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OF WESTERN AUSTRALIA (Inc.)

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RULES OF PRACTICE

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RULES OF PRACTICE

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RULES OF PRACTICE

THE RULES OF PRACTICE ARE SUPPLEMENTARY TO THE INSTITUTE'S CODE OF ETHICS TO WHICH ALL MEMBERS AND SALES REPRESENTATIVES MUST CONFORM.

1. OBTAINING AN AUTHORITY TO SELL (See Articles 6, 8 & 9)
 - 1.1 A Member shall not offer a vessel for sale on behalf of the principal without first obtaining the prior written authority of such principal.
 - 1.2 It is unethical for a broker to contact an owner if he is aware that an exclusive authority, or in fact any agreement, is in force which obligates the vendor to pay a fee in the event of a sale. This not only covers exclusive authorities, but also any other authority to sell.
In all such cases negotiations should be carried out with the Broker by whom such agreement was signed or if more than one, then with one of them and NOT with the owner direct. Inspections must not be made without the authority of the listing broker.
2. SOLICITING (See Article 12)
 - 2.1 It is unlawful for a Member to solicit a vessel listing or management, either by writing or any other means, if any brokers sign is erected under exclusive listing.
 - 2.2 Members are permitted to distribute "Soliciting" cards and circulate letters provided that the Code of Ethics is not contravened and a reasonable standard of production is maintained in respect of the card.
 - 2.3 All material distributed in accordance with Rule of Practice 2.2 above shall include the following statement: - 'If your vessel is exclusively listed with another broker please disregard this communication.

OR IF APPROPRIATE

'If your vessel is managed by another broker please disregard this communication. The foregoing statement is to be inserted adjacent to the main text of the communication in a size and colour that can easily be read.

3. EXCLUSIVE AUTHORITY AGREEMENTS (See Article 8)

- 3.1 The Institute recommends its members to obtain exclusive authorities from vendors whenever possible and to point out very clearly to the vendor his rights and responsibilities, etc. in respect of the agreement.
- 3.2 If an exclusive authority is obtained from a vendor it is essential that he be given a copy of the agreement and that he be advised that if he is approached by some other broker, the broker should be directed to the holder of the exclusive authority agreement.
- 3.3 The exclusive brokerage permits the holder to recover his fee from the vendor when a sale is made.
- 3.4 It must be remembered that an exclusive brokerage agreement does NOT protect the holder against other brokers who do not know of its existence (where a broker knows that such an agreement exists all negotiations must be carried out through the holder of the exclusive brokerage agreement).
- 3.5 It is NOT recommended that a member who holds an exclusive brokerage should take action against a vendor for recovery of his fee when a vessel has been sold by a second broker who was NOT aware of the exclusive authority and who has received his fee UNLESS the vendor was made fully aware of his responsibilities under the exclusive brokerage agreement at the time the agreement was signed.

4. CONJUNCTIONAL ARRANGEMENTS (See Article 7 & 5.5)

- 4.1 In any conjunctional sale the basis of sharing the selling fee should be 50/50 unless some other arrangement is made IN WRITING between the brokers concerned.
Conjunction at Auction
- 4.2 Where a vessel is offered at auction by two brokers in conjunction and not sold, the brokers in conjunction for at least one calendar month after the vessel has been offered at auction. The conjunctional relationship will continue thereafter until one broker gives fourteen (14) days notice in writing to the other that he wishes to act separately. This will apply unless otherwise mutually agreed in writing between the brokers with the approval of the vendor.
- 4.3 Brokers will continue to be in conjunction in respect of clients introduced to a vessel during the period of the original authority. Members of the Institute are advised that

the customary courtesies must be observed by brokers in conjunction. For example they should confer on the matter of advertising.

