

**ONTARIO SECURITIES COMMISSION RULES OF PROCEDURE  
(Amendment and Consolidation as of April 8, 2014)**

Made under the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22

# TABLE OF CONTENTS

<b>GENERAL RULES .....</b>	<b>1</b>
<b>Rule 1 – General .....</b>	<b>1</b>
1.1 Interpretation .....	1
1.2 General Principles.....	3
1.3 General Powers of a Panel under the Rules .....	3
1.4 Procedural Directions or Orders by a Panel.....	3
1.5 Service and Filing .....	4
1.5.1 Service of Documents on Parties .....	4
1.5.2 Information on Documents Served or Filed.....	5
1.5.3 Inability to Effect Service .....	6
1.5.4 Filing .....	6
1.5.5 Binding of Documents .....	6
1.5.6 Electronic Transmission.....	6
1.5.7 Lengthy Facsimile Transmissions.....	7
1.5.8 Requirement to File Electronically .....	7
1.6 Time.....	7
1.7 Parties .....	7
1.7.1 Appearance and Representation .....	7
1.7.2 Self-Representation.....	7
1.7.3 Change in Representation by a Party .....	7
1.7.4. Withdrawal by a Representative .....	8
1.8 Intervenors .....	8
1.8.1 Motion for Leave to Intervene .....	8
1.8.2 Application of the Rules .....	9
<b>COMMENCEMENT OF PROCEEDINGS .....</b>	<b>9</b>
<b>Rule 2 – Application and Notice of Hearing.....</b>	<b>9</b>
2.1 Application by Staff.....	9
2.2 Application for Review of a Decision of the Director, a Stock Exchange, a Self-Regulatory Organization or a Clearing Agency .....	9
2.3 Application for a Further Decision pursuant to Subsection 9(6) of the Act or for a Revocation or Variation of a Decision pursuant to Section 144 of the Act .....	10
2.4 Application pursuant to Section 104 and/or Section 127 of the Act .....	10
2.5 Effect of a Notice of Hearing.....	10
2.6 Request for a Written Hearing .....	11
2.7 Notice of a Constitutional Question.....	11
<b>PROCEDURES BEFORE HEARINGS.....</b>	<b>11</b>
<b>Rule 3 – Motions .....</b>	<b>11</b>
3.1 Time and Date.....	11
3.2 Notice.....	11
3.3 Request for a Written Hearing .....	11
3.4 Response .....	11
3.5 Reply.....	11
3.6 Memorandum of Fact and Law .....	12
3.7 Affidavit(s) .....	12
3.8 Where No Notice Required.....	12
3.9 Filing Motion Materials .....	12

<b>Rule 4 – Disclosure .....</b>	<b>12</b>
4.1 Interpretation .....	12
4.2 Disclosure Order .....	13
4.3 Disclosure of Documents or Things .....	13
4.4 Disclosure Where Section 8 of the SPPA Applies .....	13
4.5 Witness Lists and Summaries .....	13
4.6 Expert Witness .....	14
4.7 Request to Issue a Summons .....	15
<b>Rule 5 – Public Access to Documents.....</b>	<b>15</b>
5.1 Public Documents .....	15
5.2. Request Regarding Confidentiality .....	15
<b>Rule 6 – Pre-Hearing Conferences.....</b>	<b>16</b>
6.1 Requesting a Pre-Hearing Conference .....	16
6.2 Issues at a Pre-Hearing Conference .....	16
6.3 Notice.....	17
6.4 Filing and Exchange of Documents for a Pre-Hearing Conference .....	17
6.5 Oral or Electronic .....	17
6.6 Public Access.....	17
6.7 Orders .....	18
6.8 Disqualification.....	18
<b>HEARINGS.....</b>	<b>18</b>
<b>Rule 7 – Failure to Participate at the Hearing and Withdrawal .....</b>	<b>18</b>
7.1 Failure to Participate.....	18
7.2 Withdrawal .....	18
7.3 Discontinuance of Intervention .....	18
<b>Rule 8 – Public Access to Hearings .....</b>	<b>18</b>
8.1 Open to the Public Except under Certain Conditions .....	18
8.2 In Camera Hearing.....	19
8.3 Request to Make a Visual or Audio Recording .....	19
<b>Rule 9 – Adjournments .....</b>	<b>19</b>
9.1 How and When to Request an Adjournment .....	19
9.2 Factors Considered .....	20
<b>Rule 10 – Conduct of Oral Hearings.....</b>	<b>21</b>
10.1 Oral Hearings.....	21
10.2 Electronic Hearings .....	21
10.3 Video-Conferencing .....	21
10.4 Hearings Conducted in French and English.....	21
10.5 Interpreters for Other Languages .....	21
10.6 Special Needs of Parties or Witnesses .....	21
10.7 Affirmation of a Witness .....	21
10.8 Transcripts of Proceedings.....	21
10.9 Final Arguments and Submissions.....	21
<b>Rule 11– Written Hearings .....</b>	<b>22</b>
11.1 Application .....	22
11.2 Filing.....	22
11.3 Definition of an Applicant .....	22
11.4 When to Hold a Written Hearing .....	22

11.5 Converting From or to a Written Hearing.....	23
11.6 Submissions and Supporting Documents.....	23
11.7 Objection to a Written Hearing.....	23
11.8 Response to an Objection .....	24
11.9 Decision .....	24
<b>Rule 12 – Settlement Agreements.....</b>	<b>24</b>
12.1 Purpose of Settlement Conference.....	24
12.2 Application for a Settlement Conference.....	24
12.3 Notice of Settlement Conference .....	24
12.4 Oral or Electronic .....	25
12.5 In Camera Proceeding.....	25
12.6 No Communication to Panel Hearing the Merits.....	25
12.7 Application for a Hearing to Approve the Settlement .....	25
12.8 Notice of Settlement Hearing.....	25
12.9 Settlement Hearing Panel.....	25
12.10 Public Settlement Hearing .....	25
12.11 Publication of Settlement Agreement When Approved.....	26
<b>Rule 13 – Simultaneous Hearing with Other Securities Administrators .....</b>	<b>26</b>
13.1 Request for Simultaneous Hearing .....	26
13.2 Payment of Expenses .....	27
<b>Rule 14 – Review of a Decision of the Director, a Stock Exchange, a Self-Regulatory Organization or a Clearing Agency.....</b>	<b>27</b>
14.1 Application .....	27
14.2 Application for a Hearing and Review .....	27
14.3 Record.....	27
14.4 Service and Filing .....	28
14.5 New Evidence .....	29
14.6 Order Dispensing with Transcripts .....	29
14.7 Stay of a Decision.....	29
14.8 Setting Down for a Hearing .....	29
14.9 Statement of Fact and Law in an Oral Hearing.....	29
<b>Rule 15 – Further Decision pursuant to Subsection 9(6) of the Act or Revocation or Variation of a Decision pursuant to Section 144 of the Act.....</b>	<b>30</b>
15.1 Application .....	30
15.2 New Evidence .....	30
15.3 Whether or Not to Hold an Oral Hearing.....	30
15.4 Statement of Fact and Law in an Oral Hearing.....	30
15.5 Written Hearing .....	31
<b>Rule 16 – Application pursuant to Section 104 and/or Section 127 of the Act .....</b>	<b>31</b>
16.1 Application .....	31
16.2 Setting Down for a Hearing .....	31
16.3 Response.....	31
16.4 Reply.....	31
16.5 Request for Leave to Intervene .....	31
<b>DECISIONS .....</b>	<b>31</b>
<b>Rule 17 – Oral and Written Decisions .....</b>	<b>31</b>
17.1 Issuance of Decisions.....	31
17.2 Service of Decisions and Reasons .....	32

17.3 Sanctions Hearing .....	32
<b>COSTS AWARDS .....</b>	<b>32</b>
<b>Rule 18 – Costs.....</b>	<b>32</b>
18.1 Request for an Award of Costs .....	32
18.2 Factors Considered When Awarding Costs .....	33
18.3 Payment of Investigation Costs .....	34
<b>APPENDIX A – PRE-HEARING CONFERENCE FORM .....</b>	<b>36</b>

**ONTARIO SECURITIES COMMISSION - RULES OF PROCEDURE**  
Made under the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended

**GENERAL RULES**

**Rule 1 – General**

(See also the SPPA.)

**1.1 Interpretation** – In these Rules:

“Act” means the *Securities Act*, R.S.O. 1990, c. S.5, as amended;

“address” includes a valid address for electronic transmission;

“application” includes an application:

- (a) by Staff pursuant to section 127 of the Act;
- (b) for review of a decision of the Director pursuant to section 8 of the Act;
- (c) for review of a decision of a stock exchange, a self-regulatory organization, a quotation and trade reporting system or a clearing agency pursuant to section 21.7 of the Act;
- (d) for a further decision pursuant to subsection 9(6) of the Act;
- (e) for a revocation or a variation of a decision pursuant to section 144 of the Act;
- (f) pursuant to section 104 and/or section 127 of the Act in connection with take-over bids, issuer bids and mergers and acquisitions transactions; and
- (g) for an order authorizing disclosure pursuant to section 17 of the Act.

