

Disciplinary and Appeals Procedures

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Glossary

See also the glossary of the **IPSEX Rules for Members** and the **IPSEX Rules for Issuers**

Admission: the admission of **Financial Instruments** to trading on the **Exchange** or the acceptance of an **Applicant** by the **Exchange** as an **IPSEX Member**, as the context requires.

Exchange or **International Property Securities Exchange** or **IPSEX:** IPSEX UK Limited, a **Recognised Investment Exchange** dedicated to the trading of shares in commercial real estate companies.

ExCo: the Executive Committee of the **Exchange** established by the **IPSEX** Chief Executive Officer.

ExCo Disciplinary and Appeals Panel: the Panel to whom decisions made by **Market Regulation** are referred, comprising **ExCo** members (excluding Head of Market Regulation) and may comprise other experienced market practitioners.

Financial Instrument or **Financial Instruments:** the **Financial Instruments** of an **Applicant** or an **Issuer**, of a class admitted to trading on the **Exchange** or for which an application for **Admission** has been (or is proposed to be) made.

IPSEX Approved Valuer: a **RICS Registered Company** approved by the **Exchange**. Part III of the **IPSEX Rules for Members** sets out the requirements and process that a firm must follow to gain this status.

IPSEX Disciplinary and Appeals Procedures: the disciplinary and appeals procedures issued by the **Exchange**, as amended from time to time.

IPSEX Lead Adviser: a firm which is authorised by the **Exchange** and whose name is included on the list of **IPSEX Lead Advisers** maintained by the **Exchange**. An **Issuer** must appoint an **IPSEX Lead Adviser** in relation to any application for **Admission** of **Financial Instruments** and in certain other circumstances.

IPSEX Member: a person admitted to membership of the **Exchange** as an **IPSEX Lead Adviser** and/or an **IPSEX Approved Valuer** and/or an **IPSEX Trading Member**.

IPSEX Rules: the **IPSEX Rules for Members** or the **IPSEX Rules for Issuers** as the context requires.

IPSEX Rules for Issuers: the rules for **Issuers** issued by the **Exchange**, as amended from time to time.

IPSEX Rules for Members: the rules for **IPSEX Lead Advisers**, **IPSEX Approved Valuers** and **IPSEX Trading Members** as issued by the **Exchange**, as amended from time to time.

IPSEX Trading Member: an entity that has applied for and been granted **Trading Membership**.

IPSEX Trading Rules: the rules set out in Part IV of the **IPSEX Rules for Members** issued by the **Exchange**, as amended from time to time.

Issuer: a company established to own an underlying **Single Commercial Property Asset** or **Multiple Commercial Property Asset** which is, or is proposed to be, securitised and traded on the **Exchange**.

Market Regulation: the executive staff at the **Exchange** responsible for the **Exchange's** market surveillance, membership, listing and any other regulatory functions including monitoring the compliance of **Issuers** with their continuing obligations and enforcing the **IPsx Rules**.

Trading Membership: IPSX Membership allowing a person to participate as an **IPsx Member** and enter into trades on the **IPsx Trading Platform**, including a **Market Maker** or a **Broker**.

Introduction

These Procedures form part of the **IPsx Rules** and set out the rules and obligations applicable to **IPsx Members** and **Issuers**, as well as the procedures which **Market Regulation** will follow in circumstances where:

- an **IPsx Member/Issuer** (or an **Applicant**) intends to appeal a decision of: (i) the **Exchange**; (ii) **Market Regulation**; or (iii) the **IPsx Executive Committee (ExCo) Disciplinary and Appeals Panel**; or
- **Market Regulation** intends to initiate enforcement or disciplinary proceedings against an **IPsx Member/Issuer**.

Overview of Hearing/Appellate Body Structures

Hearing/Appellate Body	Composition
Executive Committee (ExCo) Disciplinary and Appeals Panel	IPsx ExCo members (excluding Head of Market Regulation) and may comprise other experienced market practitioners
Appeals Panel	Suitably qualified independent non- Exchange persons

Section I – IPsx Non-Disciplinary Process

- I.1 Appeals against: (i) refusal of **Admission** to trading decisions of the **Exchange**; and/or (ii) non-disciplinary decisions of **Market Regulation** under the **IPsx Rules** are heard by the **ExCo Disciplinary and Appeals Panel**. In performing the functions of investigator, complaint handler, examiner, or any other proceeding authorised by the **IPsx Rules**, the **ExCo Disciplinary and Appeals Panel** shall function independently of the commercial interests of the **Exchange** and the commercial interests of the potential **IPsx Member/Issuer** or the **IPsx Member/Issuer** (as applicable). Decisions of the **ExCo** are appealed to the **Appeals Panel**.

