

# SUMMARY OF COMMENTS

## Terms of Reference

### **CFA Institute Exam Program**

☒ Profession-related ROP      ☒ Exam-related ROP

*Comment:* Why are the exam-related rules, which are essential for the integrity of any exam, not also applied to the Certificate in ESG Investing, the CFA Institute Investment Foundations Program, and the CFA Institute Research Challenge?

*Response:* We agree that strong rules and policies are essential for the integrity and credibility of any testing program, especially ones associated with CFA Institute. Rules and policies alone are not enough, and enforcement of those rules and policies is also needed. However, most individuals testing for the Certificate in ESG Investing or Investment Foundations will not be CFA Institute members or maintain a long-standing relationship with CFA Institute. Therefore, while they will be obligated to abide by the respective program's testing rules and policies, any investigation or resulting discipline will likely be conducted as outlined in the program's Candidate Agreement, rather than administered through the Rules of Procedure. Similarly, the Research Challenge operates under its own rules, which protect the integrity of the competition. Of note, if a participant in the Research Challenge or any CFA Institute certificate program also happens to be a member of CFA Institute, or a candidate in a CFA or CIPM exam programs, their conduct will be subject to the processes identified in the Rules of Procedure.

### **Covered Person**

☒ Profession-related ROP      ☒ Exam-related ROP

*Comment:* The condition on misusing the CFA designation while lapsed or suspended to be considered a Covered Person should be removed. Lapsed or suspended members should still be responsible for any violations during the lapse or suspension time (not only designation misuse) and any wrongdoing should be investigated immediately, to protect the public and the CFA brand.

*Response:* Under current Rule 2.4, if an individual who has been suspended or has allowed their membership to lapse later seeks to reactivate their membership, Professional Conduct may then commence (or continue) an investigation and bring a Disciplinary Proceeding for misconduct that occurred while the person's membership was suspended or lapsed, regardless of whether they were also misusing the CFA designation at the time.

## Introductory and Investigatory Process

### **Rule 1.1:**

☒ Profession-related ROP      ☐ Exam-related ROP

New provision reaffirming the DRC's commitment to conducting all disciplinary hearings in a manner that is fair and that all participants will be given a reasonable opportunity to present their case. Specifically stated, the DRC, in exercising its discretion, will conduct the proceedings so as to avoid unnecessary delay and expense.

*Comment:* Is this provision needed at all? What are the limits on the DRC's discretion?

*Response:* The new language emphasizes the DRC's commitment to a fair, timely, and efficient disciplinary process.

**Rule 1.3:**

☒ Profession-related ROP      ☐ Exam-related ROP

New provision clarifying that members and candidates who have information relevant to a pending investigation or proceeding involving another member or candidate are expected to follow the relevant procedural rules; provide documents, information, and testimony when requested by Professional Conduct; and cooperate with the investigation and keep current their contact information.

*Comment #1:* Witnesses should only be used to corroborate or explain documentary evidence. Human beings have a long history of distorting the truth against or in favor of their peers, and without an effective mechanism to prosecute perjury, there is a risk of basing conclusions on subjective information.

*Comment #2:* What is the penalty for members and candidates who have information relevant to a pending investigation or proceeding involving another member or candidate who don't follow the procedural rules, provide documents, information, and/or testimony when requested by Professional Conduct?

*Comment #3:* The requirement for a member or candidate who is under investigation to provide a letter authorizing third parties to provide necessary documents, information, and testimony seems excessive and could act counter to the individual's right to mount a defense of themselves.

*Response:*

*Comment #1:* The importance of witness testimony varies depending on the issues in each case. Determining whether such testimony is reliable is the responsibility of the hearing panelists. Denying a party the opportunity to present relevant witness testimony would be unfair and violate due process requirements.

*Comment #2:* The CFA Institute bylaws and Rule 1.3(e) require that members and candidates "cooperate fully" in disciplinary matters. A failure or refusal to do so could be considered a violation and result in a disciplinary sanction, depending on the circumstances.

*Comment #3:* It is important to the integrity of the disciplinary process that all relevant information is obtained and considered. CFA Institute does not have subpoena authority. Asking members and candidates to provide assistance in obtaining relevant information from others is consistent with their obligation to cooperate fully and promotes correct disciplinary outcomes. This change does not interfere with Covered Persons' ability to defend themselves.

**Settlement Agreements****Rule 2.9:**

☒ Profession-related ROP      ☐ Exam-related ROP

New provision providing an opportunity for Professional Conduct and a member or a candidate (involved in a profession-related case) to resolve a matter with a written settlement agreement that includes findings of facts, a conclusion as to violations, and an agreed upon sanction. Settlements in which the sanction is to be made public (i.e., a Censure, Suspension, Revocation, or Prohibition) will go to a Review Panel. If the Review Panel determines the settlement is reasonable (Rule 3.1), it is final. If the settlement is rejected, Professional Conduct may continue the investigation or refer the matter for a contested hearing.

*Comment:* What are the negotiable elements for settlement agreements? Given the mission to protect the public interest, there should be general guidelines on any negotiations.

*Response:* The Sanction Guidelines that have been developed, approved, and used by the DRC for several years will still be applied and considered carefully in any settlement negotiations. Because the circumstances and considerations in each case are unique, it is important that there be flexibility to craft a fair and appropriate disciplinary outcome.

## **Hearings and Appeals**

### **Rule 4.1**

☒ Profession-related ROP      ☐ Exam-related ROP

Additional language to Rule 4.1 which states: The Hearing Panel may, at its discretion, reschedule or resume a Disciplinary Proceeding if the Panelists determine by majority vote that the Covered Person's failure to participate was unanticipated and for reasons beyond their control. Otherwise, a Covered Person may not request an appeal in a proceeding in which they did not participate.

*Comment:* Rule should allow for a Covered Person to request an appeal, if they didn't participate in the hearing panel process, if they can prove that the failure to attend was unanticipated and for reasons beyond their control.

*Response:* The proposed change allows for such appeals. As a general matter, however, Covered Persons cannot appeal if they otherwise did not participate in the proceeding.

### **Rule 4.4:**

☒ Profession-related ROP      ☒ Exam-related ROP

New provision giving Professional Conduct discretion to submit a reply (or supplemental response) to a member's or candidate's pre-hearing submission. This change allows Professional Conduct to address new issues raised in the submission and submit additional exhibits, if necessary.

*Comment:* Professional Conduct has been given the discretion to submit a reply or supplemental response to a member's or candidate's pre-hearing submission. Doesn't this create a perception of unfairness?

*Response:* This change allows Professional Conduct to address new issues raised by the Covered Person in their submission and to submit additional exhibits, if necessary. The hearing panel should have the benefit of receiving such additional information so as to achieve a fair and reliable disciplinary outcome.