Sub-Brokers: Private Treaty (See Article 9)

- 4.4 If a broker has a prospective purchaser for a vessel and approaches the listing broker to conjoin, before the latter broker refuses to do so he must be certain that he acts in the BEST INTERESTS OF THE VENDOR. (see also paragraphs 5.3 and 6.1 below).
- 4.5 When a broker lists a vessel and permits another broker to act in conjunction, the latter broker becomes a sub-broker and is thereby precluded from approaching the owner for a direct listing.
- 4.6 Negotiations between vendor and purchaser should always be conducted through the listing broker unless otherwise agreed. The listing broker must, within twenty-four (24) hours of receiving an offer, present the offer to the vendor for his consideration and notify the selling broker that the offer has been presented. Should it not be possible to present the offer within twenty-four (24) hours, the listing broker must explain to the selling broker the reasons for delay. Should the offer not be accepted the listing broker shall promptly return it to the selling broker with written notification thereof to this effect signed and dated by the vendor. Failure to comply will involve the listing broker in a penalty to be appropriately determined.
- 4.7 A sub-broker cannot approach the owner of a vessel listed with another broker with a view to persuading him to purchase another vessel.
- 4.8 A sub-broker who sells another vessel to a vendor must share the resultant selling fee with the listing broker for the vendor's original vessel.
- 4.9 If the owner approaches a broker direct and unsolicited that broker may accept a direct listing but he has a responsibility to notify the original listing broker immediately that he has received a direct listing.

Introduction of Prospective Purchasers to Another Broker

- 4.10 The indiscriminate exchange of particulars between brokers is a practice which is contrary to the Code of Ethics. Instances may, however arise when one broker introduces a purchaser or a vessel to another broker as a result of which a sale is made in which the introducing broker has taken no direct part. Examples of this would be inter-state and intra-state dealings or dealings between brokers in outport areas. In such circumstances a division of fee on a 50/50 basis would not be equitable. Brokers are free to make mutually acceptable arrangements but in the absence of such arrangements it is suggested that the following guidelines be adopted: -
- (1) If a broker, the "introducing broker", has not taken part in showing a vessel to a prospect but has merely referred him to another broker, the "selling broker", the introducing broker should be paid 33.1/3% or one third of the selling fee or commission if the vessel sold is introduced to the purchaser within three months of the date of the introduction of the purchaser to the selling broker by the introducing broker.

Deposits

- 4.11 The selling broker shall forward to the listing broker without delay the original copy of the offer and the offer and acceptance agreement for acceptance by the vendor together with all deposit monies received. If the deposit monies nominated in the offer and acceptance agreement have NOT been received by the selling broker he must notify the listing broker immediately of the position regarding such deposit monies. Cheques for deposit monies should be made payable to the listing broker and not to the selling broker.

Disclosure of Offers

- 4.12 Prospective purchasers should not be advised of the amounts of any other offers submitted by competing buyers.

5. BROKERS DEALING WITH SAME PROSPECTIVE PURCHASER (See Article 4)

- 5.1 The broker first introducing the prospective purchaser must have the opportunity of completing the sale. It is therefore the brokers responsibility to provide an adequate follow-up service to the prospect within a period of fourteen (14) days unless there are extenuating circumstances.
- 5.2 The giving of a location by a broker without his conducting an inspection of the vessel with the purchaser is NOT considered to be a proper introduction of the vessel. No claim to a share of the fee will therefore be recognised in event of a sale of the vessel by another broker to the same purchaser unless the first broker holds an exclusive brokerage.
- 5.3 Should the prospective purchaser NOT wish to continue his negotiations with the broker who first introduced him to the vessel and should he refer to a second broker, the latter broker should immediately notify the first broker of this development and unless the first broker agrees to act in conjunction with him the second broker will thereafter be deemed to be engaged to act for the buyer (see also paragraphs 4.4 above and 6.1 below).
- 5.4 Should an adequate follow-up service not be provided for a reasonable time and the prospective purchaser consequently approaches a second broker who negotiates a sale, the first broker shall have no claim to a share of the selling fee unless the sale is made under the authority given by the vendor to the first broker.
- 5.5 In the event that broker 'A', the listing broker 'B', the conjunctional selling broker, are unable to complete a sale, should broker 'C' then be approached to assist in the completion of the sale (with the consent of brokers 'A' and 'B') in the absence of any arrangement to the contrary, the selling fee shall be apportioned as to 50% to 'A', the listing broker, 25% to broker 'B', the conjunctional selling broker, and 25% to broker 'C'.
- 5.6 In the event of a broker approaching a listing broker in the respect of a possible con-

