

INTERNATIONAL INSTITUTE OF MINERALS APPRAISERS

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NEWSLETTER

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2020 IIMA/SME CONFERENCE SNEAK PEEK

First off, a big thank you to all who have submitted an abstract for the upcoming 2020 IIMA meeting in Phoenix, Arizona, on Tuesday, February 25th. The quality continuing education we enjoy as IIMA members would not be possible without your time and effort! Thank you! Here is a sneak peek at the lineup of presentations:

A Direct, Project-Based Comparison of Commonly Used Pre-Feasibility-Level Cost Estimating Methods

Scott Stebbins; Aventurine Engineering, Inc.
Elk, WA

Valuation of an Undeveloped Mineral (Limestone and Sandstone) Property Using Comparative Sales, West Virginia

Donnie Lumm; D.K. Lumm Geological Consulting
Lexington, KY

Using Paired Sales Data to Adjust Comparative Sales to Subject Property

John Gustavson; Mineral Appraiser, LLC
Boulder, CO

Calculation of the Degree of Comparability for Historical Coal Property Transactions Used in the Determination of Fair Market Value for Coal Properties with High-Grade Metallurgical Coal

Dennis Knoll; Earthtech, Inc.
Somerset, PA

Appraisals of Oil and Gas Interests in Unconventional Resources-Norming Data to Create a Comparable Sale

Betsy Suppes
Johnstown, PA

Asset Appraisal Versus Company Valuations

Amy Jacobsen; Behre Dolbear Group, Inc
Edgefield, SC

Trends in Gold Property Transaction Values 2012 – 2021

Grant Malensek; RPA USA, Ltd.
Lakewood, CO

Condemnation Valuation for the Undeveloped Mineral Property - NOI or Royalty?

James Beck; J.M. Beck & Associates
Lakewood, CO

Deterministic versus Stochastic Modeling - The Role of Each in the Appraisal Process
Craig Wood; Stagg Resource Consultants, Inc.
Cross Lanes, WV

Impact of the Feasibility Study Input Parameters Deviation on Mineral Project Cash Flow Model: An Iron Ore Case Study
Naci Duru, Freeport-McMoRan, Inc.
Sahuarita, AZ

HIGHLIGHTS FROM THE 2020-2021 USPAP

Evan Mudd

The revised USPAP manual is now available from the Appraisal Foundation. It is effective for the period January 1, 2020, through December 31, 2021. We've outlined a few key changes to expect in that updated version. An extensive list of changes is maintained by the Appraisal Standards Board on the web at:

<https://appraisalfoundation.sharefile.com/share/view/scad7ea3f7fd46768>

Revisions to the Standards regarding reporting options and Comments in Standards Rules

The Board adopted revisions to permit additional intended users besides the client for Restricted Appraisal Reports, as long as the other intended users are named in the report (i.e., not merely identified "by type"). The second adopted change for Restricted Appraisal Reports is a simplification of warning language that will no longer include a reference to the appraiser's work file.

Revisions to the Scope of Work and Competency Rules

The board adjusted disclosure obligations in the Scope of Work Rule, which now explicitly states that "the appraiser may, but is not required to, consolidate the disclosure in a specific section or sections of the report." It now further states that "An appraiser may choose to disclose the scope of work as necessary throughout the report."

The Competency Rule now includes language ("Perfection is impossible to attain...") which has been deleted from and was previously used in five different standards rules. This move into the Competency Rule was intended to reduce duplication, AND broaden the applicability of the statement to all development and reporting.

Revisions to Definitions

The 2020-2021 USPAP comes with some clarifications and expansions upon defined terms. We won't expand on them all here, but be ready look up the following definition changes and incorporate them into next year's appraisal reports:

Revised:

Appraisal
Appraisal Practice
Appraisal Review
Appraiser
Assignment Conditions
Assignment Results
Client
Cost
Exposure Time
Market Value
Personal Property
Real Property
Valuation Service
Value
Workfile

New:

Assignment Elements
Effective Date
Misleading
Personal Inspection
Physical Characteristics
Relevant Characteristics

One of the most interesting changes appears to be in the definition of Personal Property, which now includes "any tangible or *intangible article*." The definitions elaborate on the concept of an intangible article being plans, emails, or other digital content.

Another is the definition of Workfile, which now includes any documentation to support the report's conclusions *and* "to show compliance with USPAP." Many appraisers have made this a practice for years. But, in case your documentation didn't quite support an argument for USPAP compliance as well, it now appears that the Board is accepting no excuses.

Advisory Opinions

In this update of USPAP, nine advisory opinions were modified, including the creation of a new opinion (No. 38 – Content of an Appraisal Report and Restricted Appraisal Report), and the retirement of three opinions (No. 4, 11, and 12). According to the Appraisal Board, “Advisory Opinion 4 was narrowly-focused, and was more appropriately housed where it also currently exists in the USPAP.” Some may be familiar with this advisory opinion referring to the analysis of transactions involving foreclosure. The Board also states that “Advisory Opinions 11 and 12 have been replaced with the newly-created Advisory Opinion 38.” These two opinions referenced the content and applicability of the two report options. It appears that Advisory Opinion 38 was an update and consolidation of them both.

With the rollout of the new edition of USPAP, refresher courses and continuing education opportunities are abundant. Whether you are a Certified IIMA member, Associate, Affiliate, or Emeritus, you can be sure to benefit!

USPAP CONTINUING EDUCATION OPTIONS

Thank you to Donnie Lumm for this friendly reminder regarding USPAP refresher course options:

The 7-Hour USPAP Update Course is *highly recommended* for IIMA **Certified Members** every two (2) years after they have completed the 15-Hour USPAP Course. Associate Members are not required to take the 7-Hour USPAP Update Course. However, if it has been YEARS since you took the 15-Hour USPAP Course, it may be time for a Refresher, assuming that you are aiming toward Certification as a full Member. Associate Members should contact their assigned Mentor or the IIMA Secretary for info about taking the 15-Hour USPAP Course.

The Appraisal Institute (AI) has an extensive listing for Classroom sessions for the 7-Hour USPAP Update Course. The registration fee for classroom sessions runs between \$150 -\$185 for AI Members.

The online classes are listed as a “7-Hour Equivalent USPAP Update Course” and cost \$195.

You may review the AI Classroom schedule posted online at this [Appraisal Institute](#) link, or visit www.appraisalinstitute.org.

However, the Appraisal Institute is not the only source for taking the 7-Hour USPAP Update. McKissock Learning offers the 7-Hour USPAP Update course online at a fee of \$199.99.

For more details refer to the McKissock link:

<https://www.mckissock.com/appraisal/uspap/7-hour-online/>

Recall that the IIMA Bylaws Section 2.5.3 states that **Members** must have "an average of 10 hours of Continuing Education per year over a three-year average" (= 30 CE hours total in 3 years). Associate Members are not bound by IIMA CE requirements.

NEW ETHICS CODE UNANIMOUSLY APPROVED BY IIMA MEMBERS

The IIMA’s new ethics code, dated May 23, 2019, has been unanimously approved. The turn-out among our Certified Minerals Appraisers was 46%, who all voted FOR. There were no votes AGAINST adoption. As a reminder to all members, the ethics code is “not a minerals-related standard or guideline; rather it is a minimum set of rules by which a Member’s performance, ethics, and professional conduct may be evaluated should a complaint be filed against a Member,”

These complaints are filed in accordance with IIMA’s Ethics & Professional Conduct Complaint Procedures, which were also adopted with the new ethics code on May 23, 2019. We thank Bill Bagby and his Ad Hoc Ethics Code Committee for ALSO taking on this task of updating the Complaint Procedures. Thank you!

