



CAPITAL MARKETS AND SECURITIES AUTHORITY

ENFORCEMENT GUIDELINES

Purpose

The purpose of these guidelines is to set out the practices and procedure to be followed by the Directorate of Legal Affairs and Enforcement in the Capital Markets and Securities Authority (**CMSA**) when conducting an investigation.

CMSA has published these Guidelines to promote securities business certainty and to assist market participants. Nothing in these guidelines necessarily binds the CMSA in the application of the said guidelines in a particular case. In issuing these guidelines, the CMSA is not providing legal advice and individuals should obtain their own legal or other advice from a qualified professional person in respect of their rights and obligations.

PART ONE

INVESTIGATION

Investigatory Obligations and Powers

Background

The CMSA considers that one of its core functions is to promote and maintain a high level of market integrity in the interests of market participants and the broader economic community.

The CMSA, is also obliged under section 10 of the Capital Markets and Securities Act, 1994 (the Act) to, among other things:

- do all things necessary to ensure that its market is orderly and fair;
- have adequate arrangements for investigating complaints by investors relating to the transaction of the business of investors on its market; and,

- have adequate arrangements for monitoring, surveillance and enforcing compliance with Legislation, Rules and Regulations.

The Act , provides the CMSA with broad powers to monitor, investigate and obtain information from market players in the course of complying with the statutory obligations and for the purpose of promoting and maintaining market integrity.

Under section 11 of the Act, the CMSA may require :

- a) a stock exchange;
- b) a member of the council of a stock exchange;
- c) a person who is or has been, either alone or together with another person, a dealer or an investment adviser or is or has been a dealer's representative or an investment representative;
- d) a person who is or has been an officer or an employee of or an agent, lawyer, auditor or other person acting in any capacity for or on behalf of, a stock exchange or a person referred to in paragraph (b), (c) or (d);
- e) any other person who is or has been a party to any dealing in securities;
- f) any other person;

to produce to the CMSA all documents and other information (including e-mails, tape recordings, etc) within its possession or power which may relate to a matter which is the subject of the CMSA investigation.

Under section 21 of the Act, the CMSA may, during an investigation, also require the person investigated to cause one or more of its officers and employees to appear before the CMSA's investigator for interview in connection with matters relating to the business of that person.

Who conducts CMSA's Investigations?

CMSA's investigations will be carried out by the Directorate of Legal Affairs and Enforcement (the Directorate) in collaboration with other Directorates/Departments. The Directorate will conduct formal interviews and call for the production of documents during the course of its investigations.

Sources of investigations

CMSA's investigations derive from a number of sources including:

- (a) off site examinations of brokers, dealers, listed companies, stock exchange, investment advisers and
- (b) on site inspection of market players, market surveillance reports of the CMSA, DSE and other SRO's and complaints from the public.

Investigation Techniques

At the commencement of CMSA's investigations, the Directorate will –

- a) obtain information about the individuals or entities connected with the investigation from public and CMSA's internal sources including filings to obtain registration statements, annual and quarterly reports, CMSA's and Stock exchange computer surveillance systems, information from the media and other publications etc.;
- b) gather and analyse relevant facts;
- c) analyse applicable legal theories; and
- d) develop a plan of investigation.

The Director of Legal Affairs and Enforcement (Director) shall ensure that appropriate procedures for taking evidence and techniques to be employed during any investigation are put in place and revised from time to time to guide the investigations.

A format of investigation techniques is set out in Appendix I to these guidelines.

Enforcement of CMSA's Investigatory Powers

CMSA's investigatory powers under the Act, in particular its powers to require market players to produce documents and to cause its officers and employees to appear for interview, may be enforced under section 21 of the Act. If any person fails to comply with a direction from the CMSA to produce documents or appear for interview, after several reminders, the CMSA may apply to a court under section 23 (1) (b)(v) of the Act for orders that he does so.

Procedure During Investigations

Where a matter is referred to the Directorate for investigation, the Directorate will make an initial assessment, as to the seriousness of the allegations and as to whether the matter warrants an investigation.

If the matter warrants investigation, an investigator will be appointed to conduct the investigation with the assistance of other personnel from other directorates/departments in the CMSA or institutions outside the CMSA, depending on the size and complexity of the matter.

