

APPENDIX B

DRAFT APPROVAL ORDER

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED
(the "Act")

AND

IN THE MATTER OF
REGULATION 1015 MADE UNDER THE ACT,
R.R.O. 1990, AS AMENDED
(the "Regulation")

AND

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20, AS AMENDED
(the "CFA")

AND

IN THE MATTER OF
REGULATION 90 MADE UNDER THE CFA,
R.R.O. 1990, AS AMENDED
(the "CFA Regulation")

AND

IN THE MATTER OF
[NEW IPF]

APPROVAL ORDER

(Section 110 of the Regulation and Section 23 of the CFA Regulation)

WHEREAS Pursuant to Section 110(1) of the Regulation, all investment dealers and mutual fund dealers, shall participate in a compensation fund or contingency trust fund approved by the Commission and established in accordance with the Regulation.

WHEREAS Pursuant to Section 23 of the CFA Regulation, every registered futures commission merchant shall participate in a compensation fund as detailed in the CFA Regulation.

WHEREAS the Ontario Securities Commission (the **Commission**) issued an order dated October 17, 2002, as amended on September 26, 2008 and August 27, 2019, approving the Canadian Investor Protection Fund (**CIPF**) as a compensation fund for customers of investment fund dealers that were members of the Investment Industry Regulatory Organization of Canada (**IIROC**).

AND WHEREAS the Commission issued an order dated May 3, 2005, as amended on August 10, 2006, March 31, 2015 and August 27, 2019, approving the MFDA Investor Protection Corporation (**MFDA IPC**) as a compensation fund for customers of mutual fund dealers that were members of the Mutual Fund Dealers Association of Canada (**MFDA**).

AND WHEREAS following public consultation, the Canadian Securities Administrators (**CSA**) published CSA Position Paper 25-404 – *New Self-Regulatory Organization Framework*, recommending amalgamation of IIROC and the MFDA into a single self-regulatory organization, [New SRO].

AND WHEREAS the CSA also recommended amalgamating CIPF and the MFDA IPC into a single compensation fund, [New IPF], which will be independent from [New SRO].

AND WHEREAS [New IPF] will operate as a successor to CIPF and the MFDA IPC following their amalgamation under the *Canada Not-for profit Corporations Act*.

AND WHEREAS [New IPF] will provide protection within prescribed limits to eligible customers of SRO Members, as defined in Schedule A of this order (**Approval Order**), where such customers suffered financial loss to their property as a result of insolvency

of an SRO Member; and, in connection with such coverage, [New IPF] will engage in risk management activities to minimize the likelihood of such losses.

AND WHEREAS upon amalgamation, [New IPF] will maintain two segregated funds, where each of such funds will be available exclusively to eligible customers of either investment dealers or mutual fund dealers until such time as further analysis is completed and it is determined that the segregation of funds is no longer necessary.

AND WHEREAS [New IPF] will enter into an agreement with [New SRO], pursuant to which [New SRO] will levy assessments on its members and pay to [New IPF] the amount of these assessments.

AND WHEREAS CIPF and the MFDA IPC made representations on behalf of [New IPF] regarding its approval as a compensation fund to the Alberta Securities Commission; Autorité des marchés financiers; British Columbia Securities Commission; Manitoba Securities Commission; Financial and Consumer Services Commission of New Brunswick; Office of the Superintendent of Securities, Digital Government and Services, Newfoundland and Labrador; Office of the Superintendent of Securities, Northwest Territories; Nova Scotia Securities Commission; Office of the Superintendent of Securities, Nunavut; Ontario Securities Commission; Prince Edward Island Office of the Superintendent of Securities; Financial and Consumer Affairs Authority of Saskatchewan; and Office of the Yukon Superintendent of Securities (together with the Commission, the **Regulators**).

AND WHEREAS the Regulators have entered into a Memorandum of Understanding regarding oversight of [New IPF] (**MOU**) effective [●], as amended from time to time.

AND WHEREAS CIPF and the MFDA IPC are consolidating through amalgamation to continue as [New IPF], references to CIPF and the MFDA IPC in the existing regulations, rules, orders, policies, notices or other instruments (**Provisions**) in the jurisdictions of the Regulators will be treated and interpreted as references to [New IPF] until the appropriate consequential amendments are implemented, if considered necessary. Whenever a Provision assigns requirements or privileges exclusively to either investment dealers or mutual fund dealers, who, prior to the amalgamation, were members of IIROC and the MFDA respectively, it is to be understood that such requirements and privileges shall apply exclusively to either investment dealers or mutual fund dealers of the New SRO, as applicable.

