

**CIPF NOTICE OF AMENDMENTS TO APPEAL COMMITTEE GUIDELINES  
FEBRUARY 11, 2021**

**Background**

As set out in CIPF's Approval Orders issued by members of the Canadian Securities Administrators (CSA), CIPF must establish fair and reasonable procedures for assessing claims made to CIPF. CIPF must also establish a fair and reasonable internal claim review process whereby customer claims that are not accepted for payment by CIPF shall be reconsidered by the Board of Directors (CIPF Board), or an Appeal Committee, if requested by the customer.

In accordance with the above, CIPF developed guidelines for Appeal Committees hearing appeals in-person, in writing and by teleconference (Appeal Committee Guidelines).

CIPF is publishing notice of amendments to the Appeal Committee Guidelines, which have been approved by the CIPF Coverage Committee and Board. The amendments are being published concurrently with amendments to the Claims Procedures.<sup>1</sup>

**Purpose of Amendments**

The amendments arise from a CIPF initiative to add flexibility to CIPF's model of appeals. Specifically, the amendments modify the past approach of CIPF Directors conducting appeal hearings by adding the option for non-CIPF Directors to conduct appeals, if the CIPF Board considers it appropriate to do so under the circumstances of a particular member firm insolvency. This change to the composition of Appeal Committees was approved by the CSA as part of the revised CIPF Approval Orders, which came into effect on January 1, 2021. As such, the amendments are necessary to conform with the revised CIPF Approval Orders. The amendments also include other housekeeping changes, such as editorial and clarification changes.

A clean version of the amended Appeal Committee Guidelines is available at Attachment A. A blackline version is not available because the amended Appeal Committee Guidelines consolidate and update two former documents: (1) [Guidelines for CIPF Appeal Committees Hearing In-Person Appeals, dated October 6, 2014](#), and (2) [Guidelines for CIPF Appeal Committees Hearing Appeals in Writing and by Teleconference, dated February 1, 2015](#).

**Effective Date**

The Amendments are effective as of **February 11, 2021**.

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<sup>1</sup> See CIPF Notice of Amendments to the Claims Procedures, February 11, 2021.



Prior notice regarding publication of the Amendments has been provided to the CSA in accordance with the revised CIPF Approval Orders, which came into effect on January 1, 2021.

### **Further Information**

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### **Attachments**

Attachment A – Guidelines for CIPF Appeal Committees Hearing In-Person Appeals, Appeals by Teleconference, and Appeals in Writing, February 11, 2021 (available in clean only)

# ATTACHMENT A



Canadian Investor Protection Fund

## **Guidelines for Canadian Investor Protection Fund (“CIPF”) Appeal Committees Hearing In-Person Appeals, Appeals By Teleconference, and Appeals In Writing Dated February 11, 2021**

### **A. GENERAL**

1. This document sets out non-binding guidelines for Appeal Committees hearing in-person appeals, appeals by teleconference, and appeals in writing (the “Guidelines”).
2. These Guidelines are applicable to in-person appeal hearings, appeal hearings by teleconference, and appeal hearings in writing, unless a specific type of hearing is referred to in the particular guideline.
3. Where there is any inconsistency between the Guidelines and the relevant Claims Procedures (the “Claims Procedures”), the Claims Procedures prevail.
4. Nothing in these Guidelines restricts an Appeal Committee from:
  - a) conducting an appeal in a manner other than the manner described in the Guidelines, if such a change is necessary to ensure a fair procedure for the appeal; and
  - b) deciding an appeal in the manner that they believe is just and appropriate in the circumstances and in accordance with the relevant CIPF Coverage Policy.

### **B. CUSTOMER’S ELECTION OF HEARING TYPE**

5. The customer may elect to have their appeal heard in-person, by teleconference, or in writing.
6. An Appeal Committee will not hold a hearing by teleconference or in writing if CIPF staff satisfies the Appeal Committee that there is a good reason for not doing so.

### **C. COMPOSITION OF APPEAL COMMITTEES**

7. The CIPF Board of Directors has selected qualified individuals to adjudicate appeals as members of Appeal Committees.
8. Each member of an Appeal Committee (“Committee Member”) will be:
  - a) Either:
    - i) a Director of CIPF; or



- ii) an adjudicator appointed by the CIPF Board of Directors for the purpose of adjudicating appeal hearings; and
  - b) selected in accordance with criteria established by the CIPF Board of Directors, through the CIPF Coverage Committee, a subcommittee of the CIPF Board of Directors, at the time of the relevant insolvency.
- 9. An Appeal Committee may be composed of:
  - a) one Committee Member; or
  - b) two or more Committee Members.
- 10. When an Appeal Committee is comprised of two or more Committee Members, the CIPF Board of Directors will appoint a Chair of the Appeal Committee from among the Committee Members.

