must be completed by one or more Members, as applicable, to designate a specific Service Provider as a Service Provider for that Member or Members.

- 1.2 All references to timelines for review by Fundserv in these Rules are target timelines. If Fundserv is unable to meet the timelines set out in these Rules, it will keep the Service Provider Applicant informed of its progress.

SECTION 2 Service Provider Application

- 2.1 A Service Provider Applicant may apply to become a Service Provider by submitting a completed Service Provider Application to Fundserv.

- 2.2 The Service Provider Application shall consist of the following Service Provider Application Documents, each of which must be completed and signed by the Service Provider (and one or more Members, as the case may be) and each of which is available upon request from Customer Relations Staff:
- (a) Code Registry Application, complete with contact information;
 - (b) Service Provider Contract;
 - (c) Sponsor Form;
 - (d) One or more Third Party Authorization Forms, executed by a Member in favour of the Service Provider Applicant; and
 - (e) Fundserv's IT Security Profile Questionnaire.
- 2.3 The Service Provider Application Documents are available at any time upon request from Customer Relations Staff. Customer Relations Staff are available to assist a Service Provider Applicant complete the Service Provider Application.
- 2.4 Fundserv may request the Service Provider Applicant to supply the following information:
- (a) Confirmation that the Service Provider Applicant will be providing services to Distributor Members and/or Manufacturer Members;
 - (b) A detailed description of the services the Service Provider Applicant will provide to Members;
 - (c) Whether the Network, the Fundserv Standards, and the Clearing Agency Services will be used in the normal course to facilitate trades in securities of conventional investment funds or whether any new business is being pursued by the Service Provider Applicant and its clients;
 - (d) A detailed description of the products that will be settled through the Network and the Clearing Agency Services by the Service Provider Applicant's clients;
 - (e) A legal opinion from counsel to the Service Provider Applicant, or such other information as the Customer Relations Staff considers necessary to determine that the services offered by the Service Provider and the proposed use of the Network, the Fundserv Standards, and the Clearing Agency Services by the Service Provider Applicant may be lawfully offered and used, including under applicable securities regulations of the jurisdictions in Canada where its services will be offered;

- (f) Any further information to allow Fundserv to assess whether the Service Provider Applicant has the appropriate IT security protocols and capabilities in order to access the Network, the Fundserv Standards, and the Clearing Agency Services.

2.5 Fundserv will deem a Service Provider Application to be complete, and will inform the Service Provider Applicant when the Service Provider Application is deemed to be complete, when Customer Relations Staff consider they are reasonably able to assess that

- (a) the Service Provider Applicant will comply with the terms and representations set out in the Service Provider Contract, including that the Service Provider Applicant has executed or will execute a contract with one or more Members pursuant to which each such Member has authorized or will authorize the Service Provider Applicant to access the Network, the Fundserv Standards, and the Clearing Agency Services on the Member's behalf and the Member has assumed or will assume all liability for the Service Provider Applicant's actions in dealing with Fundserv;
- (b) the Service Provider Applicant has provided Fundserv with the names and addresses of its clients that will be accessing the Network, the Standards, and the Clearing Agency Services as Members;
- (c) if the Service Provider Applicant does not have clients at the time of making the Service Provider Application, the Service Provider Applicant has provided Fundserv with an explanation of its business plan and confirmed that the Service Provider Applicant will not have access to the Network, the Fundserv Standards, and the Clearing Agency Services until one or more of its clients, who are Members, signs a Third Party Authorization Form in favour of the Service Provider Applicant;
- (d) the Service Provider Applicant has acknowledged that each future client must sign the Third Party Authorization Form and be a Member before the Service Provider Applicant can access the Network, the Fundserv Standards, and the Clearing Agency Services on behalf of that client; and
- (e) the Service Provider Applicant has provided clear and reasonably detailed descriptions as to how it and its clients will be accessing the Network, the Fundserv Standards, and the Clearing Agency Services, and the extent to which the Service Provider Applicant and its clients will be accessing the Network, the Fundserv Standards, and the Clearing Agency Services in respect of securities of conventional investment funds, either through the services provided by the Service Provider Applicant or other Service Providers already approved by Fundserv as Service Providers.

