

## **ADJUDICATION OF ALLEGED VIOLATIONS OF THE NADCO CODE OF ETHICS**

### **Introduction**

The National Association of Development Companies ("NADCO") has adopted a Code of Ethics to establish expectations regarding the operation of certified development companies admitted to membership in NADCO. In order to insure compliance with these expectations the following procedures and sanctions are hereby adopted by the Board of Directors of NADCO (the "Board") to provide guidance with respect to making alleged violations of the Code of Ethics, the determination of alleged violations and the consequences of violation.

### **Reporting Alleged Violations**

Any member of NADCO in good standing may report an alleged violation of the Code of Ethics.

All reports of alleged violations of the Code of Ethics shall be made to the Vice Chair of the Board (the "Vice Chair") unless it the member reporting the alleged violation believes that the Vice Chair has a personal or professional interest in the outcome of the proceeding. In the event the Chair of the Board (the "Board Chair") finds that the Vice Chair has an actual or apparent conflict of interest, the Board Chair shall appoint another member of the Executive Committee of the Board to serve in lieu of the Vice Chair for all purposes hereunder.

Any allegation of a violation of Code of Ethics shall be in a writing that contains the following information:

- The nature of the alleged violation(s);
- The date(s) of the alleged violation(s);
- The names of person(s) involved in the alleged violation(s);
- A copy of any writing or other documentary evidence relating to the alleged violation(s);
- The identity of any witnesses to the alleged violation(s); and
- Any other information relative to the determination of the allegation that there has been a violation(s) of the Code of Ethics.

Upon receipt of a report of an alleged violation(s) the Vice Chair shall:

- Inform the chief executive officer and chair of the board of directors of the certified development company alleged to have committed the violation(s) of the alleged violation(s) and provide a copy of all material and information received by the Vice Chair in support of the allegation(s) and a copy of this procedure.
- If it appears that a disposition other than formal referral to the Adjudication Committee may be appropriate, initiate discussions with chief executive officer and chair of the board of directors of the certified development company alleged to have committed the violation(s) in an attempt to resolve the violations in an informal manner.
- If a proposed resolution is reached in lieu of referral to the Adjudication Committee the nature of the violation(s) and the proposed remedial action shall be reported to the Board of Directors, and absent a vote of the majority of all directors entitled to vote, the action proposed shall be deemed satisfactory and no further proceedings shall be had.

- In the event that it appears that a formal disposition is appropriate or that agreement on an informal solution cannot be reached, the Vice Chair shall request the Chair of the Board (the "Board Chair") to appoint an Adjudication Committee.

### **Adjudication Committee**

The Adjudication Committee shall be an ad hoc committee of the Board and shall be appointed by Board Chair upon receipt of written notification from the Vice Chair that an allegation(s) has been received. The Board Chair shall be sensitive to and avoid any actual or apparent conflict of interest in the course of selection of members of the Adjudication Committee.

The Adjudication Committee shall consist of the following:

- The Vice Chair;
- Three members of the Board of Directors; and
- Five representatives from certified development companies not having an employee currently serving as a voting member of the Board of Directors.

No member of the Adjudication Committee shall be employed by a certified development company that is authorized to do business in the same or adjacent area of operations as the certified development company alleged to have committed the allegation.

No member of the Adjudication Committee shall have direct, personal knowledge regarding the alleged violation such that it would be expected that the member would be asked to provide information regarding the allegation.

The Vice Chair shall serve as the Chair of the Adjudication Committee (the "Adjudication Chair"). In the event the Vice Chair is unable or unwilling to serve on the Adjudication Committee the Board Chair shall appoint another member of the Executive Committee of the Board of Directors to serve on the Adjudication Committee which member shall be the Adjudication Chair.

In the event that any other Adjudication Committee member is unable or unwilling to serve as a member of the Adjudication Committee the Board Chair shall appoint a successor member with like qualifications.

### **Action by the Adjudication Committee**

As soon as reasonably practicable following the appointment of an Adjudication Committee the Adjudication Chair shall cause the Adjudication Committee to meet (in person and/or telephonically) to review the allegation(s) and the supporting information presented, determine the scope of further activity necessary to determine the allegation(s), and establish a schedule for further proceedings.

The Adjudication Committee shall advise the subject of the allegation(s) that it has the opportunity to present information to the Adjudication Committee for its consideration and will be given the opportunity to be heard at a time and in a manner determined by the Adjudication Committee prior to any determination or finding by the Adjudication Committee. The subject of the allegation will also be provided with the opportunity to challenge the impartiality of any member of the Adjudication Committee which challenge shall be in writing and addressed to the Board Chair who shall determine whether the challenge and take necessary action to replace any member excused from serving as a result of the challenge.

In the event that the Adjudication Committee determines that it requires access to other resources during the course of its investigation or deliberations the request shall be presented to the Board Chair who shall

determine the request and provide any resources determined to be appropriate. In determining any such request the Board Chair may, but is not required to, consult with the Board.