The Investigator will consider the available information and may approach the person concerned for further documents and information, with a view to preparing an 'Investigation Report'.

Notification of and Scope of Investigations

The CMSA shall not be obliged to notify a person or licensee that its conduct is being investigated. However, the CMSA may as and when it deems fit notify a person that its conduct in relation to a particular matter, is being investigated.

When the CMSA advises a person that an investigation is under way, it will inform that person about the general subject matter of the investigation and, if known, the date and range within which the circumstances being investigated are believed to have occurred. The investigators primary task is to ascertain the relevant facts concerning the circumstances that are being investigated. Having regard to CMSA's general obligation to monitor compliance with the law, the investigator will not necessarily limit her or his inquiries to the information referred to her or him for investigation. Nor is it the investigators role to limit his or her inquiries to only those facts that might support a preconceived view as to whether a particular breach of the rules or regulation has occurred.

The investigator will not be in a position to express an opinion as to whether a breach of the law has occurred until at or near the conclusion of an investigation. Accordingly, and having regard to CMSA's general monitoring obligation, the investigators practice will be to refrain from expressing a view, as to whether he or she considers any particular breach may have occurred when he or she is commencing an investigation.

Access to Documents

At the commencement of and during an investigation, the investigator may write to the concerned party requesting copies of a particular document or documents within a particular class, which may be relevant to the matters under investigation. Alternatively, the investigator may elect to visit the concerned party's offices and request that its original documents be produced for inspection. In limited and appropriate circumstances, the investigator may make such a visit with little or no notice, depending on the urgency of the matter and any other relevant circumstances.

Interviews

Obligation to Appear

In the course of an investigation, CMSA may conduct interviews of officers, employees and representatives of the investigated person pursuant to section 22 of the Act That section requires an investigated person to cause its officers, employees and

representatives to appear before the CMSA and to give such information as may be required by the CMSA relating to the business of the investigated person. A refusal by an employee to comply with a reasonable direction from an investigated person to appear before the CMSA for interview may constitute a breach of the Act by the investigated person.

Conduct of Interview

Interviews will be conducted by an investigator. In more complex matters the investigator will be assisted during the interview by other investigators or advisers appointed by the CMSA. The time and venue for an interview will be determined by the investigator, after consultation with the investigated person.

Subject Matter of Interview

Prior to an interview, the CMSA will notify the investigated person of the general subject matter of the investigation. The investigated person will communicate this information to the interviewee before the interview takes place. In conducting an interview, the investigator will be seeking the assistance of the interviewee in establishing the relevant facts concerning the matter under investigation. The information generally sought from an interviewee will relate primarily to his or her personal knowledge of the circumstances, which are under investigation.

Obligation to Tell the Truth

The interviewee will take an oath or make an affirmation to the effect that to the best of his or her recollection, the interviewee will answer truthfully all questions put by the investigator in the interviewee's own words, consistent with the investigated persons obligation under the Act, to provide information to CMSA relating to its business.

Qualified Privilege

The CMSA considers that statements made by interviewees in the course of interviews are protected in actions for defamation by the defense of qualified privilege.

Presence of Representatives of the Investigated Person

The investigator may, in her or his discretion, permit other officers or employees of the investigated person to attend during an interview. In permitting such attendance, the investigator may do so subject to conditions, for example that the person so attending first undertakes to keep the contents of the interview confidential until the conclusion of

all interviews to be conducted during the investigation. It may be necessary in some circumstances for the investigator to decline to permit a particular representative to be present, for example where that representative is to be interviewed at a later stage of the investigation.

Presence of Legal Advisers

The investigator may permit at his or her discretion, an interviewee's legal adviser or the investigated persons legal adviser, to be present during the interview, again subject to conditions such as prior provision of an undertaking as to confidentiality. The investigator will afford such legal adviser an opportunity to address the inspector on any relevant issue and, before the conclusion of the interview, to clarify any outstanding matters by asking the interviewee further questions regarding any of the matters on which he or she has been interviewed. The investigator shall reserve the right to exclude from the interview any legal adviser who disrupts or obstructs the interview.