Please find both of these documents attached to this newsletter

MODERNIZATION OF MINE PROPERTY DISCLOSURES AND S-K SUBPART 1300: APPRAISERS BEWARE!

PART I

Evan Mudd

I'll admit "Beware!" is slightly bold, but as I write this article on Halloween, I consider, as minerals appraisers, how we often become entangled with a subject's web of resource attributes. Therefore, it seems that these recent changes to public reporting standards for mining registrants *should* indeed be a topic we are familiar with, so that we know how to use the numbers, and not find ourselves...spooked. So, this article is a two-part series (with comments cordially welcomed before publishing the second part), of what may affect our work as minerals appraisers given the SEC's adoption of S-K 1300.

For starters, during the course of an assignment, we often inquire about the reserve quantity and quality. Can we rely upon the estimates provided to us? How does the subject's market value relate to its resource attributes? Recent changes to reporting requirements for publicly traded companies, known as the new S-K 1300 requirements, may alter how we think about reserves of our subject and its competing properties. Let's take a dive.

A Matter of Location

Regulations pertaining to the public reporting of mineral reserves are found in Title 17 of the Code of Federal Regulations (CFR). More specifically, part 229 (known as Regulation S-K), regulated by the SEC, is where we find the U.S. reserve reporting requirements for publically listed mining companies. This occurs in Subpart 102, where listed companies are directed to disclose details about their property, and mining companies are given special instructions for disclosure of their reserves. Previously, within

subpart 102, the SEC provided us with a reporting guide, Guide 7, to follow when reporting reserves. However, pursuant to requests of mining industry participants who recognized the shortcomings of Guide 7, the SEC has updated its guidance, now precisely locating it in new subparts 229.1300 through 229.1305. The exact text of these requirements, which completely replaces Guide 7, can be found at www.ecfr.gov. Let's see what is in the attic of these new reporting standards.

Resources AND Reserves

Yes! They can now both be reported. Industry Guide 7 previously only allowed for reporting of reserves, which many industry participants felt was disadvantaging U.S. mining investment. They are now both on the table. Resources are defined as having "reasonable prospects for economic development" and are classified as measured, indicated, or inferred. If a registrant chooses to, it can convert the *indicated* and *measured* resources into **reserves**, which may be capitalized under GAAP. If this is done, then resources must not include the quantities that have been converted into reserves.

Summary Reporting

Is mining considered material to the business? If so, registrants are required to provide summary disclosure of their properties. All mining companies and vertically integrated enterprises engaged with mining, even minimally, are likely to fit this requirement. The summary disclosure includes collective information about a registrant's mining properties such as location, ownership interests, stages of development, and more. Also included is a summary of all mineral resources and reserves, as determined by a Qualified Person (QP). So far, so good? Let's keep going.

Properties containing more than 10% of a registrant's *indicated* and *measured* resources, or reserves, are reported individually. Yes, individually. This could mean we see a greater level of granularity in the property data which is publicly reported. Perhaps this is welcome to many appraisers interested in the comparable data that will be provided. But, as I did include the article title, "Beware", there may be new,

uncharted pitfalls for us to consider. For example, S-K 1300 allows significant latitude by the QP in determining whether a resource may be converted into a reserve AND at what commodity price level. This is welcome consistency with established international standards, but, an appraiser needs to be aware of these cutoff grades and commodity price differences before relying on the newly available, and easily accessible data. Perhaps, as described below, we will also consider whether a registrant has disclosed all of their reserves.

Individual Reporting

Under the new rules, registrants must provide individual property disclosure for each property that is material to its business *or* financial condition. According to the SEC, “a matter is material if there is a substantial likelihood that a reasonable investor would attach importance to it in determining whether to buy or sell the securities registered”¹. What we may consider, is that, 1) although guidelines are provided, there is still latitude in determining the materiality threshold, and, 2) the reporting process provides significant competitive information, such as an annual reconciliation of resources and reserves for individual properties. The reporting requirement is somewhat onerous, requiring internal corporate controls to ensure reporting is consistent across the enterprise. We may wonder whether this burden will cause some companies to not report a portion of their reserves. If this is the case, our conclusions about the value of mining property in relation to its quantity of reserves may be affected.

Establishing Resources and Reserves

Furthermore, information about the initial reporting of reserves (including all existing registrants who are disclosing under S-K 1300 for the first time), or any material change in reserves must be provided in the form of a Technical Summary Report (TRS), which is similar in many ways to the Canadian NI 43-101 standard for *feasibility* studies. Among other requirements, the TRS must include reserve tonnage, qualities, processing detail product pricing, and in some cases, market studies. Some have commented that this level of disclosure could be an onerous requirement and deterrent to competitive advantage.

A shift in balance sheets (and income)?

Financial statements may become more interesting if registrants choose not to report a portion of their reserve base. For example, establishing reserves is a precursor to capitalizing them as an asset. The interesting effect is that resource development expenses would then likely be reported in the year of occurrence. Not only could this upend a property’s expense comparability, but, a noticeable impact to operating income could ensue. We should, therefore, consider the impact of reserve reporting on the expenses, income, and discount rates, capitalization rates, or income multiples utilized.

As an example, consider a large construction material producer, with, 100 or more quarries, few, if any, being individually material to their business. I seriously wonder if the cost of compliance, corporate controls, and risk of disclosing competitive information may prevent disclosure of some or many of these reserves. If we have reason to believe that reserves are only partially disclosed, then our view of supply and demand within a market area could change, and our expense estimates could skew.

Part I Summary

With the new S-K 1300 rules, the old SEC Guide 7 is rescinded, and companies have until January 1, 2021, to fully comply. *Resources* are now reportable. This has been championed by many in the industry as a leveling action for U.S. mineral investment. A qualified person must certify the resources which are converted to reserves, and only those reserves may be capitalized. The reporting requirements are more onerous than Guide 7, and perhaps, even some of the common international standards. We, therefore, may wonder how different the reserve estimates of existing U.S. mining registrants will look by 2021. As appraisers, we must be aware of the picture these new numbers could paint when drawing comparisons between the reserve base of different mining properties. We also consider the materiality of a company’s properties, the likelihood that significant resources have not been converted to reserves, and the resulting nature of their balance sheet, income, and expenses. Part II casts additional light on the shadow of this new figure in our US standards, the Qualified Person. We also examine a haunting conundrum for idle mine properties. Til’ then.

¹ Securities Act Rule 405 and Exchange Act Rule 12b-2

2019 IIMA SESSION VIDEOS AVAILABLE ON DVD OR DOWNLOAD

Synchronized presentations are now available for the 2019 SME / IIMA valuation sessions. Perhaps you like to download these presentations to your personal computer, or maybe you prefer to play them on your living room DVD player. The great news is you can do both! All sessions are available for download or DVD purchase from the IIMA website.

Also, while supplies last, the earlier sessions are still available for purchase. Price of DVDs (when shipping within North America. Added postage may apply when shipping overseas):

Twin-set: 2014, 2015, 2016, 2017, 2018, or 2019
\$95 each set

Please, mail your check made out to the "IIMA" with your name and address and allow 2 weeks for delivery.

Older DVD sets are still available at the following prices:

2-set from 2013 \$90
2-set from 2012 \$90
3-set from 2011 \$120

Continuing Education

Members of the International Institute of Minerals Appraisers may claim up to 6 hours of Continuing

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Editor: Evan Mudd, PE
E-mail: emudd@rockassociates.com

Special thanks to the contributions made. The strength of the IIMA organization is through the commitment, education, and contributions of its members. We are always looking for

Education Credits after attending the Valuation Sessions. Subsequent hours recorded by our CMAs for your own serious desk study of the DVD material may also be claimed as contact hours toward CE credits.

