



# Summary Sanctions Hearing Procedures

**ICE NGX Canada Inc.**

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## Summary Sanctions Hearing Procedures

### 1 Introduction

- 1.1 This document sets out the procedures (the “**Procedures**”) for appeal against a summary sanction (“**Summary Sanction**”) imposed by the Exchange under section 6.5 of the ICE NGX Contracting Party Agreement (“**CPA**”).
- 1.2 Capitalised terms used but not defined in these Procedures have the meaning given to them in the CPA.
- 1.3 In these Procedures, the date of receipt of a notice or correspondence will be determined in accordance with Article 9 of the CPA.
- 1.4 Any time limits prescribed in these Procedures may be extended by mutual consent of the Appellant and the Exchange.

### 2 Notice of Appeal and Grounds of Appeal

- 2.1 In accordance with section 6.5 of the CPA, a Contracting Party (“**Appellant**”) may appeal against a Summary Sanction imposed by the Chief Compliance Officer by requesting in writing a hearing before a Summary Sanctions Hearing Panel (a “**Notice of Appeal**”).
- 2.2 A Notice of Appeal must be filed in accordance with each of the following.
  - (a) A Notice of Appeal must be filed with the Exchange’s Legal Department within 10 business days after receipt of a Notice of Summary Sanction.
  - (b) A Notice of Appeal must set out the grounds of appeal, which may only be any one or more of the following.
    - (i) The decision to impose the Summary Sanction was unsupported by the evidence or was against the weight of the evidence.
    - (ii) The decision to impose the Summary Sanction was based on an error of law, or a misinterpretation of the Rules.

- (iii) The Exchange did not consider facts or evidence that were or are available, whether at the time the Summary Sanction was imposed or at the time the Notice of Appeal is filed, and, had the Exchange considered such facts or evidence, its decision to impose the Summary Sanction would have been different.

The Exchange may reject a Notice of Appeal that does not contain a valid basis for appeal, and must notify the Appellant in writing of any such rejection.

- (c) A Notice of Appeal must contain a brief statement of all matters relied upon by the Appellant and must be accompanied by the evidence the Appellant seeks to rely upon in the appeal.
- (d) A Notice of Appeal must state whether the Appellant wishes to have the appeal determined at a hearing or on paper.
- (e) A Notice of Appeal must be accompanied by a filing fee (the “**Filing Fee**”) of the greater of USD 1,000 or 20% of the sanction specified in the Summary Sanction being appealed. The Exchange may determine in its discretion to reduce or waive the Filing Fee.

### **3 Pre-Hearing Procedures and Directions**

- 3.1 Within 15 business days following receipt of a Notice of Appeal filed in accordance with section 2.2, Exchange will provide to the Appellant (i) any written response by the Exchange to the Notice of Appeal (with or without evidence in support), or (ii) a notice that no written response will be provided (a “**Notice of No Response**”).
- 3.2 Within 10 business days from (i) receipt of Exchange’s written response, (ii) receipt of a Notice of No Written Response, or (iii) the date set out in section 3.1, the Appellant must provide the following to the Exchange:
  - (a) any additional evidence to be relied on by the Appellant;
  - (b) the Appellant’s election as to whether the appeal is to be determined on paper only or by hearing; and
  - (c) any other directions agreed between the Exchange and the Appellant (collectively, (b) and (c) the “**Agreed Directions**”).
- 3.3 The Notice of Summary Sanction, the Notice of Appeal, Exchange’s written response (or Notice of No Response), any evidence to be relied on by the Exchange, any evidence to be relied on by the Appellant provided under section 2.2(c) and 3.2(a), and the Agreed Directions shall collectively form the “**Appeal Materials**”.

