

## THE APPEALS PANEL – PRACTICE AND PROCEDURES

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## **PART 1 - GENERAL**

1. These procedures set out the operation and procedure of the Appeals Panel.
2. These procedures must be read in conjunction with Part 19, Chapter 1 of the Financial Services and Markets Regulations (“FSMR”).
3. Nothing in these procedures shall be taken to limit the powers of the Appeals Panel under the FSMR. The Appeals panel has the discretion to adopt different procedures to ensure the just, expeditious and economical resolution of proceedings before the Appeals Panel.
4. These procedures shall come into effect on 23 January 2023.

## **PART 2 – THE APPEALS PANEL**

5. The Appeals Panel is an independent administrative body of ADGM, established to ensure independence and integrity of regulatory decision-making by the FSRA.
6. The objectives of ADGM are to promote the Emirate of Abu Dhabi as a global financial centre, to develop the economy of the Emirate and make it an attractive environment for financial investments and an effective contributor to the international financial services industry, as set out in Article (3) of Abu Dhabi Law No. 4 of 2013.
7. The Regulator’s objectives are set out in section 1 of the FSMR.
8. The Appeals Panel is established by the ADGM Board in accordance with section 224 of the FSMR to conduct a full merits review of any decision made by the Regulator under the FSMR, which may affect the rights or liabilities of a person or otherwise adversely affect the interests of a person, and in appropriate cases make first instance decisions in respect of executive decisions referred to the Appeals Panel by the Regulator.
9. The members of the Appeals Panel shall be appointed by the ADGM Board. Up to a maximum of seven persons may be appointed at any time pursuant to FSMR, for fixed terms to serve as the President, Deputy President and other members of the Appeals Panel.
10. The Appeals Panel shall be composed of members who are independent of the ADGM and have relevant qualifications, expertise and experience in the regulatory aspects of financial services and related activities.

## **PART 3 - DEFINITIONS AND INTERPRETATION**

11. In these procedures capitalised terms shall, unless otherwise defined in the FSMR, have the following meanings:

<b>ADGM</b>	means the Abu Dhabi Global Market;
<b>ADGM Board</b>	means the Abu Dhabi Global Market Board of Directors;
<b>Affected Person</b>	means the person whose rights or liabilities may be adversely affected by a decision of the Regulator, or by an executive decision the subject of an Executive Reference;
<b>Appeals Panel Committee</b>	means a committee consisting of a minimum of three Appeals Panel members (including a Chair) selected by the President, having regard to any potential conflicts of interest, to consider and determine a Reference in relation to a Reviewable Decision;
<b>Chair</b>	means the chair of the Appeals Panel Committee selected by the President to exercise the powers and perform the functions of the Appeals Panel to hear and determine the Reference;
<b>Day</b>	means calendar day unless expressly stated otherwise;
<b>Executive Reference</b>	means a first instance executive decision referred to the Appeals Panel by the Regulator for its determination pursuant to section 227(1) of the FSMR;
<b>FSMR</b>	means the Financial Services and Markets Regulations 2015, as amended from time to time;
<b>President</b>	means the President of the Appeals Panel appointed by the Board in accordance with section 224 of the FSMR;
<b>Secretariat</b>	means the Secretariat to the Appeals Panel;
<b>Sub-Panel</b>	means a sub-panel of the Appeals Panel consisting of one Appeals Panel member selected by the President, having regard to any potential conflicts of interest, to consider and determine an Executive Reference;
<b>Reference</b>	means a decision referred to the Appeals Panel under section 225(1) or section 227(1) of the FSMR;
<b>Regulator</b>	means the ADGM Financial Services Regulatory Authority;
<b>Relevant Documents</b>	means each document, or part of a document, that is in the relevant party's possession or control and is relevant to a Reference in question; and

**Reviewable Decision** means: (i) any decision of the Regulator referred to the Appeals Panel pursuant to section 225(1) of the FSMR; and (ii) any decision of a Sub-Panel of the Appeals Panel in relation to an Executive Reference referred to the Appeals Panel pursuant to section 227(4) of the FSMR.