And there's more! As an alternative to buying DVD sets from years prior to 2018, the IIMA provides an exclusive benefit to members, making older presentations accessible for FREE viewing via the IIMA web site!

This approach continues to move forward year by year on a rolling basis, so the two most recent annual sets will be available at a price, while older papers may be uploaded for free by Members.

And in addition, as of 2019, 22 carefully selected presentations from Annual Conferences including 2019 and going back to 2011 can be accessed on YouTube through the SME Tutorial Website.

<https://www.smenet.org/publications-resources/resources/sme-valuation-standards/sme-valuation-tutorials>

These are for both our Members and also the education of the Public. Spread the word!

Please address any questions to the IIMA Chair, Continuing Education at dslumm@windstream.net

articles to enhance our profession and welcome any material that members may provide.

All articles are contributed on a volunteer basis. The views and opinions expressed in any and all articles are those of the authors and do not necessarily reflect those of IIMA or your Newsletter Editor. If any IIMA member would like to professionally add-on to, rebut, or clarify any articles, I will feature such articles in the following newsletter. Thank you!

INTERNATIONAL INSTITUTE OF MINERALS APPRAISERS

IIMA CODE OF ETHICS & PROFESSIONAL CONDUCT

May 23, 2019

Preamble & Enforcement Authority

The International Institute of Minerals Appraisers (IIMA, The Institute, Institute) is a professional organization of qualified Members who specialize in the appraisal of properties containing minerals. Although headquartered in Boulder, Colorado, USA, IIMA has qualified members elsewhere in the world. In order to reflect its international scope, IIMA is aligned with the International Mineral Property Valuation Standards Template (IMVAL) which provides harmonization of different country mineral valuation codes, standards, and guidelines.

IIMA is a professional organization as defined by IMVAL:

A self-regulating organisation, such as one of engineers, geoscientists, or minerals Valuers, that

(a) is accepted and recognised as reputable by the professional community, or has been given authority or recognition by statute;

(b) admits members on the basis of their academic qualifications and professional experience;

(c) requires compliance with professional standards of expertise and behaviour according to a code of ethics established by the association;

(d) requires compliance with specified continuing education requirements; and

(e) has enforceable disciplinary powers, including that of suspension or expulsion of a member.

Due to IIMA's international nature, The Institute cannot hold its Members to each and every available minerals valuation standard(s) or guideline(s), rather, it is up to each Member to identify with the client based on the local jurisdiction and the client's needs, the appropriate minerals valuation standard(s) or guideline(s) at the beginning of a valuation assignment and to comply with the applicable standard(s) or guideline(s). This not only applies to minerals valuation standards and guidelines, but also to standards and guidelines for the reporting and defining of mineral resources and reserves.

Public Trust is based upon each IIMA Member's ability to comply with minerals-related standards and guidelines and it is the Public Trust that provides IIMA Members with the respect due a professional minerals organization and with support necessary for valuation services performed in the public sphere. This IIMA Code of Ethics & Professional Conduct (Code) is developed to protect the Public Trust by mandating compliance for all Institute Certified

Minerals Appraisers, Associate Members, and Affiliate Members (Members) with the applicable minerals-related standards and guidelines for a given minerals valuation assignment.

This Code requires personal and professional conduct of its Members as exemplified by the fundamental principles of integrity, objectivity, competence, confidentiality, independence, and professional conduct. This Code is not a minerals-related standard or guideline, rather it is a minimum set of rules by which a Member's performance, ethics, and professional conduct may be evaluated should a complaint be filed against a Member in accordance with IIMA's Ethics & Professional Conduct Complaint Procedures (IIMA Complaint Procedures) as attached to this Code.

All IIMA Members are required under IIMA Bylaws Article 2.5.2 to comply with this Code in the professional practice of minerals (real property) valuation and to encourage others to maintain similarly high standards. This Code applies to all professional activities, whether oral or written, whether for employers or clients, The Institute, or another related professional organization, wherever and whenever such activities or assignments may occur. IIMA Members shall not be relieved of an ethical or professional responsibility by virtue of his or her employment, or because an assignment is delegated to a subordinate, or because a Member was not involved in performing valuation services for fee compensation.

It is not possible for a Code such as this to forecast all possible ethical or professional conduct lapses. It remains the discretion of the IIMA Ethics Committee Chair, at the time a complaint against a Member is lodged, to determine the minerals valuation standards and guidelines that apply in that case. If a Member is found in violation of this Code through an evaluation using the IIMA Complaint Procedures, IIMA may impose disciplinary action up to and including expulsion from The Institute and certification revocation. Under the Bylaws, The Institute may also impose such discipline for legal violations.

IIMA Code of Ethics & Professional Conduct Rules & Interpretations

Rule 1. Public Trust. The responsibility of Members for the welfare of the community (public interest) shall always come before their responsibility to the profession, to The Institute or private interests, or to other Members.

- a. Members shall promote and preserve public trust in minerals valuation by avoiding even the appearance of impropriety.
- b. Members who find that obligations to an employer or client conflict with professional or ethical standards or conduct shall have such objectionable conditions corrected or resign from that employment or minerals valuation assignment.
- c. A Member shall avoid making sensational, exaggerated, and or unwarranted statements that may mislead or deceive members of the public or any public body.
- d. A Member shall not knowingly permit his or her work to be used for illegitimate or unsound undertakings.

Rule 2. IIMA Honor, Integrity, and Dignity. Members shall act to uphold and enhance the honor, integrity and dignity of the minerals valuation profession.

- a. A Member shall be guided by the highest standards of personal integrity and professional conduct not only when performing a minerals-valuation assignment but also when acting in any professional capacity for The Institute or other minerals-related organizations.
- b. By applying for or by continuing Membership in The Institute, a Member agrees to comply with and uphold this Code of Ethics & Professional Conduct.
- c. A Member shall aid in preventing the election to any IIMA membership class those who are unqualified or do not meet the standards set forth in this Code of Ethics & Professional Conduct or in CMA certification qualifications as documented in The Institute's Bylaws.
- d. A Member having knowledge of a violation of this Code of Ethics & Professional Conduct by another Member shall bring substantiated evidence of such violation to the attention of The Institute through formal written notice to the IIMA Ethics Committee Chairman via the IIMA President and Executive Committee.
- e. A Member shall not be involved with any business or professional practice which he or she knows to be of fraudulent or dishonest nature.
- f. A Member shall not continue in partnership with, nor act in professional matters with any person who has been removed from membership of The Institute because of unprofessional conduct.

Rule 3. Competency. Members shall perform minerals valuation assignments only (1) in their areas of competency, or (2) acquire necessary competency (either personally or through subcontracting a competent person) to perform such assignment.

- a. A Member shall perform professional real-property minerals valuation services or issue professional opinions which are only within the scope of the education and experience of the Member and his or her professional associates, consultants, or employees used during the course of a mineral valuation assignment, and shall advise the employer or client of any professional requirements that are outside the Member's personal expertise.
- b. A Member shall not give a professional opinion nor submit a report without being as thoroughly informed as might reasonably be expected, considering the purpose for which the opinion or report is requested.
- c. A Member shall inform his or her employer or client and make appropriate recommendations on obtaining further advice if an assignment requires qualifications and experience (competency) outside his or her competency.