AND WHEREAS the Commission may, if it is satisfied that to do so would not be prejudicial to the public interest, make an order revoking or varying this Approval Order or any orders for CIPF and the MFDA IPC.

AND WHEREAS based on the representations made by CIPF and the MFDA IPC, the Commission is satisfied that approving [New IPF] as a compensation fund is in the public interest.

IT IS ORDERED that [New IPF] is approved as a compensation fund pursuant to Section 110 of the Regulation and Section 23 of the CFA Regulation, subject to the terms and conditions set out in Schedule A to this Approval Order and the applicable provisions of the MOU.

Dated this [●], effective [●].

“ ”

“ ”

Commissioner
Ontario Securities Commission

Commissioner
Ontario Securities Commission

Schedule A - Terms and Conditions**1. Definitions**

Unless otherwise defined or interpreted in this Approval Order, every term used in this Approval Order that is defined in subsection 1.1(3) of National Instrument 14-101 – *Definitions* has the meaning ascribed to it in that subsection.

“**Board**” means the board of directors of [New IPF].

“**Coverage Assets**” has the meaning ascribed to that term in the Industry Agreement.

“**Coverage Policies**” include, but are not limited to, the coverage policy, claims procedures, appeal committee guidelines and disclosure policy of [New IPF].

“**Industry Agreement**” means the agreement between [New IPF] and [New SRO] regarding the basis on which [New IPF] provides protection to customers of SRO Members.

“**Industry Director**” has the meaning ascribed to that term in [New IPF] By-Law Number 1.

“**MOU**” means the Memorandum of Understanding among the Regulators regarding oversight of [New IPF].

“**[New IPF] Mandate**” is to provide protection to customers of SRO Members who have suffered or may suffer financial losses as a result of the insolvency of the SRO Member, all on such terms and conditions as may be determined by [New IPF] in its sole discretion and, in connection with such coverage, to engage in risk management activities to minimize the likelihood of such losses.

“**Public Director**” has the meaning ascribed to that term in [New IPF] By-Law Number 1.

“**Regulators**” means the Alberta Securities Commission; Autorité des marchés financiers; British Columbia Securities Commission; Manitoba Securities Commission; Financial and Consumer Services Commission of New Brunswick; Office of the Superintendent of Securities, Digital Government and Services, Newfoundland and Labrador; Office of the Superintendent of Securities, Northwest Territories; Nova Scotia Securities Commission; Office of the Superintendent of Securities, Nunavut; Ontario Securities Commission; Prince Edward Island Office of the Superintendent of Securities; Financial and Consumer Affairs Authority of Saskatchewan; and Office of the Yukon Superintendent of Securities.

“**Self-regulatory organization (SRO)**” means [New SRO].

“**SRO Member**” means a registered investment dealer or registered mutual fund dealer, which is a member, approved participant or similar participating organization of the SRO, provided that the Board may exclude any person or class of persons from this definition of SRO Member.

2. Authority and Purpose

[New IPF] has, and must continue to have, the appropriate authority and capacity to carry out the [New IPF] Mandate.

3. Approval of Amendments

- (a) Prior Commission approval is required for any amendment to the following:
 - (i) [New IPF]'s Coverage Policies; or
 - (ii) [New IPF]'s by-laws.
- (b) Prior Commission approval is required for any material change to the Industry Agreement. A material change is one that directly affects the [New IPF] Mandate.
- (c) When seeking Commission approval of any amendments or material change pursuant to (a) or (b) above, [New IPF] must comply with the processes outlined in Schedule B of the MOU, as amended from time to time.

4. Corporate Governance

- (a) The Board must be selected in a fair and reasonable manner and must fairly represent the interests of all SRO Members and their customers and properly balance the interests of SRO Members and their customers.

- (b) The Board must be composed of Industry Directors, Public Directors and the chief executive officer. The number of Public Directors must exceed the number of Industry Directors by at least one. The Board must include no more than 15 directors.
- (c) The [New IPF]'s governance structure must provide for:
 - (i) fair, meaningful and diverse representation on the Board and any committees of the Board, having regard to the differing interests between SRO Members and their customers;
 - (ii) appropriate representation of Public Directors on the Board committees and on any executive committee or similar body;
 - (iii) appropriate qualification, remuneration and conflict of interest provisions, and limitation of liability and indemnification protections for directors, officers and employees of [New IPF] generally; and
 - (iv) a governance, nominating and human resources committee and an audit, finance and investment committee, each of which must be constituted by a majority of Public Directors, including the chair.