Recording of Interviews and Transcripts

The investigator will record the proceedings of the interviews. A transcript of the record may be prepared in cases where the investigator forms the view that a transcript is necessary. Upon request, a copy of the transcript (or a copy of the recording if a transcript has not been prepared) will be provided to the investigated person, but usually not before the conclusion of all interviews conducted in the course of the investigation. A copy of the transcript (or the recording) may be provided to an investigated person at an earlier time upon request, subject to conditions such as an appropriate confidentiality undertaking.

When the transcript is provided to an investigated person, the interviewee and the investigated person will each be afforded an opportunity to correct any errors it contains.

The CMSA will require an interviewee to sign his or her transcript of interview.

The contents of the interview may be relied on by the investigator in preparing an Investigation Report and, if so, a copy of the recording and/or transcript will be attached to a draft Investigation Report provided to the investigated person for his comment at the conclusion of the investigation. The contents of the interview may also be relied on by the CMSA at any disciplinary hearing, which may subsequently take place before a Tribunal in relation to matters, which were the subject of the investigators investigation.

Confidentiality

The CMSA will treat information, which it receives from investigated persons pursuant to its investigatory powers as being confidential and will seek to maintain the confidentiality of that information in accordance with its obligations under the Act. The CMSA considers that the obligation to maintain the confidentiality of information, which becomes known in the course of a CMSA's investigation, also applies to investigated persons. Thus CMSA considers that its reports and records of interviews should not be disclosed to persons other than officers, employees or agents of an investigated person without the CMSA's written consent.

Section 18 of the Act, obliges the CMSA to take all reasonable measures to protect from unauthorized use or disclosure, information provided in confidence by or on behalf of an investigated person. Accordingly the CMSA shall seek to ensure that all confidential information provided to it by an investigated person in the course of an investigation remains confidential in CMSA's hands, except for such limited disclosure permitted by the law as may be appropriate.

Notwithstanding the preceding paragraphs, the CMSA may disclose confidential information, which it obtained from an investigated person, if the publication or disclosure is required for purposes of institution of criminal proceedings, or if the information is required by persons such as expert witnesses and legal representatives, for the purpose of monitoring, compliance with or enforcing the law.

Disclosure to persons outside the CMSA is also permitted where the CMSA is required to produce confidential documents for inspection pursuant to a court order. However, where the CMSA considers that it would not be in the public interest for particular confidential information to be made public (e.g. where the disclosure could compromise the CMSA's investigation or surveillance methodologies), the CMSA may seek to oppose such production, relying on the doctrine of privileged communication.

CMSA may seek to place conditions on the persons to whom a permitted disclosure is to be made, for example restricting the number of individuals who may have access to the information and regarding what use may be made of the information.

Public Disclosure

The CMSA will, during an ongoing investigation, refrain from commenting publicly on the substantive issues, which are being examined in the course of the relevant investigation. However, the CMSA may, in appropriate cases, confirm publicly that a matter is the subject of the CMSA's investigation, in particular where there is a substantial public interest involved or where the CMSA considers that such an announcement will assist in promoting and preserving the integrity of securities market.

Legal Professional Privilege

In conducting an investigation, pursuant to its obligations under the Act, , the CMSA shall seek to ascertain all of the relevant facts and circumstances relating to the matter being investigated, with a view to promoting and preserving the integrity of securities business as a whole.

Accordingly, and having regard to the difficulties often involved in ascertaining all of the relevant facts and circumstances, the CMSA's powers under section 11 of the Act which require production of documents and disclosure of information from investigated persons are wide ranging. In common with the CMSA's powers in the course of its investigations, no exemption from disclosure is made for relevant documents and information, which would otherwise be immune from disclosure by reason of any other law or of legal professional privilege. Such documents and information must be disclosed by an investigated person to the CMSA in the same way as any other relevant documents and information, which are required in the course of an investigation.

Where an investigated person is compelled, as part of an investigation under the Act, to produce documents and disclose information to the CMSA which are otherwise protected from disclosure by legal professional privilege, the investigated person may still maintain a claim of legal professional privilege against any other person who seeks access to the documents and information. In addition, CMSA is obliged to maintain the confidentiality of the documents and information pursuant to its obligations under section 18 of the Act

Privilege Against Self-Incrimination

As is the case in respect of claims of legal professional privilege, no exemption from disclosure is made in the Act, for relevant documents and information, which an investigated person might seek to withhold from disclosure on the basis of a claim of privilege against self-incrimination.

