

ANNEX B – RESULTS MANAGEMENT FOR WHEREABOUTS FAILURES

B.1 Determining a Potential Whereabouts Failure

B.1.1 Three (3) Whereabouts Failures by an *Athlete* within any 12-month period amount to an anti-doping rule violation under Code Article 2.4. The Whereabouts Failures may be any combination of Filing Failures and/or Missed Tests declared in accordance with Article B.3 and adding up to three (3) in total.

[Comment to Article B.1.1: While a single Whereabouts Failure will not amount to an anti-doping rule violation under Code Article 2.4, depending on the facts, it could amount to an anti-doping rule violation under Code Article 2.3 (Evading Sample Collection) and/or Code Article 2.5 (Tampering or Attempted Tampering with Doping Control).]

B.1.2 The 12-month period referred to in Code Article 2.4 starts to run on the date that an *Athlete* commits the first Whereabouts Failure being relied upon in support of the allegation of a violation of Code Article 2.4. If two (2) more Whereabouts Failures occur during the ensuing 12-month period, then Code Article 2.4 anti-doping rule violation is committed, irrespective of any *Samples* successfully collected from the *Athlete* during that 12-month period. However, if an *Athlete* who has committed one (1) Whereabouts Failure does not go on to commit a further two (2) Whereabouts Failures within the 12-months, at the end of that 12-month period, the first Whereabouts Failure “expires” for purposes of Code Article 2.4, and a new 12-month period begins to run from the date of their next Whereabouts Failure.

B.1.3 For purposes of determining whether a Whereabouts Failure has occurred within the 12-month period referred to in Code Article 2.4:

- a) A Filing Failure will be deemed to have occurred (i) where the *Athlete* fails to provide complete information in due time in advance of an upcoming quarter, on the first day of that quarter, and (ii) where any information provided by the *Athlete* (whether in advance of the quarter or by way of update) transpires to be inaccurate, on the (first) date on which such information can be shown to be inaccurate; and
- b) A Missed Test will be deemed to have occurred on the date that the *Sample* collection was unsuccessfully attempted.

B.1.4 Whereabouts Failures committed by the *Athlete* prior to retirement as defined in Article 4.8.7.3 of the *International Standard for Testing and Investigations* may be combined, for purposes of Code Article 2.4, with Whereabouts Failures committed by the *Athlete* after the *Athlete* again becomes available for *Out-of-Competition Testing*.

*[Comment to Article B.1.4: For example, if an *Athlete* committed two (2) Whereabouts Failures in the six (6) months prior to their retirement, then if they commit another Whereabouts Failure in the first six (6) months in which they are again available for *Out-of-Competition Testing*, that amounts to a Code Article 2.4 anti-doping rule violation.]*

B.2 Requirements for a Potential Filing Failure or Missed Test

B.2.1 An *Athlete* may only be declared to have committed a Filing Failure where the Results Management Authority establishes each of the following:

- a) That the *Athlete* was duly notified: (i) that they had been designated for inclusion in a Registered Testing Pool; (ii) of the consequent requirement to make Whereabouts Filing; and (iii) of the *Consequences* of any Failure to Comply with that requirement;
- b) That the *Athlete* failed to comply with that requirement by the applicable deadline;

[Comment to Article B.2.1(b): An Athlete fails to comply with the requirement to make Whereabouts Filing (i) where they do not make any such filing, or where they fail to update the filing as required by Article 4.8.8.6 of the International Standard for Testing and Investigations; or (ii) where they make the filing or update but do not include all of the required information in that filing or update (e.g. they do not include the place where they will be staying overnight for each day in the following quarter, or for each day covered by the update, or omit to declare a regular activity that they will be pursuing during the quarter, or during the period covered by the update); or (iii) where they include information in the original filing or the update that is inaccurate (e.g., an address that does not exist) or insufficient to enable the Anti-Doping Organization to locate them for Testing (e.g., “running in the Black Forest”).]

- c) In the case of a second or third Filing Failure, that they were given notice, in accordance with Article B.3.2(d), of the previous Filing Failure, and (if that Filing Failure revealed deficiencies in the Whereabouts Filing that would lead to further Filing Failures if not rectified) was advised in the notice that in order to avoid a further Filing Failure they must file the required Whereabouts Filing (or update) by the deadline specified in the notice (which must be within 48 hours after receipt of the notice) and yet failed to rectify that Filing Failure by the deadline specified in the notice; and

[Comment to Article B.2.1(c): All that is required is to give the Athlete notice of the first Filing Failure and an opportunity to avoid a subsequent one, before a subsequent Filing Failure may be pursued against them. In particular, it is not necessary to complete the Results Management process with respect to the first Filing Failure before pursuing a second Filing Failure against the Athlete.]

