

Appeal Panel of the Single Resolution Board Rules of Procedure

The Appeal Panel of the Single Resolution Board (the Appeal Panel),

Having regard to Regulation (EU) No 806/2014 of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 ⁽¹⁾, and in particular Article 85 on the establishment of an Appeal Panel;

Having regard to the decision of the Executive Session of the Single Resolution Board of 6 November 2015 appointing the members and alternates of the Appeal Panel in accordance with Article 85(1) of Regulation 806/2014;

Whereas Article 85(10) of Regulation 806/2014 provides that the Appeal Panel shall adopt and make public its rules of procedure;

HAS ADOPTED THE FOLLOWING RULES OF PROCEDURE:

Chapter 1 Organisational matters

Article 1 Functioning of the Appeal Panel

1. The Appeal Panel shall be composed as stipulated in Article 85(2) of Regulation 806/2014.
2. The Appeal Panel shall designate a Chair from among its members. This shall be done by secret ballot, unless all Members agree to proceed by consensus. The member obtaining the votes of more than half the members and alternates composing the Appeal Panel shall be designated. If no member obtains that majority, further ballots among the best-placed candidates shall be held until that majority is attained. The Chair's term shall be 2.5 years and shall be renewable.

⁽¹⁾ OJ L225, 30.7.2014, p. 1.

3. The Chair shall direct the business and the administration of the Appeal Panel.
4. The Appeal Panel shall also designate a Vice-Chair from among its members by the same procedure.
5. In the event of illness or other exceptional reasons of impediment of the Chair, the Vice-Chair will perform the functions of the Chair.
6. If a member leaves before the end of his or her term, an alternate shall take the member's place until the Board has appointed a replacement.
7. In case of illness or other exceptional reason of impediment, the Appeal Panel may replace a member with an alternate for an appeal.

Article 2
Presiding over an appeal

The Chair shall preside at hearings and deliberations, or may nominate the Vice-Chair or another member to do so. (References in these rules to 'Chair' shall include the Vice-Chair or another member in relation to an appeal over which he or she has been nominated to preside.)

Article 3
Independence and impartiality

1. The Appeal Panel and each of its members shall act independently and in the public interest as stipulated in Article 85(5) of Regulation 806/2014.
2. A member's independence may be challenged only if circumstances exist that give rise to objective and reasonable doubts as to his or her impartiality or independence. A member's independence cannot be objected to under any circumstance because of his or her nationality.
3. A member shall recuse himself or herself from sitting in an appeal if circumstances exist that give rise to objective and reasonable doubts as to his or her impartiality or independence. The member must inform the Chair and the Secretariat without undue delay in writing, whereupon the Chair is to appoint an alternate.
4. Once a notice of appeal is served, the Chair shall ask the members whether they have a conflict of interest.

5. A member called to sit in an appeal who considers that there may be circumstances likely to give rise to doubts as to his or her impartiality or independence and who has not recused himself or herself in accordance with paragraph 3 shall disclose such circumstances to the Chair. The Chair may then, on his or her own initiative or after having sought the comments of the parties, decide to replace the member in accordance with Article 1(7) or that there are no grounds for the recusal of such member. A party may waive a ground of recusal of which it is aware.
6. If the Chair considers that for any reason he or she cannot participate in appeal proceedings, the Chair must inform the members and the Secretariat in writing without undue delay. The Vice-Chair shall be designated to preside over the appeal. Should the Vice-Chair be in the same position, another member shall be designated to preside over the appeal.
7. A party who intends to challenge a member's independence shall, without undue delay, send a written statement of the reasons for the challenge to the Secretariat. Unless the challenged member withdraws from the appeal, the Panel shall decide on the challenge. For the purposes of this decision, the challenged member shall not participate in the deliberation and shall have no vote. The decision of the Appeal Panel shall be reasoned and shall be notified to the parties. If a challenge is manifestly inadmissible or manifestly unfounded, the Chair may dismiss the challenge by reasoned order.
8. The parties will be informed of the composition of the Appeal Panel by the Secretariat on behalf of the Appeal Panel in due course.
9. The term 'Appeal Panel' for the purpose of this article means the Appeal Panel as constituted for the appeal(s) in accordance with these rules, and the term 'member' includes 'alternate'.

Article 4

The Secretariat

1. Pursuant to Article 85(2) of Regulation 806/2014, the Board shall ensure adequate operational and secretarial support for the Appeal Panel, with appropriate segregation of duties and functional separation from all other activities of the Board. The Secretariat shall regularly report to the Chair, shall not take instructions nor orientations from the Board and shall maintain full confidentiality of the Panel's affairs.
2. The Board shall ensure that there is an adequate procedure in place so that, from the outset of the appeal, no information passes from the Secretariat to the Board or any affiliated authority other than the Appeal Panel.