Documents and information which an investigated person might otherwise claim to be protected from disclosure on the grounds of a claim of privilege against self-incrimination, must be disclosed to the CMSA in the same way as any other relevant documents and information which are required in the course of an investigation. CMSA notes that, quite apart from the position under the Act, the law does not in any event recognize an entitlement by companies (as opposed to individuals) to rely on the privilege. Thus for investigated person who are companies, such a claim could not be maintained even if the availability of the privilege was not curtailed by the Act.

Investigation Reports

Necessity of a Report

After an investigator has considered all relevant information which becomes available during an investigation, she or he shall form a view as to whether any regulatory issues which arose during the investigation regarding the investigated person's business or conduct are of sufficient concern to warrant the preparation of a formal Investigation Report. As part of that process, the investigator may consult with the investigated person regarding his or her understanding of the relevant factual circumstances. In some instances, the investigator may prepare a written statement of facts and seek confirmation from the investigated person as to whether he agrees that the facts stated are correct.

Draft Report

If a view is formed that any regulatory issues arising are of sufficient concern, the Investigator shall prepare an Investigation Report in draft form, which sets out the relevant facts and issues. The Draft Report may include the investigators tentative view as to whether a breach of the law has occurred. Documents relied on by the investigator in preparing the Draft Report will be attached to the Draft Report.

The Draft Report will be provided to the investigated person to afford him an opportunity, if he chooses, to provide the investigator with written comments on the Report's contents within a reasonable time. Any comments received, will be taken into account by the investigator in forming a considered opinion of the matter and in finalizing the Report. A full copy of the investigated person's comments will be attached to the Final Report. The investigator may also choose to respond specifically to some of the investigated person's comments, either in a separate attachment to the Final Report or in the body of the Final Report.

After the Investigator has taken into account any comments received, or if no comments are received within the time specified, the investigator will finalize and sign the Report as a Final Report.

Final Report

A copy of the Final Report will be provided to the relevant members of CMSA's Management. The CMSA Management will consider the contents of the Report and decide whether to bring charges against the investigated person for hearing before a Tribunal. However, any opinion of the investigator that may be expressed in the Report will not be the sole determinant of whether charges will be brought or not. Those are matters that are wholly within the discretion of the CMSA having regard to its regulatory obligations and all other relevant circumstances. For less serious matters, the Report may be considered by the Tribunal, as the CMSA's delegate, without formal charges being

prepared and without the investigated person and Directorate being present (known as a “fast track” proceeding). At any time whether before or after charges (if any) are brought or a matter is assigned to a “fast track” proceeding, an investigated person may choose to, but is not obliged to provide the CMSA with any comments he may wish to make regarding the contents of the final Report.

Effect and Status of Final Report

It is important to note that the investigator’s opinion in a Final Report as to whether a breach of the Rules or the Act, has occurred will not necessarily result in disciplinary action being commenced by the CMSA against the investigated person concerned. Nor does it follow if disciplinary action is commenced, that the Tribunal will adopt or agree with the Final Report in the course of a disciplinary hearing. If the Final Report is taken into account in the course of a disciplinary hearing, it is entirely a matter for the Tribunal to determine as to how much weight it will give to the Report and to any other evidence, which is placed before it by the CMSA or by the investigated party. However, the CMSA may seek to rely on the facts and circumstances set out in a Final Report, including any attachments to the Report, at hearings before the Tribunal and during fast track proceedings.

Procedural Fairness

The CMSA shall, when conducting an investigation regarding the conduct of an investigated person, have regard to and comply with the requirements of procedural fairness to the full extent of the application of those requirements to investigations by CMSA. In conducting its investigations, the CMSA will ensure that a balance is achieved between the legitimate interests and expectations of an investigated person and the CMSA’s obligation to preserve the integrity of its investigations in the public interest and to maintain the integrity of the securities market on behalf of all market participants.