Rule 4. Personal Integrity and Professional Conduct. Members shall build their professional reputation on merit and shall not compete unfairly by misrepresenting experience and (or) competency required to complete a minerals valuation assignment.

- a. A Member shall neither falsify nor misrepresent his or her or an associate's qualifications, experience, and prior responsibilities or experience.
- b. A Member shall neither maliciously nor carelessly do anything to injure, directly or indirectly, the reputation, prospects, or business of others.
- c. A Member shall not use the advantages of a privileged position to compete unfairly with others at any time, including while serving as an officer, director, or Member of The Institute or any other professional minerals valuation organization or committee.
- d. A Member should respect the rights, interests, and contributions of professional colleagues, and any critiques of a colleague's professional conduct or competency should be conducted in a professional and objective manner.
- e. A Member shall respect and acknowledge the professional status and contributions of his or her colleagues.
- f. A Member shall give due credit for work done by others during a professional assignment when appropriate and shall not knowingly accept credit due another.
- g. A Member shall not plagiarize another's oral and (or) written communications, or use materials prepared by others without appropriate citation and acknowledgment.

Rule 5. Industry-Accepted Minerals Valuation Standards, Skills, and Knowledge. Members shall apply current industry-accepted minerals valuation skills and knowledge to develop objective, unbiased minerals valuations independent from the desires, wishes, interests, or needs of a client, employer, or a third party.

- a. While realizing that Members are contracted to perform minerals valuations with many differing purposes, a Member shall perform valuation work with independence from the influence or bias of a client's, employer's, or any other party's desires, needs or wishes as to the outcome of their valuation.

b. A Member must defend minerals valuation results and opinions based only on supporting evidence as provided in a credible valuation report, whether oral or written. Unsupported opinions or reliance upon questionable data sources, do not provide a basis for defense of minerals valuation results.

Rule 6. Avoiding and Disclosing Conflicts, Maintaining Objectivity and Independence.

Members must not advocate the cause or interest of their client, employer, or intended users when engaged in a minerals valuation assignment, instead, they must work in a professional capacity regarding real-property valuation theory, practices, and procedures. Members must avoid wherever possible both real and perceived conflicts of interest and prominently disclose in writing (or verbally for an oral report) any unavoidable or apparent conflicts in the valuation report, whether oral or written.

a. A Member shall disclose to a client, an association, or employer any actual or potential conflicts of interest which may affect their ability to complete an objective, unbiased, and independent minerals valuation assignment, including disclosure of any existing or contemplated financial interests related to the project. A Member shall also disclose to The Institute any actual or potential conflicts of interest when representing The Institute's interests to another professional minerals-related or minerals-valuation organization.

b. A Member shall not solicit, receive, or negotiate service referral fees.

c. A Member shall not use, directly or indirectly, any confidential information obtained from, or in the course of, performing professional minerals-valuation services or consultation for an employer, client, or other minerals-related, minerals-valuation, or geologic organization in any way which is adverse or detrimental to the interests of an employer, client, or other minerals-related, minerals-valuation, or geologic organization except with the prior consent of such employer, client, or other minerals-related, minerals-valuation, or geologic organization or when disclosure is required by law.

d. The engagement of a Member to perform a valuation-related assignment should be kept confidential in order to protect the client's proposed enterprise or transaction, unless the client approves disclosure or clearly has no interest in keeping the engagement and (or) valuation results confidential, or unless the Member is required by due process of law to disclose the engagement. All Members on a valuation assignment are bound by this rule.

e. If a Member is providing minerals-valuation expert testimony in a litigation case, that Member's testimony can only be in support of his or her valuation results, it must not be in support of the client's desires, interests, or objectives.

f. A Member shall not provide minerals valuation or other economic geology services to more than one party on the same property, project, asset, or legal action within a three-year period, unless the circumstances are fully disclosed and agreed to by all interested parties. If a former client and valuer agreed not to disclose a minerals property valuation or other economic geology service, then the valuer must decline a new assignment on the same property falling within a three-year period.

Rule 7. Credible, Supported, and Transparent Minerals Valuation Reporting and Communication. Members shall provide well-supported evidence, express opinions, and make statements in an objective and truthful manner based on adequate knowledge, to provide credible minerals valuations and must communicate such evidence, opinions, and statements with transparency.

a. A Member's professional reports, statements or testimony shall be objective, unbiased, and independent. A Member shall express an opinion only based on adequate knowledge and technical competence required to produce credible, reasonable valuation results. This shall not preclude a considered professional judgment based on experience and supported by relevant knowledge and data if disclosed and supported in the valuation report.

b. A Member signing a valuation report certification accepts total responsibility for that valuation assignment and report, including any data provided by other Members or outside consultants and any opinions expressed by other Members or outside consultants.

Rule 8. Advancing Professional Development in Education, Training, Knowledge and Experience. Members shall continue their professional development throughout their careers and shall actively assist and encourage those under their direction and other Members to advance their knowledge and experience in minerals valuation and relevant related disciplines including but not limited to economic geology as broadly defined above.

a. A Member shall strive to widen personal knowledge and improve necessary skills to achieve continuing improvement of competency in the minerals valuation profession.

b. A Member shall cooperate with colleagues in the profession and encourage the dissemination of technical knowledge, and the understanding of minerals valuation principles and procedures.

c. A Member shall encourage professional employees and subordinates to further their education in real-property valuation theory and economic geology as broadly defined above.

d. A Member shall take a positive interest in, and actively encourage colleagues in the profession to support The Institute and other professional minerals valuation organizations which further general interests, standards, guidelines, ethics, and professional conduct of the minerals valuation profession.

Rule 9. Compliance with Jurisdictional Laws, Regulations, Standards, Guidelines, and Rules. Members shall have a working knowledge of, and comply with, all jurisdictional laws, government regulations, and relevant jurisdictional minerals-valuation organization standards, guidelines, and rules pertaining to the jurisdiction and minerals-valuation activity in which they are practicing.

a. A Member shall observe and comply with the requirements and intent of all applicable laws, codes, and regulations where a minerals valuation assignment is performed.

b. A Member shall not knowingly participate in any illegal activities, or knowingly permit the publication of his or her reports, maps, or other documents for illegal activities.

c. A Member shall neither offer nor make any illegal payments, gifts, or other valuable consideration to a public official for influencing a decision by such official; nor shall a Member accept any payments, gifts, or other valuable consideration which would appear to influence a decision made on behalf of the public by the Member acting in a position of public trust.

Explanatory Notes on Terminology

Although the word *appraisers* occurs in the IIMA title, this Code uses the words *valuers* instead of *appraisers* and *valuation* instead of *appraisal* in accordance with IMVAL to best reflect IIMA's international scope. IMVAL defines these words as follows:

Valuation

The estimation of the Value of a Mineral Property in money or monetary equivalent. The word 'valuation' can be used to refer to the estimated value (the Valuation conclusion) or to refer to the preparation of the estimated Value (the act of valuing).

Valuer

A person who (a) is a professional with demonstrated experience and Competence in the Valuation of Mineral Properties, (b) has experience relevant to the subject Mineral Property or has relied on an Expert with experience relevant to the subject Mineral Property, and (c) is regulated by or is a member in good standing of a Professional Organisation.

Note that the Appraisal Institute, a United States based institute, also uses the word *valuer* to replace *appraiser* in the 2018 edition of its Code of Professional Ethics and Explanatory Comments.

