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# **APPEAL PROCESS FOR PENALTIES ON TRADING INFRACTIONS**

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**March 2016**

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## 1. INTRODUCTION

- 1.1. The self-regulatory organisation (SRO) function of FMDQ OTC Securities Exchange (“**FMDQ**”) is driven by the Market Regulation and Examination Groups and its approach to monitoring and enforcement is aimed at maintaining the integrity, orderliness and transparency of trading activities in the FMDQ markets. To ensure that trades are executed in a transparent and orderly manner, FMDQ, in conjunction with the Dealing Members, developed the Trading Infractions and Penalties Guide which articulates infractions and the penalties for violation of the infractions.
- 1.2. To this effect, FMDQ has established this Appeal Process for Penalties on Trading Infractions (the “**Appeal Process**”) which involves a three-level structure, starting at the Management level, through the Trading Infractions Appeal Committee to the Board level, through the Board Regulation and Risk Management Committee (“**BRRMC**”) and ultimately, to the Board of Directors. The Appeal Process which seeks to ensure proper management and adjudication of the appeals made by aggrieved Dealing Members, outlines the steps which Dealing Members should take where they disagree with penalties imposed on them based on infractions provided in the Trading Infractions and Penalties Guide.
- 1.3. The Appeal Process shall be read in conjunction with all FMDQ Rules, Guidelines, Bulletins including the FMDQ OTC General Market Rules, FMDQ Codified Rule Books, E-Bond Trading Rules, E-Bond Trading Infractions and Penalties Guide, Disciplinary Procedure Rules, FMDQ OTC Market Bulletins and all other regulation as may be introduced to the market from time to time.

## 2. APPEALS AGAINST PENALTIES ON TRADING INFRACTIONS

- 2.1. All appeals against penalties on trading infractions shall be made to the Trading Infractions Appeal Committee (TIAC).
- 2.2. Appeals shall be filed within three (3) business days of a notification of a trading infraction and the applicable penalty.
- 2.3. All appeals to the TIAC shall be made in writing via a letter and filed with the Control & Audit Group (CAG) at the following address:

**Group Head, Control & Audit**  
FMDQ OTC Securities Exchange  
1 Olosa Street  
Victoria Island  
Lagos

- 2.4. The contents of the letter shall include the following, *inter alia*:
  - (i) The date of the infraction
  - (ii) The type of infraction
  - (iii) Details of the infraction that is the subject of the appeal
  - (iv) Valid justifications for the appeal
  - (v) Any supporting documents relevant to the hearing of the appeal

- (vi) A written undertaking by the appellant stating that they are acting in good faith and are not making a frivolous or vexatious appeal

2.5. The following matters are not considered as appeals for deliberation under this Appeal Process:

- (i) Appeals that are not within the purview of the Trading Infractions and Penalties Guide
- (ii) Appeals with incomplete details or which are not specific
- (iii) Appeals without valid justifications
- (iv) Where the Dealing Member is offering suggestions, seeking interpretive guidance or explanation

2.6. The burden of proof shall be on the appellant.

### **3. TRADING INFRACTIONS APPEAL COMMITTEE**

3.1. The TIAC shall be composed of the following persons:

- (i) Divisional Head, Market Operations & Technology
- (ii) Divisional Head, Market Development & Regulation
- (iii) Group Head, Control & Audit
- (iv) Group Head, Market Regulation
- (v) One Representative of the Market Services Group
- (vi) One Representative of the Legal & Company Secretariat Group who shall also serve as the Secretary to the TIAC

***Note: The Divisional Head, Market Operations & Technology shall serve as the Chairman of the TIAC.***

3.2. The quorum for meetings of the TIAC shall be four (4) members.

3.3. The TIAC shall not set aside the penalty unless it determines, by a simple majority vote, that the decision was:

- (i) Arbitrary or an abuse of power by the surveillance officer
- (ii) In excess of the surveillance officer's authority or jurisdiction
- (iii) Based on a clearly erroneous application of the Trading Rules

3.4. In the event of equality of votes amongst members of the TIAC, the Chairman shall have a second or casting vote.

3.5. The Secretary shall communicate the decision of the TIAC to the appellant with the relevant details of the decision within five (5) business days of the decision.