#### **D. THE PARTICIPANTS TO AN APPEAL**

- 11. The participants to an appeal hearing are:
  - a) the customer who has submitted a request for appeal in accordance with the Claims Procedures; and
  - b) CIPF staff.
- 12. The participants to an appeal hearing may have legal counsel or other advisers, but their participation is optional.

#### **E. ROLE OF INDEPENDENT LEGAL COUNSEL**

- 13. With the approval of the CIPF Board of Directors, an Appeal Committee may engage independent legal counsel (to be compensated by CIPF) for the purpose of providing legal advice to each Appeal Committee.
- 14. The role of independent legal counsel is to advise an Appeal Committee in respect of conducting appeal hearings and providing well-reasoned decisions in a manner that is fair, efficient, consistent with CIPF coverage, and in accordance with the law.
- 15. Independent legal counsel will act independently of the customer and CIPF staff (the “participants”) and will not provide legal advice for or otherwise represent the participants.
- 16. An Appeal Committee may seek legal advice from independent legal counsel with respect to general issues arising from an appeal, including:
  - a) procedural issues related to the conduct of an appeal;
  - b) consistency with CIPF coverage; and

- c) applicable legal principles.
- 17. If an Appeal Committee has obtained legal advice from independent legal counsel that relates to any particular appeal at any time after receiving materials with respect to an appeal, the Appeal Committee will:
  - a) disclose to the participants the fact that legal advice has been obtained;
  - b) provide to the participants a summary of the content of the legal advice; and
  - c) offer an opportunity to the participants to make submissions in relation to that legal advice.
- 18. When independent legal counsel offers advice to an Appeal Committee in the drafting of written reasons for the disposition of an appeal, he or she will do so in the manner set out in paragraphs 47 and 48 below.

#### **F. PREPARATIONS FOR APPEAL HEARINGS**

- 19. An administrative coordinator, under the supervision of the Coverage Committee Chair, will schedule appeals in advance, and advise Committee Members and the participants of the date, and where relevant, the time and place that the appeal is to be conducted.
- 20. The customer will provide to CIPF any contact information or other information necessary for the hearing by teleconference.
- 21. The customer and any representative participating in the appeal will make themselves available at the scheduled time of the appeal.
- 22. For an appeal in writing, a written submissions schedule, which includes the date upon which each participant's submissions (including any relevant evidence) are due and the address for delivery of the submissions (the "Written Submissions Schedule") will be provided once the date of the appeal has been set.
- 23. The Written Submissions Schedule will generally indicate that submissions be provided in the following order:
  - a) Claimant's (Appellant) submissions
  - b) CIPF's (Respondent) submissions
  - c) Claimant's (Appellant) reply, if any
- 24. An Appeal Committee and the participants to the appeal hearing will be provided in advance of the appeal hearing with:
  - a) the relevant CIPF Coverage Policy;
  - b) the relevant Claims Procedures;

- c) Guidelines for CIPF Appeal Committees; and
  - d) relevant background information.
25. An Appeal Committee and the participants to the appeal hearing will also be provided in advance of the appeal hearing with:
- a) any evidence and submissions provided by the customer in support of the appeal; and
  - b) any evidence and submissions provided by CIPF staff in support of staff's recommendation to recommend or deny coverage, in whole or in part, which will include:
    - i) the summary of facts prepared by staff;
    - ii) the decision letter issued by staff; and
    - iii) a review and analysis of the basis of each claim in relation to the relevant CIPF Coverage Policy.

#### **G. PROCEDURES AND PRACTICES DURING APPEAL HEARINGS**

26. Each Appeal Committee has the power to determine its own procedures and practices, ensuring that they are fair and reasonable. Nevertheless, in most instances, it may be advisable for an Appeal Committee to commence an in-person appeal hearing or an appeal hearing by teleconference by:
- a) welcoming and introducing the Committee Member(s) (including any Committee Members referred to in paragraph 27 below), the customer, CIPF staff and any legal counsel that are present;
  - b) identifying the purpose of the appeal hearing (i.e. the review of an initial staff recommendation to recommend or deny CIPF coverage).
27. A Committee Member who is not hearing the appeal, may attend an in-person appeal hearing or an appeal hearing by teleconference as an observer, but may not participate in any way in the adjudication of the appeal.
28. In a hearing by teleconference, all the participants and Committee Members should be able to hear one another and any witnesses throughout the hearing.