Market Regulation role

- 1.2 **Market Regulation** will consider applications for registration or the withdrawal of a registration further to:
- Rules 1.1 and 1.2 of Part II (IPsx Lead Advisers) of the **IPsx Rules for Members**;
 - Rules 1.1 and 1.2 of Part III (IPsx Approved Valuers) of the **IPsx Rules for Members**;
 - Rules 2.1 to 2.8 inclusive of Part IV (IPsx Trading Members) of the **IPsx Rules for Members**; and
 - applications for the **Admission of Securities** to trading on the **Exchange** further to the **IPsx Rules for Issuers**.
- 1.3 Where **Market Regulation** is minded to refuse such an application, it will provide written reasons for its preliminary decision and the potential **IPsx Member/Issuer** or the **IPsx Member/Issuer** (as applicable) may submit further information to **Market Regulation** on the basis of which **Market Regulation** may either revise or uphold its original decision. Where **Market Regulation**, following consideration of any additional information submitted by the **Applicant**, continues to uphold its original decision to refuse the application in question, the potential **IPsx Member/Issuer** or the **IPsx Member/Issuer** (as applicable) may appeal that decision to the **ExCo Disciplinary and Appeals Panel**.

Appeals against decision of Market Regulation

- 1.4 The potential **IPsx Member/Issuer** or the **IPsx Member/Issuer** (as applicable) will be notified in writing of any decision and will have the option of initiating an appeal against the decision of **Market Regulation**. The written notification from **Market Regulation** will include details of the incident and/or identified failings and details of **Market Regulation's** factual findings in this respect and any remedial action taken or proposed along with details of any supporting evidence on which the findings are based.
- 1.5 Subject to the following paragraph, any appeals against the decisions of **Market Regulation** made by the potential **IPsx Member/Issuer** or the **IPsx Member/Issuer** (as applicable) pursuant to these **Rules** will be heard by the **ExCo Disciplinary and Appeals Panel**, with the **ExCo Disciplinary and Appeals Panel** having the power to uphold, quash or vary any decision of **Market Regulation**.
- 1.6 There will be no appeal on **Market Regulation's** decision to refer a matter to the **ExCo Disciplinary and Appeals Panel** where the **ExCo Disciplinary and Appeals Panel** is to act as a tribunal of first instance (for which see section 3 below).

Appeals against decision of the ExCo Disciplinary and Appeals Panel

- 1.7 Appeals against final decisions of the **ExCo Disciplinary and Appeals Panel** are heard by the **Appeals Panel** in accordance with its procedures (for which see section 4 below). If an **IPsx Member/ Issuer**, following receipt of a decision by the **ExCo Disciplinary and Appeals Panel**, wishes to appeal that decision it must, within 10 **business days** of service of the **ExCo Disciplinary and Appeals Panel's** decision (unless the **ExCo Disciplinary and Appeals Panel** provides for a longer period), serve notice in writing on the Chairman of the **ExCo Disciplinary and Appeals Panel**. The notice of appeal must include:
- (a) the appellant's name;
 - (b) the decision appealed against;
 - (c) the grounds of appeal; and
 - (d) all material facts (including supporting evidence).
- 1.8 Following receipt of an appeal notice in compliance with the requirements above, an **Appeals Panel** will be appointed, and the matter will be referred to it. The **Appeals Panel** will make arrangements for a hearing as soon as practicable thereafter.
- 1.9 If the appellant wishes to rely on new evidence which was not put before **Market Regulation** or the **ExCo Disciplinary and Appeals Panel**, the matter will be heard by a reconvened **ExCo Disciplinary and Appeals Panel** rather than the **Appeals Panel**. If the appellant wishes to appeal the decision of the reconvened **ExCo Disciplinary and Appeals Panel**, the matter may only then be referred to the **Appeals Panel** for consideration. Copies of any new evidence on which the appellant seeks to rely are required to be appended to the appeal notice.
- 1.10 The **Appeals Panel** may uphold, quash or vary any decision it is asked to consider. Any decision of the **Appeals Panel** shall be final.

Section 2 – IPSX Disciplinary Process

- 2.1 **Market Regulation** will bring enforcement or disciplinary proceedings against an **IPsx Member/Issuer** where there is evidence to suggest that the **IPsx Member/Issuer** has circumvented or breached the **IPsx Rules** and the circumvention or breach is such as to warrant enforcement or disciplinary action (see below for details of the factors that **Market Regulation** will consider in coming to a view on this).
- 2.2 **Market Regulation** will take enforcement or disciplinary action where a careful and thorough investigation of the facts and circumstances surrounding the incident or breach of the **IPsx Rules** indicates that steps taken by the **IPsx Member/Issuer** in light of the incident or breach, are inadequate or are likely to be inadequate, to guard against further incidents or breaches of the **IPsx Rules** and enforcement or disciplinary action is deemed necessary to protect the orderly functioning of the **Exchange** and its integrity and transparency.
- 2.3 In the event of conflict between these Procedures and the provisions of any other **Rules**, these Procedures shall prevail.