3. The administration of an appeal shall be conducted as follows:
 - a) upon filing of the notice of appeal in accordance with Article 5, the Secretariat shall forthwith transmit the notice of appeal to the Chair and members;
 - b) the Secretariat will act in accordance with the Chair's directions, and will maintain a register of appeals, circulate documents to the members and alternates as required, organise Appeal Panel meetings, pre-hearings and hearings, and otherwise provide assistance in relation to the appeal;
 - c) upon filing of the response according to Article 6, the Secretariat shall forthwith transmit the response to the Chair and members;
 - d) the Secretariat will provide the parties with the decision in accordance with Article 85(9) of Regulation 806/2014.
4. Subject to the Chair's directions, all additional communication by the parties with the Appeal Panel will be routed through the Secretariat.

Chapter 2

Statements of the parties' cases

Article 5

The appellant's notice of appeal

1. A party wishing to bring an appeal against a decision of the Board under Article 85(3) of Regulation 806/2014 shall do so by way of a notice of appeal identifying the decision that is the subject of the appeal.
2. The language of the Notice of Appeal and of the appeal proceeding shall be the language of the contested decision and shall usually be English. The parties can agree on a language other than that of the contested decision. If the contested decision was issued in more than one languages of the Union and the English language is among such languages, the language of the appeal shall be English, save if the parties instead agree on a different language.
3. The decision that is the subject of the appeal shall be annexed to the notice of appeal.
4. The notice of appeal shall:
 - a) state why it is admissible under Article 85(3) of Regulation 806/2014;

- b) state the grounds on which it is based;
 - c) if an application is made that the appeal should have suspensive effect under Article 85(6) of Regulation 806/2014 pending the outcome of the appeal, state the grounds of such application;
 - d) attach copies of any documents on which the appellant intends to rely.
5. If the notice of appeal exceeds 10 pages, it should include a summary of the content referred to in paragraph 4 points (a) and (b).
 6. The notice of appeal shall clearly indicate full contact details to which the Secretariat and other parties may send communications with the appellant.
 7. The notice of appeal shall give the names of the appellant's representatives.
 8. The appellant may at any time discontinue an appeal by giving notice of discontinuance to the Secretariat. The Secretariat shall also inform the Board of the appellant's decision to discontinue the appeal.
 9. If there is more than one appellant, the above shall apply to each.

Article 6
The Board's response

1. The Board shall set out a response.
2. The response shall:
 - a) state any contentions as to non-admissibility;
 - b) state the grounds on which the appeal is contended;
 - c) state the Board's case as to any application that the appeal should have suspensive effect;
 - d) attach copies of any documents on which the Board intends to rely.
3. If the response exceeds 10 pages, it should include a summary of the content referred to in paragraph 2 points (a) and (b).
4. The response shall be served on the appellant(s) and filed with the Secretariat within two (2) weeks of service of the notice of appeal, whereas the Board may ask for an extension of another two (2) weeks.

5. If the Board states that it does not oppose the appeal and, according to the claims of the appellant, withdraws or amends its decision, giving notice of such amendment to the appellant and to the Secretariat, the Appeal Panel may decide that there is no need to adjudicate and put the appeal to rest.

Chapter 3

Time limits, filing and service

Article 7

Filing and service

1. The notice of appeal and the response must be filed and served in writing at the address specified on the Board's website.
2. A document that is to be filed with the Secretariat or served on any party shall be communicated by email, subject to the applicable security standards. Subject to an objection by any of the parties, the Chair may decide that the document has to be filed either by registered post or by personal delivery against a receipt or in accordance with any direction given in respect of a particular appeal as to filing and/or service.
3. Filing or service shall be deemed to have taken place at the time of receipt.

Article 8

Time limits

1. Any time limit prescribed by or imposed under these rules may be extended by the Appeal Panel or by the Chair, if exceptional circumstances so require.
2. Time limits shall be calculated in accordance with Council Regulation 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits.²

² OJ 1971 L 124, p. 1.

Chapter 4

Preliminary rulings

Article 9

Admissibility of the appeal

1. If the Board contends that the appeal is not admissible under Article 85(3) of Regulation 806/2014, the Appeal Panel shall determine whether or not it is admissible before examining whether it is well founded under Article 85(7) of Regulation 806/2014.
2. The Appeal Panel may, of its own motion, raise any question as to admissibility.
3. The procedures set out in these rules (including those set out below as to directions, pre-hearing conference and oral representations) apply as the Chair shall deem appropriate to the determination of any question as to admissibility.
4. The decision of the Appeal Panel determining any question as to admissibility shall be given in writing and shall be adopted in accordance with Article 85(9) of Regulation 806/2014.