PART TWO

DISCIPLINARY PROCEEDINGS

Disciplinary Obligations and Powers

The CMSA is obliged under section 46 of the Act, to “have adequate arrangements for the expulsion, suspension or disciplining of a dealing member for conduct inconsistent with just and equitable principles in the transaction of securities business” or for a

contravention of the Act, or the conditions of a license. The CMSA is also required under section 10 (1) of the Act to “undertake such other activities as are necessary or expedient for giving full effect to the provisions of the “Act,”

Disciplinary Actions and Appeals

Charges and the Tribunal

Where the CMSA considers that an investigated person should be charged with a breach of any of the provisions of Act or Regulations or with prohibited conduct, it may charge the person concerned by giving that person written notice of the particulars of the charge and of the date that the charge will be heard.

A charge brought against an investigated person will be heard by the Tribunal. The person charged shall be entitled to be heard in answer to the charge.

The Tribunal shall be comprised of a chairperson, who shall be the judge or a reputable person with at least a first degree in laws and 2 other persons one with finance background and one with legal background appointed by the Chairperson after being recommended by management.

Where the Tribunal finds that a charge is proved, it may impose the following sanctions:

- a) impose a censure; or
- b) impose a fine of up to Tshs 5,000,000/=; and/or
- c) require part or all of any commission or profit from a transaction to be paid to it; and/or
- d) in the case of a finding of prohibited conduct, recommend to the Authority for the cancellation of the licence of an investigated person; and/or
- e) impose a suspension; and/or
- f) prohibit the transaction or business for up to 3 months; and/or
- g) require an education and compliance programme to be initiated or upgraded.

Appeals to the Minister and Applications for Court’s Orders

A party aggrieved by the decision of the Tribunal recommending the Authority to cancel or suspend a license, may appeal to the Minister within thirty days of such decision under section 48 of the Act. Where the Tribunal determines that a person has committed an offence under the Act, or has contravened the conditions or restrictions of a license, or is about to do an act with respect to dealing in securities that if done, would be an offence or contravention, it shall recommend to the CMSA to make necessary applications to the Court under section 23 of the Act. Where the Tribunal considers it necessary or desirable, for the purpose of protecting the interest of any person to whom the investigated person is liable or may become liable to pay any moneys by way of a debt, damages or

compensation or otherwise account for any securities or other property, the Tribunal shall recommend that an application be made by the CMSA to the Court for relevant orders under section 143 of the Act. Notice of an appeal to the Minister by an aggrieved party shall pursuant to section 48, be lodged with the Secretary to the tribunal within 14 days after receipt of the written reasons for the decision made. There is no standard form of notice of appeal, but the usual practice is to refer to the determination of the Tribunal, state which part or parts of that determination is appealed from and specify the grounds of appeal, in particular how the Tribunal is said to have erred and what determination ought to have been made by the Tribunal

Fast Track Proceedings

For less serious alleged breaches of the Rules, the Tribunal may determine a matter by considering only an investigator's report without written particulars of a charge and without the parties or their legal representatives being present. This is referred to as a "fast track" proceeding. The sanctions that the Tribunal may impose under a fast track proceeding are limited to a fine of up to Tshs 5,000,000/=, requiring part or all of any commission or profit from a transaction to be paid to it, or imposing a censure. The investigated person who is dissatisfied with the outcome may, within 10 days of notification of a "fast track" determination, require the matter to be heard by the Tribunal.

Disciplinary Procedures

Set out below is a description of practices and procedures, which the CMSA will follow when it commences and pursues disciplinary action. Many of these procedures are not formal rules. Interested persons should note that the procedures, which CMSA adopts in a specific case may vary from these procedures where appropriate, depending on all the relevant circumstances.

Charges

The decision as to whether to bring a charge will be made by the Authority. The member of management who will exercise these powers frequently will be the Chief Executive Officer upon advise from the Director, although other legal officers will assist the Director.

If a decision is made to bring a charge, a written Notice of Charge will be given by the Director to the investigated person and to the Tribunal, specifying the relevant rule and the breach or prohibited conduct which is alleged to have occurred, together with particulars of the facts which it is alleged, give rise to the alleged breach.

In addition to the charges, a copy of the investigators report and any attached documents will also be provided to the respondent and to the Tribunal.