junctional arrangement and giving the name of the prospective purchaser to the listing broker and the listing broker declines to conjoin then, provided that the prospective purchaser is not one who has been introduced or is about to be introduced to the vessel by the listing broker in accordance with Rule of Practice 5.2, it shall be unethical for the listing broker to approach the prospective purchaser direct in order to conclude a sale.

In the event of a breach of this Rule of Practice any resultant selling fee will be apportioned on a 60/40 basis between the introducing broker and the listing broker respectively.

6. ENGAGEMENT OF ACT FOR BUYER (See Article 4)

6.1 It is ethical in most circumstances for a member to act as a buying broker for a principal, either generally or in connection with a particular vessel, and to advise him as to values.

However, if a member is instructed to act for a buyer he must look to the buyer for his remuneration. It is unethical for him to conduct any negotiations with the vendor of a vessel direct; he must negotiate with the vendor's broker (see also paragraphs 4.4 and 5.3 above).

7. BROKER ACTING AS A PRINCIPAL (See Article 16)

7.1 A member must not buy or sell any vessel for himself, his wife or for any relative or for a proprietary company or private company or family trust in which any such person has an interest without first disclosing in writing to the vendor or purchaser as the case may be, that such person, company or trust is interested in the transaction as a principal, PROVIDED HOWEVER that nothing hereinbefore contained shall prohibit a member buying or selling any vessel for himself, his wife or for any relative or for a proprietary company or private company or family trust in which such person has an interest by public auction – unless the broker is the auctioneer at such public auction.

8. ADVERTISING

8.1 Every advertisement must contain the name and address or telephone number or such other details as are sufficient to identify the broker.

8.2 It is unethical for a member to advertise a vessel for auction unless an auction authority form has been signed by the vendor. This authority should stipulate the date of the auction and specify the amount available for advertising, which amount should be sufficient to facilitate the provision of a standard of service expected of members of the Institute.

8.3 A member shall not arrange for a vessel to be offered at auction unless the vendor undertakes to pay all advertising expenses.

8.4 With the exception of auctions a member is prohibited from advertising his name with that of a non-member broker in any form of advertisement, including newspaper ad-

vertisements and “For Sale” boards.

9. COMPLAINTS AND DISPUTES (See Articles 2 & 5)
- 9.1 Members should at all times endeavour to resolve disputes in a businesslike and amicable manner.
- 9.2 If a member believes that he has grounds for querying a transaction in which another member has become involved, he must, before referring the matter to the Institute –
- (a) ascertain which article within the Institute’s Code of Ethics or Rules of Practice has been contravened and communicate the complaint to that member;
 - and
 - (b) discuss the matter face to face with the other member (principal) within fourteen (14) days of communicating the complaint and unless otherwise arranged the complainant should attend the office of the respondent for such discussion; and
 - (c) ensure that he is in possession of all the facts of the matter.
- 9.3 If, after discussion, the problem cannot be resolved, the complainant should write to the respondent referring to the verbal discussion, citing the article within the Code of Ethics or Rules of Practice which has been contravened and requesting a reply to his letter within fourteen (14) days.
- 9.4 If the respondent member does not concur with the views of the complaining member he should, in his letter of reply, state clearly and concisely why he does not concur.
- 9.5 The two parties should continue to correspond in an endeavour to resolve the dispute with a minimum of delay.
- 9.6 If the matter is not resolved by the parties to the dispute it should be referred to the Institute for arbitration.
- 9.7 Both parties must be in possession of each other’s correspondence and a copy of the complainant’s letter to the Institute wherewith he forwards papers relevant to the dispute must be sent to the respondent. The letter should indicate that this has been done.
- 9.8 Complaints cannot be dealt with by an arbitration committee unless the prescribed procedures are followed.
- 9.9 An arbitration fee is payable to the Institute by each party to any dispute which is referred to arbitration.
- 9.10 (a) When the complaining member finally writes to the Institute (paragraph 14.7 refers) the letter must be accompanied by a cheque for \$50.00, or such other amount as may from time to time be prescribed. Upon receipt of his copy of the letter the respondent member must also forward a cheque for