- d) That the *Athlete*'s failure to file was at least negligent. For these purposes, the *Athlete* will be presumed to have committed the failure negligently upon proof that they were notified of the requirements yet did not comply with them. That presumption may only be rebutted by the *Athlete* establishing that no negligent behavior on their part caused or contributed to the failure.

B.2.2 While *Code* Article 5.2 specifies that every *Athlete* must submit to *Testing* at any time and place upon request by an *Anti-Doping Organization* with Testing Authority over them, in addition, an *Athlete* in a *Registered Testing Pool* must specifically be present and available for *Testing* on any given day during the 60-minute time slot specified for that day in their Whereabouts Filing, at the location that the *Athlete* has specified for that time slot in such

filing. Where this requirement is not met by the *Athlete*, it shall be pursued as an apparent Missed Test. If the *Athlete* is tested during such a time slot, the *Athlete* must remain with the DCO until the *Sample* collection has been completed, even if this takes longer than the 60-minute time slot. A failure to do so shall be pursued as an apparent violation of *Code* Article 2.3 (refusal or failure to submit to *Sample* collection).

- B.2.3** To ensure fairness to the *Athlete*, where an unsuccessful attempt has been made to test an *Athlete* during one of the 60-minute time slots specified in their Whereabouts Filing, any subsequent unsuccessful attempt to test that *Athlete* (by the same or any other *Anti-Doping Organization*) during one of the 60-minute time slots specified in their Whereabouts Filing may only be counted as a Missed Test (or, if the unsuccessful attempt was because the information filed was insufficient to find the *Athlete* during the time slot, as a Filing Failure) against that *Athlete* if that subsequent attempt takes place after the *Athlete* has received notice, in accordance with Article B.3.2(d), of the original unsuccessful attempt.

[Comment to Article B.2.3: All that is required is to give the Athlete notice of one Missed Test or Filing Failure before a subsequent Missed Test or Filing Failure may be pursued against them. In particular, it is not necessary to complete the Results Management process with respect to the first Missed Test or Filing Failure before pursuing a second Missed Test or Filing Failure against the Athlete.]

- B.2.4** An *Athlete* may only be declared to have committed a Missed Test where the Results Management Authority can establish each of the following:

- a) That when the *Athlete* was given notice that they had been designated for inclusion in a *Registered Testing Pool*, they were advised that they would be liable for a Missed Test if they were unavailable for *Testing* during the 60-minute time slot specified in their Whereabouts Filing at the location specified for that time slot;
- b) That a DCO attempted to test the *Athlete* on a given day in the quarter, during the 60-minute time slot specified in the *Athlete's* Whereabouts Filing for that day, by visiting the location specified for that time slot;
- c) That during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the *Athlete*, short of giving the *Athlete* any advance notice of the test;

[Comment to Article B.2.4(c): Due to the fact that the making of a telephone call is discretionary rather than mandatory, and is left entirely to the absolute discretion of the Sample Collection Authority, proof that a telephone call was made is not a requisite element of a Missed Test, and the lack of a telephone call does not give the Athlete a defense to the assertion of a Missed Test.]

- d) That Article B.2.3 does not apply or (if it applies) was complied with; and
- e) That the *Athlete's* non-availability for *Testing* at the specified location during the specified 60-minute time slot was at least negligent. For these purposes, the *Athlete* will be presumed to have been negligent upon proof of the matters set out at sub-Articles

B.2.4 (a) to (d). That presumption may only be rebutted by the *Athlete* establishing that no negligent behavior on their part caused or contributed to their failure (i) to be available for *Testing* at such location during such time slot, and (ii) to update their most recent Whereabouts Filing to give notice of a different location where they would instead be available for *Testing* during a specified 60-minute time slot on the relevant day.

B.3 Results Management for a Potential Whereabouts Failure

B.3.1 In accordance with Code Articles 7.1.6, the Results Management Authority in relation to potential Whereabouts Failures shall be the International Federation or the *National Anti-Doping Organization* with whom the *Athlete* in question files their whereabouts information.