- 2.6 The Service Provider Applicant must provide other supplementary information as necessary so that the Customer Relations Staff may reasonably assess the items listed in section 2.5.
- 2.7 Fundserv will conduct or cause the Service Provider Applicant to conduct the following searches and produce the search results of:
- (a) a corporate search of the Service Provider Applicant to ensure it is in good standing and to determine its officers and directors;
 - (b) an insolvency search to ensure that the Service Provider Applicant has not entered into insolvency proceedings;
 - (c) if applicable, a search of the records of the provincial securities commissions to determine if the Service Provider Applicant is registered in any capacity; and
 - (d) confirmation that each client of the Service Provider Applicant that wishes to access the Network, the Fundserv Standards and/or the Clearing Agency Services is a Member and that the Member is in good standing with Fundserv.
- 2.8 Fundserv may request identification information from the directors, officers, and employees of the Service Provider Applicant that would be consistent with the requirements of the Canadian anti-money laundering laws that apply to Canadian securities dealers.
- 2.9 Customer Relations Staff will provide the information provided by the Service Provider Applicant and as a result of the applicable searches as provided for in this section 2 to a Fundserv officer who is designated by Fundserv as the initial decision maker for Service Provider Applications (the **Chief Relationship Officer**) in summary form (the **Summary**), along with the Service Provider Application.

SECTION 3 – The Chief Relationship Officer’s Recommendation

- 3.1 Based on the Summary and the Service Provider Application received from the Customer Relations Staff, the Chief Relationship Officer (the **CRO**) will obtain legal advice, where applicable, on whether the CRO and/or Fundserv can make a decision on the Service Provider Application or whether the CRO or Fundserv has a conflict of interest. Where there is no conflict of interest, the CRO will proceed to the duties set out in section 3.2. Where there is a conflict of interest, the following sections will be modified as necessary by section 9.

- 3.2 Based on the Summary and the Service Provider Application, including any supplementary information requested by or provided to the Customer Relations Staff, the CRO will assess
- (a) the end-to-end order flow by the Service Provider Applicant's clients and how the Service Provider Applicant will be engaged in this process, including details on the proposed use of the Network, the Fundserv Standards, and the Clearing Agency Services;
 - (b) whether the Service Provider Applicant has the technological capability to comply with the requirements of the Network, the Fundserv Standards, and the Clearing Agency Services;
 - (c) whether access to the Network, the Fundserv Standards, and the Clearing Agency Services as proposed by the Service Provider Applicant will require any changes to Fundserv's rules or Fundserv Standards and/or will constitute a new business for Fundserv;
 - (d) whether access by the Service Provider Applicant to the Network, the Fundserv Standards, and the Clearing Agency Services will impose fees or other material costs on Fundserv or on other Members that are unfairly or inequitably allocated amongst the Members, including the clients of the Service Provider Applicant;
 - (e) whether Fundserv must implement new fees and charges in respect of the Service Provider Applicant's access to Clearing Agency Services;
 - (f) whether permitting or denying access by the Service Provider Applicant to the Network, the Fundserv Standards, or the Clearing Agency Services will impose any material burden on competition that is not reasonably necessary or appropriate; and
 - (g) whether permitting the access applied for by the Service Provider Applicant will impose any material risk to the Clearing Agency Services or the Network or other Members of Fundserv using the Clearing Agency Services or the Network.
- 3.3 Based on the assessment at section 3.2, the CRO will recommend to the Chief Operating Officer (**COO**) that the Service Provider Applicant be granted access (a **Positive Recommendation**) if the CRO is able to conclude that there are no material risks or issues, including conflicts of interest, arising from the Service Provider Application and the Service Provider Applicant's proposed use of the Network, the Fundserv Standards, and the Clearing Agency Services, and the Service Provider Applicant