The Tribunal Communications and Directions

Following the provision of a Notice of Charge to the respondent by the CMSA, the Chairperson of the Tribunal or Counsel to the Tribunal (being a person appointed to assist the Tribunal in carrying out its functions) will advise the respondent and the CMSA in writing of the date fixed for the hearing. The Chairperson of the Tribunal or Counsel to the Tribunal will also advise the parties of the identity of the 3 persons who have been selected to hear the matter.

Communications to the Tribunal prior to a hearing shall be addressed to Counsel to the Tribunal and shall always be copied to the other party.

If any party has any objection to any member of the Tribunal the hearing a particular matter or has any other objection to a particular matter being heard by the Tribunal, that party shall raise that objection at the earliest possible opportunity with the Counsel to the Tribunal and shall not wait until the hearing date before raising the objection.

Prior to a hearing, the Tribunal may give written directions to the parties, with a view to simplifying the matter and shortening the hearing time. Pre-hearing directions given by the Tribunal may address such matters as imposition of deadlines for the supply to the other party of copies of documents which it is intended will be relied on at the hearing, imposing deadlines for identifying any persons who it is proposed will give oral evidence at the hearing, directing that written outlines of arguments be prepared and directions in relation to preparing a statement of agreed facts.

Electing to Refrain from Contesting a Charge

After receiving a written Notice of Charge, the respondent may give consideration to whether he intends to contest the charge or charges at a hearing. Some of the factors which could have a bearing on that decision may include whether the respondent accepts that he has contravened the law, the weight of the evidence, the wording of the relevant law and the expense and time involved in preparing for and attending a contested hearing. The respondent may choose to consult with his professional advisers when giving consideration to these matters.

If a respondent is interested in possibly refraining from contesting a charge, he will contact the CMSA through the Director as soon as possible to discuss the matter. Discussions with the Director may be held on a “without prejudice” basis, such that the matters discussed will remain confidential and will not be used as evidence against the respondent before the Tribunal without the respondent’s consent.

Where a respondent agrees with the CMSA that he will not contest a charge, he may also seek to agree with the CMSA's submission to the Tribunal in relation to the sanction or sanctions that would be appropriate for the Tribunal to impose and, where the sanction involves a fine or a payment of commission or profit, the amount of that sanction. That submission may be made to the Tribunal in writing, in the form of a letter from the respondent. The respondent will also consult with the Director regarding the form and content of such submission.

Where the respondent elects not to contest a charge, the Tribunal must nevertheless be satisfied, having regard to the available evidence, that the charge alleged in the Notice of Charge is made out, before it will make a finding that a breach of the law has occurred. In considering the evidence when no contested hearing takes place, the Tribunal will have regard to any documents submitted before it by the CMSA and by the respondent, including the investigator's report. The Tribunal may also in its discretion require the CMSA and the respondent to appear before it to provide further information or clarify any issue raised by the documents.

The Tribunal will not be obliged to adopt a common submission from the CMSA and the respondent as to the appropriate sanction to impose where an uncontested charge is found to have been made out on the evidence. The Tribunal may impose a greater or lesser sanction than that submitted by the parties if it thinks fit. However, where a charge is uncontested, the parties' entitlement to institute court proceedings against a determination of the Tribunal is preserved.

Contested Hearings

Where a charge is contested, a hearing will take place before the Tribunal on a date nominated by the Tribunal, by notice in writing to the parties. The hearing date must be not less than 7 days after the notice is served. Any party aggrieved by the decision of the Tribunal, may institute court proceedings for relevant orders in accordance with the Act.

The proceedings of the Tribunal shall be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before the relevant Tribunal permit. The Tribunal will not operate as a Court, however some Court practices or procedures may be adopted in hearings, for example, setting timetables for the submission of material and other practices.

The venue for a hearing will be chosen by the Tribunal, but often the venue will be the CMSA's premises.

If the respondent does not want to appear in person or be represented before the Tribunal, he may lodge a written submission for consideration by the Tribunal. The submission must be lodged not less than 5 days before the date of the hearing.

