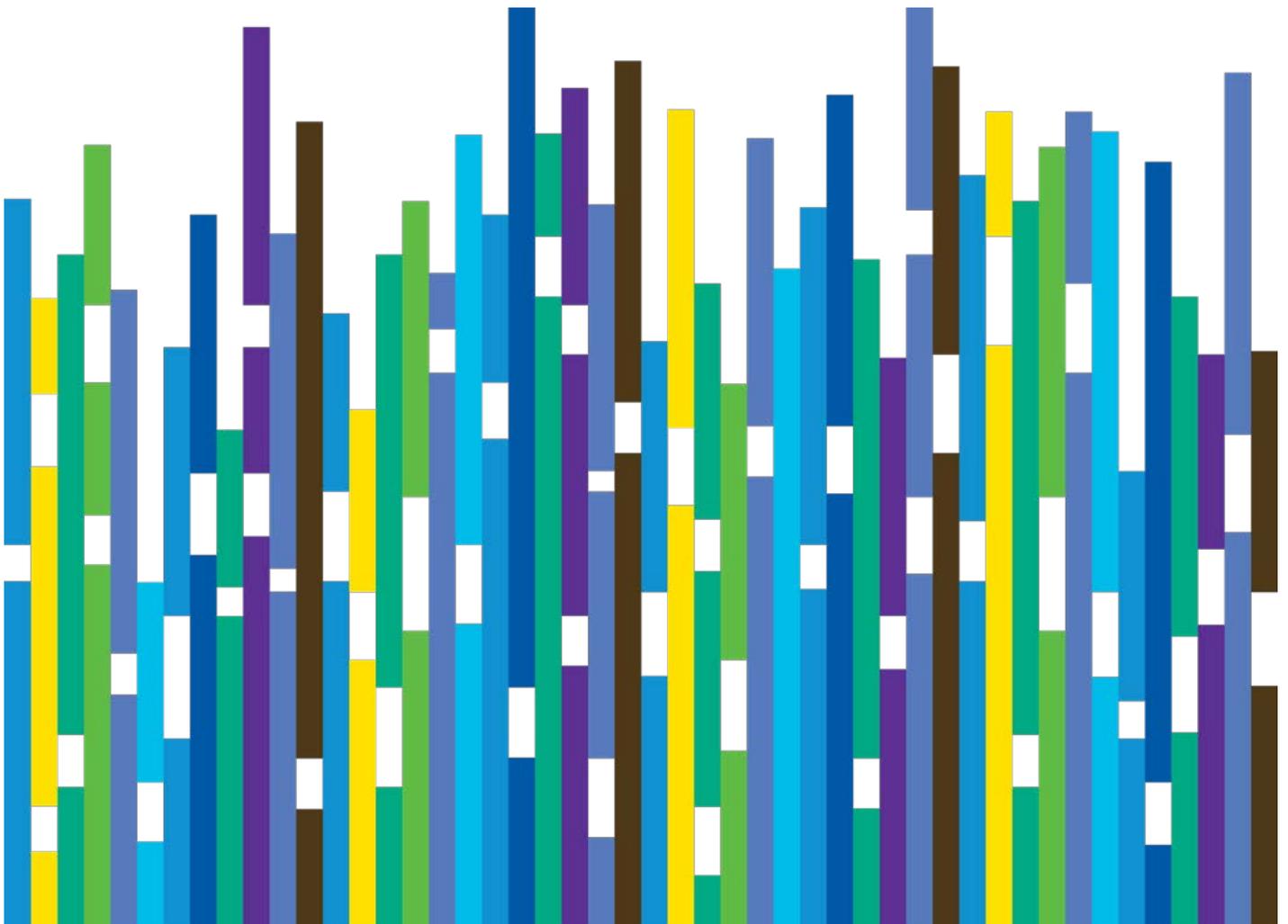


ENHANCING THE CFA INSTITUTE DISCIPLINARY PROCESS

Invitation to Comment



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The mission of CFA Institute is to lead the investment profession globally by promoting the highest standards of ethics, education, and professional excellence for the ultimate benefit of society. A robust disciplinary process supports and advances this important mission. The disciplinary process is governed by the Rules of Procedure.

In 2016, CFA Institute commissioned a benchmarking survey of several comparable organizations to understand how they manage and implement their codes of conduct and disciplinary processes. CFA Institute then formed a project team consisting of CFA Institute staff, Disciplinary Review Committee (DRC) members, and the Audit and Risk Committee liaison from the Board to the DRC (the “Project Team”) to analyze the benchmarking survey results and propose improvements to our own disciplinary program. The Project Team evaluated the following areas for improvement: (1) sanction guidelines, (2) use of precedent in panel decisions, (3) panel location, (4) review panel process, (5) appeals process, and (6) panel composition. The Project Team also considered several changes beyond those examined in the benchmarking process.

The Board of Governors recently reviewed the recommendations made by the Project Team and gave its approval to proceed to member comment. Revisions to the Rules of Procedure generally fall into two broad categories: Those that protect the reputation of the organization, its members, and the CFA charter; and those that further enhance the effectiveness and efficiency of the disciplinary process to ensure its sustainability. The Project Team is now publishing these proposed changes for comment by our members.