- (a) has or will have clients who are Members of Fundserv who are Distributor Members or Manufacturer Members;
 - (b) has the necessary IT security protocols in place; and
 - (c) has or will have clients who will use the Network, the Fundserv Standards, and the Clearing Agency Services in respect of conventional investment funds or other investment products in the normal course, either through the Service Provider Applicant or another Service Provider.
- 3.4 If the CRO is unable to make a Positive Recommendation because the Service Provider Applicant and the Service Provider Application do not fulfill the criteria set out in sections 3.2 and 3.3, the CRO will provide a written assessment of the Service Provider Application to the COO outlining the CRO's concerns with the Service Provider Application and areas that require further review, if any (the **CRO's Review**).

SECTION 4 – The COO's Assessment

- 4.1 The COO will review the Positive Recommendation or the CRO's Review, as may be the case.
- 4.2 If the COO agrees with the Positive Recommendation, then the CRO will, within 10 business days of receiving the Positive Recommendation, communicate the decision to the Service Provider Applicant and the Service Provider Applicant will move to the testing phase on the Network and the Clearing Agency Services as set out in section 8.
- 4.3 If the COO disagrees with the Positive Recommendation, the COO will prepare an assessment articulating the COO's concerns with the Service Provider Application (the **COO Assessment**).
- 4.4 The COO will deliver a copy of the COO Assessment to the Service Provider Applicant and request further submissions from the Service Provider Applicant as set out in section 5 within 20 business days of receiving the Positive Recommendation.
- 4.5 If the COO disagrees with the CRO's Review and in the COO's view the Service Provider Applicant meets the criteria set out in sections 3.2 and 3.3, then the COO will, within 10 business days of receiving the CRO's Review, grant access to the Service Provider Applicant and the Service Provider Applicant will move to the testing phase on the Network and the Clearing Agency Services as set out in section 8.
- 4.6 If the COO agrees with the CRO's Review that there are areas that require further review, then the COO will send the CRO's Review to the Service Provider

Applicant and request further submissions from the Service Provider Applicant as set out in section 5 within 20 business days of receiving the CRO's Review.

SECTION 5 – Service Provider Applicant's Response

- 5.1 The Service Provider Applicant will have the opportunity to make written submissions in response to the COO Assessment or the CRO's Review (the **Service Provider Applicant's Response**).
- 5.2 The Service Provider Applicant will deliver the Service Provider Applicant's Response to the COO within 30 days of receiving the COO Assessment or the CRO's Review.
- 5.3 If the Service Provider Applicant does not provide a Service Provider Applicant's Response within the time period set out in section 5.2, Fundserv will consider the Service Provider Application to have been abandoned and will not continue the review of the Service Provider Application.

SECTION 6 – COO's Decision

- 6.1 The COO, in consultation with the CRO, will consider the Service Provider Applicant's Response and shall, within 20 business days of receiving the Service Provider Applicant's Response, decide whether to
 - (a) approve the Service Provider Application (a **Positive Decision**);
 - (b) approve the Service Provider Application with conditions; or
 - (c) deny the Service Provider Application.
- 6.2 If the COO approves the Service Provider Application, the COO will communicate the decision to the Service Provider Applicant and the Service Provider Applicant will move to the testing phase on the Network and the Clearing Agency Services as set out in section 8.
- 6.3 If the COO approves the Service Provider Application with conditions, including the need to negotiate a different fee structure for the Service Provider Applicant, the COO will communicate that decision, in writing, to the Service Provider Applicant, along with the conditions and how those conditions would be met.
- 6.4 If the COO denies the Service Provider Application, the COO will communicate their decision, with reasons, in writing to the Service Provider Applicant.