- \$50.00 to the Institute.
- (b) If as a result of a complaint to the Institute by a member of the public an arbitration hearing is arranged, the member of the Institute is required to lodge an arbitration fee of \$50.00 prior to the hearing.
- 9.11 It will be at the discretion of the appropriate Arbitration Committee as to whether any part of the \$50.00 arbitration fee is withheld.
- 9.12 The arbitration fee is payable in addition to any penalty which may be imposed in accordance with the Rules of the Institute.
- 9.13 Should a party to the dispute wish to appeal against the decision of an arbitration committee he may do so only on the grounds that –
- (a) the arbitration committee incorrectly interpreted the Rules of Practice or Code of Ethics of the Institute; and/or
- (b) evidence which could not be produced at the time the matter was considered by the arbitration committee was now available; and/or
- (c) on such other grounds as the Institute Council may consider reasonable in the particular circumstances. In considering any appeal on grounds other than those referred to in (a) and (b) above, the Council will have regard to the recommendations of the Chairman of the Institute's Appeals Committee.
- 9.14 Any appeal must be in writing and must be submitted to the Executive Director of the Institute within fourteen (14) days of the aggrieved disputant receiving formal notification of the findings of the arbitration committee.
If an appeal is lodged on the grounds of 9.13 (a) above, the particular Rules of Practice or Code of Ethics and the basis for claiming that there was incorrect interpretation must be nominated.
If an appeal is lodged on the grounds of 9.13 (a) above, the evidence must be submitted in writing when lodging the appeal.
- 9.15 An appeal fee is payable at the time the appeal is submitted.
Should the appeal relate to a dispute with another broker the fee will be \$150.00. However, should the appeal relate to a complaint by a member of the public the appeal fee will be \$25.00. The fee may be retained or refunded wholly or partly at the discretion of the Institute's Appeals Committee.
- 9.16 The Appeals Committee may hold a hearing and afford the disputants the opportunity of appearing and speaking in respect of the appeal.
- 9.17 The decision of the Appeals Committee will be final and binding.
- 9.18 Arbitration committees will decide a dispute on the basis of the evidence available but any penalties will be imposed by such committees after affording consideration to the previous record of the parties to the dispute.
- 9.19 Complaints by non-member brokers against member brokers of the Institute will only be subjected to arbitration procedures provided the non-member broker-
- (a) signs a written undertaking to the effect that he will submit to arbitration in the event of any member of the Institute lodging a complaint against him; and

- 9.22 Statutory Declarations obtained by brokers in dispute will be admissible in evidence provided that they have been submitted to the Arbitration or Appeals Committee at least 14 days prior to the date of any Hearing. A broker involved in a dispute before an Arbitration or Appeals Committee is discouraged from seeking Statutory Declarations from members of the public. The Chairman of an Arbitration or Appeals Committee may seek evidence from Members of the public, and if such evidence is in the form of Statutory Declarations it will be obtained at least 14 days prior to any Hearing date.
- 9.23 Such additional documentary evidence as is to be considered by the Arbitration or Appeals Committee must be delivered to such Committee at least fourteen (14) days before any hearing.
10. MEASUREMENT AND SURVEY OF VESSELS
- 10.1 The measurement and survey of vessels shall be on accordance with the official recommendations of an authority to be determined, such recommendations having been formally adopted by the Institute.