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## 24. REVIEW PANEL

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**Chapter 24 sets out the role and powers of the Review Panel with respect to APX enforcement determinations and APX decisions in respect of listees and sponsors.**

### **Matters that may be reviewed**

24.1 A reference in this **Chapter 24** to:

- (a) an **APX enforcement determination** is to a decision by **APX** under:
  - (i) **Rule 23.3** (enforcement action) or 23.6 (penalties and sanctions) in respect of a **sponsor**; and
  - (ii) **Rule 22.1** (sanctions) in respect of a **listee**; and

an **APX decision** means a decision by **APX** under these **Rules** including a decision under **Rule 26.7** (waivers)

but not including:

- (iii) an **APX enforcement determination**; or
- (iv) a decision by **APX** under **Chapter 3** not to grant an application by a person to be a **sponsor**; or
- (v) a decision by **APX** under **Chapter 4** not to admit an **applicant** to the **official list**.

24.2 A **sponsor** or **listee** the subject of an **APX enforcement determination** or affected by an **APX decision** may request that determination or decision be reviewed by a **Review Panel** by giving **APX** notice of the request to **APX** in accordance with the **Procedures**.

24.3 If a **sponsor** or **listee** gives **APX** notice of a request under **Rule 24.2** for a review by a **Review Panel** of an **APX enforcement determination** or **APX decision**, **APX** must establish a **Review Panel** to review that determination or decision.

24.4 Any reference to **listee** in **Rules 24.5** to **24.24** will be taken to include a **sponsor** that has given **APX** notice of a request under **Rule 24.2**.

24.5 A **listee** must comply with the **Procedures** in respect of any request by the **listee** for the review by a **Review Panel** of an **APX enforcement determination** or **APX decision**. The **listee** must also pay the fee (if any) set out in **Fee Schedule** in respect of such a request.

### **Referral by APX of a matter to the Review Panel**

24.6 **APX** may refer an alleged breach of these **Rules** to the **Review Panel** for determination without first making an **APX enforcement determination** itself. **APX** must comply with **Rule 22.2** or **23.1** before doing so, and must give the **Review Panel** a copy of the notice given by **APX** to the **listee** under **Rule 22.2** or **23.1** (as applicable), and a copy of any response provided by the **listee** to that notice.

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## Conduct of Review Panel Proceedings

- 24.7 The **Review Panel** must comprise members and carry out proceedings in accordance with the **Procedures**.
- 24.8 A **Review Panel** is bound by and must enforce the provisions of these **Rules**.
- 24.9 Unless otherwise specified in the **Procedures**, a review by the **Review Panel** of an **APX enforcement determination** is to be conducted as a hearing de novo.
- 24.10 Unless otherwise specified in the **Procedures** a review by the **Review Panel** of an **APX decision** is to be conducted as a review to determine whether or not the **APX decision** was made in accordance with the powers and obligations conferred on **APX** by these **Rules**.
- 24.11 Either party may notify the **Review Panel** within the time period specified in the **Procedures** that an oral hearing is necessary to establish all of the relevant facts and request an oral hearing in accordance with the **Procedures**.
- 24.12 Unless a request under **Rule 24.11** is made within the relevant time period, proceedings of the **Review Panel** will take place by way of the consideration of documents submitted by the parties with no oral hearing.
- 24.13 Any oral hearing by a **Review Panel** is to be conducted in private.
- 24.14 If a **Review Panel** is established under this **Chapter 24**, **APX** and the **listee** may submit to the **Review Panel** for its consideration a proposed agreed outcome in relation to a matter referred to the **Review Panel** under **Rules 24.3 or 24.6**. A **Review Panel** is not bound to accept the agreed outcome proposed.

## Determinations of a Review Panel

- 24.15 A **Review Panel** may affirm, vary or set aside an **APX enforcement determination**, and may substitute an **APX enforcement determination** of **APX** with its own determination.
- 24.16 Without limiting **Rule 24.15**, a **Review Panel** may set aside, reduce or increase any penalties or sanctions imposed by **APX** pursuant to an **APX enforcement determination** or impose different or additional penalties or sanctions to those (if any) imposed by **APX**.
- 24.17 If the **Review Panel** decides that an **APX decision** was not made in accordance with the powers and obligations conferred on **APX** by these **Rules**, the **Review Panel** may either:
- (a) decide, notwithstanding that the **APX decision** was not made in accordance with the powers and obligations conferred on **APX** by these **Rules** to affirm the **APX decision**; or
  - (b) remit the subject matter of the **APX decision** to **APX** for further consideration by **APX** in accordance with any direction given by the **Review Panel**. **APX** may following such further consideration either affirm, vary or set aside the relevant **APX decision**.
- 24.18 Where a matter has been referred to the **Review Panel** by **APX** under **Rule 24.6**:
- (a) the **Review Panel** may exercise any of the powers that **APX** has under **Rule 22.1 or 23.6** (as the case may be);
  - (b) the conduct of **Review Panel** proceedings must otherwise be in accordance with this **Chapter 24**; and

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- (c) the **listee** may by notice in writing request a review of the decision by the **Review Panel** within the period specified in the **Procedures**. If the **listee** requests such a review, the provisions of this **Chapter 24** apply to that review, except that **APX** must establish a **Review Panel** to review the decision which consists of different members to the **Review Panel** which made the decision the subject of the review.
- 24.19 A **Review Panel** must make its decision free of bias, give the **listee** and **APX** a fair hearing, and must in all other respects observe the rules of procedural fairness.
- 24.20 A decision of a **Review Panel** is binding on the **listee** and **APX**.
- 24.21 A **Review Panel** must notify **APX** and the **listee** of:
- (a) its decision (including the penalties and sanctions (if any) imposed by it); and
  - (b) the reasons for its decision,
- as soon as reasonably practicable. In any event, a notification by the **Review Panel** under this **Rule 24.21** must be given within 10 **business days** of the conclusion of its review or decision.
- 24.22 A **Review Panel** may order that **APX** refund the fee (if any) paid by the **listee** under **Rule 24.5** if the **Review Panel**:
- (a) sets aside the relevant **APX enforcement determination** (or part of it, such as any penalties or sanctions imposed); or
  - (b) varies the relevant **APX enforcement determination** (or part of it, such as any penalties or sanctions imposed ) in the manner requested by the **listee**;
  - (c) remits the subject matter of the relevant **APX decision** to **APX** for further consideration by **APX** in accordance with any direction given by the **listee**; or
  - (d) the **Review Panel** otherwise considers it appropriate.
- 24.23 **APX** must publish the decisions of the **Review Panel** in respect of the review of **APX enforcement determinations** on the **APX website**.
- 24.24 A party to **Review Panel** proceedings must keep confidential the subject matter of any proceedings of the **Review Panel** and must not use or disclose any confidential information provided to it in the proceeding, except:
- (a) to the extent disclosed by **APX** in the publication of a decision under Rule, 23.13 or 24.23;
  - (b) as permitted under these **Rules**;
  - (c) as required by law; or
  - (d) for disclosure by a party to the **Review Panel** proceedings of the proceedings to its advisers on a confidential basis.