For IIMA Members providing minerals valuation services in the United States, the Uniform Standards of Professional Appraisal Practice (USPAP, The Appraisal Foundation) have been used as a Standard or Guideline for minerals valuation, even though the word *mineral* is not in the current 2018-2019 USPAP edition, nor has it been in previous USPAP editions. IIMA minerals valuers may continue to use USPAP if it is appropriate for a given minerals valuation assignment. Note, however, that The Appraisal Foundation, together with IVSC (International Valuation Standards Council) has published a document entitled *A Bridge from USPAP to IVS 2018 – A Guide to Producing IVS-Compliant Appraisals*, available on The Appraisal Foundation website. IIMA Members may use IMVAL when providing minerals valuation services in the United States, if it is appropriate for a given minerals valuation assignment to be IVS compliant.

A central tenant of this Code is that the minerals valuer is competent in minerals valuation principles and practices as recognized throughout the minerals industry. Because IIMA aligns with IMVAL, the definition of *competence* or *competent* by IMVAL is provided below.

Competence or Competent

Applies to a suitably qualified and experienced person who is a member of a Professional Organisation with an enforceable code of ethics and rules of conduct that include the ability to discipline and expel a member. In the context of Mineral Property Valuation, Competence for a Valuer also requires "appropriate technical skills, experience and knowledge of the subject of the valuation, the market(s) in which [the Mineral Property] trades and the purpose of the valuation" (IVS Framework, Section 50).

The phrase *economic geology* is used in this Code in a broad sense to refer to all aspects of the economics of mineral-deposit identification, extraction, beneficiation, and commodity and

mineral-property marketing. Related disciplines included in the phrase "economic geology" include mineral-deposit geology, mineral resource and reserve estimation, mining and petroleum engineering and refining, mineral processing, mineral economics, and mineral law.

The phrase "minerals-related organization" refers to an organization, society, or institute comprised of professional members promoting an understanding of mineral resources for use by society. Examples include the Society for Mining, Metallurgy, and Exploration, Inc. (SME), the Australasian Institute of Mining and Metallurgy (AusIMM), the Canadian Institute of Mining, Metallurgy and Petroleum (CIM), the International Council on Mining and Metals (ICMM), the Committee for Mineral Reserves International Reporting Standards (CRIRSCO), the South African Institute of Mining and Metallurgy (SAIMM), the Society of Petroleum Engineers (SPE), etc.

IIMA certifies minerals valuers based on completion of education requirements and experience in minerals valuation. That certification, or designation, is "Certified Minerals Appraiser" or CMA. This certification was developed when The Institute was not recognized for its international scope but was primarily an American Institute, AIMA. The AIMA remains a Chapter of the IIMA. With the name change to IIMA, the certification or designation remains. Retaining the CMA certification or designation is similar to the Appraisal Institute practice of retaining its MAI designation. The MAI designation was once referred to as "Member of the Appraisal Institute" which is no longer in use; the designation is simply "MAI".

INTERNATIONAL INSTITUTE OF MINERALS APPRAISERS

IIMA ETHICS & PROFESSIONAL CONDUCT COMPLAINT PROCEDURES

May 23, 2019

SECTION 1. Complaints

1.1 Complaints Against Members

Complaints against any member of The Institute, whether by another-member or by a member of the public, which are based on an alleged violation of the Code of Ethics, on the conviction of a felony or other offense related to the practice of valuation, or on discipline imposed by a governmental agency, shall be directed to the IIMA Ethics Committee Chairman, through the Executive Committee, *via* the IIMA President. The President shall forward any such complaints received to the Ethics Committee Chairman within seven days of receipt.

1.2 Contents of Complaints

Complaints shall be based on the personal knowledge of and be signed by the Complainant, shall identify the member or applicant against whom the Complaint is made (the Respondent), shall identify the specific Rules under the Code of Ethics which are alleged to have been violated, and shall describe the conduct giving rise to the alleged violation. Complaints shall be accompanied by copies of any letters, reports, documents, or statements upon which the complaint is based, and a list of persons (potential witnesses) who have personal knowledge of the matter, including a brief statement of what the knowledge of each such witness is alleged to be.

1.3 Review of Complaints

The Ethics Committee Chairman shall review complaints initially. Within 15 days of receipt of the Complaint, the Ethics Chairman may take one or more of the following actions.

1. Dismiss the Complaint, in whole or in part, for lack of evidence, insufficient grounds, or other good cause including the availability of adequate legal recourse, and so advise the Complainant.
2. Request the Complainant to provide, within a specified amount of time, further information or documentation, or a more specific statement as to the nature of the Complaint.
3. Appoint an investigator to determine whether there are grounds to proceed in the matter and to prepare a report for the Ethics Committee Chairman.
 - a. The investigator shall not be a member of the Executive Committee.

- b. In the event that an investigation is commenced, the Ethics Committee Chairman shall notify the Respondent of the fact of the investigation, unless to give such notice would severely and irreparably impair the investigation.
- c. The investigator's report shall include the investigator's findings and any further documentary evidence developed or uncovered by the investigation.

1.4 Action Following Review

Upon receipt and review of the further information or the more specific statement from the Complainant (or upon the expiration of the time for providing same), or upon receipt and review of the investigator's report, or both, the Ethics Committee Chairman shall promptly either dismiss the Complaint or proceed with further disciplinary action in accordance with these procedures.

SECTION 2. Expedited Procedure

2.1 Complaints

2.1.1 Basis of Complaint.

In the discretion of the Ethics Committee Chairman, expedited proceedings may be initiated upon receipt of a Complaint based on the conviction of a felony or other offense relating to the practice of valuation or of disciplinary action taken by a governmental authority, or upon receipt of notice of such action against a member from an interested person, in which case The Institute may (but is not obligated to) act on the Complaint.

2.1.2 Documentation.

A verified copy of the official record of conviction of a felony or other offense relating to the practice of valuation or of disciplinary action is necessary to support an expedited proceeding. Such documentation may be provided by the Complainant or obtained by an investigator appointed by the Ethics Committee Chairman.

2.1.3 Notice to Respondent Member.

The Ethics Committee Chairman shall promptly notify the Respondent of a complaint upon which expedited proceedings are based and provide the Respondent 30 days to submit a written Response either (1) accepting specific discipline proposed by the Ethics Committee Chairman, (2) rejecting the proposed discipline and showing cause why such discipline should not be imposed, or (3) rejecting the proposed discipline and requesting a hearing before an independent Adjudicator. This notice shall include copies of the Complaint and of relevant documents upon which the Complaint is based. A response shall be limited to the issues, which may be adjudicated under these expedited procedures.

2.1.4 Other Proceedings.

Institution of a case under these expedited procedures shall not preclude filing of a Complaint against the Respondent under the ordinary adjudication procedures of these disciplinary procedures, based on violation of provisions of the Code of Ethics other than those raised under the expedited procedures. However, ordinary proceedings growing out of the same instances of conduct which give rise to the governmental action shall be suspended until the conclusion of the expedited proceedings and all ordinary proceedings pending against the Respondent shall be ended if the expected proceeding results in termination of the member.

2.2 Expedited Proceedings

2.2.1 Acceptance of Discipline.

If the Respondent member accepts the proposed discipline, or if the Respondent member fails to respond in a timely manner, the Ethics Committee Chairman shall issue a written Adjudicatory Report imposing the specified discipline for implementation by The Institute Secretary, with copies to the Complainant, interested persons, if any, and the Respondent. Imposition of discipline other than by consent may be appealed by the Respondent as provided herein.

2.2.2 Appointment of Adjudicator.

If the Respondent submits a Response rejecting the proposed discipline or requesting a hearing, the Ethics Committee Chairman shall appoint a disinterested Adjudicator to review the Complaint and the Response, to conduct a hearing if a hearing is requested, and to make a report in the case. The Adjudicator shall not be an Executive Committee member.