“Bulletin” means the Commission Bulletin;

“Commission” means the Ontario Securities Commission;

“company” means a company as defined in subsection 1(1) of the Act;

“decision” means a decision as defined in subsection 1(1) of the Act;

“Director” means a Director as defined in subsection 1(1) of the Act;

“electronic hearing” means an electronic hearing as defined in subsection 1(1) of the SPPA;

“electronic transmission” means transmission by facsimile or electronic mail (e-mail);

“file” means to file with the Office of the Secretary to the Commission in accordance with Rule 1.5.4;

“holiday” means:

- (a) any Saturday or Sunday,
- (b) New Year’s Day,
- (c) Family Day,
- (d) Good Friday,
- (e) Easter Monday,
- (f) Victoria Day,
- (g) Canada Day,
- (h) Civic Holiday,
- (i) Labour Day,
- (j) Thanksgiving Day,
- (k) Remembrance Day,
- (l) Christmas Day,
- (m) Boxing Day,
- (n) any special holiday proclaimed by the Governor General or the Lieutenant Governor, and
- (o) where New Year’s Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday;

“intervenor” means a person who has applied to intervene pursuant to the Rules and who has been granted intervenor status by order of a Panel;

“oral hearing” means an oral hearing as defined in subsection 1(1) of the SPPA;

“Panel” means a quorum of at least 2 members of the Commission pursuant to subsection 3(11) of the Act or a single member of the Commission authorized by order of the Commission pursuant to subsection 3.5(3) of the Act;

“party” may include:

- (a) a person recognized as a party by the Act;
- (b) a person entitled by law to be a party to the proceeding;
- (c) a person granted party status by order of a Panel; and
- (d) Staff;

“person” means a person as defined in subsection 1(1) of the Act, and where applicable, includes a company as defined in subsection 1(1) of the Act;

“representative” means, in respect of a proceeding to which the Rules apply, a person authorized under the *Law Society Act*, R.S.O. 1990, c. L.8, as amended, to represent a person in a proceeding;

“Rules” means the *Ontario Securities Commission Rules of Procedure*;

“Secretary” means the Secretary to the Commission appointed pursuant to section 7 of the Act;

“service” means the delivery of a document to a party in accordance with the Rules;

“SPPA” means the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

“Staff” means Staff of the Commission;

“Website” means the Commission’s Website; and

“written hearing” means a hearing conducted in writing as defined in subsection 1(1) of the SPPA.

**1.2 General Principles – (1)** Unless otherwise provided in the Rules, the Rules apply to all proceedings before a Panel where the Commission is authorized under the Act or the *Commodity Futures Act*, R.S.O. 1990, c. C.20, as amended, or otherwise by law to hold a hearing.

**(2)** Except where otherwise specifically provided in the SPPA, if there is a conflict between the SPPA and the Rules, the SPPA shall prevail over the Rules.

**(3)** The Rules shall be construed to secure the most expeditious and least expensive determination of every proceeding before the Commission on its merits, consistent with the requirements of natural justice.

**(4) Effect of Irregularity in Form –** No proceeding, document or order in a proceeding is invalid by reason of a defect or other irregularity in form.

**1.3 General Powers of a Panel under the Rules – (1)** The Commission may, from time to time, issue procedural directions or practice guidelines with respect to the application of the Rules as may be appropriate. The Commission shall give notice of these procedural directions or practice guidelines by issuing a notice from the Office of the Secretary, which shall be posted on the Website and published in the Bulletin.

**1.4 Procedural Directions or Orders by a Panel – (1)** A Panel may exercise any of its powers under the Rules on its own initiative or at the request of a party.



**(2)** A Panel may issue procedural directions or orders with respect to the application of the Rules in respect of any proceeding before it, and may impose any conditions in the direction or order as it considers appropriate.

**(3)** A Panel may waive or vary any of the Rules in respect of any proceeding before it, if it is of the opinion that to do so would be in the public interest or that it would otherwise be advisable to secure the just and expeditious determination of the matters in issue.

**(4)** In considering a request to waive or vary any of the Rules or to hold a hearing on an expedited basis, a Panel may consider factors including:

- (a) the nature of the matters in issue;
- (b) whether adherence to the time periods set out in the Rules would be likely to cause undue delay or prejudice to any of the parties;
- (c) costs; and
- (d) any other factors a Panel considers relevant in the public interest.

**(5)** When granting a request for an expedited hearing, a Panel may, as a condition, require that the parties file documents electronically.

## **1.5 Service and Filing**

**1.5.1 Service of Documents on Parties – (1)** All documents required to be served under the Rules shall be served by one of the following methods:

- (a) by personal delivery to the party;
- (b) by delivery to the representative of the party;
- (c) by delivery to an adult person at the premises where the party resides, is employed or carries on business, or where the representative of the party carries on business;
- (d) by delivery to a company, by leaving a copy with an officer, director or agent of the company, or a person at any place of business of the company who appears to be in control or management of the place of business;
- (e) by regular, registered or certified mail to the last known address of the party or the representative of the party;

- (f) electronically to the facsimile number or e-mail address of the party or the representative of the party;
- (g) by courier to the last known address of the party or the representative of the party; or
- (h) by any other means authorized by a Panel.

**(2) Date on Which Service is Effective** – Service is deemed to be effective, when delivered:

- (a) by personal delivery, on the day of delivery;
- (b) by mail, on the fifth day after the day of mailing;
- (c) electronically, on the same day;
- (d) by courier, on the earlier of the date on the delivery receipt or the second day after it was sent; or
- (e) by any other means authorized by a Panel, on the date specified by the Panel.

**(3) Service After 4:30 p.m.** – Documents served after 4:30 p.m. shall be deemed to have been served on the next day that is not a holiday.

**1.5.2 Information on Documents Served or Filed – (1)** A person who serves or files a document should include with it the following information:

- (a) the person's name, address, telephone number, facsimile number and e-mail address, as applicable; or
- (b) if the person is represented by a representative, the name, address, telephone number, facsimile number and e-mail address of the representative, as applicable; and
- (c) the name of the proceeding to which the document relates; and
- (d) the name of the person or representative being served.

**(2)** If any information referred to in subrule 1.5.2(1) changes, the person who provided the information shall notify the person to whom the information was provided and the Secretary of the change and any new information.

**1.5.3 Inability to Effect Service – (1)** If a person required to serve a document is unable to serve it by one of the methods described in Rule 1.5.1, the person may apply to a Panel for an order for substituted, validated or waived service.

**(2) Application for an Order for Substituted, Validated or Waived Service –** The application shall be filed with an affidavit setting out the efforts already made to serve the person and stating:

- (a) why the proposed method of substituted service is likely to be successful; or
- (b) why a Panel should validate or waive service on that person.

**(3) Substituted, Validated or Waived Service –** A Panel may give directions for substituted service or, where necessary, may validate or waive service if it considers it appropriate.

**1.5.4 Filing – (1)** A document required under the Rules to be filed shall be filed by personal delivery, mail, facsimile transmission or courier to the offices of the Commission, marked to the attention of the Secretary, or, alternatively if the Secretary consents, by e-mail to the Secretary.

**(2)** The filing of a document with the Secretary pursuant to these Rules does not constitute service of the document on any party to the proceeding, including Staff or any other person.

**(3)** Unless otherwise specified in the Rules or otherwise directed by the Secretary, when a document is filed, 5 copies shall be filed. The Secretary may require that a greater number of copies be filed.

**(4) Filing After 4:30 p.m. –** Documents filed after 4:30 p.m. shall be deemed to have been filed on the next day that is not a holiday.

**1.5.5 Binding of Documents – (1)** A record for a motion and an application should have a light blue backsheet.

**(2)** A factum or case book filed by an applicant or a moving party should be bound front and back in white covers. A factum or case book of a respondent or responding party should be bound front and back in green covers.

**1.5.6 Electronic Transmission –** If a document is filed with the Secretary by electronic transmission, the required number of print copies of the document shall be filed forthwith.

**1.5.7 Lengthy Facsimile Transmissions** – Documents filed by facsimile transmission shall not exceed 25 pages, including the cover sheet, except with the consent of the Secretary.

**1.5.8 Requirement to File Electronically** – The Secretary may require a party to file an electronic version of any or all documents.

**1.6 Time – (1)** When computing time under the Rules, except where a contrary intention appears:

- (a) if there is a reference to a number of days between 2 events, they are counted by excluding the day on which the first event occurs and including the day on which the second event occurs;
- (b) if a period of less than 7 days is prescribed, holidays are not counted; and
- (c) if the time for doing an act under the Rules expires on a holiday, the act may be done on the next day that is not a holiday.

