

Variation Order

Canadian Investor Protection Fund

Section 171 of the *Securities Act*, RSBC 1996, c. 418

Background

1. The Executive Director issued an order dated August 21, 2002, under section 23 of the *Securities Rules*, approving the Canadian Investor Protection Fund (CIPF) as a compensation fund for customers who suffer financial losses due to the failure of a member of certain self-regulatory organizations (Approval Order).
2. The Executive Director varied the Approval Order on September 26, 2008, effective September 30, 2008.

Order

3. Considering that to do so would not be prejudicial to the public interest, the Executive Director varies the Approval Order of the CIPF by streamlining and modernizing the oversight of the CIPF, and ensuring consistency with current practice, including by:
 - (a) amending Schedule A to:
 - (i) require Commission prior approval for proposed:
 - (A) changes to CIPF coverage policies, and by-laws in addition to By-law No. 1
 - (B) material changes to the CIPF's Industry Agreement with the Investment Industry Regulatory Organization of Canada
 - (ii) codify that the CIPF must comply with the amendment review protocol set out in the CIPF Memorandum of Understanding
 - (iii) allow its board to appoint non-CIPF directors as adjudicators for conducting appeals
 - (iv) codify information sharing and regulatory cooperation with the Commission
 - (v) codify that the CIPF must adhere to its reporting requirements as a condition of its approval

- (b) adding Schedule B to:
 - (i) identify and group regular reporting and notification only requirements
 - (ii) combine and amend multiple date specific reporting requirements into semi-annual and annual reporting
 - (iii) document information currently provided annually and require that it be provided on an ad hoc basis
 - (iv) add the following new reporting requirements:
 - (A) an annual certification of compliance with the terms and conditions of the Approval Order
 - (B) notification of information security breaches
 - (C) notification of the CIPF's non-compliance with terms of conditions of its approval as determined by the CIPF
 - (D) prior notice before publishing any document expected to have a significant impact on the CIPF's mandate

4. The revised Approval Order is attached.

Effective date

5. This order comes into effect on January 1, 2021

Peter J. Brady
Executive Director
British Columbia Securities Commission

(This part is for administrative purposes only and is not part of the Order)

Authority under which the Order is made:
Act and section: *Securities Act*, section 171

Approval Order

Canadian Investor Protection Fund

Section 23 of the *Securities Rules*, B.C. Reg. 194/97

Background

1. The Securities Rules require a dealer, other than a security issuer or scholarship plan dealer, to participate in a compensation fund or contingency trust fund approved by the Executive Director.
2. The CIPF is approved as a compensation fund under section 23 of the Rules.
3. The CIPF was originally established by its sponsoring self-regulatory organizations (SROs); currently, the Investment Industry Regulatory Organization of Canada (IIROC) (formerly, the Investment Dealers Association of Canada (IDA)) is the CIPF's only sponsoring SRO that carries on member regulation activities for dealers that participate in the CIPF.
4. The CIPF, IDA, Toronto Stock Exchange Inc., TSX Venture Exchange Inc. and Bourse de Montréal Inc. entered into an agreement dated December 14, 2001 (Original Industry Agreement), pursuant to which the CIPF, among other things, provides certain financial compliance oversight of these SROs and financial examination of members of these SROs.
5. On June 1, 2008, the Commission recognized IIROC as an SRO and IIROC became a party to the Original Industry Agreement.
6. The parties to the Original Industry Agreement terminated and replaced the agreement with an agreement between the CIPF and IIROC as the sole SRO (Industry Agreement) that reflected the realignment of their respective regulatory roles and responsibilities, including the elimination of the CIPF's SRO oversight role and member examination functions.
7. The Industry Agreement contemplates that other SROs may become parties to the Industry Agreement (together with IIROC, Participating SROs).
8. Pursuant to the Industry Agreement, the Participating SROs must levy assessments on their members (Member Firms) and the Participating SROs must pay to the CIPF the amount of these assessments.
9. The CIPF previously entered into a Memorandum of Understanding (Previous MOU) with all of the members of the Canadian Securities Administrators (CSA). All of the

members of the CSA have withdrawn from the Previous MOU and have concluded, amongst themselves, a new Memorandum of Understanding (MOU) regarding their oversight of the CIPF.

10. The CIPF:
 - (a) provides protection on a discretionary basis to prescribed limits to eligible customers (Customers) of Participating SRO Member Firms suffering losses if Customer property comprising securities, cash and other property held by such Member Firms is unavailable as a result of the insolvency of the Member Firm, and
 - (b) in connection with such coverage, will engage in risk management activities to minimize the likelihood of such losses (together, the CIPF Mandate).
11. The Executive Director is satisfied that the continued approval of the CIPF would not be prejudicial to the public interest.