## **PART 4 - ROLES AND OBJECTIVES**

### **Roles**

12. The jurisdiction and role of the Appeals Panel, as set out in sections 225 and 227 of the FSMR, is to:
  - (a) conduct a full merits review of a Reviewable Decision under section 225(1) of the FSMR;
  - (b) consider and determine an Executive Reference under section 227(1) of the FSMR; and
  - (c) conduct a full merits review of a Reviewable Decision under section 227(4) of the FSMR.
13. These procedures are designed to allow the Appeals Panel to fulfil its roles efficiently, proportionately and fairly, without being unnecessarily formal, burdensome or causing undue delay.

### **Overriding Objectives of the Appeals Panel**

14. The overriding objectives of the Appeals Panel are to:
  - (a) promote proper observance of due process and provide procedural fairness when the Regulator exercises its powers;
  - (b) ensure independence and integrity of regulatory decision-making;
  - (c) secure consistent, transparent and proportionate use of such powers; and
  - (d) increase legal certainty and the expedient resolution of matters.
15. The Appeals Panel shall seek to give effect to these objectives when it interprets or exercises any power conferred to it by the FSMR or by these procedures.

### **Duty to assist the Appeals Panel**

16. All parties to Appeals Panel proceedings must take all reasonable steps to assist the Appeals Panel to fulfill its objectives, as set out in paragraph 14 of these procedures.

17. If a party fails to comply with these procedures, the Appeals Panel may:
  - (a) draw such inferences from the failure to comply with these procedures as it considers justified and appropriate in the circumstances;
  - (b) order that such party be barred from taking any further part in the proceedings without the permission of the Appeals Panel; and
  - (c) issue such directions as it deems necessary, including dismissing a Reference.
18. If any party fails to attend any hearing, case management conference or pre-hearing review of which it has received proper written notice, the Appeals Panel may continue with such case management conference or pre-hearing review in the absence of that party.
19. Any irregularity resulting from failure to comply with these Rules shall not of itself render the proceedings void, and the Appeals Panel may give such directions as it thinks just to cure the irregularity.

## **PART 5 - PROCEEDINGS BEFORE THE APPEALS PANEL**

### **Commencement of Proceedings**

#### ***Reference***

20. All proceedings before the Appeals Panel shall be commenced as follows:
  - (a) In the case of a Reference for a full merits review of a Reviewable Decision:
    - i. within 30 days of the relevant decision of the Regulator or a decision of a Sub-Panel in relation to an Executive Reference (as the case may be); or
    - ii. within such further period not exceeding 30 days as may be approved by the Appeals Panel where it is satisfied that such approval is appropriate in the circumstances, or
  - (b) by way of an Executive Reference under section 227(1) of the FSMR.

#### **Reviewable Decisions**

21. A Reference in accordance with paragraph 20(a) above must:
  - (a) be in writing;
  - (b) be signed and dated by the Affected Person; and
  - (c) include:

- i. the Affected Person’s name and address;
  - ii. details of the Affected Person’s representative (if any);
  - iii. a copy of the Reviewable Decision;
  - iv. grounds for contesting the Reviewable Decision; and
  - v. details of the relief sought.
22. Upon submitting the Reference made in accordance with paragraph 20 above to the Appeals Panel, the Affected Person must:
- (a) serve a copy of the Reference on the Regulator forthwith; and
  - (b) provide a declaration to the Appeals Panel evidencing or recording the service on the Regulator of the Reference referred to in paragraph 22(a) above.

#### Executive References

23. In relation to an Executive Reference in accordance with paragraph 20(b) above, the role of a Sub-Panel of the Appeals Panel is that of a first-instance decision-maker to decide whether to exercise the powers and perform the functions of the Regulator.
24. Upon submitting an Executive Reference to a Sub-Panel, the Regulator must provide the Sub-Panel with a recommendation in writing, and set out the facts relevant to the decision being referred, to enable the Sub-Panel to determine whether it is appropriate to make the proposed decision.
25. In the event that the Sub-Panel decides it is appropriate to exercise any of the powers set out in section 246 of the FSMR, the Sub-Panel will give the Affected Person a warning notice setting out the proposed decision and will apply the relevant procedure set out in Part 21 of the FSMR.