2.2.3 Reply by Complainant.

The Ethics Committee Chairman shall, within five days after receipt of the Response, send a copy of such Response to, and request of, the Complainant and other interested persons, if any, a written Reply within 15 days of such notice. The Reply shall be limited to the issues, which may be adjudicated under these expedited procedures, and a copy thereof shall be provided to the Respondent by the Ethics Committee Chairman.

2.2.4 Referral to Adjudicator.

Upon receipt of the Complainant's Reply, if any, the Ethics Committee Chairman shall refer the record in the case to the Adjudicator for a decision or a hearing, if requested by the Respondent.

2.2.5 Notice of Hearing.

If the Respondent requests a hearing, the Ethics Committee Chairman shall determine the date, place, and time of the hearing, after consultation with the Adjudicator, the Complainant, if any, and the Respondent. Not less than 15 days notice of such hearing date shall be given to the

Complainant, if any, and to the Respondent. The Ethics Committee Chairman shall also notify other interested parties, if any, of the opportunity to appear and be heard, provided they notify the Ethics Committee Chairman not less than five days prior to the date of the hearing of their intention to appear and be heard.

2.2.6 Hearing procedures.

The procedures for the show-cause hearing are informal and not limited by the formal rules of evidence; however, the Adjudicator may refuse to admit any material, which is not relevant or material to the issues to be determined in the hearing. The hearing shall proceed as follows.

1. The Adjudicator shall call the meeting to order and note all parties present and their representation by counsel, if any. Any party may be represented by counsel and Institute Counsel may be present at the request of the Ethics Chairman.
2. The Adjudicator shall outline the applicable procedures for the participants. The Adjudicator will make a record of any objections to the procedures or the conduct of the hearing which are raised during the course of the hearing.
3. The Adjudicator shall take the statements of and shall receive and mark for identification the exhibits of the Complainant or other interested parties, if any, speaking in support of the imposition of discipline against the Respondent.
4. The Adjudicator shall take the statement of and shall receive and mark for identification the exhibits of the Respondent in opposition to the imposition of discipline against the Respondent.
5. The Complainant and Respondent shall each be afforded the opportunity to cross-examine the witnesses of the other. The Adjudicator may also question such witnesses.
6. The Adjudicator shall take the closing statement of Complainant or other interested parties, if any, and then the closing statement of the Respondent.

2.2.7 Failure to Appear.

Should either party fail to appear, the Adjudicator shall conduct the hearing based on the documents previously submitted in the case and the testimony and exhibits of those in attendance.

2.3 Adjudication

2.3.1 Issues Allowed.

The Adjudicator shall consider only evidence and arguments relevant to the following issues.

1. The finality, or lack thereof, of the underlying conviction or disciplinary action, or the

remoteness in time of such action.

2. Except in the case of a felony, the degree of relationship between the offense committed or the actions giving rise to the disciplinary action and the practice of valuation.
3. Other good grounds other than a challenge to the substance or procedure of the underlying conviction or governmental disciplinary action.
4. The type or severity of disciplinary action to be imposed by The Institute.
5. Existence of a prejudicial defect in the proceedings under these disciplinary procedures.

2.3.2 Decision and Adjudicatory Report.

Following the hearing, or in the absence thereof, following review of the Complaint (including any investigatory report), the Response, the Reply, if any, and accompanying documents, the Adjudicator shall prepare an Adjudicatory Report to the Ethics Committee Chairman.

2.3.3 Contents of Report.

The Adjudicatory Report shall contain the Adjudicator's findings and conclusions. If the Adjudicator determines that discipline should not be imposed, he shall dismiss the case as to any or all the allegations in the Complaint, indicating the reasons therefor. Otherwise, the Adjudicatory Report shall include a brief statement of the conduct giving rise to the violation and a statement of the rules violated, if any, the discipline to be imposed, as described in the Bylaws, if any, and copies of the relevant documents supporting his determination.

2.3.4 Notice to Parties.

Following a dismissal by the Adjudicator or review of the Adjudicatory Report by Institute Counsel, if requested by the Ethics Committee Chairman, the Ethics Committee Chairman shall send notice of the dismissal decision or a copy of the Adjudicatory Report to the Respondent and Complainant, if any, and may also advise other interested parties as may be appropriate.

2.4 Appeal of Decision

The dismissal of a Complaint or of individual allegations therein may not be appealed. In the event that discipline imposed on a member is rejected, the Adjudicatory Report may be appealed to the Executive Committee including the Ethics Chairman under these disciplinary procedures but shall be considered final and binding if no timely appeal is taken. Grounds for appeal of disciplinary action against a member under these expedited procedures are limited to:

1. Discipline of a member, which is out of proportion to the severity of the offense.
2. Discipline of a member which, from the face of the Adjudicatory Report, is based on matters other than the underlying conviction of an offense or governmental disciplinary

action.

3. Bias or abuse of discretion by the Adjudicator.
4. Reversal of the underlying conviction or reversal or reduction of the governmental disciplinary action.

SECTION 3. Adjudication

3.1 Preliminary Matters

3.1.1 Notice to Respondent.

Within five days of a determination to proceed under normal disciplinary procedures, the Ethics Committee Chairman shall notify the Respondent of the Complaint filed by the Complainant by certified mail, personal delivery, or equivalent means to Respondent's address on record with The Institute. This notice shall include:

1. A copy of the Complaint, including a statement of the precise conduct alleged to constitute the violation or violations, referencing the rules violated, citing any relevant dates, and identifying any persons alleged to have been involved or to have knowledge of the matter.
2. A copy of the specific rules alleged to have been violated and a copy of these procedures.
3. Copies of all supporting documentation, including but not limited to any records or transcripts of statements of the Complainant or others, the investigator's report, if any, and the Complainant's witness list and description of their expected testimony.
4. A statement of the Respondent's right to submit within 30 days a written Response to the Complaint either admitting or denying the allegations, setting forth grounds for such denial. Such Response shall be accompanied by copies of any documentary evidence Respondent wished to have in the record. The Respondent may request an extension for submission of the Response for a period not to exceed 30 days for good cause shown, which the Ethics Committee Chairman may grant or deny in his discretion.
5. A statement of Respondent's right to request, as part of the Response, a hearing before an independent Adjudicator or, in the case of a Respondent member, an Adjudicatory Board. This request for a hearing before the Executive Committee including the Ethics Chairman shall state whether Respondent will be represented by legal counsel at the hearing and shall include a proposed witness list with a brief summary of what the Respondent expects their testimony to be.
6. A statement of Respondent member's right to resign or to accept discipline by consent, as provided in these procedures.

3.1.2 Appointment of Adjudicatory Board.

Upon receipt of a Response, the Ethics Committee Chairman shall appoint an Adjudicatory Board made up of not less than three disinterested persons, giving due consideration to the preference of the Respondent, the complexity of the case, and the seriousness of the allegations. If requested by a Respondent member, or in the case of a Respondent applicant, the Ethics Committee Chairman shall appoint a single Adjudicator.

1. No member of the Adjudicatory Board shall be a member of the Executive Committee.
2. An Adjudicatory Board shall promptly select a Chairman and a Recording Secretary.

3.1.3 Reply by Complainant.

The Ethics Committee Chairman shall, within five days after receipt of the Response, if a timely response is submitted, send a copy of such Response to and request of the Complainant a written Reply within 15 days of such notice. No new allegations may be made in the Reply. The Ethics Committee Chairman shall provide a copy of the Reply to the Respondent.