The Role of Market Regulation

Investigation

- 2.4 **Market Regulation** may carry out an investigation into an incident or the conduct of an **IPsx Member/Issuer** where it has evidence that creates a suspicion that a circumvention or breach of **Rules** may have occurred. This suspicion may arise from observed market conduct, reports by a third party to the **Exchange**, or from the **Exchange's** ongoing member monitoring programme.
- 2.5 Such investigations will be conducted by **Market Regulation** in a thorough, objective manner and as quickly as reasonably possible.
- 2.6 **IPsx Members/Issuers** are required to provide **Market Regulation**, upon request, with such information and assistance as **Market Regulation**, in its sole discretion, considers necessary for the proper investigation of an incident or potential breach of **Rules**. Requests may include (but are not limited to) requests relating to:
- (a) the provision of complete and accurate information in respect of transactions in **Securities** in such format as **Market Regulation** may specify;
 - (b) the production of documentation such as emails, telephone transcripts, agreements and any other documentation unless legally privileged or otherwise legally protected from disclosure;
 - (c) attendance at interviews to provide explanations and answer questions in interview, with such explanations and answers to be recorded; and
 - (d) the granting of access to the **IPsx Member's/Issuer's** premises by **Market Regulation** or a person appointed by it during normal office hours for the purposes of inspecting documents and records of the **IPsx Member/Issuer**.
- 2.7 **IPsx Members/Issuers** must at all times co-operate fully with any requests that **Market Regulation**, in its sole discretion, considers necessary for the proper investigation of a potential **Rule** breach, and failure to do so shall itself be deemed a breach of **Rules** liable to disciplinary or enforcement action.
- 2.8 On the basis of that investigation, **Market Regulation** will decide if the matter may be dealt with by **Market Regulation** or if the seriousness or severity of the incident warrants a referral to the **ExCo Disciplinary and Appeals Panel**.
- 2.9 The matters that **Market Regulation** will consider when coming to a view as to the action that an apparent circumvention or breach of the **IPsx Rules** justifies will include:
- (a) the nature of the circumvention or breach of the **IPsx Rules**, including how serious it is perceived to be;
 - (b) the intent behind the circumvention or breach of the **IPsx Rules**, including if it was negligent, reckless or deliberate;
 - (c) the duration of circumvention or the breach of the **IPsx Rules**, including if it is an isolated incident or otherwise;
 - (d) how the circumvention or breach of the **IPsx Rules** was identified and brought to the attention of **Market Regulation** or the **Exchange**;

- (e) the impact of the circumvention or breach of the **IPsx Rules**, to include consideration of any actual or potential repercussions of the incident;
- (f) any steps taken, or not taken, by the **IPsx Member/Issuer** to mitigate the effects/impact of the circumvention or breach of the **IPsx Rules**;
- (g) the previous conduct and compliance history of the **IPsx Member/Issuer**;
- (h) fairness and consistency in the application of the **IPsx Rules/Disciplinary and Appeals Procedures**; and
- (i) the conduct of the **IPsx Member/Issuer** in relation to the matter under investigation.

Disciplinary Action

- 2.10 Upon conclusion of its investigations, **Market Regulation** may, subject to the outcome of its investigation and where it considers this the appropriate remedy or course of action:
- (a) Confirm to the **IPsx Member/Issuer**, if a circumvention or breach of the **IPsx Rules** has not been found, that this is the case and that no further action will be taken;
 - (b) In circumstances where **Market Regulation** identifies failings in an **IPsx Member's/Issuer's** conduct, but such failing does not amount to a circumvention or breach of the **IPsx Rules**, **Market Regulation** may provide guidance to the **IPsx Member/Issuer** as to its expectations in relation to the conduct in question; or
 - (c) Provide the **IPsx Member/Issuer** with a written summary of its findings and advise the **IPsx Member/Issuer** that a circumvention or breach of the **IPsx Rules** has been found and is being referred to the **ExCo Disciplinary and Appeals Panel**.

Referral to ExCo Disciplinary and Appeals Panel

- 2.11 The **ExCo Disciplinary and Appeals Panel** will hear: (i) appeals against changes to the **IPsx Rules**; (ii) refusal of **Admission** to trading decisions of **Market Regulation** (iii) appeals against non-disciplinary decisions of **Market Regulation**; and (vi) direct referrals of breaches of the **IPsx Rules** from **Market Regulation**.