Article 10

Suspension under Article 85(6) of Regulation 806/2014

1. An appeal does not have suspensive effect, but by Article 85(6) of Regulation 806/2014 the Appeal Panel may, if it considers that the circumstances so require, suspend the application of the contested decision.
2. The procedures set out in these rules (including those set out below as to directions and pre-hearing conference) apply as the Chair shall deem appropriate to the determination of any question regarding the suspension of a decision by the Board. In exceptional circumstances, the Appeal Panel may also suspend the application of the contested decision for a period sufficient to permit full discussion of the suspension.
3. The decision of the Appeal Panel determining any question as to suspension shall be given in writing, and shall be adopted in accordance with Article 85(9) of Regulation 806/2014. The Appeal Panel may amend its decision to suspend or not suspend at any time on the application of any of the parties.

Chapter 5

Case management

Article 11

Directions and pre-hearing conference

1. The Chair may give directions on behalf of the Appeal Panel by way of case management for the efficient conduct of the appeal at any stage in the appeal. This includes provision for procedural observations on a party's own notifications or on communications from other parties under Article 85(3) of Regulation 806/2014. Such directions will be submitted to the parties through the Secretariat, and the Chair may consult with the other members and alternates for such purposes.
2. The parties may also apply for such directions through the Secretariat at any stage in the appeal. Observations as to what directions are appropriate may be made by the parties in any form permitted by the Chair.
3. If it is appropriate, the Chair may direct a pre-hearing conference (taking place in person, by phone, video link or otherwise). The Chair may conduct the pre-hearing conference alone or with (or in consultation with) other members or alternates.
4. Without limiting its scope, the above procedure also applies to directions given by the Appeal Panel as regards any application to amend the notice of appeal, the response or the appellant's reply, the challenge of a member's independence, directions for the production of further documents, directions as to witness evidence, permission to adduce expert evidence, permission to call oral evidence, permission to extend time limits and directions as to hearing appeals at the same time.

Article 12

Rapporteur

1. The Chair should (with the consent of the person concerned) designate (an) other member(s) or alternate(s) as Rapporteur for the case to the Appeal Panel in respect of the appeal. The function of a Rapporteur is internal to and part of the deliberations of the Appeal Panel.
2. The Chair may decide not to name a Rapporteur and perform the duties himself or herself.

Article 13
Consolidated appeals

Where two or more appeal notices have been filed in respect of the same matter, or which involve the same or similar issues, the Appeal Panel may direct that the appeals or any particular issue or matter raised by the appeal notices may be heard at the same time.

Article 14
Failure to comply

1. Where a party has, without reasonable excuse, failed to comply with a direction of the Appeal Panel or a provision of these rules, the Appeal Panel may, where that party is the appellant, dismiss the appeal wholly or in part.
2. The Appeal Panel shall make no order under this article without giving the parties notice so that they have an opportunity to make representations against the making of such an order.
3. If the Appeal Panel decides not to dismiss the appeal under paragraph 1 of this article, any failure of the parties in the appeal to comply with any provision of these rules or of any direction of the Appeal Panel shall not affect the validity of the proceedings or of any decision made by the Appeal Panel.
4. The Chair shall establish the procedural timetable for the conduct of the appeal. The procedural timetable shall in particular set out the time limits for the submissions following the Board's response to the statement of appeal, if any, and a date for the hearing, unless the parties decline their right to be heard. The Chair may modify the procedural timetable during the course of the appeal as appropriate.

Chapter 6
Evidence

Article 15
General

The Appeal Panel shall be the judge of the admissibility of any evidence adduced, herein included witnesses, and of its probative value.

Article 16
Exchange of documents

1. A party is entitled to request that the other party produce further documents, including electronic documents, within the limits of the applicable rules, regulations and confidentiality obligations and subject to a modification of the timetable according to Article 11.
2. In case of disagreement, the Appeal Panel may give directions for the production of further documents, but shall only do so if it considers it to be necessary for the just determination of the appeal.
3. No new plea in law may be introduced in the course of the appeal unless it is based on matters of law or of fact that come to light in the course of the proceedings.
4. No new evidence may subsequently be submitted save for good reason.

Article 17
Experts

With the permission of the Appeal Panel, a party may adduce expert evidence. Permission will only be given if the Appeal Panel considers it to be necessary for the just determination of the appeal. Such evidence is to be in the form of a written statement served within the time permitted.

Chapter 7
Oral representations

Article 18
Oral representations

1. Parties are entitled to make oral representation before the Appeal Panel according to Article 85(7) of Regulation 806/2014. Each party may decline its right to be heard. If a party declines to have an oral hearing, the Appeal Panel may nevertheless require oral representations if it considers it to be necessary for the just determination of the appeal.
2. The parties shall be entitled to legal representation at oral hearings.
3. Taking account of the views of the parties, the Appeal Panel will give directions as to the order and form of oral representations and, where appropriate, set a timetable. The Secretariat will notify the parties in due time.