SECTION 7 – Service Provider Applicant’s Appeal Rights

- 7.1 The Service Provider Applicant has the right to appeal the COO’s decision to approve the Service Provider Application with conditions or the COO’s decision to deny the Service Provider Application (the **Decision**).
- 7.2 The appeal panel will be constituted by the Chief Executive Officer and will consist of the Chief Executive Officer and two other members of the senior executive of Fundserv chosen by the Chief Executive Officer (the **Appeal Panel**).
- 7.3 The Service Provider Applicant will serve a notice of appeal within thirty days of receiving the Decision from the COO.
- 7.4 The notice of appeal will contain a concise summary of the reasons why the Service Provider Applicant disagrees with the Decision and the reason(s) why the Service Provider Application should be approved.
- 7.5 Thirty days after filing its notice of appeal, the Service Provider Applicant will deliver to the Appeal Panel its written submissions on the appeal (the **Service Provider Applicant’s Submissions**).
- 7.6 If the Service Provider Applicant does not serve a notice of appeal or provide the Service Provider Applicant’s Submissions within the applicable time periods, then Fundserv will consider that the Decision is final with respect to the Service Provider Applicant and will communicate that to the Service Provider Applicant.
- 7.7 The COO, in consultation with the CRO, may make responding submissions to the Appeal Panel within 30 days of receiving the Service Provider Applicant’s Submissions.
- 7.8 The COO will provide to the Appeal Panel the record that was before the COO when the COO made the Decision.
- 7.9 The Appeal Panel may elect to hear submissions from the Service Provider Applicant, the CRO, and/or the COO, as the case may be, orally or request further submissions in writing or may elect to make its decision based on the written record before it.
- 7.10 The Appeal Panel will render its decision within a reasonable time.
- 7.11 The Appeal Panel will provide written reasons for its decision.
- 7.12 Where the Appeal Panel renders a Positive Decision, the Service Provider Applicant will move to the testing phase on the Network and the Clearing Agency Services as set out in section 8.

- 7.13 The decision of the Appeal Panel, whether a Positive Decision, a conditional decision, or one that upholds the Decision, shall be final and binding, subject to any rights to appeal that decision to the Ontario Securities Commission under applicable laws.

SECTION 8 – Testing

- 8.1 Where a Positive Decision is rendered, the Service Provider Applicant will move to test its systems with the Network and/or the Clearing Agency Services and will be provided with test scripts by the Customer Relations Staff.
- 8.2 The Service Provider Applicant will provide completed test script(s) to the Customer Relations Staff, which will be audited for appropriateness by the CRO.
- 8.3 Fundserv will only grant access to the Service Provider Applicant to the Network, the Fundserv Standards, and the Clearing Agency Services when the CRO is satisfied that the Service Provider Applicant has the appropriate systems capability and can comply with all the requirements for access and use of the Network, the Fundserv Standards, and the Clearing Agency Services.

SECTION 9 – Conflicts of Interest

- 9.1 A conflict of interest exists where a decision-maker is unable to act as an impartial decision-maker with respect to the Service Provider Application as a result of a pecuniary interest or other interest that the decision-maker has that affects the decision-maker's ability to be impartial.
- 9.2 If the CRO has a conflict of interest, the CRO will recuse himself or herself, and the COO of Fundserv will make the decisions that are within the duties of the CRO herein, in place of the CRO.
- 9.3 If the COO of Fundserv has a conflict of interest, the COO will recuse himself or herself, and a different member of senior management of Fundserv will make the decisions in place of the COO. In these circumstances, such different member of senior management of Fundserv shall be ineligible to sit as a member of an Appeal Panel in regard to the particular Service Provider Application.
- 9.4 If a member of the Appeal Panel has a conflict of interest, he or she will recuse himself or herself, and the remaining members of the Appeal Panel will appoint another member of senior management or, if another member of senior management is unavailable, a member of the Board of Directors of Fundserv will be appointed to serve on the Appeal Panel.
- 9.5 If Fundserv itself has a conflict of interest, Fundserv will notify the Service Provider Applicant of the conflict and, unless the Service Provider Applicant writes to the COO acknowledging the conflict of interest, but requesting Fundserv

to follow its usual procedures in respect of the Service Provider Application, in which case the usual process set out in these Rules will apply and be followed, the process for considering the Service Provider Application will be as follows:

- (a) The Customer Relations Staff and the CRO will conduct their assessments as set out in sections 2 and 3.
- (b) The COO will review the assessment prepared by the CRO according to section 4 and the COO will add any relevant information or questions to that evaluation (the **Fundserv Evaluation**).
- (c) The Fundserv Evaluation will be provided to an independent panel of experts who will be the decision-makers on the Service Provider Application (the **Expert Panel**).
- (d) The Expert Panel will be chosen by the Chief Executive Officer of Fundserv in consultation, as considered appropriate, with other senior management of Fundserv, from a secretariat of eligible decision-makers (the **Secretariat**) maintained by Fundserv.
- (e) The members of the Secretariat will be chosen by Fundserv. The Secretariat shall have members, all of whom
 - (1) have demonstrated expertise in the financial services industry in Canada and specifically with respect to investment funds and their operation and/or regulation; and
 - (2) are independent of Fundserv in that they have no pecuniary interest in and are not related to Fundserv, have no current affiliation with Fundserv, and are not employed by or agents of any Members of Fundserv.

Certain of the members of the Secretariat shall be members in good standing of a provincial law society and have expertise in adjudication, in addition to the above two characteristics.

- (f) When a Service Provider Application is ready to be adjudicated on by the Expert Panel, a panel of three experts shall be constituted by Fundserv. One of the three members shall be a lawyer. Each of the members of the Expert Panel must be independent of the Service Provider Applicant, and have no affiliation, including employment or contract, with the Service Provider Applicant or any client (prospective or actual) of the Service Provider Applicant.
- (g) Fundserv will determine the fees for each of the members of any specific Expert Panel. Fundserv will be responsible to pay the fees of the Expert

Panel, except where the Expert Panel determines, in its sole discretion, that the Service Provider Application was brought in bad faith, or was vexatious or frivolous, and determines accordingly to award, in whole or in part, the fees to be paid by the Service Provider Applicant, as the Expert Panel determines appropriate.

- (h) The Expert Panel may determine the procedure to be followed, subject to the following:
 - (1) Fundserv will deliver to the Expert Panel and to the Service Provider Applicant the Fundserv Evaluation and all of the original Service Provider Application documents and submissions;
 - (2) Fundserv will deliver to the Service Provider Applicant the names of the members of the Expert Panel, as well as the compensation to be paid to the members of the Expert Panel, and will describe the process to be followed by the Expert Panel (as set out in these Rules);
 - (3) The Service Provider Applicant may respond, in writing, to any issues raised in the Fundserv Evaluation and may provide further submissions as to why its Service Provider Application should be approved (the **Service Provider Applicant's Submissions**).
 - (4) The Service Provider Applicant will deliver the Service Provider Applicant's Submissions to the Expert Panel and to Fundserv within 30 days of receiving the Fundserv Evaluation.
 - (5) Fundserv will have a right of reply to the Service Provider Applicant's Submissions. Fundserv will deliver its reply within 30 days to the Expert Panel and to the Service Provider Applicant.
 - (6) The Expert Panel may hear oral submissions from Fundserv and the Service Provider Applicant or may elect to make its decision based on the written record before it.
 - (7) The Expert Panel will apply the criteria in section 3 in making its decision and will render its decision in writing with reasons.
 - (8) The Expert Panel's decision will be binding on Fundserv and the Service Provider Applicant, subject to any rights of appeal to the Ontario Securities Commission that may be provided for under applicable laws.