5. Conflicts of Interest

Subject to applicable legislation, [New IPF] must identify and avoid real, potential or perceived conflicts of interest between its own interests, or the interests of its directors, officers, or employees and the [New IPF] Mandate.

6. Funding and Maintenance of the [New IPF]

- (a) [New IPF] must institute and publish one or more fair, transparent, and reasonable methodologies of establishing assessments for contribution for each category of SRO Members, which are investment dealers and mutual fund dealers (**Assessment Policies**).
- (b) [New IPF] will conduct the analysis of risks associated with each category of SRO Members and, following which, determine whether a single assessment methodology is appropriate for all categories of SRO Members. Until such time as the analysis is completed,
 - (i) the funds available to satisfy potential claims for coverage by customers of each category of SRO Members must be segregated;
 - (ii) the assessments must be calculated and levied discretely on the basis of independent assessment methodologies for each category of SRO Members and contributed to the segregated funds (each, a **Fund**); and
 - (iii) [New IPF] must ensure a moratorium on any changes to the current assessment methodologies applied to fees or assessments that would result in a material increase to the assessments levied by [New IPF] on each category of SRO Members, unless authorized by the Commission.
- (c) The assessments must:
 - (i) reflect an equitable allocation among SRO Members, which may be based on the level of risk to which each SRO Member exposes [New IPF]; and
 - (ii) balance the need for [New IPF] to have sufficient revenues to satisfy claims in the event of an insolvency of any member of the relevant category of SRO Members and to have sufficient financial resources to satisfy its operational costs against the goal that there be no unreasonable financial barriers to becoming a member of the SRO.
- (d) [New IPF] must make all necessary arrangements for the notification to each category of SRO Members of [New IPF]'s assessments and the collection of such assessments, either directly or indirectly through the SRO.
- (e) The Board must determine the appropriate level of assets for each of the Funds. The Board will conduct an annual review of the adequacy of the Coverage Assets, assessment amounts and assessment methodologies; and will ensure that the level of Coverage Assets of each Fund remains adequate to cover potential claims of customers of the relevant category of SRO Members.
- (f) Moneys in each Fund must be invested in accordance with the relevant policies, guidelines or other instruments (**Investment Policies**) applicable to that Fund and approved by the Board, who will be responsible for regular monitoring of the investments. The Investment Policies must require safety of principal and a reasonable income while at the same time ensuring that sufficient liquidity is available to pay potential claims in accordance with

the Coverage Policies. All moneys and securities must be held by a qualified custodian, which are those entities considered suitable to hold securities on behalf of an SRO Member, for both inventory and client positions, without capital penalty, pursuant to the bylaws, rules or regulations of the SRO.

- (g) [New IPF] must implement an appropriate accounting system, including a system of internal controls for maintaining [New IPF] Coverage Assets.

7. Customer Protection

- (a) [New IPF] must establish and maintain Coverage Policies which:
 - (i) provide for fair and adequate coverage, on a discretionary basis, for all customers of SRO Members, for losses of property comprising securities, cash, and other property (to the extent not specifically excluded or held in accounts located in Québec) held by SRO Members resulting from the insolvency of an SRO Member, including criteria for who is an eligible customer;
 - (ii) include fair and reasonable procedures for assessing claims made to [New IPF]. [New IPF] will respond as quickly as practicable in assessing and paying claims made pursuant to those procedures; and
 - (iii) allow [New IPF] to adequately disclose to customers of SRO Members, either directly or indirectly through the SRO, the principles and policies on which coverage will be available, including, but not limited to, the process for making a claim and the maximum coverage available per customer account.
- (b) In a case where a claim is not accepted for payment by [New IPF] staff or by an appointed committee, the claim must be reconsidered by an internal appeal committee if such a review is requested by a customer of an SRO Member or by [New IPF] staff. [New IPF] must establish within its Coverage Policies fair and reasonable internal claim review procedures for this purpose. An appeal committee will be comprised of one or more adjudicators who may or may not be directors. The Coverage Policies or other documentation must include criteria established by the Board for the selection of appeal committee members, including criteria that no director involved in the initial decision will be involved in reconsidering that decision.
- (c) The Coverage Policies must not prevent a customer of an SRO Member from taking legal action against [New IPF] in a court of competent jurisdiction in Canada. [New IPF] must not contest the jurisdiction of such a court to consider a claim where the claimant has exhausted [New IPF]'s internal appeals or review process.