[Comment to Article B.3.1: If an Anti-Doping Organization that receives an Athlete's Whereabouts Filing (and so is their Results Management Authority for whereabouts purposes) removes the Athlete from its Registered Testing Pool after recording one or two Whereabouts Failures against them, then if the Athlete is put in another Anti-Doping Organization's Registered Testing Pool, and that other Anti-Doping Organization starts receiving their Whereabouts Filing, then, that other Anti-Doping Organization becomes the Results Management Authority in respect of all Whereabouts Failures by that Athlete, including those recorded by the first Anti-Doping Organization. In that case, the first Anti-Doping Organization shall provide the second Anti-Doping Organization with full information about the Whereabouts Failure(s) recorded by the first Anti-Doping Organization in the relevant period, so that if the second Anti-Doping Organization records any further Whereabouts Failure(s) against that Athlete, it has all the information it needs to bring proceedings against them, in accordance with Article B.3.4, for violation of Code Article 2.4.]

B.3.2 When a Whereabouts Failure appears to have occurred, *Results Management* shall proceed as follows:

- a) If the apparent Whereabouts Failure has been uncovered by an attempt to test the *Athlete*, the Testing Authority shall timely obtain an Unsuccessful Attempt Report from the DCO. If the Testing Authority is different from the Results Management Authority, it shall provide the Unsuccessful Attempt Report to the Results Management Authority without delay, and thereafter it shall assist the Results Management Authority as necessary in obtaining information from the DCO in relation to the apparent Whereabouts Failure.
- b) The Results Management Authority shall timely review the file (including any Unsuccessful Attempt Report filed by the DCO) to determine whether all of the Article B.2.1 requirements (in the case of a Filing Failure) or all of the Article B.2.4 requirements (in the case of a Missed Test) are met. It shall gather information as necessary from third parties (e.g., the DCO whose test attempt uncovered the Filing Failure or triggered the Missed Test) to assist it in this task.
- c) If the Results Management Authority concludes that any of the relevant requirements have not been met (so that no Whereabouts Failure should be declared), it shall so advise WADA, the International Federation or *National Anti-Doping Organization* (as applicable), and the *Anti-Doping Organization* that uncovered the Whereabouts Failure,

giving reasons for its decision. Each of them shall have a right of appeal against that decision in accordance with *Code* Article 13.

- d) If the Results Management Authority concludes that all of the relevant requirements as set out in B.2.1 (Filing Failure) and B.2.4 (Missed Test) have been met, it should notify the *Athlete* within fourteen (14) days of the date of the apparent Whereabouts Failure. The notice shall include sufficient details of the apparent Whereabouts Failure to enable the *Athlete* to respond meaningfully, and shall give the *Athlete* a reasonable deadline to respond, advising whether they admit the Whereabouts Failure and, if they do not admit to the Whereabouts Failure, then an explanation as to why not. The notice should also advise the *Athlete* that three (3) Whereabouts Failures in any 12-month period is a *Code* Article 2.4 anti-doping rule violation, and should note whether they had any other Whereabouts Failures recorded against them in the previous twelve (12) months. In the case of a Filing Failure, the notice must also advise the *Athlete* that in order to avoid a further Filing Failure they must file the missing whereabouts information by the deadline specified in the notice, which must be within 48 hours after receipt of the notice.
- e) If the *Athlete* does not respond within the specified deadline, the Results Management Authority shall record the notified Whereabouts Failure against them.

If the *Athlete* does respond within the deadline, the Results Management Authority shall consider whether their response changes its original decision that all of the requirements for recording a Whereabouts Failure have been met.

- i. If so, it shall so advise the *Athlete*, WADA, the International Federation or *National Anti-Doping Organization* (as applicable), and the *Anti-Doping Organization* that uncovered the Whereabouts Failure, giving reasons for its decision. Each of them shall have a right of appeal against that decision in accordance with *Code* Article 13.
- ii. If not, it shall so advise the *Athlete* (with reasons) and specify a reasonable deadline by which they may request an administrative review of its decision. The Unsuccessful Attempt Report shall be provided to the *Athlete* at this point if it has not been provided to them earlier in the process.
- f) If the *Athlete* does not request an administrative review by the specified deadline, the Results Management Authority shall record the notified Whereabouts Failure against them. If the *Athlete* does request an administrative review before the deadline, it shall be carried out, based on the papers only, by one or more persons not previously involved in the assessment of the apparent Whereabouts Failure. The purpose of the administrative review shall be to determine anew whether or not all of the relevant requirements for recording a Whereabouts Failure are met.
- g) If the conclusion following administrative review is that all of the requirements for recording a Whereabouts Failure are not met, the Results Management Authority shall so advise the *Athlete*, WADA, the International Federation or *National Anti-Doping Organization* (as applicable), and the *Anti-Doping Organization* that uncovered the Whereabouts Failure, giving reasons for its decision. Each of them shall have a right of appeal against that decision in accordance with *Code* Article 13. On the other hand, if the

conclusion is that all of the requirements for recording a Whereabouts Failure are met, it shall notify the *Athlete* and shall record the notified Whereabouts Failure against them.