#### ***Response to the Reference***

#### Reviewable Decisions

26. As soon as is practicable and in any event within 28 Days of the receipt of a Reference, or such other period as may be approved by the Appeals Panel, the Regulator must file with the Appeals Panel a response to such Reference setting out:
- (a) any relevant matters that the Regulator wishes to raise in response to such Reference;
  - (b) evidence the Regulator relied upon in making the Reviewable Decision; and

- (c) any other evidence the Regulator wishes to rely upon in the proceedings before the Appeals Panel, with an explanation as to why this evidence was not adduced earlier.
27. Upon submitting the response in accordance with paragraph 26 above with the Appeals Panel, the Regulator must:
- (a) serve a copy of the response on the Affected Person forthwith; and
  - (b) provide a declaration to the Appeals Panel evidencing or recording the service on the Affected Person of the response referred to in paragraph 27(a) above.

#### Executive References

28. In relation to an Executive Reference, the Sub-Panel will inform the Affected Person of its right to make representations (oral or written) to the Sub-Panel concerning the proposed decision which is the subject of the Executive Reference and its impact on the Affected Person within such period as may be specified by the Sub-Panel.
29. Upon submitting its written representations (if any) to the Sub-Panel in accordance with paragraph 28 above, the Affected Person must:
- (a) serve a copy of the representations (if any) on the Regulator forthwith; and
  - (b) provide a declaration to the Sub-Panel evidencing or recording the service on the Regulator of the representations referred to in paragraph 29(a) above.
30. Where the Affected Person elects to make oral representations, the Sub-Panel will inform the Regulator of this and the date and time during which these representations are to be heard.

#### ***Right of Reply***

##### Reviewable Decisions - Affected Person's Right of Reply

31. Within 21 Days of the Affected Person receiving the Regulator's response, or such other period as may be approved by the Appeals Panel, the Affected Person may, if it wishes, file with the Appeals Panel a reply to the Regulator's response setting out:
- (a) any matters that the Affected Person disputes;
  - (b) any further relevant matters with respect to the Regulator's response; and
  - (c) any other relevant matters the Affected Person wishes to rely upon in the proceedings before the Appeals Panel.
32. Upon submitting a reply with the Appeals Panel in accordance with paragraph 31 above, the Affected Person must:



- (a) serve a copy of its reply on the Regulator forthwith; and
- (b) provide a declaration to the Appeals Panel evidencing or recording the service on the Regulator of the reply referred to in paragraph 32(a) above.

Executive References – the Regulator’s Right of Reply

33. Within 21 days of receiving the Affected Person’s written representations (if any) or hearing the Affected Person’s oral representations, or such other period as may be approved by the Sub-Panel, the Regulator may, if it wishes, file with the Sub-Panel a reply to the Affected Person’s representations setting out:
- (a) any matters that the Regulator disputes; and
  - (b) any further relevant matters with respect to the Executive Reference that the Regulator wishes to rely upon.
34. Upon submitting a reply to the Sub-Panel in accordance with paragraph 33 above, the Regulator must:
- (a) serve a copy of its reply on the Affected Person forthwith; and
  - (b) provide a declaration to the Sub-Panel evidencing or recording the service on the Affected Person of the reply referred to in paragraph 34(a) above .
35. Following receipt of any representations by the Affected Person and any reply by the Regulator, the Sub-Panel will proceed to determine whether to make the proposed decision that was the subject of the Executive Reference.
36. In the event that the Sub-Panel decides it is appropriate to make the decision proposed in a warning notice, it will give the Affected Person a decision notice setting out the decision and will apply the relevant procedure set out in Part 21 of the FSMR.

**Referral of an Executive Reference decision for full merits review**

37. Under section 227(4) of the FSMR, a decision made by a Sub-Panel in relation to an Executive Reference may be referred by the Affected Person to the Appeals Panel for a full merits review as a Reviewable Decision.
38. As set out in paragraph 20(a) above, a Reference for a full merits review of a decision of a Sub-Panel in relation to an Executive Reference must be made within 30 days of the relevant decision, or within such further period not exceeding 30 days as may be approved by the Appeals Panel.
39. Where a decision of a Sub-Panel of the Appeals Panel in relation to an Executive Reference is subsequently referred to the Appeals Panel for a full merits review under section 227(4) of the

FSMR, the Appeals Panel member forming the Sub-Panel that made that decision shall not be selected for the Appeals Panel Committee constituted to consider and determine the Reference in relation to that decision.