8. Financial and Operational Viability

[New IPF] must maintain adequate financial and operational resources, including adequate staff resources or external professional advisers, to permit [New IPF] to:

- (a) exercise its rights and perform its duties under this Approval Order; and
- (b) review, in accordance with the Industry Agreement, the business and operations of any SRO Member, or designated groups of SRO Members, where a situation has occurred that in the opinion of [New IPF] constitutes a reportable condition, as defined in the Industry Agreement.

9. Risk Management

- (a) [New IPF] must ensure that it has policies and procedures, including a process to identify and request all necessary information from the SRO, in order for [NEW IPF] to:
 - (i) fulfill the [New IPF] Mandate and manage risks to the public and to [New IPF] assets;
 - (ii) assess whether the prudential standards and operations of [New IPF] are appropriate for the coverage provided and the risk incurred by [New IPF]; and
 - (iii) identify and deal with SRO Members that may be in financial difficulty.
- (b) While [New IPF] may rely on the SRO to conduct reviews of SRO Members for [New IPF] purposes, [New IPF] must reserve the right to conduct reviews of SRO Members in particular situations where [New IPF] has concerns about the integrity of the Coverage Assets or possible claims.

10. Agreement between [NEW IPF] and the SRO

[New IPF] must comply with the Industry Agreement signed with the SRO.

11. Assistance to the SRO

[New IPF] must assist the SRO when an SRO Member is in or is approaching financial difficulty. Such assistance will be provided in any way [New IPF] determines to be appropriate.

12. Collection of Information

Subject to applicable legislation, [New IPF] must:

- (a) collect, use and disclose personal information only to the extent reasonably necessary to carry out [New IPF] regulatory activities and [New IPF] Mandate; and
- (b) protect personal information and confidential business information in its custody or under its control.

13. Information Sharing and Regulatory Cooperation

- (a) [New IPF] must provide the Commission with reports, documents and information as the Commission or its staff may request.
- (b) [New IPF] shall have mechanisms in place to enable it to share information and otherwise co-operate with the Commission.

14. Ongoing Reporting Requirements

[New IPF] must comply with the reporting requirements set out in Schedule B of this Approval Order, as amended from time to time by the Commission.

Schedule B - Reporting Requirements**1. Prior Notification**

- (a) [New IPF] will provide the Commission with at least 12 months' written notice prior to completing any transaction that would result in the [New IPF]:
 - (i) ceasing to perform its functions;
 - (ii) discontinuing, suspending or winding-up all or a significant portion of its operations; or
 - (iii) disposing of all or substantially all of its assets.
- (b) In situations where, in the opinion of [New IPF], the notice period in subsection (a) is considered unreasonable, [New IPF] will inform the Commission with as much advance notice as possible in the circumstances. Such notice will include an explanation of why the notice period in subsection (a) is considered unreasonable.
- (c) [New IPF] will provide the Commission with at least 60 days' prior written notice before implementing any change to the following:
 - (i) [New IPF]'s Investment Policies; or
 - (ii) [New IPF]'s Assessment Policies.
- (d) [New IPF] will provide the Commission with at least 60 days' prior written notice before making a decision to exclude any person or class of persons from the definition of SRO Member in [New IPF] By-Law Number 1.
- (e) [New IPF] will provide the Commission with at least 60 days' prior written notice before implementing any material change to [New IPF] Board's mandate and the Board committees' mandates.

2. Immediate Notification

- (a) [New IPF] will immediately report to the Commission any reportable condition as defined in the Industry Agreement, with respect to an SRO Member of which [New IPF] has been notified.
- (b) [New IPF] will immediately report to the Commission where the SRO has withdrawn or has been expelled from participation in [New IPF]. [New IPF] will include in its report the reasons for the SRO's withdrawal or expulsion.
- (c) [New IPF] will immediately report to the Commission any actual or potential material adverse change in the level of [New IPF]'s assets, together with [New IPF]'s plan to deal with the situation.