Order

12. The Executive Director continues the approval of the CIPF as a compensation fund under section 23 of the Rules (Approval Order), subject to the terms and conditions set out in Schedule A and the applicable provisions of the MOU between the CIPF's regulators (Regulators), as amended from time to time.

Effective date

13. This order comes into effect on January 1, 2021

Peter J. Brady
Executive Director
British Columbia Securities Commission

(This part is for administrative purposes only and is not part of the Order)

Authority under which the Order is made:

Act and section: *Securities Act*, section 23

Schedule A -- Terms and Conditions

1. Authority and Purpose

The CIPF has, and must continue to have, the appropriate authority and capacity to carry out the CIPF Mandate.

2. Approval of Amendments

(a) Prior Commission approval is required for any amendment to the following:

- (i) the CIPF's Coverage Policies; or
- (ii) the CIPF'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 CIPF Mandate.

(c) When seeking approval of amendments pursuant to (a) and (b) above, the CIPF must comply with the processes for filing outlined in Schedule B of the MOU, as amended from time to time.

3. Corporate Governance

(a) The board of directors for the CIPF (Board) must be selected in a fair and reasonable manner and must fairly represent the interests of all Member Firms and their Customers and properly balance the interests of Member Firms and their Customers.

(b) The Board must be composed of an equal number of Industry Directors and Public Directors, as defined in the CIPF's By-law Number 1, together with the Chair and the President and Chief Executive Officer of the CIPF.

(c) The CIPF's governance structure must provide for:

- (i) fair and meaningful representation on the Board and any committees of the Board, having regard to the differing interests between Member Firms and their Customers;
- (ii) appropriate representation of Public Directors on the CIPF 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 the CIPF generally; and

- (iv) an audit committee, the majority of which must be made of Public Directors.

4. **Funding and Maintenance of the CIPF**

- (a) The CIPF must institute a fair, transparent, and reasonable method of establishing assessments for each Member Firm's contribution (Assessment Policies). The assessments must:
 - (i) be allocated on an equitable basis among Member Firms and may be based on the amount of risk a Member Firm exposes the CIPF fund (Fund) to; and
 - (ii) balance the need for the CIPF to have sufficient revenues to satisfy claims in the event of an insolvency of a Member Firm and to have sufficient financial resources to satisfy its operations costs against the goal that there be no unreasonable financial barriers to becoming a member of an SRO.
- (b) The CIPF must make all necessary arrangements for the notification to Member Firms of the CIPF assessments and the collection of such assessments, either directly or indirectly through a Participating SRO.
- (c) The Board must determine the appropriate level of assets for the Fund. The Board will conduct an annual review of the adequacy of the level of assets, assessment amounts, and assessment methodology and will ensure that the level of assets of the Fund remains, in its opinion, adequate to cover potential claims.
- (d) Moneys in the Fund must be invested in accordance with policies, guidelines or other instruments (Investment Policies) approved by the Board, who will be responsible for regular monitoring of the investments. All moneys and securities must be held by a qualified custodian, which are those entities considered suitable to hold securities on behalf of a Member Firm, for both inventory and client positions, without capital penalty, pursuant to the bylaws, rules or regulations of the Participating SROs.
- (e) The CIPF must implement an appropriate accounting system, including a system of internal controls for maintaining CIPF assets.

5. **Customer Protection**

- (a) The CIPF must establish and maintain policies and procedures (Coverage Policies) which:
 - (i) provide for fair and adequate coverage, on a discretionary basis, for all Customers of Member Firms, for losses of property comprising securities, cash, and other property held by Member Firms resulting from the insolvency of a Member Firm, including criteria for who is an eligible customer;

- (ii) include fair and reasonable procedures for assessing claims made to the CIPF. The CIPF will respond as quickly as practicable in assessing and paying claims made pursuant to those procedures; and
 - (iii) allow the CIPF to adequately disclose to Customers of Member Firms, either directly or indirectly through a Participating 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 CIPF staff or by an appointed committee, the claim may be reconsidered by an internal appeal committee if such a review is requested by a Customer of a Member Firm or by CIPF staff. The CIPF 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 from taking legal action against the CIPF in a court of competent jurisdiction in Canada. The CIPF must not contest the jurisdiction of such a court to consider a claim where the claimant has exhausted the CIPF's internal appeals or review process.

6. **Financial and Operational Viability**

The CIPF must maintain adequate financial and operational resources, including adequate staff resources or external professional advisers, to permit the CIPF 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 Member Firm, or designated groups of Member Firms, where a situation has occurred that in the opinion of the CIPF constitutes a Reportable Condition, as defined in the Industry Agreement.