Powers of ExCo Disciplinary and Appeals Panel

- 2.12 The **ExCo Disciplinary and Appeals Panel** has the power, where it considers it appropriate to do so, to take the following actions in relation to a case against an **IPsx Member/Issuer** which is referred to it:
- (a) dismiss the case and take no action;
 - (b) impose remediation conditions;
 - (c) censure the **IPsx Member/Issuer**;
 - (d) fine the **IPsx Member/Issuer** (such fine being a maximum of £50,000 per rule breach);
 - (e) publish the fact that the **IPsx Member/Issuer** has been fined and/or censured and the reasons for such fine or censure (the **ExCo Disciplinary and Appeals Panel** is able to

publish part or all of its written decision or a summary of it, and the reasons for the decision);

- (f) in relation to an **IPSEX Member**, suspend or withdraw the **trading membership** of the **IPSEX Member** concerned where the **IPSEX Member** has failed to comply with the **IPSEX Rules for Members** or suspend particular user accounts of the **IPSEX Member**; and/or
- (g) in relation to an **Issuer**, suspend or cancel trading in **Securities** where an **Issuer** has failed to comply with the **IPSEX Rules for Issuers**.

Appeals against decision of ExCo Disciplinary and Appeals Panel

- 2.13 Procedural directions or orders of the **ExCo Disciplinary and Appeals Panel** will not be open to appeal.
- 2.14 Any final substantive decision of the **ExCo Disciplinary and Appeals Panel** may be appealed to the **Appeals Panel** which will have the ability to uphold, vary or quash any decision of the **ExCo Disciplinary and Appeals Panel** which is referred to it.

Appeals Panel

- 2.15 The **Appeals Panel** will be selected from a pool of appropriately experienced persons who are not members of the **Exchange's** staff (see section 4 below).

Negotiated Settlement

- 2.16 At any time following a decision by **Market Regulation** to escalate a matter to the **ExCo Disciplinary and Appeals Panel**, or by an **IPSEX Member/Issuer** to appeal a decision of **Market Regulation** to the **ExCo Disciplinary and Appeals Panel** or **Appeals Panel**, **Market Regulation** and the **IPSEX Member/Issuer** are free to negotiate a proposed settlement and submit it to the **ExCo Disciplinary and Appeals Panel** or **Appeals Panel** for approval. The submission should be in writing and agreed by both the parties.
- 2.17 If the **ExCo Disciplinary and Appeals Panel** or **Appeals Panel** (as applicable) approves the proposed settlement, the **ExCo Disciplinary and Appeals Panel** or **Appeals Panel** shall make an order reflecting the terms of the settlement reached which shall have the same effect as a decision of the **ExCo Disciplinary and Appeals Panel** sitting as a tribunal of first instance.
- 2.18 While negotiations of a settlement are ongoing **Market Regulation** has the discretion to ask the **ExCo Disciplinary and Appeals Panel** or the **Appeals Panel** to suspend its consideration of the matter in issue.
- 2.19 All settlement discussions shall be on a without prejudice basis so that if the **ExCo Disciplinary and Appeals Panel** or **Appeals Panel** are asked to consider a settlement proposal and then reject the proposed settlement, then the **ExCo Disciplinary and Appeals Panel** or **Appeals**

Panel taking the matter forward will be required to have different members who will have no knowledge of the details of the earlier proposed settlement.

- 2.20 If the settlement is agreed prior to the case being submitted to the **ExCo Disciplinary and Appeals Panel**, the **IPsx Member/Issuer** shall be entitled to a 30% discount on any proposed fine. If the settlement is agreed prior to an appeal being heard by the **Appeals Panel**, the **IPsx Member/Issuer** shall be entitled to a 15% discount on any proposed fine.

Section 3 – Executive Committee (ExCo) Disciplinary and Appeals Panel

Role

- 3.1 The role of **IPsx's ExCo Disciplinary and Appeals Panel** is to (i) act as a tribunal of first instance, to hear and determine a decision against an **IPsx Member/Issuer** upon referral from **Market Regulation**; and (ii) act as an appellate tribunal, to hear and determine admissible appeals against a decision of **Market Regulation** by a potential **IPsx Member/Issuer** or **IPsx Member/Issuer** (as applicable).

Powers

- 3.2 When acting as a tribunal of first instance, the **ExCo Disciplinary and Appeals Panel** will have the powers set out in paragraph 2.12 above.
- 3.3 When acting as an appellate tribunal, the **ExCo Disciplinary and Appeals Panel** will have the power to uphold, quash or vary any decision by **Market Regulation** which is referred to it.
- 3.4 The **ExCo Disciplinary and Appeals Panel** will also have the power to approve any settlement negotiated between **Market Regulation** and an **IPsx Member/Issuer** in respect of a matter referred to it for consideration.