**(2) Extension or Abridgement** – A Panel may extend or abridge any time period prescribed under the Rules, before or after the time period expires and on any conditions that the Panel considers advisable. Prior to the commencement of a hearing, a Panel may authorize the Secretary to extend or abridge any time period under the Rules with respect to a hearing.

## **1.7 Parties**

**1.7.1 Appearance and Representation** – In any proceeding a party may be self-represented or may be represented by a representative.

**1.7.2 Self-Representation – (1)** When a party first appears before a Panel in a proceeding, the party shall file or otherwise state on the record, and keep current during the proceeding, the party's address, telephone number, facsimile number and e-mail address, as applicable.

**(2) Representation by a Representative** – When a person first appears as representative for a party in a proceeding before a Panel, the person shall file or otherwise state on the record, and keep current during the proceeding, the person's address, telephone number, facsimile number and e-mail address, as applicable, and the name and address of the party being represented.

**1.7.3 Change in Representation by a Party – (1)** A party who is represented by a representative may change the representative by serving on the representative and on every other party, and filing a notice of the change, giving the name,

address, telephone number, facsimile number and e-mail address of the new representative, as applicable.

**(2)** A party who is represented by a representative may elect to act in person by serving on the representative and on every other party and filing a notice of the intention to act in person, giving the party's address, telephone number, facsimile number and e-mail address, as applicable.

**1.7.4. Withdrawal by a Representative – (1)** A representative for a party in a proceeding may withdraw as representative for the party only with leave of the Panel.

**(2)** A notice of motion seeking leave to withdraw as representative must be served on the party and filed, and must state all facts material to a determination of the motion, including a statement of the reasons why leave should be given. The notice must not disclose any solicitor client communication in which solicitor client privilege has not been waived.

**(3)** The notice of motion shall include:

- (a) the client's last known address or the address for service, if different; and
- (b) the client's telephone number, facsimile number and e-mail address, as applicable, unless the Panel orders otherwise.

## **1.8 Intervenors**

**1.8.1 Motion for Leave to Intervene – (1)** A motion for leave to intervene in a proceeding shall be made pursuant to Rule 3.

**(2)** A motion for leave to intervene shall set out:

- (a) the title of the proceeding in which the person making the request wishes to intervene;
- (b) the name and address of the person making the request;
- (c) a concise statement of the scope of the proposed intervention, the issue that directly affects that person and the extent to which that person wishes to intervene; and
- (d) the reasons why intervenor status should be granted.

**(3)** A Panel may grant leave to intervene or refuse the request on any terms and conditions that it deems appropriate.

**(4) Factors** – In considering a motion for leave to intervene, a Panel may consider factors such as:

- (a) the nature of the matter;
- (b) the issues;
- (c) whether the person or company is directly affected;
- (d) the likelihood that the person or company will be able to make a useful and unique contribution to the Panel's understanding of the issues;
- (e) any delay or prejudice to the parties; and
- (f) any other factor the Panel considers relevant.

**1.8.2 Application of the Rules** – Once a person has been granted intervenor status, the Rules, including those with respect to the service and filing of documents, apply to the intervenor as if it were a party, subject to the order of a Panel.

## **COMMENCEMENT OF PROCEEDINGS**

### **Rule 2 – Application and Notice of Hearing**

**2.1 Application by Staff – (1)** Subject to Rule 2.4, an application by Staff pursuant to section 127 of the Act shall be made by filing a Statement of Allegations.

**(2) Issuance and Service of a Notice of Hearing** – Once a Statement of Allegations has been filed by Staff, the Secretary shall issue a Notice of Hearing forthwith.

**(3)** Staff shall serve the Statement of Allegations and the Notice of Hearing forthwith on all the parties.

**2.2 Application for Review of a Decision of the Director, a Stock Exchange, a Self-Regulatory Organization or a Clearing Agency – (1)** An application for review of a decision of the Director, a stock exchange, a self-regulatory organization or a clearing agency pursuant to section 8 or 21.7 of the Act shall be made in accordance with Rule 14.

**(2) Issuance of a Notice of Hearing** – In the case of an application referred to in subrule 2.2(1), the Secretary shall issue a Notice of Hearing only after all the

documents required to be filed and served pursuant to Rule 14 have been filed and served.

**(3)** The Secretary shall issue the Notice of Hearing and the applicant shall serve it on all the parties and on any other persons as the Secretary considers necessary.

**2.3 Application for a Further Decision pursuant to Subsection 9(6) of the Act or for a Revocation or Variation of a Decision pursuant to Section 144 of the Act – (1)** An application for a further decision pursuant to subsection 9(6) of the Act or an application pursuant to section 144 of the Act for a revocation or a variation of a decision made by a Panel shall be made in accordance with Rule 15.

**(2)** In the case of an application referred to in subrule 2.3(1), the Secretary shall issue a Notice of Hearing only after all the documents required to be filed and served pursuant to Rule 15 have been filed and served.

**(3)** The applicant shall serve the Notice of Hearing on all the parties and on any other persons as the Secretary considers necessary.

**2.4 Application pursuant to Section 104 and/or Section 127 of the Act – (1)** An application made pursuant to section 104 of the Act in connection with a take-over bid or an issuer bid by an interested person as defined in subsection 89(1) of the Act, or an application pursuant to section 127 of the Act in connection with a take-over bid or an issuer bid, shall be made in accordance with Rule 16, with any modifications as the circumstances require.

**(2) Issuance of a Notice of Hearing –** The Secretary shall issue a Notice of Hearing for an application referred to in subrule 2.4(1) only after all the documents required to be filed and served pursuant to Rule 16 have been filed and served.

**(3)** The applicant shall serve the Notice of Hearing on all the parties and on any other persons or companies as the Secretary considers necessary.

**2.5 Effect of a Notice of Hearing – (1)** A proceeding commences upon the issuance of a Notice of Hearing by the Secretary.

**(2) Publication on the Website and in the Bulletin –** A Notice of Hearing, together with the Statement of Allegations or any other document required to be filed in connection with an application under Rule 2, shall be posted on the Website upon confirmation of service on the parties or, in any event, no later than 2 days following the issuance of the Notice of Hearing, and shall be published as soon as possible in the Bulletin.

**2.6 Request for a Written Hearing** – Any request to have an application heard by way of a written hearing pursuant to Rule 11 shall be specified in the application.

**2.7 Notice of a Constitutional Question** – If a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or a by-law made under legislation, or a common law rule, the party shall serve a notice of the constitutional question on the Attorneys General of Canada and Ontario and on the other parties, and file it as soon as the circumstances requiring a notice become known and in any event, at least 15 days before the question is to be argued.

## **PROCEDURES BEFORE HEARINGS**

### **Rule 3 – Motions**

**3.1 Time and Date** – A person who wishes to make a motion shall contact the Secretary, who may set a time and date for the hearing of the motion by a Panel.

**3.2 Notice – (1)** A motion shall be made by filing a notice of motion accompanied by a motion record, including any affidavit(s) setting out the facts to be relied upon.

**(2)** The person making the motion shall serve the motion on each party and file the motion, at least 10 days before the day on which the motion is to be heard.

**3.3 Request for a Written Hearing** – Any request to have a motion heard by way of a written hearing pursuant to Rule 11 shall be specified in the notice of motion.

**3.4 Response – (1)** A party served with a notice of motion may serve on the person making the motion and on each other party an affidavit(s) in response, at least 6 days before the day on which the motion is to be heard.

**(2)** The party serving any affidavit(s) in response shall file the affidavit(s) in response, within the period set out in subrule 3.4(1).

**3.5 Reply – (1)** A party served with any affidavit(s) in response to a motion may serve on the person making the response and on each other party an affidavit(s) in reply, at least 4 days before the day on which the motion is to be heard.

**(2)** The party serving any affidavit(s) in reply shall file the affidavit(s) in reply, within the period set out in subrule 3.5(1).



**3.6 Memorandum of Fact and Law – (1)** The party making the motion shall serve a memorandum of fact and law on each party and file it, at least 4 days before the day on which the motion is to be heard.

**(2)** A party served with a notice of motion and affidavit(s) shall serve a memorandum of fact and law on each party and file it, at least 2 days before the day on which the motion is to be heard.

**3.7 Affidavit(s) – (1)** Subject to subrule 3.7(2), evidence on a motion may be made by affidavit(s).

**(2)** Where a party files an affidavit in respect of a motion, the party shall make the deponent reasonably available for cross-examination by any adverse party.

**(3)** If the circumstances require, the Panel may, before the hearing, grant leave on any terms and conditions that it deems appropriate for:

- (a) oral testimony in relation to an issue raised in the notice of motion; and
- (b) the cross-examination of a deponent to an affidavit.