#### **H. EVIDENCE**

29. Following any introduction provided as referenced in paragraph 26 above, an Appeal Committee will:
- a) identify any evidence and submissions provided by the customer in support of the appeal;

- b) identify any evidence and submissions provided by CIPF staff in support of staff's recommendation to recommend or deny coverage, in whole or in part; and
  - c) confirm that the customer was provided with a copy of CIPF staff's evidence and submissions, including the summary of facts and decision letter.
30. An Appeal Committee may allow the participants to introduce any evidence it considers appropriate in the circumstances, including:
- a) any documents that were not previously provided to the Appeal Committee; and
  - b) any other evidence offered with respect to the appeal.
31. In the case of a hearing in writing, any evidence referred to in paragraph 30 is to be received on or before the date of the scheduled appeal hearing.
32. An Appeal Committee may, at its own discretion, restrict oral evidence from being given at an in-person hearing or a hearing by teleconference in the interests of fairness.
33. Each Participant is entitled to receive every document that an Appeal Committee receives in the appeal proceeding, and will be given reasonable time to review.
34. An Appeal Committee may ask questions with respect to any evidence offered by any participant.

#### **I. SUBMISSIONS**

35. At an in-person hearing or a hearing by teleconference, an Appeal Committee will invite the participants to make submissions relating to the appeal.
36. At an in-person hearing or a hearing by teleconference, an Appeal Committee may ask at any time questions with respect to the submissions or positions taken by any participant.
37. After the close of the Written Submissions Schedule referred to in paragraph 22, an Appeal Committee may write to the participants with any questions with respect to the submissions or positions taken by any participant.
38. If an Appeal Committee requests any additional evidence or submissions in respect of an issue, all participants will have an opportunity to submit further written submissions on that issue.

#### **J. CONCLUSION OF IN-PERSON APPEAL HEARING OR APPEAL HEARING BY TELECONFERENCE**

39. An Appeal Committee will customarily thank the customer and CIPF staff for their participation.

40. An Appeal Committee will advise that:
  - a) it has made its decision, which will be communicated verbally to the participants, with written reasons to follow; or
  - b) it will reserve its decision and inform the participants of the decision notification process, including the issuance of written reasons.

#### **K. DELIBERATIONS**

41. An Appeal Committee will, without the presence of any participants to the appeal hearing, convene to determine the outcome of the appeal.
42. If an Appeal Committee is comprised of two or more Committee Members, the decision of the Appeal Committee will be decided by simple majority but, in the case of an evenly split decision among Committee Members, the decision of the Chair of the Appeal Committee, as appointed by the CIPF Board of Directors, will prevail.
43. An Appeal Committee will select a Committee Member to prepare a draft of written reasons for the decision.

#### **L. REMOVAL OF A COMMITTEE MEMBER**

44. If a Committee Member is unable to continue to serve on an Appeal Committee for any reason before the completion of the appeal hearing, which includes the rendering of a decision, the remaining Committee Member(s) will continue to hear the matter and render a decision.
45. If there are no remaining Committee Members available to continue with an appeal hearing, an appeal hearing de novo will be scheduled to be heard by another Appeal Committee.
46. If the Committee Member referred to in paragraph 44 above was the Chair of the Appeal Committee, a new Chair of the Appeal Committee will be appointed among the remaining Committee Members, as referenced in paragraph 10 above.

#### **M. ADVICE FROM INDEPENDENT LEGAL COUNSEL**

47. When an Appeal Committee seeks advice from independent legal counsel in connection with the preparation of written reasons, the Appeal Committee may ask independent legal counsel to review a draft of any written reasons for the purpose of advising the Appeal Committee in relation to:
  - a) issuing written reasons that are:
    - i) consistent with CIPF coverage;
    - ii) in accordance with the law; and



- b) ensuring that the written reasons accurately reflect the rationale for its decisions.
48. With respect to advice offered by independent legal counsel relating to the drafting of reasons, an Appeal Committee and independent legal counsel will ensure: (a) that the decision of the Appeal Committee and its reasons are determined in accordance with the relevant CIPF Coverage Policy and Claims Procedures; and (b) that independent legal counsel does not detrimentally impact the fairness or integrity of the appeal process.
  49. If new issues arise during the course of seeking legal advice that were not raised during the appeal hearing, an Appeal Committee will allow the participants to make submissions on those issues following the relevant procedure set out in Section I.

#### **N. CUSTOMER NOTIFICATION OF THE DECISION**

50. The Appeal Committee will endeavor to provide its decision and issue its written reasons within 90 days from the date of the appeal hearing.
51. An administrative coordinator, under the supervision of the Coverage Committee Chair, will advise the customer and CIPF staff in writing of the decision of an Appeal Committee.
52. An administrative coordinator, under the supervision of the Coverage Committee Chair, will provide the customer and CIPF staff with written reasons for the decision of an Appeal Committee.