Upon receipt and consideration of all evidence deemed necessary by the Adjudication Committee in its sole discretion, the Adjudication Committee shall adopt findings of fact and, if the findings of fact determine that a violation(s) has occurred, a recommendation regarding sanctions to be imposed shall be made. The findings of fact and any recommended sanctions shall be set forth in a written Adjudication Committee Report (the "Report") which report shall be delivered to the Board Chair. The Report shall be signed by the Adjudication Chair and all members of the committee who agree with the findings of fact and recommended sanctions.

Members of the Adjudication Committee that do not agree with the findings or recommended sanctions set forth in the Report may, but shall not be required, to submit a writing to the Board Chair setting forth the reason(s) for their dissent.

If the Adjudication Committee finds that a violation of the Code of Ethics has occurred it shall recommend appropriate sanctions consisting of one or more of the following:

- No sanctions;
- Admonition<sup>1</sup>;
- Censure<sup>2</sup>;
- Suspension of NADCO membership for a period of not more than one year; or
- Revocation of NADCO membership.

Regardless of whether the Adjudication Committee finds that a violation of the Code of Ethics has occurred it may, in addition to any other sanctions recommend completion of specific training as a condition to membership in NADCO.

Members of the Adjudication Committee that do not agree with the findings of fact and/or recommended sanctions may, but are not required to, submit separate written reports (each a "Dissenting Report") to the Board Chair setting forth such matters relative to the findings of fact and recommended sanctions as such member desires to bring to the attention of the Board Chair and the Board.

All proceedings of the Adjudication Committee shall remain confidential.

A quorum of the Adjudication Committee shall consist of a seven members of the committee including at least four members from certified development companies not having an employee currently serving as a voting member of the Board.

Any action by the Adjudication Committee shall require a majority of those present at the meeting.

### **Action by the Board**

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<sup>1</sup> An "admonition" is intended to be a criticism of conduct and a warning that the conduct should be corrected. This should be accompanied by a suggested course of corrective action. It is generally considered a mild rebuke the terms of which should not be published or otherwise disseminated except to the parties involved.

<sup>2</sup> A "censure" is a strong statement of disapproval of an action or course of action. It should contain specific direction as to the conduct that must be corrected, a recommended course of corrective action and a time frame for implementation of the corrective action. It is generally considered to be a more formal and vehement statement delivered in a public manner. The censure be read aloud at a closed (directors only) meeting of the Board following its imposition and in writing to the chief executive officer and chairman of the board of directors of the certified development company found to be in violation.

Upon receipt of a Report from the Adjudication Committee the Chair shall cause the Report to be circulated to members of the Executive Committee of the Board.

In the event that the Executive Committee determines, by unanimous consent of its members, that the findings of fact support a determination that a violation of the Code of Ethics has occurred, the Chair shall refer the Report to the Board which shall meet in executive session (in person and/or telephonically) for the purpose of considering the Report. The chief executive officer or the chairman of the board of the certified development company alleged to have committed the violation shall have an opportunity to make a written and/or oral statement to the Board prior to any action on the Report.

Irrespective of any other findings or other action of the Executive Committee, it may recommend that the Board require participation by the certified development company in specified training as a condition to renewal of membership in NADCO.

Following a motion(s) and such discussion as the Chair deems appropriate, the Board shall:

- Reject the Report and take no further action;
- Reject the Report and direct further investigation by the Adjudication Committee;
- Accept selected findings of fact contained in the Report; or
- Accept all findings of fact contained the Report.

In event that the Board shall accept one or more findings of fact set forth in the Report, the Board shall next upon motion(s) and following such discussion as the Chair deems appropriate impose one or more of the following sanctions:

- No sanctions;
- Admonition;
- Censure;
- Suspension of NADCO membership for a period of not more than one year; or
- Revocation of NADCO membership.

In the event that the Board determines that suspension of NADCO membership is an appropriate sanction, the Board may stay the suspension conditioned on timely completion of such training as the Board, in its sole discretion, determines as appropriate.

Irrespective of any other findings or other action of the Board it may resolve to require participation by the certified development company in specified training as a condition to renewal of membership in NADCO.

The President and Chief Executive Officer of NADCO, as an ex officio member of the Board, shall participate in all deliberations of the Board but shall abstain from voting on any motions related to an alleged violation of the NADCO Code of Ethics.

No Board member employed by a certified development company that is authorized to do business in the same or adjacent area of operations as the certified development company alleged to have committed the allegation shall be permitted to be present during deliberations or vote on any motions related to an alleged violation of the NADCO Code of Ethics.

In the event that the Board determines to impose no sanctions or an Admonition the terms of the Admonition shall be announced at an Executive Session of the next scheduled Board meeting and provided to the chief executive officer and chairman of the board of directors of the certified development company in writing.

In the event that the Board determines to impose a Censure, Suspension or Revocation the terms of such shall be announced at an open session of the next scheduled Board meeting and provided to the chief executive officer and chairman of the board of directors of the certified development company in writing.

All actions by the Board shall require an affirmative vote of a majority of all voting members of the Board of Directors.