### **4. APPEALS TO FMDQ BOARD REGULATION AND RISK MANAGEMENT COMMITTEE**

4.1. Appeals against final decisions of the TIAC shall be to the BRRMC.

4.2. Appeals shall not act as a stay of execution of the decision of the Committee.

- 4.3. Appeals may be by written submissions or by appearance before the BRRMC, depending of the circumstances of the case.
- 4.4. An appellant shall make an appeal to the BRRMC by filing a Notice of Appeal within ten (10) business days of service of the decision of the TIAC, in the template advised by FMDQ at the registered office of FMDQ. The Notice of Appeal shall be accompanied by all supporting documents which the appellant seeks to rely upon.
- 4.5. The appellant shall be required to pay a filing fee as provided in the Fee Schedule attached in [Appendix I](#).
- 4.6. The Company Secretary of FMDQ shall act as Secretary to the BRRMC for the purpose of appeals made against decisions of the TIAC.
- 4.7. All appeals to the BRRMC shall be based solely upon facts presented to the TIAC for consideration and must be connected to the underlying substantive issues brought before the TIAC at first instance.
- 4.8. Upon receipt of a Notice of Appeal, the Company Secretary will notify the BRRMC Chair, who will arrange a hearing, if required, at its next meeting or at an earliest convenient time to the Committee.
- 4.9. Following service of a notice, the appellant may submit to the BRRMC a statement amending the notice served. Provided that:
  - (i) Such amendments are made within the time stipulated for filing a Notice of Appeal
  - (ii) The amendments do not seek to deviate from the issue which was presented before the TIAC at first instance
- 4.10. Prior to the hearing of the appeal, any member of the BRRMC shall be required to state if there is a conflict of interest in respect of the appellants and if so, shall recuse himself from the hearing of the appeal.
- 4.11. If no quorum is formed based on a recusal of a BRRMC Member, the BRRMC Chair may request that another Member of the Board of Directors of FMDQ be seconded for the purpose of hearing the appeal.
- 4.12. The BRRMC shall hear appeals in private and such hearings may be recorded. A transcription or copy of the record of proceedings shall be available to any party upon payment of a fee as provided in the Fee Schedule below. For the avoidance of doubt, it shall be sufficient for such record or transcript of proceedings to be in the form of minutes taken by the Secretary.
- 4.13. The appellant shall be given not less than ten (10) business days' notice of the time and place of the hearing of the appeal by the Secretary. The notice period may be shortened with the consent of the appellant.
- 4.14. If the appellant fails to attend the hearing of the appeal, the BRRMC may proceed to consider the

appeal and other supporting documents in the absence of the appellant and such decision shall be binding on the appellant.

- 4.15. After due consideration of the appeal, the BRRMC may take any of the following decisions:
- (i) Uphold the decision of the TIAC
  - (ii) Vary the decision of the TIAC
  - (iii) Quash the decision of the TIAC if it is satisfied on the balance of probabilities that the appellant has provided good reason why the decision of the TIAC should be quashed
  - (iv) Such other decision as the BRRMC deems fit to make in respect of the appeal
- 4.16. Appeals shall not be frivolous, vexatious or made in bad faith. Where an appeal is deemed to be frivolous, vexatious or made in bad faith, the BRRMC may impose such sanction on the appellant as it deems fit, including, inter alia, the following:
- (i) Warning Letters
  - (ii) Fines
  - (iii) Suspension
  - (iv) Expulsion from the Platform
  - (v) Public Censure
  - (vi) Such other sanctions as the BRRMC may deem fit to make in the circumstances
- 4.17. No appellant may rely on any statement or document not filed with the BRRMC at least two (2) business days before the hearing except with the leave of the BRRMC.
- 4.18. In exceptional circumstances and with the leave of the BRRMC, the appellant may be permitted to call witnesses to the hearing of the appeal.
- 4.19. The BRRMC may extend the time for an appeal.

## **5. APPEALS TO FMDQ BOARD OF DIRECTORS**

- 5.1. Following the outcome of the decision made by the BRRMC, where an appellant is dissatisfied with the decision, it may file a Notice of Appeal against the decision of the BRRMC to the Board of Directors (Board) of FMDQ.
- 5.2. The appellant shall be required to pay a filing fee as provided in the Fee Schedule below.
- 5.3. The Company Secretary shall inform the Board of a pending Notice of Appeal filed by a dissatisfied appellant. Upon receiving the Notice of Appeal, the Chairman of the Board shall decide the procedure for the Board to hear the appeal. The Chairman may however be guided by the appeal process for the BRRMC as provided above.

## **6. APPEALS AGAINST DECISIONS OF THE BOARD OF DIRECTORS**

Any further appeals shall lie with the Securities and Exchange Commission (SEC) in accordance with the Investments and Securities Act 2007 and the SEC Rules made pursuant to the Act.

## **7. AMENDMENTS**

This Appeal Process may be subject to amendments from time to time as FMDQ may deem fit to make.

**APPENDIX I**

**FEE SCHEDULE**

S/N	Subject	Fee (₦)
1.	Filing of Appeals to Trading Infractions Appeal Committee ("TIAC")	25,000.00
2.	Filing of Appeals to FMDQ Board Regulation and Risk Management Committee ("BRRMC")	100,000.00
3.	Filing of Appeals to the FMDQ Board of Directors	250,000.00
4.	Transcript or Record of Proceedings*	5,000.00

**Notes:**

- a) *The filing fee(s) shall be treated as a deposit with FMDQ.*
- b) *Where the ruling of any of the appellate bodies provided in the table above is in favour of the appellant, all filing fees incurred by the appellant during the Appeal Process shall be refunded to the appellant.*
- c) *The filing fee(s) shall be forfeited by the appellant under any of the following circumstances:*
  - i. *Where the final ruling of the Board of Directors is against the appellant*
  - ii. *Where a ruling of either the TIAC or BRRMC is against the appellant and the appellant does not pursue a further appeal to the Board of Directors*
- d) *\*The transcript or record of the proceedings may be in form of minutes taken by the Secretary*