### Appeals Panel Committee

40. On receipt of a Reference, the Appeals Panel Committee, selected by the President, having regard to any potential conflicts of interest, shall consider and determine the Reference, in accordance with section 226(1) or 227(2) of the FSMR.
41. In the case of a Reference under section 226(1) of the FSMR:
  - (a) at least 3 members of the Appeals Panel Committee must be present to form a quorum for the meetings;
  - (b) in accordance with section 225(4) of the FSMR, the Appeals Panel may do whatever it deems necessary for or in connection with, or reasonably incidental to, the performance of its functions; and
  - (c) in accordance with section 226(2) of the FSMR, the Appeals Panel may make rules of procedure governing the commencement, hearing and determination of any appeal.
42. The Appeals Panel Committee may request the attendance of any person at the Appeals Panel Committee's meeting whom the Chair of the Appeals Panel Committee or the President (as the case may be) considers able to assist the Appeals Panel Committee.
43. At any time after the commencement of a Reference, the Appeals Panel Committee may, on the request of a party or on its own initiative, at a case management conference, pre-hearing review or otherwise, give such directions as it deems necessary to enable the parties to prepare for a hearing and to assist the Appeal Panel Committee with considering and determining a Reference.
44. In particular, the Appeals Panel Committee may give directions, among other things:
  - (a) as to the manner in which the proceedings are to be conducted, including any hearings (whether held in person or remotely);
  - (b) dispensing with any requirement set out in these procedures;
  - (c) for the preparation and exchange of skeleton arguments;
  - (d) requiring persons to attend and give evidence or to produce documents, including electronic records and communications;
  - (e) as to the evidence which may be required or admitted and the extent to which it shall be oral or written;

- (f) as to the submission in advance of a hearing of any witness statement or expert report;
  - (g) as to the examination or cross-examination of any witness;
  - (h) fixing time limits with respect to any aspect of the proceedings;
  - (i) for the disclosure between, or the production by the parties of documents or classes of documents, including electronic records and communications;
  - (j) for the appointment and instruction of experts, whether by the Appeals Panel Committee or by the parties and the manner in which expert evidence is to be given;
  - (k) for the award of costs and expenses, including any allowances payable to persons in connection with their attendance before the Appeals Panel Committee;
  - (l) for maintaining the confidentiality of information which the Appeals Panel Committee has power to exclude under these procedures from any document recording a decision of the Appeals Panel Committee.
45. The Appeals Panel Committee may:
- (a) put questions to the parties and witnesses;
  - (b) invite the parties to make written or oral submissions on certain aspects of the proceedings;
  - (c) ask the parties or third parties for information;
  - (d) ask for documents or records relating to the proceedings to be produced;
  - (e) require the parties or their representatives to attend meetings, whether in person or by video link or telephone conference.
46. A request by a party for directions shall be made in writing as soon as practicable and shall be sent to the Appeals Panel Committee and every other party who might be affected by such directions, and the request shall be determined by the Appeals Panel Committee taking into account the observations of the parties.

***Function of the Chair of the Appeals Panel Committee***

47. The Chair of the Appeals Panel Committee will ensure that the hearing is conducted so as to enable:
- (a) the Affected Person to make representations;
  - (b) the Regulator to respond to those representations;

- (c) any panel members to raise any points or ask questions about the matter; and
  - (d) the Affected Person to respond to the points made by the Regulator or the Appeals Panel Committee.
48. The Chair of the Appeals Panel Committee may ask the Affected Person or Regulator to limit their representations or response in length or to particular issues.
49. The Chair of the Appeals Panel Committee may, in appropriate circumstances, consider and determine any application for directions, or give directions, without consulting the other members of the Committee.
50. The Chair of the Appeals Panel Committee may, in appropriate circumstances, ask those present to provide additional information in writing after the hearing. If such request for further information is made, the Appeals Panel Committee will specify the time within which that information is to be provided.

### **Representation at Hearings**

51. A party to a Reference may appear at any proceedings and may be represented by any person, whether or not that person is legally qualified.
52. However, the Appeals Panel Committee reserves the right to refuse to permit a person to represent a party at a proceeding if the Appeals Panel Committee is satisfied that there are good and sufficient reasons for doing so.