7. **Risk Management**

- (a) The CIPF must ensure that it has policies and procedures, including a process to identify and request all necessary information from a Participating SRO, in order for the CIPF to:
 - (i) fulfill the CIPF Mandate and manage risks to the public and to CIPF assets;

- (ii) assess whether the prudential standards and operations of the CIPF are appropriate for the coverage provided and the risk incurred by the CIPF; and
 - (iii) identify and deal with Member Firms that may be in financial difficulty.
- (b) While the CIPF may rely on IIROC to conduct reviews of Member Firms for CIPF purposes, the CIPF must reserve the right to conduct reviews of Member Firms in particular situations where the CIPF has concerns about the integrity of the Fund or possible claims.

8. Agreement between the CIPF and IIROC

The CIPF must comply with the Industry Agreement signed with IIROC and any Participating SRO.

9. Assistance to Participating SRO

The CIPF must assist a Participating SRO when a Member Firm is in or is approaching financial difficulty. Such assistance will be provided in any way the CIPF determines to be appropriate.

10. Collection of Information

The CIPF must, subject to applicable legislation, collect, use and disclose personal information only to the extent reasonably necessary to carry out the CIPF Mandate.

11. Information Sharing and Regulatory Cooperation

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

12. Ongoing Reporting Requirements

The CIPF must comply with the reporting requirements set out in Schedule B of this Approval Order, as amended from time to time by the Commission or its staff.

Schedule B -- Reporting Requirements

1. **Prior Notification**

- (a) The CIPF will provide the Commission with at least 12 months' written notice prior to completing any transaction that would result in the CIPF:
 - (i) ceasing to perform its services;
 - (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 the CIPF, the notice period in subsection (a) is considered unreasonable, the CIPF 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) The CIPF will provide the Commission with at least 60 days' prior written notice before implementing any change to the following:
 - (i) the CIPF's Investment Policies; or
 - (ii) the CIPF's Assessment Policies.
- (d) The CIPF will provide the Commission with at least 60 days' prior written notice before implementing any material change to the CIPF Board's mandate and the Board committees' mandates.

2. **Immediate Notification**

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

3. **Prompt Notification**

- (a) The CIPF 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 the CIPF's proposed response to ensure resolution, and, if appropriate, provide timely updates:
 - (i) situations that would reasonably be expected to raise concerns about the CIPF'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 the CIPF or notification from any Regulator that the CIPF 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 or with these reporting requirements; and
 - (iii) any breach of security safeguards involving information under the CIPF'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, the CIPF, the Participating SRO, or the capital markets generally.
- (b) The CIPF will prepare and provide to the Commission a report detailing any action taken by the CIPF with respect to a Member Firm. For Member Firm insolvencies, the report will describe the circumstances of the insolvency, including a summary of the actions taken by the Member Firm, the Participating SRO and the CIPF and any committee or person acting on behalf of such parties.

4. **Semi-Annual Reporting**

The CIPF will file on a semi-annual basis with the Commission a written report pertaining to the CIPF'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 the CIPF's By-law Number 1.
- (c) Any suggestions or comments that the CIPF has made to any Participating SROs regarding the Participating SROs' making new rules or amending existing rules, and the Participating SROs' response to those suggestions.

- (d) Description of any directions the CIPF has made to a Participating SRO to take certain actions in regard to Member Firms that are in financial difficulty pursuant to the Industry Agreement, details about the CIPF's direction and comment on whether the CIPF is satisfied with the Participating SRO's response.
- (e) Summary statistics pertaining to (i) the Fund, (ii) assessments and (iii) noted trends.
- (f) The adequacy of (i) the level of assets in the Fund, (ii) assessment amounts, and (iii) assessment methodology.
- (g) Member Firm insolvencies and any resulting Customer claims, detailing the circumstances of the insolvency and including a summary of the actions taken by the Member Firm, the Participating SRO and the CIPF.
- (h) Risk management issues, including how the CIPF evaluated risks, what risk management issues were identified and how the CIPF dealt with these issues.
- (i) The extent and results of any Member Firm reviews conducted pursuant to the Industry Agreement.
- (j) The CIPF'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**

The CIPF will file on an annual basis with the Commission a written report pertaining to the CIPF'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 assets in the Fund, (ii) assessment amounts, and (iii) assessment methodology.
- (b) The Board's assessment of the need for additional risk management tools.
- (c) The Board's assessment against the CIPF's strategic plan.
- (d) A certification by the CIPF's President, or other officer, that the CIPF is in compliance with the terms and conditions applicable to it in this Approval Order.

6. Financial Reporting

- (a) The CIPF will file with the Commission unaudited financial statements with notes within 60 days after the end of each financial semi-annual period.
- (b) The CIPF 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) The CIPF 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) the CIPF's strategic plan; and
 - (iv) the CIPF's annual report.
- (b) The CIPF will provide the Commission with reasonable prior notice of any document that it intends to publish or issue to the public or to any class of Member Firms which, in the opinion of the CIPF, could have a significant impact on the CIPF's ability to carry out the CIPF Mandate.