Hearings before the Tribunal will take place in private. However, 2 representatives of each, that is of the respondent and the CMSA will be entitled to be present and make submissions. The Tribunal may also permit more than 2 representatives to be present. A representative may be a member or employee of the party appearing before the Tribunal, or a barrister or solicitor or any other person approved by the Tribunal.

At the commencement of a hearing, the chairperson will:

- a) identify the members of the Tribunal;
- b) request the parties and their representatives to identify themselves and in the course of doing so, draw to the parties attention that (if relevant) the proceedings are being recorded;
- c) ascertain whether there are any procedural objections, not previously raised, to the convening of the hearing or the composition of the tribunal; and
- d) ascertain whether the respondent continues to contest the charge or charges brought against them.

Once it is ascertained that the Notice of Charge continues to be contested, the Tribunal will invite the CMSA to put before it the evidence upon which the CMSA relies in support of the charge and to address the Tribunal in relation to the charge. After the CMSA has presented its evidence and made its address, the Tribunal will invite the respondent to present its evidence and to address the Tribunal in relation to the charge. After the respondent has completed its address, the Tribunal will afford the CMSA an opportunity to address the Tribunal in reply.

In the event that it finds that the law has been contravened, the Tribunal will also invite the parties to address it on the question of any sanction that would be appropriate to impose. It may call for addresses to be made on the question of sanctions as part of the submissions in support of or in opposition to the charge, or it may ask that those submissions be made if and when it makes a finding that a contravention of the law has occurred. If the latter, the same order of addresses will apply as for addresses in support of or in opposition to the Notice of Charge.

The Tribunal will determine a matter without bias and give both the CMSA and the respondent fair consideration and observe the rules of natural justice.

The Tribunal may conduct proceedings as it deems fit. The Tribunal will not be obliged to observe formal rules of evidence and may give such weight to items of evidence placed before it as it considers appropriate and fair in all the circumstances. Evidence placed before the Tribunal by CMSA and by respondent will be in written form, supported by oral submissions made by the parties. The written evidence will include an investigators report and trading or other business records of the respondent. Where relevant, the Tribunal may permit oral evidence to be laid before it. It is a matter for the Tribunal's discretion whether to permit a person who provides oral evidence to be cross-

examined. The Tribunal may itself choose to question a person who provides oral evidence.

The Tribunal will not be obliged to make a transcript of a hearing but may elect to do so. The hearing will be recorded and the Tribunal will subsequently make a decision on whether or not to prepare a transcript from the recording. Any transcript made, is required to be copied to the respondent who is the subject of the hearing as well as to the CMSA.

A determination of the Tribunal will be made by a simple majority of votes of the 3 members of the Tribunal. Each member, including the chairperson, will have one vote. The chairperson shall not have a casting vote.

The Tribunal may make its determination immediately after the conclusion of submissions made to it by the parties or it may reserve its decision to a later date. In either case, the Tribunal shall be obliged to provide written reasons for its determination within 15 days after the determination is made.

The Tribunal may recommend that the Authority make an application for court orders in accordance with sections 23, 48 and 143 of the Act as well as recommend to the Authority that the costs incurred by either party in preparing for and attending the Tribunal hearing be awarded to the other. Where a party decides to institute court proceedings, and the court upholds in full the decision of Tribunal, the applicant's reasonable costs will be met by the other party.

Publication of Determinations

Where a sanction or a fine or a suspension is imposed upon a person, the CMSA may, in its discretion, make a public announcement and/or an announcement to that person and of the decision and the name of the person concerned. The CMSA may delegate this power to the Tribunal. The Tribunal may decide in what form and in what manner the announcement should be made. The announcement may include a summary of relevant circumstances, to be published in the form of a "Circular Paper" to the respective person and/or in a form of a "Notice" to market participants, under the heading "Disciplinary Matters".

In addition, where a person has been found guilty of contravening the law or Regulations or engaging in prohibited conduct, or has been suspended or had its licence cancelled, the CMSA will record details of the determination in a register.

The CMSA and the Tribunal will not announce a determination made until the expiry of 15 days after receipt of written reasons for the determination. Where a court order has been applied for, the Tribunal will not announce the determination until the court issues the relevant order.

Enquiries

Enquiries about these Guidelines can be made to:

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