**3.8 Where No Notice Required –** The Panel may permit a party to make a motion without notice if:

- (a) the nature of the motion or the circumstances render service of a notice of motion impractical or unnecessary; or
- (b) the delay necessary to effect service might entail serious consequences.

**3.9 Filing Motion Materials –** If the party bringing a motion fails to comply with the time limits for the filing of motion materials set out in the Rules or directed by the Secretary, the Panel may dispose of the motion as it considers appropriate.

#### **Rule 4 – Disclosure**

(See also sections 5.4 and 8 of the SPPA and Part VI of the Act.)

**4.1 Interpretation – (1)** In Rule 4, “document” includes a sound recording, video-tape, film, photograph, chart, graph, map, plan, survey, book of account, and information recorded or stored by means of any device.

**(2)** “Particulars” includes:

- (a) the grounds upon which any remedy or order is being sought or opposed in the proceeding; and

- (b) a general statement of the alleged material facts upon which the party relies in the proceeding.

**4.2 Disclosure Order** – At any stage in a proceeding, the Panel may order that a party:

- (a) provide to another party and to the Panel any particulars that the Panel considers necessary for a full and satisfactory understanding of the subject of the proceeding; and
- (b) make any other disclosure required by this Rule, within the time limits and on any conditions that the Panel may specify.

**4.3 Disclosure of Documents or Things – (1) Requirement to Disclose –**

Each party to a proceeding shall deliver to every other party copies of all documents that the party intends to produce or enter as evidence at the hearing, as soon as is reasonably practicable after the Notice of Hearing is served, and in any case, at least 20 days before the commencement of the hearing on the merits or as determined by a Panel as the circumstances require.

**(2)** In the case of a hearing under section 127 of the Act and subject to Rule 4.7, Staff shall make available for inspection by every other party all other documents and things that are in the possession or control of Staff that are relevant to the hearing. Staff shall provide copies, or permit the inspecting party to make copies, of these documents at the inspecting party's expense, as soon as is reasonably practicable after the Notice of Hearing is served, and in any case at least 20 days before the commencement of the hearing.

**(3) Non-disclosure of a Document or Thing** – A party who does not disclose a document or thing in compliance with subrule 4.3(1) may not refer to the document or thing or introduce it in evidence at the hearing without leave of the Panel, which may be on any conditions that the Panel considers just.

**4.4 Disclosure Where Section 8 of the SPPA Applies** – Subject to Rule 4.7, if the good character, propriety of conduct or competence of a party is an issue in a proceeding, Staff shall provide particulars of the allegations and disclose to the party against whom the allegations are made all documents and things in Staff's possession or control relevant to the allegations, as soon as is reasonably practicable after the Notice of Hearing is served, and in any case at least 20 days before the commencement of the hearing on the merits.

**4.5 Witness Lists and Summaries – (1) Provision of a Witness List** – A party to a proceeding shall serve every other party and file with the Secretary a list of the witnesses the party intends to call to testify on the party's behalf at the hearing, at least 10 days before the commencement of the hearing.

**(2) Provision of Witness Summaries** – If material matters to which a witness is to testify have not otherwise been disclosed, a party to a proceeding shall provide to every other party a summary of the evidence that the witness is expected to give at the hearing, at least 10 days before the commencement of the hearing.

**(3) Content of the Witness Summary** – A witness summary shall contain:

- (a) the substance of the evidence of the witness;
- (b) reference to any documents that the witness will refer to; and
- (c) the witness's name and address or, if the witness's address is not provided, the name and address of a person through whom the witness can be contacted.

**(4) Failure to Provide a Witness List or a Summary** – A party who does not include a witness in the witness list or provide a summary of the evidence a witness is expected to give in accordance with subrules 4.5(1), 4.5(2) and 4.5(3), may not call that person as a witness without leave of the Panel, which may be on any conditions as the Panel considers just.

**(5) Incomplete Witness Summary** – A witness may not testify to material matters that were not previously disclosed without leave of the Panel, which may be on any conditions that the Panel considers just.

**4.6 Expert Witness – (1) Intent to Call an Expert** – A party who intends to call an expert to give evidence at a hearing shall inform the other parties of the intent to call the expert and state the issue on which the expert will be giving evidence, at least 90 days before the commencement of the hearing.

**(2) Provision of an Expert's Affidavit or an Expert's Report**– A party who intends to introduce evidence of an expert witness at the hearing shall either:

- (a) serve the expert's report on each other party at least 60 days before the commencement of the hearing; or
- (b) if granted leave by a Panel, serve an affidavit of the expert witness on each other party, at least 60 days before the commencement of the hearing. Where an affidavit of an expert witness is used, and the deponent is cross-examined prior to the hearing, the Panel reserves the right to call the expert to testify at the hearing if necessary.

**(3) Provision of an Expert's Affidavit or an Expert's Report in Response** – A party on whom an expert's affidavit or expert's report referred to in subrule 4.6(2)

has been served and who wishes to respond with expert evidence to a matter set out in the affidavit or report, shall serve an expert's affidavit or expert's report in response on each other party, at least 30 days before the commencement of the hearing.

**(4) Provision of an Expert's Affidavit or an Expert's Report in Reply –** A party on whom a responding expert's affidavit or responding expert's report has been served and who wishes to reply with expert evidence to a matter set out in that affidavit or report, shall serve an expert's affidavit or expert's report in reply on each other party, at least 15 days before the commencement of the hearing.

**(5)** An affidavit or report referred to in subrules 4.6(2), 4.6(3) and 4.6(4) shall include:

- (a) the name, address and qualifications of the expert;
- (b) the substance of the expert's evidence; and
- (c) a list of any documents that the expert will refer to.

**(6) Failure to Advise of Intent to Call an Expert –** A party who fails to comply with subrule 4.6(1) may not call the expert as a witness without leave of the Panel, which may be on any conditions that the Panel considers just.

**(7) Failure to Provide an Expert's Affidavit or Expert's Report–** A party who fails to comply with subrules 4.6(2), 4.6(3) and 4.6(4) may not file the expert's affidavit or report without leave of the Panel, which may be on any conditions that the Panel considers just.

**4.7 Request to Issue a Summons – (1)** At the request of a party, a summons to a witness may be issued pursuant to section 12 of the SPPA.

**(2)** The issuance of or a refusal to issue a summons may be reviewed by a Panel by motion filed in accordance with Rule 3.

**(3)** Once a summons is served, it is effective for the duration of the hearing as long as the witness is advised of the adjourned dates.

## **Rule 5 – Public Access to Documents**

**5.1 Public Documents –** Subject to Rule 5.2 and subrule 10.9(3), documents required to be filed or received in evidence in proceedings shall be available to the public.

**5.2. Request Regarding Confidentiality – (1)** At the request of a party or person, the Panel may order that any document filed with the Secretary or any

document received in evidence or transcript of the proceeding be kept confidential pursuant to section 9 of the SPPA.

**(2)** A party or person who makes a request pursuant to subrule 5.2(1) shall advise the Panel of the reasons for the request.

**(3)** The Panel may, if it is of the opinion that there are valid reasons for restricting access to a document, declare the document confidential and make such other orders as it deems appropriate.

## **Rule 6 – Pre-Hearing Conferences**

(See also section 5.3 of the SPPA.)

**6.1 Requesting a Pre-Hearing Conference – (1)** A Panel may direct the parties in a proceeding to participate in a pre-hearing conference at any stage of the proceeding.

**(2)** Any party may request a pre-hearing conference by filing a request.

**6.2 Issues at a Pre-Hearing Conference –** At a pre-hearing conference, a Panel may:

- (a) create a timetable for the scheduling of a hearing;
- (b) create a timetable for any pre-hearing matters, including the disclosure of documents or things and the delivery of witness lists and summaries and experts' affidavits or reports;
- (c) amend an existing timetable;
- (d) schedule any preliminary motions;
- (e) consider with the parties:
  - (i) agreed upon facts or evidence; and
  - (ii) the resolution of any or all of the allegations in the proceeding, subject to Rule 6.8;
- (f) make procedural orders with respect to:
  - (i) the simplification or clarification of issues in the proceeding;
  - (ii) the disclosure of documents or things; and
  - (iii) any other matter that may assist in the just and most expeditious disposition of the proceeding.

**6.3 Notice – (1)** The Secretary shall give notice of a pre-hearing conference to the parties and to any other persons as the Panel directs.

**(2)** The notice shall include:

- (a) the date, time, place and purpose of the pre-hearing conference;
- (b) any direction of the Panel regarding the exchange or filing of documents or pre-hearing submissions as prescribed by Rule 6.4 and, if so, the issues to be addressed and the date or dates on or before which the documents or pre-hearing submissions must be exchanged and filed;
- (c) a direction as to whether parties are required to attend in person and,
  - (i) if so, that they may be accompanied by a representative; or
  - (ii) if not, that they may be represented by a representative who has the authority to make agreements and undertakings on their behalf;
- (d) a statement that if a party does not attend (in person or by a representative, as required) at the pre-hearing conference, the Panel may proceed in the absence of that party; and
- (e) a statement that any order made by the Panel at the pre-hearing conference will be binding on all the parties.