Membership

- 3.5 The **ExCo Disciplinary and Appeals Panel** will be staffed by suitably experienced senior members of the **Exchange's** personnel. Non-Executive Directors of the **Exchange** and/or a suitably qualified non-**Exchange** legal representative may also be appointed to the **ExCo Disciplinary and Appeals Panel**.
- 3.6 The **ExCo Disciplinary and Appeals Panel** appointed further to a referral or an appeal will have a quorum of three, one of whom is to be the Chairman and is to be selected by the members of the **ExCo Disciplinary and Appeals Panel**.
- 3.7 Members of the **ExCo Disciplinary and Appeals Panel** will be required to disclose any potential conflict of interest at the earliest possibility and the Chairman on receipt of such a disclosure will, if a conflict is indeed deemed to exist, take steps to replace that member of the **ExCo Disciplinary and Appeals Panel**.

- 3.8 The names of the members of the **ExCo Disciplinary and Appeals Panel** will be confirmed in writing to the potential **IPsx Member/Issuer** or the **IPsx Member/Issuer** (as applicable).
- 3.9 **Exchange** personnel who were involved in a decision of **Market Regulation** which is the subject of an appeal, or who were involved in the investigation leading to a disciplinary case, will be precluded from sitting on the **ExCo Disciplinary and Appeals Panel** considering that matter.
- 3.10 A party is able to object to the membership of the **ExCo Disciplinary and Appeals Panel**, provided it does so prior to its hearing of the case, on the grounds of conflict of interest or a breach of the arrangements set out above. If the **ExCo Disciplinary and Appeals Panel** upholds the objection, it will take steps to address the objection. The decision of the **ExCo Disciplinary and Appeals Panel** under this **Rule** is an interim decision and cannot be appealed.

Service

- 3.11 Service of necessary notices or documents shall be:
- (a) by hand; or
 - (b) by first class post.
- 3.12 The parties may agree to other modes of service.
- 3.13 A party shall also send to the receiving party a copy by email of any communications and documents required to be served. Unless otherwise agreed, such provision by email shall not constitute service.
- 3.14 Service shall be deemed effective on the date of delivery by hand or, where first-class post is used, on the second day after posting (provided that day is a **business day**; or if not, the next **business day** after that day).

Process for Referral from Market Regulation to ExCo Disciplinary and Appeals Panel

- 3.15 Proceedings will be commenced by **Market Regulation** serving its written statement of case on the potential **IPsx Member/Issuer** or the **IPsx Member/Issuer** (as applicable). The statement of case will outline the decision of **Market Regulation** and any evidential failings (including copies of any such evidence).
- 3.16 Following receipt of the statement of case, the recipient may, within ten **business days**, (unless **Market Regulation** provides for a longer period), submit a response to **Market Regulation's** statement of case (and should also attach supporting evidence).
- 3.17 On receipt of the response from the potential **IPsx Member/Issuer** or the **IPsx Member/Issuer** (as applicable), **Market Regulation** will provide to the **ExCo Disciplinary and Appeals Panel**, **Market Regulation's** statement of case and the third party's response (including any supporting evidence).

Process for Referral when acting as Appellate Tribunal

- 3.18 Following service of a non-disciplinary decision by **Market Regulation** to the **ExCo Disciplinary and Appeals Panel**, the third party who is the subject of the non-disciplinary decision will have ten **business days** (unless **Market Regulation** provides for a longer period), including the day on which the decision was served, to initiate an appeal.
- 3.19 Appeals are to be initiated by the appellant serving a notice in writing on the **ExCo Disciplinary and Appeals Panel**. The notice is required to include details of:
- (a) the appellant's name;
 - (b) the decision appealed against;
 - (c) the grounds of appeal; and
 - (d) all material facts.
- 3.20 The **Exchange** will ensure that a copy of the notice, along with a copy of the **Market Regulation** decision to which the notice relates, is provided to the Chairman of the **ExCo Disciplinary and Appeals Panel**.
- 3.21 If **Market Regulation** wishes to respond to the appellant's notice, it will be required to do so within ten **business days** of service of the notice to the **ExCo Disciplinary and Appeals Panel** (unless a different period is agreed), with copies of that response and any supporting documents to also be provided to the appellant.