- 3.4 Within 10 business days of receipt of the items set out in section 3.2, the Exchange will
- (a) convene a panel (the “**Summary Sanctions Hearing Panel**”) to hear the appeal in accordance with section 4 of these Procedures, and
  - (b) provide the Appeal Materials to the Summary Sanctions Hearing Panel.
- 3.5 If the Appellant indicated it wishes to have the matter determined on paper, the Summary Sanctions Hearing Panel will proceed to determine the appeal on the basis of the evidence and submissions in the Appeal Materials, in accordance with section 5 below. The Summary Sanctions Hearing Panel may ask questions of the Appellant or the Exchange by email, and set a reasonable deadline for replying to any such question. Any such email correspondence with either party must be copied to the other party.
- 3.6 If the Appellant indicated it wishes to have a hearing, the Summary Sanctions Hearing Panel will issue directions to the Appellant and the Exchange for the hearing of the appeal (“**Summary Sanctions Appeal Hearing**”), which may include the Agreed Directions.
- 3.7 Each of the Appellant and the Exchange may request to vary the directions issued by the Summary Sanctions Hearing Panel. Any such request must be in writing and must be received by the Summary Sanctions Hearing Panel within 5 business days of the directions being issued.
- 3.8 The Appellant may withdraw its appeal in writing delivered to the Exchange at any time prior to the determination of the appeal by the Summary Sanctions Hearing Panel.
- (a) If the Appellant withdraws its appeal, the Summary Sanction is due and payable within 10 business days of the notice of withdrawal of appeal.
- 3.9 Exchange may withdraw a Summary Sanction that is the subject of an appeal in writing delivered to the Appellant and the Summary Sanctions Hearing Panel at any time prior to the determination of the appeal.

#### **4. Composition of a Summary Sanctions Hearing Panel**

- 4.1 A Summary Sanctions Hearing shall be conducted by a three-member panel, selected by the President of the Exchange. The panel will not include the Chief Compliance Officer or any member of the Exchange’s Compliance staff.
- 4.2 In selecting the Summary Sanctions Hearing Panel, the President shall consider several criteria, including:
- (a) the availability of an individual to participate in the Summary Sanctions Hearing;

- (b) the potential for a direct conflict of interest due to an individual's personal, business, or family relationship; and
- (c) the relevant experience and expertise of the individual.

## **5. Conduct of a Summary Sanctions Appeal Hearing**

- 5.1 A Summary Sanctions Appeal Hearing will proceed in the manner determined most appropriate and fair by the Chairperson of the Summary Sanctions Hearing Panel (the "**Hearing Chairperson**").

## **6. Determination of the appeal**

- 6.1 The burden of convincing the Summary Sanctions Hearing Panel to allow the appeal in whole or in part shall reside with the Appellant.
- 6.2 The Summary Sanctions Hearing Panel will determine the appeal by applying the civil standard of proof, i.e., on the balance of probabilities.
- 6.3 The Summary Sanctions Hearing Panel may:
  - (a) dismiss the appeal and confirm the Summary Sanction, in which case the Summary Sanctions Hearing Panel shall state the date by which the Summary Sanction must be paid; or
  - (b) allow the appeal and annul the Summary Sanction, in whole or in part.
- 6.4 In the case of 6.3(b), the Summary Sanctions Hearing Panel may direct that the Filing Fee be refunded in whole or in part to the Appellant.
- 6.5 The decision of the Summary Sanctions Hearing Panel shall be notified to the Appellant and the Exchange, and any other applicable party, in writing as soon as possible.
- 6.6 A decision of the Summary Sanctions Hearing Panel may be published by notice by Exchange.

## **7. Concluding Matters**

- 7.1 All applicable correspondence in relation to the Summary Sanctions Appeal Hearing, any transcript of the Summary Sanctions Appeal Hearing and all documentary evidence presented to the Summary Sanctions Hearing Panel by any party shall comprise the record of the Summary Sanctions Appeal Hearing.

- 7.2 The decision of a Summary Sanctions Hearing Panel in relation to an appeal is final, binding and conclusive and there shall be no further appeal and no recourse to mediation or arbitration under the CPA.
- 7.3 The Appellant, the Exchange and each of their respective representatives shall comply with any decision of a Summary Sanctions Hearing Panel in relation to an appeal. The contravention by a Contracting Party or its representatives of any determination, direction or sanction imposed by a Summary Sanctions Hearing Panel pursuant to these Procedures shall be treated for all purposes as a breach of the ICE NGX Rules. The lack of enforcement by the Exchange of any sanction shall not constitute a breach of these Procedures or the ICE NGX Rules by the Exchange and shall not constitute a waiver of any action or contravention of the ICE NGX Rules.
- 7.4 Notwithstanding anything else in these Appeal Procedures, a decision by a Summary Sanctions Hearing Panel in no way restricts ICE NGX's authority to take any other action under the CPA, including without limitation to (i) investigate, enforce or take action against the Contracting Party in respect of its activities and obligations under the CPA, or (ii) impose any limitations or conditions on the Appellant's membership, participation or access that ICE NGX determines, in its absolute discretion, necessary or appropriate to protect the security and integrity of the ICE NGX exchange or clearinghouse.