### **Disclosure**

53. For the purpose of facilitating the hearing and the determination of a Reference, each party to a Reference must, within such timeframe as is directed by the Appeals Panel Committee, submit a copy of the Relevant Documents to the Appeals Panel Committee.
54. Upon submitting the Relevant Documents to the Appeals Panel Committee, each party to the Reference must:
- (a) serve a copy of the Relevant Documents on the Affected Person or the Regulator (as the case may be) forthwith or within such timeframe as is approved by the Appeals Panel Committee, save for those documents that have already been filed; and
  - (b) provide a declaration to the Appeals Panel Committee evidencing or recording the service referred to in paragraph 54(a) above.
55. A document served or filed by a party in any proceedings may be amended only with the permission of the Appeals Panel.

56. Permission to amend such a document may be granted on such terms as the Appeals Panel thinks fit, and the Appeals Panel shall give such further or consequential directions as may be necessary.

### **Evidence**

57. For the purpose of hearing and determining a Reference, the Appeals Panel Committee is not bound by the rules of evidence and may inform itself on any matter as it thinks appropriate.
58. The Appeals Panel Committee may receive and consider any material by way of oral evidence, written statements or documents, even if such material may not be admissible in evidence in civil or criminal proceedings in a court of law.
59. In determining a Reference, the Appeals Panel Committee shall apply the civil standard of proof – ‘on the balance of probabilities’ – in its administrative fact-finding role, requiring the Appeals Panel Committee to satisfy itself that a particular fact is more likely than not to be true.
60. The Appeals Panel Committee may control the evidence by giving directions as to:
  - (a) the issues on which it requires evidence;
  - (b) the nature of the evidence which it requires to decide those issues; and
  - (c) the way in which the evidence is to be placed before the Appeals Panel Committee.
61. A party may not without the permission of the Appeals Panel Committee present any written or oral evidence which has not previously been disclosed to all other parties to the proceedings (in the case of oral evidence, in the form of a witness statement or expert opinion).
62. The Appeals Panel Committee may dispense with the need to call a witness to give evidence if a witness statement or expert opinion has been submitted in respect of that witness.
63. Unless the Appeals Panel Committee otherwise directs, no witness of fact or expert shall be heard unless the relevant witness statement or expert report has been submitted in advance of the hearing and in accordance with any directions of the Appeals Panel Committee.
64. Unless the Appeals Panel Committee otherwise directs, all documentary exhibits of a particular class (e.g. correspondence, witness statements, documentary evidence, etc) shall be presented in bundles arranged chronologically, and any document contained in such a bundle shall be deemed authentic without further proof.
65. Any documentary exhibit whose authenticity is challenged shall be excluded from such bundles and shall be proved by such evidence as is appropriate to the circumstances.

### **Conduct of hearings**

66. Every oral hearing in the course of proceedings shall be opened, directed and closed by the Chair, who shall be responsible for the proper conduct of the hearing.
67. The Appeals Panel Committee, or a Sub-Panel hearing oral representations, shall, so far as it appears to be appropriate, seek to avoid formality in its proceedings and shall conduct any oral hearing in such manner as it considers most appropriate for the clarification of the issues and generally for the just, efficient and expeditious handling of the proceedings.
68. Hearings before the Appeals Panel Committee or a Sub-Panel are not required to be in person and may be conducted:
  - (a) in Abu Dhabi, United Arab Emirates or at such other location as may be determined by the Chair of the Appeals Panel Committee or the Sub-Panel; and / or
  - (b) via telephone, video conferencing or any other electronic medium, at discretion of the Chair of the Appeals Panel Committee or the Sub-Panel.
69. The Appeals Panel Committee may, of its own initiative or on the application of any party, direct that a witness or a party, or the representative of a party, take part in any oral proceedings by way of video link or telephone conference in such manner as the Appeals Panel Committee may direct, and whether or not that person is physically present within the United Arab Emirates.
70. After the Chair has closed the proceedings, no further evidence or argument may be submitted without the consent of the Appeals Panel Committee.
71. The Appeals Panel Committee may determine all questions of fact and law that arise in any proceedings brought before it.