3.1.4 Counter Charges.

In the event that a Response includes counter charges against Complainant who is a member, such charges shall be made in the same manner as an original Complaint, and the Complainant shall be afforded the right to submit a Response to such counter charge in conjunction with his Reply, including the right to a hearing before the Adjudicatory Board.

3.1.5 Referral to Adjudicatory Board

In the absence of a timely Response, or upon timely receipt of the Complainant's Reply, if any, the Ethics Committee Chairman shall refer the record in the case to the Adjudicatory Board for a decision, or for a hearing, if requested by the Respondent.

3.2 Hearing

3.2.1 Notice of Hearing.

If the Respondent requests a hearing, the Ethics Committee Chairman shall determine a proposed date, place, and time for the hearing and shall proceed as follows.

1. The Ethics Committee Chairman shall notify the Complainant of the proposed hearing and shall inform the Complainant if legal counsel will represent the Respondent. If Respondent is so represented, Complainant may also be represented. Nothing herein shall limit the right of The Institute to have Institute Counsel in attendance at a hearing, whether or not counsel represents the Complainant or Respondent.

2. The Ethics Committee Chairman shall notify the Respondent of the proposed hearing.
3. Respondent and Complainant shall give notice of any objections to the proposed date, time, or place within five days of receipt of the notice thereof. Upon the expiration of this time, the Ethics Committee Chairman shall promptly set the final date, time, and place, and shall notify Complainant and Respondent thereof.

3.2.2 Hearing procedures.

The procedures for the Adjudicatory Board hearing are informal. Statements are not limited by the formal rules of evidence; however, the Adjudicatory Board may refuse to admit any material, which is not relevant or material to the issues to be determined in the hearing. The hearing shall proceed as follows.

1. The Chairman of the Adjudicatory Board shall convene the hearing. The Recording Secretary shall note for the record the date, time, place, persons in attendance, and representation by counsel, if any.
2. The Chairman of the Adjudicatory Board shall read the allegations, identify the documents submitted in the case, and inquire whether the Respondent understands the allegations.
3. The Chairman of the Adjudicatory Board shall give a brief description of the procedures.
4. The Chairman of the Adjudicatory Board shall call for any objections from any party to the proceeding and the Recording Secretary shall note same for the record. Parties may request sequestration of witness at the time, which shall be granted as a matter of right, upon request.
5. The Chairman of the Adjudicatory Board will call for brief opening statements from the Complainant, then from the Respondent.
6. Following opening statements, the Complainant may present testimony and other evidence. The Complainant shall not be bound by formal rules of evidence, but shall be permitted to present any material, which might be relevant or material. Objections and actions taken thereon by the Chairman of the Adjudicatory Board shall be noted for the record. Each document submitted into evidence shall be marked for identification. Respondent shall have the right to cross-examine any witnesses presented by Complainant and shall be provided with copies of any documents presented in the hearing as evidence. Any member of Adjudicatory Board may also question the witness.
7. Following the Complainant's case, the Respondent may present testimony and other evidence. The Respondent shall not be bound by formal rules of evidence, but shall be permitted to present any material, which might be relevant or material. Objections and actions taken thereon by the Chairman of the Adjudicatory Board shall be noted for the record. Each document submitted into evidence shall be marked for identification.

Complainant shall have the right to cross-examine any witnesses presented by Respondent and shall be provided with copies of any documents presented in the hearing as evidence. Any member of the Adjudicatory Board may also question the witnesses.

8. Following the close of the Respondent's case, the Chairman of the Adjudicatory Board for closing arguments, first from the Complainant and then from the Respondent.
9. Following closing arguments, the Chairman of the Adjudicatory Board shall adjourn the hearing and excuse the parties and witnesses.

3.2.3 Failure to Appear.

Should either party fail to appear, the Adjudicatory Board shall conduct the hearing based on the documents previously submitted in the case and the testimony and exhibits of those in attendance.

3.2.4 Decision of Adjudicatory Board.

Within 15 days of the adjournment of the hearing, the Adjudicatory Board shall review the record in the case. The Adjudicatory Board shall then make a determination as to each allegation in the Complaint, by unanimous vote of the Adjudicatory Board, within 15 days. The Adjudicatory Board may meet and vote via conference call, at the option of its Chairman. The Adjudicatory Board shall set forth its findings and conclusions in an Adjudicatory Board Report to the Ethics Committee Chairman.

3.3 Adjudicatory Report

3.3.1 Contents of Report

An Adjudicatory Report, whether prepared on the record or following a hearing, shall contain the following:

1. Findings of fact, based on the evidence received and testimony heard in a hearing, if any.
2. Conclusions of the Adjudicatory Board including a list of allegations dismissed and reasons for dismissal, a list of rules violated, if any, and a statement of the evidence relied upon in finding each violation.
3. Discipline to be imposed on a Respondent member as a result of each violation and as a result of the cumulative violations, which may consist of private admonition, public reprimand, suspension of up to three years, or termination, or a combination thereof; and
4. A copy of the record before the Adjudicatory Board.

3.3.2 Review by Ethics Committee Chairman.

Upon receiving the Report of the Adjudicatory Board, the Ethics Committee Chairman shall, within 15 days, review the Report to determine whether it satisfies the requirements of these procedures for its form and content, to ascertain whether the determinations are supported by sufficient evidence, and to determine whether any discipline to be imposed is reasonable and consistent with action taken previously in cases of like seriousness. The Ethics Committee Chairman may obtain the assistance of Institute Counsel in review of the Report. The Ethics Committee Chairman may then:

1. Return the Report of the Adjudicatory Board for revision. Should the resubmitted Report still not satisfy the requirements of these procedures, the Ethics Committee Chairman may return it for a second redraft, at his option. If the resubmitted Report fails to contain a showing of sufficient evidence to support the determinations, then the Ethics Committee Chairman shall dismiss any determinations not so supported and permit the rest of the determinations covered by the Report, if any, to become the Adjudicatory Report.
2. Reduce the discipline imposed to a reasonable level or a level consistent with discipline imposed in previous cases of like seriousness and permit the Report to become the Adjudicatory Report with such reduced discipline, or in the case of a Respondent applicant, dismiss a recommendation for rejection and, in the discretion of the Ethics Committee Chairman, require a private admonition as a condition of acceptance.
3. Permit the Adjudicatory Report to become final, without alteration.

3.3.3 Issuance of Adjudicatory Report

An Adjudicatory Board Report shall become final only after review and appropriate action by the Ethics Committee Chairman. It shall then be transmitted, without exhibits, by the Ethics Chairman to the Ethics Committee, the Complainant and the Respondent. They also receive notice of his or her right to an appeal to the Executive Committee and the time for taking an appeal.

SECTION 4. Appeals

4.1 Initiation of an Appeal

4.1.1 Notice of Appeal.

The Respondent may appeal the Adjudicatory Report to the entire Executive Committee of The Institute by notifying the Ethics Committee Chairman, within 15 days of the date of issuance of the Adjudicatory Report and notice of appeal rights to him or her. Any appeal must state the specific determinations in the Adjudicatory Report, which are being appealed, and the basis for each such appeal. The Ethics Committee Chairman shall notify The Institute Secretary of the appeal.

4.1.2 Automatic Review by Executive Committee.

The Ethics Committee Chairman shall automatically institute an appeal of any determination in an Adjudicatory Report that a Respondent member is to be terminated, by notifying The Institute Secretary that an automatic appeal is required.