- B.3.3** The Results Management Authority shall promptly report a decision to record a Whereabouts Failure against an *Athlete* to WADA and all other relevant *Anti-Doping Organizations*, on a confidential basis, via ADAMS.

*[Comment to Article B.3.3: For the avoidance of doubt, the Results Management Authority is entitled to notify other relevant *Anti-Doping Organizations* (on a strictly confidential basis) of the apparent Whereabouts Failure at an earlier stage of the *Results Management* process, where it considers it appropriate (for test planning purposes or otherwise). In addition, an *Anti-Doping Organization* may publish a general statistical report of its activities that discloses in general terms the number of Whereabouts Failures that have been recorded in respect of *Athletes* under its jurisdiction during a particular period, provided that it does not publish any information that might reveal the identity of the *Athletes* involved. Prior to any proceedings under Code Article 2.4, an *Anti-Doping Organization* should not Publicly Disclose that a particular *Athlete* does (or does not) have any Whereabouts Failures recorded against them (or that a particular sport does, or does not, have *Athletes* with Whereabouts Failures recorded against them).]*

- B.3.4** Where three (3) Whereabouts Failures are recorded against an *Athlete* within any 12-month period, the Results Management Authority shall notify the *Athlete* and other *Anti-Doping Organizations* in accordance with Article 5.3.2 of the *International Standard for Results Management* alleging violation of Code Article 2.4 and proceed with *Results Management* in accordance with Article 5 et seq. of the *International Standard for Results Management*. If the Results Management Authority fails to bring such proceedings against an *Athlete* within 30-days of WADA receiving notice of the recording of that *Athlete*'s third Whereabouts Failure in any 12-month period, then the Results Management Authority shall be deemed to have decided that no anti-doping rule violation was committed, for purposes of triggering the appeal rights set out at Code Article 13.2.

- B.3.5** An *Athlete* asserted to have committed a Code Article 2.4 anti-doping rule violation shall have the right to have such assertion determined at a full evidentiary hearing in accordance with Code Article 8 and Articles 8 and 10 of the *International Standard for Results Management*. The hearing panel shall not be bound by any determination made during the *Results Management* process, whether as to the adequacy of any explanation offered for a Whereabouts Failure or otherwise. Instead, the burden shall be on the *Anti-Doping Organization* bringing the proceedings to establish all of the requisite elements of each alleged Whereabouts Failure to the comfortable satisfaction of the hearing panel. If the hearing panel decides that one (or two) Whereabouts Failure(s) have been established to the required standard, but that the other alleged Whereabouts Failure(s) has/have not, then no Code Article 2.4 anti-doping rule violation shall be found to have occurred. However, if the *Athlete* then commits one (or two, as applicable) further Whereabouts Failure(s) within the relevant 12-month period, new proceedings may be brought based on a combination of the Whereabouts Failure(s) established to the satisfaction of the hearing panel in the previous

proceedings (in accordance with Code Article 3.2.3) and the Whereabouts Failure(s) subsequently committed by the *Athlete*.

[Comment to Article B.3.5: Nothing in Article B.3.5 is intended to prevent the Anti-Doping Organization challenging an argument raised on the Athlete's behalf at the hearing on the basis that it could have been but was not raised at an earlier stage of the Results Management process.]

B.3.6 A finding that an *Athlete* has committed a Code Article 2.4 anti-doping rule violation has the following *Consequences*: (a) imposition of a period of *Ineligibility* in accordance with Code Article 10.3.2 (first violation) or Code Article 10.9 (subsequent violation(s)); and (b) in accordance with Code Article 10.10 (*Disqualification*, unless fairness requires otherwise) of all individual results obtained by the *Athlete* from the date of the Code Article 2.4 anti-doping rule violation through to the date of commencement of any *Provisional Suspension* or *Ineligibility* period, with all of the resulting *Consequences*, including forfeiture of any medals, points and prizes. For these purposes, the anti-doping rule violation shall be deemed to have occurred on the date of the third Whereabouts Failure found by the hearing panel to have occurred. The impact of any Code Article 2.4 anti-doping rule violation by an individual *Athlete* on the results of any team for which that *Athlete* has played during the relevant period shall be determined in accordance with Code Article 11.