### **Public Proceedings**

72. In relation to Reviewable Decisions, all proceedings and decisions of the Appeals Panel Committee shall be heard and given in public unless the Appeals Panel Committee decides otherwise.
73. In relation to Executive References, all proceedings and decisions of the Sub-Panel will be made in private and without a public hearing. Nothing in paragraph 73 limits the Regulator's discretion in section 252 of the FSMR to publish a decision notice, final notice or other notice in relation to the exercise of the Regulator's powers, and details about the matter to which such notice relates, in such manner as the Regulator considers appropriate.

### **Confidential Treatment**

74. The Appeals Panel Committee on its own initiative or on the application of an Affected Person may order a part or all of a proceeding be in private and that information is to be treated confidentially and not disclosed publicly.
75. An application for confidential treatment shall state the grounds for objection to public disclosure and where applicable shall be accompanied by a sealed copy of the information for which confidential treatment is sought.
76. In determining an application for confidential treatment, the Appeals Panel Committee shall consider, so far as practicable:
  - (a) whether the disclosure of information would in its opinion be contrary to the public interest;
  - (b) whether the disclosure of commercial information would or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates;
  - (c) whether the disclosure of information relating to the private affairs of an individual would, or might, in its opinion, significantly harm the person's interests: and
  - (d) the extent to which any such disclosure is necessary for the purpose of explaining the reasons for the decision.
77. Pending the determination of the application for confidential treatment, any materials in connection with the application shall be for the confidential use only of the Appeals Panel Committee, the Secretariat, the Affected Person(s), and any other parties to the proceedings and counsel, and shall be made available to the public only in accordance with orders of the Appeals Panel Committee.

## **Decisions and orders of the Appeals Panel**

### ***Interim orders***

78. At any time after the commencement of a Reference, the Appeals Panel Committee may make any order on an interim basis to the extent permitted by section 229 of the FSMR including to:
  - (a) stay the decision of the Regulator (or in the case of an executive decision the decision of the Sub-Panel) to which the Reference relates and any related steps proposed to be taken by the Regulator (or in the case of an executive decision any related steps proposed to be taken by the Sub-Panel) until the Appeals Panel Committee has heard and determined the reference;
  - (b) order a person not to publish or otherwise disclose any material disclosed by any person to the Appeals Panel Committee;

- (c) stay the proceedings on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice; and
  - (d) exercise such other powers or make such other orders as the Appeals Panel Committee considers necessary for or ancillary to the conduct of the proceedings or the performance of its functions.
79. Any interim order is subject to further order, direction or final decision of the Appeals Panel Committee or Chair.
80. If the urgency of the case so requires, the Appeals Panel Committee may make an interim order on the request of a party before the observations of the other parties have been submitted, and without notice to those other parties, but in such a case the Appeals Panel Committee shall require notice of the request and of the order to be given forthwith to all parties who are affected by the order, and any party who is so affected may request the Appeals Panel Committee to set aside or vary the order.

#### ***Final orders***

81. At the conclusion of any proceedings commenced under sections 226 and 227 of the FSMR, the Appeals Panel Committee may make one or more of the orders or do one or more of the things listed in section 229(2) of the FSMR. A decision of the Appeals Panel Committee requires a majority of those members present. In the event of there being no majority, the Chair shall have a casting vote.
82. Upon making its decision, the Appeals Panel Committee must without undue delay inform each party to the proceeding in writing of:
- (a) such decision and the reasons for such decision, including its findings on material questions of fact and identifying the evidence or other material on which those findings were based;
  - (b) the date on which the decision is to take effect; and
  - (c) where applicable, the date by which payment of any fine, restitution, compensation or costs must be made.
83. Clerical mistakes or errors arising from any accidental slip or omission in any document recording a decision of the Appeals Panel Committee may be corrected by the Chair.

#### ***Deliberations and decisions of the Appeals Panel***

84. The Appeals Panel Committee may conduct its deliberations in person or in such other manner as it considers appropriate, whether or not any or all of its members are present in ADGM.



85. Decisions of the Appeals Panel Committee:

- (a) shall be communicated to the parties in writing by the Secretariat;
- (b) shall, unless otherwise ordered to be kept confidential, be published on the Regulator's website.

**Discontinuance or dismissal of a Reference**

86. Any party that has made a Reference may, at any time, notify the Appeals Panel Committee in writing, or orally at a hearing, that the Reference is discontinued or withdrawn.