Procedure of ExCo Disciplinary and Appeals Panel

- 3.22 The **ExCo Disciplinary and Appeals Panel** will consider matters before it on the basis of the relevant papers and will not hold a hearing unless one of the parties specifically requests this.
- 3.23 In circumstances where the **ExCo Disciplinary and Appeals Panel** agrees to hold a hearing, the **ExCo Disciplinary and Appeals Panel** will provide the parties with not less than ten **business days'** notice (the notice period may be longer if the **ExCo Disciplinary and Appeals Panel** considers this to be appropriate). The notice will be in writing and service shall be deemed effective on the date of delivery by hand or, where first-class post is used, on the second day after posting (provided that day is a **business day**; or if not, the next **business day** after that day). While parties are able to attend the hearing, the hearing may proceed in their absence.

Decision-Making Process

- 3.24 The **ExCo Disciplinary and Appeals Panel** will be able to reach a decision on the matter before it on a majority basis (unanimity will not be required) and will then notify the parties in writing of its decision and the grounds on which it was reached (but there is no requirement to disclose if the decision was reached on a unanimous or majority basis).
- 3.25 Where the **ExCo Disciplinary and Appeals Panel** is acting as an appellant tribunal and considering an appeal against a decision of **Market Regulation** the **ExCo Disciplinary and Appeals Panel** will only quash or vary that decision if it is satisfied, on the balance of probabilities, that the evidence does not support the decision reached by **Market Regulation** or the decision is based on an incorrect interpretation of the **IPsx Rules** or any other relevant IPSX rule.

Appeals against decision of ExCo Disciplinary and Appeals Panel

- 3.26 Appeals against final decisions of the **ExCo Disciplinary and Appeals Panel** are heard by the **Appeals Panel**, in accordance with its procedures (for which see section 4 below). If an **IPsx Member/Issuer**, following receipt of a decision by the **ExCo Disciplinary and Appeals Panel**, wishes to appeal that decision, it must, within ten **business days** of service of the **ExCo Disciplinary and Appeals Panel's** decision (unless the **ExCo Disciplinary and Appeals Panel** provides for a longer period), serve notice in writing on the Chairman of the **ExCo Disciplinary and Appeals Panel**. The notice of appeal must include:
- (a) the appellant's name;
 - (b) the decision appealed against;
 - (c) the grounds of appeal; and
 - (d) all material facts (including supporting evidence)
- 3.27 Following receipt of an appeal notice in compliance with the requirements above, an **Appeals Panel** will be appointed, and the matter will be referred to it. The **Appeals Panel** will make arrangements for a hearing as soon as practicable thereafter.
- 3.28 If the appellant wishes to rely on new evidence which was not put before **Market Regulation** or the **ExCo Disciplinary and Appeals Panel**, the matter will be heard by a reconvened **ExCo Disciplinary and Appeals Panel** rather than the **Appeals Panel**. If the appellant wishes to appeal the decision of the reconvened **ExCo Disciplinary and Appeals Panel**, the matter may only then be referred up to the **Appeals Panel** for consideration. Copies of any new evidence on which the appellant seeks to rely are required to be appended to the appeal notice.

Section 4 – Appeals Panel

Role

- 4.1 The role of the **Appeals Panel** will be to hear and determine appeals referred to it against decisions of the **ExCo Disciplinary and Appeals Panel**.

Powers

- 4.2 The **Appeals Panel** will have the power to uphold, quash or vary any decision of the **ExCo Disciplinary and Appeals Panel** which is referred to it.
- 4.3 In the case of an appeal, the **Appeals Panel** will be able to vary any penalty imposed by the ExCo Disciplinary and Appeals Panel for each breach of the **IPsx Rules**.
- 4.4 The **Appeals Panel** will also have the power to approve any settlement negotiated between **Market Regulation** and an **IPsx Member/Issuer** in respect of a matter referred to it for consideration.

Membership

- 4.5 The members of the **Appeals Panel** will be drawn from an external pool of individuals who are independent of the **Exchange** and who have relevant expertise in the standards required to meet the obligations and standards set out in the **IPsx Rules** and/or the conduct of proceedings.
- 4.6 The **Appeals Panel** appointed further to a referral will have a quorum of three (but may have additional members if considered necessary), one of whom is to be the Chairman who will ordinarily be selected by the members of the **Appeals Panel**. However, depending on the nature of the matter under consideration, the **Exchange** reserves the right to appoint an external barrister or solicitor to be the Chairman.
- 4.7 The **Appeals Panel** may appoint any additional individual to the **Appeals Panel** as it considers necessary or appropriate, provided that individual is not a member of the **ExCo Disciplinary and Appeals Panel** whose decision is the subject of the appeal, nor its legal adviser nor anyone who is at the relevant time a member of the **Exchange's** staff. That individual will count as a member of the **Appeals Panel**.
- 4.8 The **Appeals Panel** may, via its Chairman, appoint a legal adviser to advise the **Appeals Panel** on legal issues. That legal adviser will not count as a member of the **Appeals Panel** and may be replaced at any time.
- 4.9 Members of the **Appeals Panel** will be required to disclose any potential conflict of interest at the earliest possibility and the Chairman on receipt of such a disclosure will, if a conflict is indeed deemed to exist, take steps to replace that member of the **Appeals Panel**.
- 4.10 The names of the members of the **Appeals Panel** will then be disclosed to the appellant who will have the opportunity to object to the membership of the **Appeals Panel** on grounds of conflict