3. Prompt Notification

- (a) [New IPF] will provide the Commission with prompt notice of the following occurrences, and in each case describe the circumstances that gave rise to the occurrence, and [New IPF]'s proposed response to ensure resolution, and, if appropriate, provide timely updates:
 - (i) situations that would reasonably be expected to raise concerns about [New IPF]'s financial viability, including but not limited to, an inability to meet its expected expenses for the next quarter or the next year;
 - (ii) any determination by [New IPF] or notification from any Regulator that [New IPF] is not, or will not be, in compliance with one or more of the terms and conditions of its approval or acceptance in any jurisdiction; and
 - (iii) any breach of security safeguards involving information under [New IPF]'s control if it is reasonable in the circumstances to believe that the breach creates a real risk of material harm to investors, issuers, registrants, other market participants, [New IPF], the SRO, or the capital markets.
- (b) [New IPF] will prepare and provide to the Commission a report detailing any action taken by [New IPF] with respect to an SRO Member. For SRO Member insolvencies, the report will describe the circumstances of the insolvency, including a summary of the actions taken by the SRO Member, the SRO and [New IPF] and any committee or person acting on behalf of such parties.

4. Semi-Annual Reporting

[New IPF] will file on a semi-annual basis with the Commission a written report pertaining to [New IPF]'s operations promptly after the report is reviewed or approved by the Board, Board committees, or senior management, as the case may be, containing at a minimum the following information and documents:

- (a) A summary of ongoing initiatives, policy changes, and emerging or key issues that arose in the previous 6 months.
- (b) Description of any changes in the composition of the Board, including the names and terms of any incoming directors, the names of any outgoing directors, and whether any incoming directors are Public Directors as defined in [New IPF]'s By-law Number 1.
- (c) Any suggestions or comments that [New IPF] has made to the SRO regarding the SRO's making new rules or amending existing rules, and the SRO's response to those suggestions.
- (d) Description of any directions [New IPF] has made to the SRO to take certain actions in regard to SRO Members that are in financial difficulty pursuant to the Industry Agreement, details about the [New IPF]'s direction and comment on whether [New IPF] is satisfied with the SRO's response.
- (e) Summary statistics pertaining to (i) the Coverage Assets, (ii) assessments and (iii) noted trends.
- (f) The adequacy of (i) the level of Coverage Assets, (ii) assessment amounts, and (iii) assessment methodology.
- (g) SRO Member insolvencies and any resulting customer claims, detailing the circumstances of the insolvency and including a summary of the actions taken by the SRO Member, the SRO and [New IPF].
- (h) Risk management issues, including how [New IPF] evaluated risks, what risk management issues were identified and how [New IPF] dealt with these issues.
- (i) The extent and results of any SRO Member reviews conducted pursuant to the Industry Agreement.
- (j) [New IPF]'s staff complement, by function, and details of any material changes or reductions in staffing, by function, during the previous 6 months.
- (k) Any intended material changes to arrangements with third party service providers relating to key services or systems.

5. Annual Reporting

[New IPF] will file on an annual basis with the Commission a written report pertaining to [New IPF]'s operations promptly after the report is reviewed or approved by the Board, Board committees, or senior management, as the case may be, containing at a minimum the following information and documents:

- (a) The Board's annual review of the adequacy of (i) the level of Coverage Assets, (ii) assessment amounts, and (iii) assessment methodologies.
- (b) The Board's assessment of the need for additional risk management tools.
- (c) The Board's qualitative assessment or evaluation of [New IPF]'s performance and achievements relative to the [New IPF] Mandate and strategic plan.
- (d) A certification by [New IPF]'s chief executive officer, or other officer, that [New IPF] is in compliance with the terms and conditions applicable to it in this Approval Order.

6. Financial Reporting

- (a) [New IPF] will file with the Commission unaudited financial statements with notes within 60 days after the end of each financial semi-annual period.
- (b) [New IPF] will file with the Commission audited annual financial statements accompanied by the report of an independent auditor within 90 days after the end of each fiscal year.

7. Other Reporting

- (a) [New IPF] will provide the Commission on a timely basis with the following information and documents upon completion of review or approval by the Board, Board committees, or senior management, as the case may be:
 - (i) the financial budget for the current year, together with the underlying assumptions, that have been approved by the Board;
 - (ii) enterprise risk management reports, and any material changes to enterprise risk management methodology;
 - (iii) [New IPF]'s strategic plan;
 - (iv) [New IPF]'s annual report; and
 - (v) material changes to the Board and employee codes of conduct, which include policies for managing conflicts of interest.

- (b) [New IPF] will provide the Commission with reasonable prior notice of any document that it intends to publish or issue to the public or to any category of SRO Members which, could have a significant impact on:
 - (i) [New IPF]'s ability to carry out the [New IPF] Mandate;
 - (ii) SRO Members; and
 - (iii) the capital markets generally, including, for greater clarity, particular stakeholders or sectors.