**6.4 Filing and Exchange of Documents for a Pre-Hearing Conference** – The parties shall serve and file a pre-hearing conference form (see Appendix A of the Rules). All documents intended to be used at the pre-hearing conference that may be of assistance shall be exchanged among the parties and be made available to the Panel.

**6.5 Oral or Electronic** – A pre-hearing conference may be held in person or by way of an electronic hearing, as the Panel may direct.

**6.6 Public Access – (1)** In order to encourage a full and frank exchange of views, a pre-hearing conference shall be confidential and conducted in camera.

**(2)** Any pre-hearing submissions referred to in Rule 6.4 shall not be made available to the public.

**6.7 Orders** – A Panel that presides at a pre-hearing conference may make such order as it considers necessary or advisable with respect to the conduct of the proceeding, including an order relating to the matters set out in subrule 6.2(f).

**6.8 Disqualification** – A Panel that presides at a pre-hearing conference at which the parties attempt to settle any or all of the allegations, as contemplated in subrule 6.2(e)(ii), shall not preside at the hearing on the merits unless the parties consent.

## **HEARINGS**

### **Rule 7 – Failure to Participate at the Hearing and Withdrawal**

(See also sections 6 and 7 of the SPPA.)

**7.1 Failure to Participate** – If a Notice of Hearing has been served on any party and the party does not attend the hearing, the Panel may proceed in the party's absence and that party is not entitled to any further notice in the proceeding.

**7.2 Withdrawal** – (1) A person or company that has filed an application under Rule 2 or a request for leave to intervene under Rule 1.8.1 may withdraw the application or request at any time before a final determination of the application or request by a Panel.

(2) The person or company referred to in subrule 7.2(1) shall serve a notice of withdrawal on each party and on each intervenor and file the notice.

(3) In the case of a withdrawal of a Statement of Allegations or of an application under Rule 2, the notice of withdrawal shall be posted on the Website and published in the Bulletin.

**7.3 Discontinuance of Intervention** – (1) An intervenor may discontinue the intervention at any time before a final determination of the application by the Panel on any terms that the Panel deems appropriate.

(2) The intervenor referred to in subrule 7.3(1) shall serve a notice of discontinuance on each party and on each intervenor and file the notice.

### **Rule 8 – Public Access to Hearings**

**8.1 Open to the Public Except under Certain Conditions** – Subject to Rule 8.2, a hearing shall be open to the public, except when having regard to the circumstances, the Panel is of the opinion that intimate financial, personal or other matters may be disclosed at the hearing and that the desirability of avoiding that disclosure in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public pursuant to section 9 of the SPPA.

**8.2 In Camera Hearing** – If a party wishes to have a hearing held in camera, the party shall make a request at the commencement of the hearing before the Panel pursuant to section 9 of the SPPA. The Panel will make a decision on whether or not to hold the hearing or a portion of the hearing in camera, based on the facts and circumstances of each case.

**8.3 Request to Make a Visual or Audio Recording – (1)** Any request to make a visual or audio recording of a hearing should be made in writing to the Secretary at least 5 days before the day of the hearing on which the audio or visual recording is to be made.

**(2)** Media personnel or any person permitted to make a visual or audio recording under subrule 8.3(1) will be subject to the direction of the chair of the Panel.

**(3)** Media personnel shall not engage in any activity at the hearing that may disrupt the hearing. Disruptive activities include:

- (a) interviewing persons in the hearing room at any time or in the vicinity of the hearing room;
- (b) television lights, cables and other equipment which, when in use, could distract the persons in the hearing room;
- (c) electronic flash for still photography;
- (d) movement of persons or equipment while the hearing is in session;  
and
- (e) any other behaviour that disrupts or detracts from the process of the hearing.

## **Rule 9 – Adjournments**

**9.1 How and When to Request an Adjournment – (1)** As soon as a party decides to request an adjournment, the party shall advise the other parties and the Secretary.

**(2) With Consent** – If the other parties consent to the adjournment and the requesting party files a written request certifying that it is made on consent, the Panel may:

- (a) refuse the request;
- (b) reschedule the hearing without a hearing on the request; or
- (c) require a hearing on the request.



**(3) Without Consent** – If the parties do not consent to a request for adjournment, the requesting party shall serve and file a notice of motion on the other parties as soon as possible. The notice of motion shall set out:

- (a) the reasons for the adjournment;
- (b) the length of time requested for the adjournment; and
- (c) the earliest available dates for that party to make submissions on the motion.

**(4)** If the parties do not consent, the requesting party and/or the party's representative shall appear before the Panel to request the adjournment orally and shall be prepared to proceed if the adjournment is denied.

**(5)** After considering the submissions of the parties, the Panel may grant or deny the adjournment on any terms that it considers appropriate.

**9.2 Factors Considered** – In deciding whether to grant an adjournment, the Panel shall consider all relevant factors, including, but not restricted to, the following:

- (a) whether an adjournment would be in the public interest;
- (b) whether all parties consent to the request;
- (c) whether granting or denying the adjournment would prejudice any party;
- (d) the amount of notice of the hearing date that the requesting party received;
- (e) the number of any previous adjournment requests made and by whom;
- (f) the reasons provided to support the adjournment request;
- (g) the cost to the Commission and to the other parties for rescheduling the hearing;
- (h) evidence that the party made reasonable efforts to avoid the need for the adjournment; and
- (i) whether the adjournment is necessary to provide an opportunity for a fair hearing.

## **Rule 10 – Conduct of Oral Hearings**

(See also the *French Language Services Act* and sections 5.2 and 15 of the SPPA.)

**10.1 Oral Hearings** – An oral hearing shall be conducted in accordance with the provisions set out in the SPPA.

**10.2 Electronic Hearings** – A hearing may be conducted by way of an electronic hearing, unless a party objects as provided by subsection 5.2(2) of the SPPA.

**10.3 Video-Conferencing** – A hearing may be conducted by video-conferencing or by other similar means approved by the Secretary.

**10.4 Hearings Conducted in French and English – (1)** A hearing may be conducted in English or in French or in both English and French.

**(2)** A party or intervenor requesting a proceeding to be conducted in French or in both English and French must notify the Secretary’s Office in writing of their choice as soon as possible, and in any event, at least thirty (30) days before a hearing.

**(3)** Hearings held in French or in both English and French are conducted in accordance with the Commission’s Practice Guideline for French Hearings.

**10.5 Interpreters for Other Languages** – If a party requires an interpreter for a language other than English or French, the party shall notify the Secretary as soon as possible, and in any event, at least 30 days before the hearing, and the Secretary will arrange for an interpreter at the requesting party’s expense.

**10.6 Special Needs of Parties or Witnesses** – Parties should notify the Secretary as soon as possible, and in any event at least 30 days before the hearing, of any special needs of parties or their witnesses for the hearing.

**10.7 Affirmation of a Witness** – Oral examination of witnesses shall be conducted under affirmation or oath that their evidence will be true.

**10.8 Transcripts of Proceedings** – Official transcripts of proceedings are prepared by a court reporting services agency retained by the Commission. Parties who wish to obtain a copy of the transcripts may do so directly from the court reporting services agency at their own expense.

**10.9 Final Arguments and Submissions – (1)** Except in the case of a written hearing where parties shall file final written submissions pursuant to Rule 11.6, a party may file and serve on every other party a factum consisting of a concise argument stating the facts and law relied upon by the party.

**(2)** Final submissions may include:

- (a) facts or quotations from the oral evidence, referenced to the transcript volume and page number if a transcript is available; or
- (b) facts or quotations from documentation filed as exhibits, referenced to the exhibit and page number; and
- (c) a concise summary of the law.

**(3)** Final arguments and submissions shall not be made public until the commencement of the hearing of the submissions.

**(4)** A party referring to any court decision, legal article or authority shall provide a copy for each member of the Panel and each party.

**(5)** Parties may include in their argument the details of the specific order that they request.

**(6)** Any party may file a draft order within the time permitted by the Panel, but shall do so only if they serve a copy on all other parties.

### **Rule 11– Written Hearings**

(See also subsections 5.1(1), 6(4), 7(2) and 9(1.1) of the SPPA.)

**11.1 Application – (1)** This Rule does not apply to the admissibility, at an oral hearing, of written evidence admissible under section 15 of the SPPA.

**(2)** Nothing in this Rule precludes a Panel from directing that further submissions be filed in respect of a matter arising in a hearing. If the Panel so directs, the parties may also be given an opportunity to make oral submissions on a matter, which may be time-limited by the Panel.

**11.2 Filing –** Where this Rule requires that documentation be filed with the Secretary, 5 copies shall be filed, except in the case of a notice of an objection to a written hearing which shall be filed in duplicate.