provided it does so prior to a hearing of the case. If the **Appeals Panel** upholds the objection, it will take steps to address the objection. The decision of the **Appeals Panel** under this **Rule** is final and cannot be appealed.

- 4.11 Once a hearing is under way any changes to membership of the **Appeals Panel**, and the legal adviser, require consent of all the parties. If such consent cannot be achieved and the **Appeals Panel** cannot or does not consider it appropriate to continue with the hearing, a new **Appeals Panel** and legal adviser will be appointed from the wider pool of members and the hearing will start afresh (but it will not be necessary for the pre-hearing procedures to be repeated).

Secretary

- 4.12 The **Appeals Panel** will have a Secretary (the “Secretary”) responsible for administrative functions (including receipt of any notices or documents to be served on the **Appeals Panel** and distribution of such documents, or notification of any other relevant matter to all other parties to the proceedings).
- 4.13 All communications relating to the proceedings, unless privileged, will be channelled through the Secretary.
- 4.14 Given the administrative nature of the Secretary’s role, it will be permissible for the Secretary to be a member of the **Exchange’s** staff.
- 4.15 All parties will be notified of the name of the Secretary.

Service

- 4.16 Service of necessary notices or documents shall be:
- (c) by hand; or
 - (d) by first class post.
- 4.17 The parties may agree to other modes of service.
- 4.18 A party shall also send to the receiving party a copy by email of any communications and documents required to be served. Unless otherwise agreed, such provision by email shall not constitute service.
- 4.19 Service shall be deemed effective on the date of delivery by hand or, where first-class post is used, on the second day after posting (provided that day is a **business day**; or if not, the next **business day** after that day).

Procedure

- 4.20 Following referral of a matter to, and the appointment of, the **Appeals Panel**:
- (a) the appellant is able to submit to the **Appeals Panel** a further statement amending or expanding upon the notice served pursuant to the **IPsx Rules** above (as appropriate); and
 - (b) any other party may submit to the **Appeals Panel** a further statement in support of its case; and
 - (c) if any party wishes to rely on new evidence or documents not already before the **Appeals Panel**, they must submit a statement containing details of any such new evidence and attach copies of the documents (the **Appeals Panel** will decide on a case by case basis whether such new evidence should be permitted).
- 4.21 Other than with the leave of the **Appeals Panel**, parties will not be permitted to rely on any statement or document not served on the **Appeals Panel** more than two **business days** before the hearing, although this period may be extended if the complexity of the case requires it.
- 4.22 The appeal may be considered on the basis of written submissions if both parties consent.

Case Management

- 4.23 The **Appeals Panel** may give any case management directions they consider necessary, including any directions that may be given for the fair and efficient consideration of the matter.

The Hearing

- 4.24 The parties will be given by the Secretary a minimum of:
- (a) three **business days'** notice of the details of a pre-hearing review; and
 - (b) ten **business days'** notice of the hearing.
- 4.25 The notice period may be longer if the **Appeals Panel** considers this to be appropriate.
- 4.26 The notice will be in writing and will be deemed effective on the date of delivery by hand or, where first-class post is used, on the second day after posting (provided that day is a **business day**; or if not, the next **business day** after that day). Evidence to be considered by the **Appeals Panel** must be submitted a minimum of two **business days** before the hearing, although this period may be extended if the complexity of the case requires it. The **Appeals Panel** may admit any evidence it considers appropriate, even if the same may not be admissible in a court of law.
- 4.27 Legal representation will be permitted at pre-hearing reviews and hearings.
- 4.28 The **Appeals Panel** may proceed in the absence of any of the parties, be it a pre-hearing review or a hearing.