4.1.3 Notice to Executive Committee.

The Institute Secretary shall promptly notify the Executive Committee members of the appeal and transmit to each of them a copy of the entire record, the Adjudicatory Report, and the Respondent's notice of appeal. The Institute Secretary shall keep records of the proceeding on appeal.

4.1.4 Notice to Complainant.

The Institute Secretary shall promptly notify the Complainant of the appeal and transmit a copy of the notice of the appeal.

4.2 Statement of Position

4.2.1 Statements by the Parties.

The Complainant and Respondent shall each have 15 days after the date of Respondent's notice of appeal or of notice of an automatic appeal to submit to the Executive Committee written statements of their positions, which shall not raise any new issues and shall not introduce any new evidence except evidence, which could not reasonably have been obtained in time for original Complaint, Response, or Reply or presented at the hearing.

4.2.2 Appearances by the Parties.

Except in extraordinary cases, there shall be no appearances by the parties before the Executive Committee in person or by counsel. A request by either party for such an appearance must be made in writing to The Institute Secretary within the time allowed for the submission of written statements and shall set forth in detail the extraordinary circumstances, which the party believes justifies an oral argument. Granting of such appearances is within the sole discretion of the Executive Committee, and, if granted, The Institute Secretary shall notify the parties of oral argument and determine the time, place, and date of same. The Institute Secretary may place reasonable time limits on oral argument.

4.3 Executive Committee Action

4.3.1 Review of Record.

The appeal will be considered only on the record in the case and the parties' statements on appeal. Institute Counsel shall be present in an advisory capacity for the deliberations of the Executive Committee.

4.3.2 Decision of Executive Committee.

Following review of the record and the written statements, the Executive Committee shall:

1. Adopt the Adjudicatory Report without alteration.
2. Dismiss some or all allegations giving reasons for dismissal, permitting the rest of the Adjudicatory Report, if any, to become the final decision of the Executive Committee on appeal.
3. Reduce the discipline imposed in the Adjudicatory Report, dismiss a recommendation for rejection and, in the discretion of the Executive Committee, require a private admonition as a condition of acceptance.
4. Order a *de novo* hearing on some or all of the allegations before a new Adjudicatory Board, in which case the discipline which may be imposed against a Respondent member will not be limited in its severity by the discipline imposed by the first Adjudicatory Report, nor the action taken with respect to a Respondent applicant be limited by the first Adjudicatory Report; however, no new allegations may be raised at such a hearing.

SECTION 5. Implementation

5.1 Final Report and Notifications.

Reports are considered final for all purposes upon the expiration of the period for taking an appeal when no appeal is taken, and upon issuance of the decision of the Executive Committee if an appeal is taken, unless the Executive Committee orders a *de novo* hearing. The Ethics Committee Chairman shall notify the Complainant, the Respondent, the Ethics Committee, and the Executive Committee through The Institute Secretary (when no appeal has been taken) and shall direct the entry of the final report into the Ethics Committee records.

5.2 Administrative Steps.

Upon becoming final, The Institute Secretary shall take such administrative steps as are necessary to implement the discipline imposed against a Respondent member.

5.3 Notice to Governmental Authorities.

At the discretion of the Executive Committee with advice of Counsel, The Institute Secretary shall notify any appropriate governmental regulatory or law enforcement agencies of the disciplinary action and the reasons therefor.

SECTION 6. General Provisions

6.1 Resignation by Respondent Member.

At any time until the Adjudicatory Report becomes final, a Respondent member may resign, at which point all proceedings shall end. A resignation during the pendency of disciplinary proceedings shall have the same effect as termination of membership with prejudice.

6.2 Effect of Termination With Prejudice.

A member, who has resigned during the pendency of disciplinary proceedings or who has been terminated as a result thereof, shall not be permitted to reapply for membership in The Institute for a period of three years. A reapplication by such former member or applicant shall be referred to the Executive Committee, which may, in its discretion, defer readmission for an additional period not to exceed three years on the basis of the violations indicated in the Complaint. Thereafter, in the absence of a showing of subsequent additional violations, prior disciplinary action shall not be considered.

6.3 Discipline by Consent.

At any time until the Adjudicatory Report becomes final, the Respondent may offer to submit to specified discipline by consent on his own initiative or may accept discipline offered by the Ethics Committee Chairman, the Adjudicatory Board, or the Executive Committee, as appropriate, in their discretion. The Adjudicator or the Adjudicatory Board, acting through its Chairman, the Ethics Committee Chairman, or the Executive Committee, as appropriate, may accept such offer of discipline by consent, in which case The Institute Secretary shall implement the discipline.

6.4 *Prima Facie* Evidence of Misconduct.

Except as otherwise provided in these disciplinary procedures, proof of the conviction of an offense or of disciplinary action taken by a governmental authority against a member or applicant is *prima facie* evidence of misconduct in any Institute disciplinary proceeding.

6.5 Confidentiality

6.5.1 General

Except as otherwise provided in these procedures, the existence of allegations against any member, and the basis and content thereof, is considered confidential. If discipline is imposed against a member, other than a private admonition, only The Institute may disclose or publish information concerning such discipline and the reasons therefor. Records of the Ethics Committee and the Executive Committee concerning disciplinary proceedings shall be labeled and treated confidential and shall not be released except with the consent of The Institute President or Secretary.

6.5.2 Exceptions.

Disclosure of disciplinary records is permitted in the following circumstances:

1. Where disclosure is required by law.
2. Where disclosure is necessary to pursue the investigation or proceedings hereunder, in which case the person to whom disclosure is made shall be bound by these provisions.
3. Where disclosure is necessary to avoid a clear danger to public safety or health or to prevent the imminent commission of a crime; or
4. Where otherwise required or permitted by these Procedures or the Bylaws.

6.5.3 Breach of Confidentiality.

Breach of confidentiality, including by parties to a disciplinary action, may subject those responsible to disciplinary action at the instance of the aggrieved person or The Institute.

6.5.4 Dismissal of Complaints for Breach.

In the event of a breach of confidentiality of such seriousness that it might prejudice Respondent's right to a fair adjudication despite any reasonable remedial action, the Complaint shall be dismissed by the Ethics Committee Chairman, if the case is not yet in adjudication. By the Adjudicator or the Chairman of the Adjudicatory Board, if the case is in adjudication, or by the Executive Committee, if the case is on appeal.

6.5.5 *Ex Parte* Communications.

The members of an Adjudicatory Board and the members of the Executive Committee shall not discuss any substantive matters concerning the allegations with either party to the proceedings or with any person listed as a potential witness by either party. Any member of an Adjudicatory Board or of the Executive Committee who has participated in such a discussion shall disqualify himself or herself from the proceeding in question and any other related proceedings.

6.6 Dismissals With and Without Prejudice.

Unless otherwise stated in the dismissal action, dismissals of allegations in a Complaint are with prejudice and such allegations may not then be raised in any subsequent Complaint. Allegations may be dismissed without prejudice for technical filing defects, in the presence of ongoing criminal, civil, or administrative proceedings, or for other good cause.

6.7 Administrative Decisions and Appeals.

The Ethics Committee Chairman, Adjudicator, or Adjudicatory Board, or the Executive Committee, as appropriate, shall have the authority to make decisions during the course of disciplinary proceedings and appeals concerning the administration of a case and in response to the conduct of and objections made by the parties. Such decisions may be enforced by the imposition of appropriate sanctions on the parties. Objections and decisions shall be noted for the record, but unless otherwise determined by the Ethics Committee Chairman on the basis of a showing of good cause, shall not be subject to appeal until the Adjudicatory Report becomes final.