**11.3 Definition of an Applicant –** In this Rule, “applicant” means the party who instituted the proceeding or the person or company who is bringing a motion.

**11.4 When to Hold a Written Hearing – (1)** A Panel may conduct any proceeding or part of a proceeding, including motions, by means of a written hearing.

**(2)** Written hearings may be held in the following circumstances unless a party objects, as provided by subsection 5.1(2) of the SPPA:

- (a) motions relating to procedural issues;

- (b) hearings on agreed facts; and
- (c) any other motions or applications that the Panel considers are appropriate for a written hearing.

**11.5 Converting From or to a Written Hearing – (1)** A Panel may:

- (a) continue a written hearing as an oral hearing;
- (b) subject to subsection 5.2(2) of the SPPA, continue a written hearing as an electronic hearing; or
- (c) subject to subsection 5.1(2) of the SPPA, continue an oral hearing or an electronic hearing as a written hearing.

**(2)** If a Panel decides to continue a written hearing as an oral or electronic hearing or an oral or electronic hearing as a written hearing, it shall notify the parties of its decision and may provide directions as to the holding of that hearing. Any procedures set down in the Rules for such a hearing shall apply.

**11.6 Submissions and Supporting Documents – (1)** Within 10 days after receiving notice that a hearing will be in writing, the applicant shall serve on all other parties and file written submissions setting out:

- (a) the grounds on which the request for the remedy or order is made;
- (b) a statement of the facts and evidence relied on in support of the remedy or order requested; and
- (c) any law relied on in support of the remedy or order requested.

**(2)** A Panel may require the applicant to provide further information, which the applicant shall serve on every other party.

**11.7 Objection to a Written Hearing – (1)** A party who objects to a hearing being held as a written hearing shall file and serve a notice of objection setting out the reasons for the objection, within 5 days after receiving notice of the written hearing.

**(2)** A notice of objection shall set out the reasons for the objection in the submissions relating to the matter and be accompanied by a statement of the facts, any evidence and any law relied on in support of the objection.

**11.8 Response to an Objection – (1)** If a party wishes to respond, the party shall do so by serving the written response on every other party and filing it within 7 days after the notice of objection has been served on the party.

**(2)** The response shall set out the party's submissions and be accompanied by a statement of the facts, any evidence and any law relied on in support of the response.

**11.9 Decision – (1)** Upon consideration of the written record, the Panel may render a decision as to whether the matter shall be heard at an oral or a written hearing.

## **Rule 12 – Settlement Agreements**

**12.1 Purpose of Settlement Conference – (1)** The purpose of a settlement conference is to provide the parties with the opportunity, prior to proceeding to a hearing under this Rule to approve a settlement agreement, to make confidential submissions on a proposed settlement to a Panel in order to obtain guidance on whether the terms of the proposed settlement would, in the view of the Panel, be in the public interest.

**(2)** At least one settlement conference shall be held before a hearing to approve the settlement agreement.

**12.2 Application for a Settlement Conference – (1)** An application for a settlement conference shall be filed jointly by the parties to the proposed settlement no later than 5 days before the settlement conference.

**(2)** The application shall be accompanied by:

- (a) the consent in writing of the parties to participate in the settlement conference;
- (b) an agreement concerning the confidentiality of the settlement discussions and any document or thing presented at the settlement conference; and
- (c) a draft of the proposed settlement agreement or a joint memorandum setting out the terms of the proposed settlement between the parties.

**12.3 Notice of Settlement Conference – (1)** The Secretary shall issue a Notice of Settlement Conference for an application referred to in subrule 12.2(1) only after all the documents required to be filed pursuant to subrule 12.2(2) have been filed.

**(2)** The Notice of Settlement Conference shall be issued only to the parties to the settlement conference and shall not be published or otherwise made available to the public.

**12.4 Oral or Electronic** – A settlement conference may be held in person or by way of electronic hearing, as the Panel may direct.

**12.5 In Camera Proceeding** – (1) The settlement conference shall be held in camera and no transcript or other record of the proceeding shall be made unless the parties to the settlement request otherwise, except that the Panel may make such record of the conference as it deems necessary for its own record and use.

**(2)** Rule 5.1 shall not apply to any document or thing filed under Rule 12.1 or presented at a settlement conference or any record made by the Panel pursuant to subrule 12.5(1), and any such document or thing shall be kept confidential pursuant to Rule 9 of the SPPA and shall not be made available to the public.

**12.6 No Communication to Panel Hearing the Merits** – In the event that the matter subject to the settlement conference proceeds to a hearing on the merits, the Panel presiding at the settlement conference shall not participate in the hearing on the merits and no communication made at the settlement conference shall be disclosed to the Panel hearing the matter on the merits.

**12.7 Application for a Hearing to Approve the Settlement** – (1) An application for a hearing to approve a settlement shall be filed jointly by the parties to the settlement no later than 2 days before the hearing.

**(2)** The application shall be accompanied by:

- (a) a draft order;
- (b) the respondent's consent to the order; and
- (c) the settlement agreement signed by the settling parties.

**12.8 Notice of Settlement Hearing** – The Secretary shall issue a Notice of Hearing for an application referred to in subrule 12.7(1) only after all the documents required to be filed pursuant to subrule 12.7(2) have been filed.

**12.9 Settlement Hearing Panel** – The Panel presiding at the hearing to approve the settlement shall be one or more of the members of the Panel that presided at the settlement conference.

**12.10 Public Settlement Hearing** – (1) A hearing to approve an application under subrule 12.7(1) shall be open to the public.

(2) The Panel may issue oral or written reasons if it deems it appropriate to do so.

**12.11 Publication of Settlement Agreement When Approved** – The order approving the settlement agreement, the settlement agreement, and the Panel’s reasons, if any, shall be posted on the Commission’s website and in the *Bulletin* forthwith following approval of the settlement agreement by the Panel, unless otherwise ordered by the Panel.

**Rule 13 – Simultaneous Hearing with Other Securities Administrators**

(See also subsection 2(5) of the Act.)

**13.1 Request for Simultaneous Hearing – (1)** At the request of a party to a proceeding or on the Commission’s own initiative, the Commission may hold a hearing in or outside Ontario in conjunction with any other body empowered by statute to administer or regulate trading in securities.

(2) A request for a simultaneous hearing shall be made in writing and state the reasons for a simultaneous hearing.

**(3) Invitation to Federal Corporations Branch** – If the issue that is the subject of the simultaneous hearing is also of interest to the Director, Corporations Branch, of the Federal Department of Consumer and Corporate Affairs in administering the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended, the applicant may also request that the federal officer be invited to join the hearing.

**(4) Factors in Deciding Whether to Hold a Simultaneous Hearing** – When deciding whether to hold a simultaneous hearing, the Commission may take into account any circumstances it considers relevant, which may include whether:

- (a) the issues raised through the application and the evidence and arguments to be presented are likely to be substantially the same, notwithstanding any apparent difference in the form of the several applications or the specific legislation in each jurisdiction;
- (b) there is an urgent business reason for holding one simultaneous hearing rather than multiple hearings; or
- (c) the matter in issue is a novel one and it is in the public interest that securities administrators strive to achieve consistency in their decision-making on the matter.

**(5) Factors in Deciding Where to Hold a Simultaneous Hearing** – When deciding where to hold a simultaneous hearing, the Commission may take into account any circumstances it considers relevant, which may include:

- (a) the preponderance of convenience to the majority of interested parties, taking into account where the majority of the parties reside or have their principal places of business and where witnesses reside; and
- (b) where it can be determined that it is in the public interest to do so.

**13.2 Payment of Expenses – (1)** If a party requests that a simultaneous hearing be held outside Ontario, the Commission may, despite any general public interest perceived in the holding of a simultaneous hearing, before and as a condition precedent to its granting the request, require that party to undertake to pay the additional costs incurred by the Commission.

**(2)** These costs include travel and related expenses incurred by the Panel, Staff, witness fees and expenses.

**Rule 14 – Review of a Decision of the Director, a Stock Exchange, a Self-Regulatory Organization or a Clearing Agency**

(See also sections 8 and 21.7 of the Act.)

**14.1 Application** – In Rule 14, “decision” means any direction, decision, order, ruling or other requirement made by the Director, a stock exchange, a self-regulatory organization or a clearing agency.

**14.2 Application for a Hearing and Review – (1)** An application for a hearing and review of a decision pursuant to section 8 or 21.7 of the Act shall:

- (a) identify the decision in respect of which the hearing and review is being sought;
- (b) state the interest in the decision of the party filing the request;
- (c) state in summary form the alleged errors in the decision and the reasons for requesting the hearing and review; and
- (d) state the desired outcome.

**14.3 Record – (1)** The party requesting a hearing and review of a decision shall obtain from the Director, stock exchange, self-regulatory organization or clearing agency a record of the subject proceeding and file it.