4. The hearing shall take place at the seat of the Appeal Panel, unless the Appeal Panel gives different directions. In any case, the Secretariat shall be present.
5. The hearing shall be held in private, unless exceptional circumstances require otherwise.
6. The Appeal Panel may give directions as to adjournment of the hearing on the application of a party or on its own initiative, but adjournment is to be regarded as exceptional.
7. There shall be a record of the hearing made in accordance with the Appeal Panel's direction.
8. If a party fails to appear, the Appeal Panel may decide to proceed in its absence.
9. The quorum for the valid constitution of the Appeal Panel in order to hear oral representations shall require the presence of four (4) of its Members. In case of a duly justified excuse or emergency, upon assessment by the Chair, members can also attend via electronic means.

Article 19
Oral evidence

1. At a party's request or on its own initiative, the Appeal Panel may direct a party to call a witness or an expert who has given a written statement under Article 17 to be examined and cross-examined at the hearing, in person or, if the Appeal Panel so permits, by telephone or by video link.
2. Witnesses may be examined and cross-examined by the parties under the control of the Chair. Questions may be put to them by any member.

Chapter 8
Lodging of the appeal

Article 20
Lodging of the appeal

When the Chair considers that the evidence is complete, the Chair shall notify the parties that the appeal has been lodged for the purposes of Article 85(4) of Regulation 806/2014.

Chapter 9

Deliberations and decision of the Appeal Panel

Article 21

Deliberations and decision

1. The deliberations of the Appeal Panel shall be in private.
2. For preliminary decisions under Articles 13, 16(2), 17, 18(3), 18(4), 18(6), 18(7) and 19(1), the Chair and the Rapporteur are entitled to act in the name of the Appeal Panel; they will inform the other members in due time. If the Chair and the Rapporteur disagree, a decision will be taken by the whole Appeal Panel.
3. The decision of the Appeal Panel shall be adopted in accordance with Article 85(4) of Regulation 806/2014, within one month after the appeal has been lodged. To this end, every appeal Panel Member shall cast a vote.
4. In its decision, the Appeal Panel may confirm the decision taken by the Board, or remit the case to the latter, in accordance with according to Article 85(8) of Regulation 806/2014.

Article 22

Form of decisions

1. The decision of the Appeal Panel shall be in writing and give reasons, in accordance with Article 85(9) of Regulation 806/2014. The decision shall disclose whether it was a unanimous or a majority decision. The decision shall include (not necessarily in this order):
 - the names of the members taking part;
 - the name of the responsible Secretariat member;
 - the names of the parties and their lawyers;
 - a statement as to the course of the proceedings, the contentions of the parties and the form of order that they sought;
 - a summary of the relevant facts; and
 - the decision and the reasons for it.

2. The decision shall be signed by the members and the Secretariat. The signatures may be electronic. Thereafter, the Secretariat shall send it to the parties in accordance with Article 85(9) of Regulation 806/2014, informing them of the right of appeal under Article 86(1) of Regulation 806/2014.

Article 23

Rectification of the decision

1. The parties may within seven days of being sent the decision provide the Appeal Panel through the Secretariat with a list of clerical mistakes, errors in calculation or obvious slips in the decision.
2. The Appeal Panel may by way of order of its own motion or in response to such a list (and if necessary after obtaining the representations of the parties) rectify clerical mistakes, errors in calculation and obvious slips in the decision.
3. The rectification order shall be annexed to the rectified decision.

Article 24

Publication

The Appeal Panel will publish an extract of the grounds of its decision on the Board's website, which will be anonymised and in such a format that the confidentiality of sensitive information is preserved. No publication shall take place if confidentiality cannot be preserved.

Chapter 10

Miscellaneous

Article 25

Confidentiality

All filings, documents and/or any information contained in (a) document(s) to be filed and/or served in connection with proceedings before the Appeal Panel will be kept confidential in line with the applicable confidentiality regime of the Board.

Article 26
Publication and amendment of the rules

1. The Secretariat shall ensure that the rules of procedure are published in accordance Article 85(10) of Regulation 806/2014.
2. The Secretariat shall ensure that participants to an appeal, including the appellant, are made aware of the rules of procedure.
3. These rules may be amended by the Appeal Panel and other relevant forms and guidelines may be issued from time to time.

Article 27
Entry into force

The rules of procedure shall enter into force the day after their publication in accordance with the preceding article.

Signed by the Chair and Vice-Chair on behalf of the Appeal Panel