87. Upon submitting a notice of discontinuance to the Appeals Panel Committee, the Affected Person (in relation to a Reviewable Decision) and the Regulator (in relation to an Executive Reference) must:

- (a) serve a copy of the notice of discontinuance on the Regulator/the Affected Person, as the case may be, forthwith or within such timeframe as is approved by the Appeals Panel Committee; and
- (b) provide a declaration to the Appeals Panel Committee evidencing or recording the service referred to in paragraph 87(a) above.

88. A notice of discontinuance does not take effect unless the Appeals Panel Committee consents to the discontinuance.

**PART 6 - COSTS**

89. At the conclusion of proceedings, the Appeals Panel Committee may make an order for costs on an application by a party or on its own initiative.

90. A person making an application for an order for costs must:

- (a) send or deliver a written application to the Appeals Panel Committee and to the person against whom it is proposed that the order be made; and
- (b) send or deliver with the application a schedule of the costs or expenses claimed sufficient to allow summary assessment of such costs or expenses by the Appeals Panel Committee.

91. An application for an order for costs must be made not later than 28 days after the date on which the Appeals Panel Committee:

- (a) issues a decision which finally disposes of all issues in the proceedings; or
- (b) gives its consent to the discontinuance of the Reference under paragraph 87.

92. The Appeals Panel Committee may not make an order for costs against a person (the “paying person”) without first:
  - (a) giving that person an opportunity to make representations; and
  - (b) if the paying person is an individual, considering that person’s financial means.
93. The amount of costs or expenses to be paid under an order under paragraph 89 may be ascertained by:
  - (a) summary assessment by the Appeals Panel Committee;
  - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (“the receiving person”); or
  - (c) assessment of the whole or a specified part of the costs, including the costs or expenses of the assessment, incurred by the receiving person, if not agreed.
94. Upon making an order for the assessment of costs, the Appeal Panel Committee may order an amount to be paid on account before the costs are assessed.

#### **PART 7 - FILING AND SENDING DOCUMENTS**

95. A document which is required by these procedures to be filed with the Appeals Panel Committee shall be delivered personally or by post or electronically by e-mail to the Secretariat’s address for service (see paragraph 104).
96. A document which is required by these procedures to be filed with a Sub-Panel in relation to an Executive Reference shall be filed using the appropriate method(s) communicated to the Affected Person(s) in each particular case.
97. A document which is required by these procedures to be sent to any person other than the Appeals Panel Committee or Sub-Panel may be:
  - (a) delivered personally to the person’s physical address for service;
  - (b) sent by post to the person’s physical address for service; or
  - (c) sent to the person by e-mail at any e-mail address which the person has provided as an address for service.
98. If a person has not provided an address for service, a document may:
  - (a) in the case of a company, be delivered personally or sent by post to the secretary of the company at the registered address or principal place of business of the company;

- (b) in the case of a partnership, be delivered personally or sent by post to the last known address of any one of the partners;
  - (c) in the case of any other person, be delivered personally to him or sent by post to the last known address of that person; or
  - (d) be sent by any other means to any address or facility by which the person has previously communicated with the Regulator and which will reasonably bring the document to the person's attention.
99. A document shall be treated as having been filed or sent at the time when, having regard to all the circumstances, including the method of filing or sending, the incidence of non-working days and the differences between time zones, the document should in the ordinary course have come to the notice of the intended recipient.
100. The Appeals Panel Committee or Sub-Panel may dispense with the filing or sending of a document if the interests of justice so require.
101. The Appeals Panel Committee may, for good reason, authorise a document to be sent or filed by an alternative method to those permitted by these Rules.
102. Where the time for doing any act expires on a non-business day, the act is in time if done on the next business day.
103. Subject to legislative provisions to the contrary, the Appeals Panel Committee or Sub-Panel may extend or abridge the time for doing any act under these procedures, whether or not expired.
104. All notices, applications and any other documents required to be filed with the Appeals Panel Committee in relation to a Reviewable Decision shall be filed at one of the following addresses:
- (a) Electronic Service:  
  
Email: [Secretariat.AP@aoshearman.com](mailto:Secretariat.AP@aoshearman.com)
  - (b) Personal or postal service:  
  
Allen Overy Shearman Sterling LLP  
Secretariat to the Appeals Panel  
Al Mamoura Building B, 5th Floor  
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