**(2)** The record of the proceeding shall include:

- (a) the application or other document by which the proceeding was commenced;
- (b) the Notice of Hearing;



- (c) any interim orders made in the proceeding;
- (d) any documentary evidence filed in the proceeding, subject to any limitation expressly imposed by any statute, regulation or rules on the extent to which, or the purpose for which, any such documents may be used in any proceeding;
- (e) a copy of any other documents relevant in the proceeding that are referred to in the party's statement of fact and law;
- (f) any transcript of the oral evidence given at the hearing; and
- (g) the decision that is the subject of the request for a hearing and review and the reasons therefore, if reasons were given.

**(3) Omission of Documents from Record** – Despite subrule 14.3(1), any of the documents may be omitted from the record if all parties consent, and the Panel agrees or the Panel otherwise directs.

**(4) Where Record Unavailable** – In the circumstance where no record is available, the parties shall advise the Panel.

**14.4 Service and Filing – (1)** An application for a hearing and review of a decision shall be served by the applicant on every other party to the original proceeding and filed.

**(2)** The party requesting a hearing and review shall provide a copy of the record of the proceeding to any other party that requests a copy of the record.

**(3)** The party requesting a hearing and review shall perfect the application by complying with Rule 14.3 and subrules 14.4(1) and 14.4(2):

- (a) if no transcript of evidence is required for the review, within 30 days after filing the request; or
- (b) if a transcript of evidence is required for the review, within 60 days after receiving notice that the evidence has been transcribed.

**(4)** If the party requesting a hearing and review has not complied with subrule 14.4(3), the Secretary may serve a notice on the requester that the request may be dismissed for delay unless it is perfected within 10 days after service of the notice.

**(5) Dismissal Where Default not Cured** – If the party requesting a hearing and review does not cure the default within 10 days after the service of the notice

under subrule 14.4(4), or within a longer period allowed by a Panel, a Panel may make an order dismissing the request and serve the order on the requester.

**(6) Record in Response** – A party served with an application for a hearing and review and record may serve a record in response on the person making the application and on each other party, at least 15 days before the day on which the application is to be heard.

**(7) Record in Reply** – A party served with a record in response to an application for hearing and review may serve a record in reply on the person making the response and on each other party an affidavit(s) in reply, at least 5 days before the day on which the application is to be heard.

**14.5 New Evidence** – If a party proposes to introduce new evidence at the hearing and review, that party shall, at least 10 days before the hearing and review, advise every other party as to the substance of the new evidence and shall deliver to every other party copies of all new documents that the party will rely on at the hearing and review.

**14.6 Order Dispensing with Transcripts** – The Panel may direct that a transcript of the oral evidence be dispensed with, if the Panel is of the opinion that a transcript of the oral evidence taken at the original hearing is unnecessary to deal effectively with the hearing and review, or for any reason the Panel considers appropriate.

**14.7 Stay of a Decision – (1)** Before the hearing and review, the party requesting the hearing and review may apply to the Panel for an order staying the original decision until the hearing and review is concluded.

**(2)** The party shall make the application in writing on notice to all the parties and the application shall state the reasons why a stay is required.

**14.8 Setting Down for a Hearing** – Once the record of the proceeding is perfected in accordance with subrule 14.4(3), the Secretary shall give notice of the time and place for the hearing and review.

**14.9 Statement of Fact and Law in an Oral Hearing – (1)** The party requesting a hearing and review shall, if an oral hearing is to be held, serve on every other party and file the memorandum of fact and law being relied upon, at least 30 days before the date of the hearing and review.

**(2)** Each other party to the hearing and review shall serve on every other party and file a statement of the points to be argued and the memorandum of fact and law being relied upon by it at least 15 days before the date of the hearing and review.

**Rule 15 – Further Decision pursuant to Subsection 9(6) of the Act or Revocation or Variation of a Decision pursuant to Section 144 of the Act**

**15.1 Application – (1)** An application for a further decision pursuant to subsection 9(6) of the Act or an application pursuant to section 144 of the Act for a revocation or a variation of a decision made by a Panel shall:

- (a) identify the decision in respect of which the request is being made;
- (b) state the interest in the decision of the party filing the request;
- (c) state the factual and legal grounds for the request; and
- (d) state the desired outcome.

**(2)** An application for a further decision or an application for a revocation or variation of a decision made by a Panel shall be served by the applicant on every other party to the original proceeding and filed.

**15.2 New Evidence –** If a party proposes to introduce new evidence at the hearing of the application for a further decision or for a revocation or variation of a decision, the party shall, at least 10 days before the hearing, advise every other party as to the substance of the new evidence and shall deliver to every other party copies of all new documents that the party will rely on at the hearing.

**15.3 Whether or Not to Hold an Oral Hearing – (1)** Upon reviewing the application, a Panel may, on the basis of the written record:

- (a) decide to grant the application;
- (b) refuse to grant the application; or
- (c) decide to hold an oral hearing to consider the application.

**15.4 Statement of Fact and Law in an Oral Hearing – (1)** The party requesting a further decision or a revocation or a variation of a decision made by a Panel shall, if an oral hearing is to be held, serve on every other party and file a statement of the points to be argued and the memorandum of fact and law being relied upon by it at least 10 days before the date of the hearing.

**(2)** Each other party to a hearing shall, if an oral hearing is to be held, serve on every other party and file a statement of the points to be argued and the memorandum of fact and law being relied upon by it at least 5 days before the date of the hearing.

**15.5 Written Hearing** – If the parties consent to a further decision, revocation or variation of a decision made by a Panel, the matter may be heard in writing.

## **Rule 16 – Application pursuant to Section 104 and/or Section 127 of the Act**

**16.1 Application – (1)** An application made pursuant to section 104 of the Act in connection with a take-over bid or an issuer bid by an interested person as defined in subsection 89(1) of the Act, or an application made pursuant to section 127 of the Act in connection with a take-over bid or an issuer bid, shall be made by serving it on every other party and on the Manager of Take-Over Bids, Issuer Bids and Mergers and Acquisitions Transactions and filing it.

**(2)** An application shall be accompanied by a memorandum of fact and law and any affidavit(s) as appropriate setting out the facts to be relied upon.

**16.2 Setting Down for a Hearing** – Once all the documents for the application have been filed in accordance with Rule 16.1, the Secretary shall establish the schedule for the filing of a response and a reply and give notice of the time and place for the hearing of the application.

**16.3 Response** – A party served with an application may serve on the person making the application and on each other party a memorandum of fact and law and any affidavit(s), and file them in accordance with the schedule established by the Secretary.

**16.4 Reply** – A party served with a memorandum of fact and law and any affidavit(s) in response to an application may serve on the person making the response and on each other party a memorandum of fact and law and any affidavit(s) in reply, and file them in accordance with the schedule established by the Secretary.

**16.5 Request for Leave to Intervene** – A request for leave to intervene in an application relating to a take-over bid or an issuer bid shall be made by serving it on each of the parties and filing it in accordance with Rule 1.8.1.

## **DECISIONS**

### **Rule 17 – Oral and Written Decisions**

(See also section 17 of the SPPA.)

**17.1 Issuance of Decisions – (1)** A Panel may reserve its decision or may give its decision orally at the end of the hearing.

**(2) Written Final Decisions** – A Panel shall issue a final written decision, which shall be the official decision.

**(3) Discrepancy** – If there is a discrepancy between an oral decision rendered at the hearing and the written decision, the written decision shall prevail.

**17.2 Service of Decisions and Reasons – (1)** The Secretary shall send to all parties to the proceeding a copy of the Panel’s final decision, including any reasons that have been given.

**(2) Publication** – A decision shall be published on the Website and in the Bulletin, unless a Panel orders that it shall remain confidential.

**17.3 Sanctions Hearing – (1)** Unless the parties to a proceeding agree to the contrary, a separate hearing shall be held to determine the matter of sanctions and costs.

**(2)** Following the issuance of the reasons for the decision on the merits, the Secretary shall set a date for the sanctions hearing if such a hearing is necessary.

**(3) Submissions by Staff** – Staff shall file submissions regarding the matter of sanctions and costs at least 10 days before the sanctions hearing, unless the Panel provides otherwise.

**(4) Responding Submissions** – A respondent shall file submissions regarding the matter of sanctions and costs at least 5 days before the sanctions hearing, unless the Panel provides otherwise.

**(5) Reply Submissions** – Staff shall file any reply submissions regarding the matter of sanctions and costs at least 2 days before the sanctions hearing, unless the Panel provides otherwise.

## **COSTS AWARDS**

### **Rule 18 – Costs**

(See also section 127.1 of the Act.)

**18.1 Request for an Award of Costs – (1)** A Panel may award costs against a respondent at the request of Staff after having considered any submissions from the parties.