- 4.29 **Appeals Panel** hearings will be in private unless the appellant requests that the hearing be public. Such a request by an appellant must be made a minimum of five **business days** before the commencement of the hearing.
- 4.30 Prior to the commencement of the substantive hearing the parties will be asked to confirm that there is no objection to any of the **Appeals Panel** members appointed to hear the case or the legal adviser, on the basis of a conflict of interest. If there is an objection which is upheld by the **Appeals Panel**, it may appoint another person from the pool of members to replace any member who is considered to be conflicted. If it is the legal adviser who is considered to be conflicted the Chairman may appoint another person to replace the legal adviser. When considering if a conflict exists the **Appeals Panel** will exclude any member objected to and shall have a quorum of two.
- 4.31 The **Appeals Panel** will have full discretion as to the order of proceedings.
- 4.32 The Secretary of the **Appeals Panel** will take minutes of the proceedings which will be available to the parties on request. A transcription of the pre-hearing review or the hearing may also be made at the prior request of any of the parties, including the Chairman, but that party will be required to bear the costs of making the transcription or such proportion of the costs as the Secretary shall determine appropriate.

Decision-Making Process

- 4.33 The **Appeals Panel** will be able to reach a decision on a matter before it on a majority basis (unanimity will not be required). In the case of an equality of votes, the Chairman shall have a second or casting vote.
- 4.34 Once the **Appeals Panel** has reached a decision it will notify the parties in writing of:
- (a) its decision and the grounds on which it was reached (but there is no requirement to disclose if the decision was reached on a unanimous or majority basis);
 - (b) any statement that will be published (the **Appeals Panel** is able to publish part or all of its written decision or a summary of it, and the reasons for the decision);
 - (c) the details of any penalty and/or costs to be imposed (fines and costs will be payable within 30 days of notification).
- 4.35 The **Appeals Panel** will only quash or amend a decision of the **ExCo Disciplinary and Appeals Panel** if it is satisfied in light of the facts presented and on the balance of probabilities, that the decision is a misinterpretation of or an erroneous application of any of the **IPsx Rules** or any other relevant **Rule** or is not justified by the evidence on which it is based.
- 4.36 The **Appeals Panel** has full discretion in relation to costs orders and may order any party to pay such reasonable costs as it thinks fit, regardless of the outcome of the case. However, costs will only be awarded against the **Exchange** when, in the opinion of the **Appeals Panel, Market Regulation** has acted in bad faith in bringing or conducting the proceedings. Parties to the proceedings will be given an opportunity to make submissions on costs to the **Appeals Panel** prior to any costs order being made.

Section 5 – Miscellaneous Points of Procedure

Burden of proof

- 5.1 **Market Regulation**, the **ExCo Disciplinary and Appeals Panel** or the **Appeals Panel** shall not uphold a decision, an allegation or enforce a **Rule** or **Rules** unless it is satisfied on the balance of probabilities that the circumvention or breach of the **Rule(s)** has been evidentially established. The burden of proof will be on **Market Regulation** to establish the circumvention or breach of the **Rule(s)**.

Confidentiality and Market Guidance

- 5.2 Other than as outlined in these **Rules**, and other than as between a party and its advisers, the parties are required to keep confidential any matters relating to proceedings under these **Rules** unless disclosure is permitted or required by law.
- 5.3 The **Exchange**, however, may publish, provided it does not disclose the identity of any party concerned, the findings of the **ExCo Disciplinary and Appeals Panel** or the **Appeals Panel**, if it believes that to do so would be of assistance to the market. The findings may be published in part, in summary, or in full. The **Exchange** is also able to publish details of warning notices issued provided these are also anonymised.
- 5.4 The **Appeals Panel** will also have the power to publish their decision in summary, in part or in full and to include details of the **IPsx Member/Issuer**.

Related Matters

- 5.5 Where cases concerning related matters are brought against more than one **IPsx Member/Issuer**, **Market Regulation** may decide, with the agreement of the **ExCo Disciplinary and Appeals Panel** or the **Appeals Panel** (as appropriate), to bring such cases at the same time, where it would be fair and practicable to do so. **Market Regulation** will consult with the relevant **IPsx Members/Issuers** where it intends to take this course of action.

Disciplinary Fines

- 5.6 Where disciplinary action has been taken by **IPsx** and, consequently, a fine has been levied on an **IPsx Member/Issuer**, the **Exchange** will use the proceeds in one or more of the following ways:
- (a) meeting the expenses incurred by the **Exchange** in the course of the investigation and prosecution of the matter that resulted in disciplinary action being taken or in the course of any appeal against the decision of the **Exchange** in relation to that disciplinary action;
 - (b) for the benefit of users of the **Exchange's** facilities; or
 - (c) for charitable purposes.

Changes to the Procedures

- 5.7 The **ExCo Disciplinary and Appeals Panel** or the **Appeals Panel** is able to vary their Terms of Reference or any of their procedures, including the timeframes provided for completion of the various procedural steps, as outlined in the sections above, to adapt to the circumstances of any particular case.



**International Property
Securities Exchange**

8-10 Hill Street
London W1J 5NG
1 Farnham Road
Guildford GU2 4RG

T +44 (0)20 3931 8800



ipsx.com

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