Proposed Changes

The Rules of Procedure will now consist of two separate and distinct documents—one for exam-related matters and one for conduct and activities relating to the profession. By doing so, we hope to make each set of procedures easier for our members and candidates to understand and apply as well as reduce confusion that has resulted when the two are combined in a single document.

The following are the most significant revisions to the Rules of Procedure for conduct and activities relating to the profession.

Rules of Procedure

- The description of a “Covered Person” has been revised to include individuals who seek to *reactivate* a membership (charterholder, regular, or affiliate) that has been lapsed. This change will enable Professional Conduct to investigate and consider disciplinary action when it appears that a returning member was involved in misconduct while his or her membership was lapsed, regardless of whether he or she was misusing the CFA designation at the time. This revision will also enable us to address situations in which members fail to accurately account for their professional activities while lapsed on the Professional Conduct Statement that they submit in requesting reactivation.
- Rule 1.6 has been revised to allow for the sanctions imposed to include the requirement that Covered Persons also meet certain conditions, such as successfully completing a specific ethics training course or examination and providing proof of payment of any related monetary awards, fines, costs, disgorgement, or restitution that they have previously been ordered to pay by a regulator, agency, or court. This change allows hearing panels *the option* to impose specific educational and remedial

conditions recommended by Professional Conduct to reinforce the importance of personal responsibility and prevent future violations.

- Rule 3.1 has been revised to specify that additional supporting documents and information may be submitted to a Review Panel *with the Covered Person's consent or waiver*. This change, identified in the benchmarking process, will enable the parties to provide additional information and context to benefit the review process.
- Rule 3.1 has also been revised to state that Private Reprimands will now be deemed final upon acceptance and will no longer require consideration and approval by a Review Panel. This change, also identified in the benchmarking process, is designed to make imposing a Private Reprimand less burdensome and more efficient for both the DRC and Professional Conduct and more timely for the member or candidate involved.
- Rule 4.2 has been revised to allow the DRC Chair flexibility to appoint three to five voting members (plus one alternate) to serve on Hearing Panels (and Review Panels, via Rule 3.1). In addition to adding flexibility, this change will enable the DRC Chair to address situations in which a case presents potential conflicts that could limit the number of panelists available.
- Rule 5.7 has been revised to allow an Appeal Panel the option to impose a greater sanction, in addition to the same sanction, a lesser sanction, or no sanction, as provided under the present rule. Prior to adoption of the current Rules of Procedure in 2015, Appeal Panels always had the ability to impose a greater sanction if it was deemed appropriate. This change will provide Appeal Panels greater flexibility in determining a fair and proper sanction and promotes consistency.
- Rule 6.1 has been revised to state that members and candidates may be subject to a summary suspension if barred or suspended permanently, indefinitely, *or for a period of two or more years*. This change provides greater respect for, and deference to, disciplinary sanctions that have been imposed by securities regulators. This revision is consistent with the requirement that all members and candidates maintain the highest ethical standards in the investment profession and abide by all laws, rules, and regulations applicable to their professional conduct under Standard I(A). If a regulator has suspended a Covered Person for two or more years, it is a reasonable presumption that the member or candidate has not abided by the ethical expectations embodied in the Code and Standards and merits a summary suspension. Any decision to impose a summary suspension will continue to be subject to review by a Summary Suspension Hearing Panel.

The following are the most significant revisions to the Rules of Procedure and Sanction Guidelines for conduct and activities relating to CFA Institute exam programs.

Rules of Procedure

- Rule 4.2 has been revised to reduce the number of voting hearing panel members to three (plus one alternate). This change is consistent with the benchmarking results and adds an opportunity for flexibility, efficiency, and sustainability in the event the number of exam-related hearings each year continues to rise.
- Covered Persons will no longer have an opportunity to appeal a hearing panel decision that imposes a prohibition. The hearing panel decision will be final. However, all individuals with a prohibition or revocation imposed in an exam-related matter, regardless of whether imposed by a hearing panel, accepted through an Early Resolution Agreement, or accepted through a Statement of Charges, will

have an opportunity to proactively seek reinstatement into CFA Institute exam programs five years after the sanction was imposed. This change supports sustainability and promotes fairness. The change provides former candidates with the opportunity to reenter the program rather than receiving a lifetime ban. Reinstatement is not guaranteed, but provides the opportunity to address “rehabilitation” after exam-related misconduct.

- Revised Rule 5.1 allows the DRC Chair to appoint current *or former* DRC members as voting and/or alternate panelists for reinstatement panels. In addition to adding flexibility, this change will enable the DRC Chair to address any scheduling conflicts that could limit the number of panelists available.

Sanction Guidelines

The revised Sanction Guidelines for Exam-Related Matters now identify the “most frequently imposed sanction” for each type of misconduct. Additionally, information was added to the Guidelines to address unprofessional and disrespectful behaviors toward testing personnel, other candidates, CFA Institute staff and disciplinary panel participants as well as address the alteration and misrepresentation of exam results.

Invitation to Comment

We welcome your feedback on the proposed changes to the Sanction Guidelines and the Rules of Procedure. Please submit your comments to proposedruleschanges@cfainstitute.org by 5 September 2017.