**(2) Content of a Request for an Award of Costs** – A request for costs by Staff shall be made in a written motion and served on the respondent and it shall contain the following information:

- (a) an explanation of the basis of the claim;
- (b) a summary statement of hours and fees for each lawyer and each professional that worked on the file, supported by time docketts

setting out the hourly wage for the individual and a description of the work performed;

- (c) a summary statement of disbursements for each lawyer or professional, supported by corresponding invoices and receipts. If invoices or receipts are not obtainable, the Commission may accept a written record of disbursements and associated dates; and
- (d) an affidavit declaring that all the information contained in the dockets and the summary statement of disbursements are true and accurate, and all disbursements were incurred directly and necessarily as a result of the investigation or proceeding.

**(3) Time Limit for Making a Request for an Award of Costs** – A request for an award of costs on a motion or on the main proceeding shall be served by Staff on the respondent no later than 30 days after the issuance of a final order or decision of a Panel on the main proceeding.

**(4) Response** – The respondent served with a request for an award of costs may serve on Staff a response setting out any objections to the request, within 15 days of the request.

**(5) Reply** – After receiving a response, Staff may serve a reply to the respondent's objections within 5 days of receiving the response.

**(6) General Principle** – A Panel has the discretion to shorten or extend any of these time limits, and may consider the timeliness of any request for costs in determining the amount to be awarded.

**18.2 Factors Considered When Awarding Costs** – In exercising its discretion under section 127.1 of the Act to award costs against a person or company, a Panel may consider the following factors:

- (a) whether the respondent failed to comply with a procedural order or direction of the Panel;
- (b) the complexity of the proceeding;
- (c) the importance of the issues;
- (d) the conduct of Staff during the investigation and during the proceeding, and how Staff's conduct contributed to the costs of the investigation and the proceeding;

- (e) whether the respondent contributed to a shorter, more efficient, and more effective hearing, or whether the conduct of the respondent unnecessarily lengthened the duration of the proceeding;
- (f) whether any step in the proceeding was taken in an improper, vexatious, unreasonable, or negligent fashion or in error;
- (g) whether the respondent participated in the proceeding in a way that helped the Commission understand the issues before it;
- (h) whether the respondent participated in a responsible, informed and well-prepared manner;
- (i) whether the respondent co-operated with Staff and disclosed all relevant information;
- (j) whether the respondent denied or refused to admit anything that should have been admitted; or
- (k) any other factors the Panel considers relevant.

**18.3 Payment of Investigation Costs – (1)** If the Panel orders under subsection 127.1(1) of the Act that the costs of the investigation be paid by a person or company whose affairs were the subject of an investigation, the costs awarded may include the following:

- (a) the costs of Staff involved in the investigation, based on the time spent on the investigation by each member of Staff and the applicable hourly rate as prescribed by subrule 18.3(3);
- (b) the actual amount of the fees and disbursements paid to a person appointed or engaged under sections 5, 11 or 12 of the Act;
- (c) the actual amount of the witness examination costs;
- (d) the actual amount of the court reporter's fees;
- (e) the actual cost of the transcripts of examinations of individuals during the course of the investigation;
- (f) the actual costs of experts;
- (g) the disbursements and the incidental costs incurred in respect of the investigation; and
- (h) any other costs the Panel considers relevant.

**(2) Payment of Hearing Costs** – If the Panel orders under subsection 127.1(2) of the Act that the costs of, or related to, a hearing be paid by a person or company whose affairs were the subject of a hearing, the costs awarded may include the following:

- (a) the costs of Staff involved in the hearing, based on the time spent on the hearing by each member of Staff and the applicable hourly rate as prescribed by subrule 18.3(3);
- (b) the actual amount of the fees and disbursements paid to a person appointed or engaged under sections 5, 11 or 12 of the Act;
- (c) the reasonable costs of witnesses, other than a witness referred to in sub-paragraph (b) required to attend at the hearing;
- (d) the reasonable costs for the services of a lawyer acting as counsel with or for Staff;
- (e) the costs to the Commission to administer the hearing, including fees paid to the court reporter, fees for transcripts, and disbursements required to conduct a hearing;
- (f) the reasonable costs incurred for each expert or person engaged by Staff; and
- (g) any other costs the Panel considers relevant.

**(3) Publication of Costs in Staff Notice** – The specific hourly rates for the costs categories, which can be determined a priori, set out in subrules 18.3(1) and 18.3(2) shall be published from time to time as a Staff Notice and will be posted on the Website and published in the Bulletin.



## **Appendix A – Pre-Hearing Conference Form**

The parties may submit this form pursuant to Rule 6.4. In the alternative, the parties may submit such other written submissions as they deem appropriate.



Ontario  
Securities  
Commission  
3S8

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue queen ouest  
Toronto ON M5H

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**IN THE MATTER OF THE SECURITIES ACT  
R.S.O. 1990, c. S.5, as amended**

**- and -**

**IN THE MATTER OF  
[INSERT STYLE OF CAUSE]**

**DATE OF PRE-HEARING:**

[insert]

---

**PRE-HEARING CONFERENCE SUBMISSIONS OF:**

[insert name of Party]

---

**REPRESENTATIVE:**

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**I. INTRODUCTORY MATTERS**

**A. Procedural History**

1. Notice of Hearing and Statement of Allegations - Date of Issue:
2. Date(s) of Alleged Conduct:
3. Date of Hearing:
4. Interim Orders:
  - a) Temporary Cease Trade Order: (Date of Order)

Provide Details:

- b) Freeze Order: (Date of Order)

Provide Details:

**B. Unrepresented Respondents**

1. Are any of the Respondents in this proceeding unrepresented?
2. Has Staff provided any unrepresented Respondent(s) with a copy of the *OSC Guide to Enforcement Proceedings* and *OSC Frequently Asked Questions About Hearings*?

Provide Details:

3. Has Staff informed any unrepresented Respondent(s) about the OSC Litigation Assistance Program?

Provide Details:

4. Does the Respondent intend to apply for the OSC Litigation Assistance Program?

**C. Settlement Discussions**

1. Have the parties discussed settlement?

Provide Details:

2. Is there a reasonable prospect of this matter settling?

Provide Details:

**D. Disclosure (Rule 4)**

1. Has Staff made disclosure to the Respondent in accordance with subrules 4.3(1) and (2)?

Provide Details:

2. Has the Respondent made disclosure to Staff in accordance with subrule 4.3(1)?

Provide Details:

3. Is further disclosure requested?

Provide Details:

4. Are there any issues in respect of a third party and disclosure?

Provide Details:

**II. PRE-HEARING MATTERS**

**A. Severance**

1. Do you expect to bring a motion to sever the hearing of certain Respondents?

Provide Details:

**B. Disclosure**

1. Do you expect to bring a motion respecting disclosure?

Provide Details:

**C. Other**

1. Do you expect to bring any other motions?

Provide Details:

**III. THE HEARING**

**A. Procedure on Hearing**

1. Will you be requesting that the hearing, or any part of the hearing, be conducted electronically? (Rule 10.2)

Provide Details:

2. Will you be requesting that the hearing, or any part of the hearing, be conducted in writing? (Rule 11)

Provide Details:

**B. Hearing Brief re: Documents**

1. Have you prepared or will you be preparing a Hearing Brief?

Provide Details:

The Hearing Brief has been delivered to the other parties:

Provide Details:

OR

The Hearing Brief will be delivered by: \_\_\_\_\_

Provide Details:

**IV. EVIDENTIARY MATTERS**

**A. Expert Evidence**

1. Will you be tendering the opinion evidence of a duly qualified expert for admission?

By Staff:

By the Respondent:

2. Upon what issue(s) will you be tendering such evidence?

Provide Details:

3. Will you be challenging the qualification of the expert?

Provide Details:

4. Will you be filing an expert's report? When?

Provide Details:

5. Will you be challenging the admissibility of the report?

Provide Details:

**B. Privilege**

1. Will you be asserting any claim of privilege in respect of any evidence proposed for introduction:

Provide Details:

**C. Procedural Issues**

1. Will you be asking the Commission to rule on any procedural matters?

Provide Details:

2. Are you making any admissions?

Provide Details:

**D. Documents**

1. Has Staff prepared a brief of documents?

Provide Details:

2. Does the Respondent object to the admissibility of any of the documents?

Provide Details:

3. Has the Respondent prepared a brief of documents?

Provide Details:

4. Does Staff object to the admissibility of any of the documents?

Provide Details:

**V. LENGTH AND SCHEDULING OF PROCEEDINGS**

**1. Length of Hearing and Scheduling of Proceeding**

Has the hearing been scheduled? If so, when?

If not, what is the anticipated length of time needed to deal with pre-hearing matters?

For Staff:

For the Respondent:

**2. Witnesses**

Please list the witnesses you will be calling:

<b>Witness Name</b>	<b>Estimated Time for Examination-in-Chief</b>	<b>Estimated Time for Cross-Examination (to be completed at pre-hearing)</b>

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**Dated:** At Toronto this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.