

Guidelines for Managing Hearings during a Pandemic

The Financial and Consumer Affairs Authority (“FCAA”) continues to take all necessary precautions in order to protect individual health and safety as it responds to challenges due to the COVID-19 pandemic. As a part of this, the FCAA is implementing the following guidelines for hearings pursuant to *The Securities Act, 1988* during a pandemic (Guidelines). The Guidelines are intended to amend, to the extent necessary, and supplement Part 11 and Rule 11.1 of the *Saskatchewan Policy Statement 12-602, Procedure for Hearings and Reviews* [the *Local Policy*] during periods of pandemic, including the current COVID-19 pandemic.

Please be advised that these Guidelines are subject to change from time to time. In addition, and notwithstanding Rule 1.3(4) of the Local Policy, Hearing Panels may depart from or modify these Guidelines in any manner that they consider appropriate to address issues specific to or arising from a particular case. Any party wishing to depart from these Guidelines must apply to the Hearing Panel for approval.

Virtual Hearings – The FCAA has established specific guidelines and procedures for virtual hearings which have been appended to these Guidelines. Virtual hearings are the default method for holding hearings during a pandemic. In the event a party wishes to proceed in a manner other than a virtual hearing during a pandemic, the party may seek leave from the Panel to do so in accordance with these Guidelines.

In-Person Hearings – The FCAA will not be holding in-person hearings pursuant to *The Securities Act, 1988*, until otherwise published. In the event parties in a particular matter wish to proceed prior to the FCAA reconvening in-person hearings, they may apply to the Panel to proceed with a hearing by alternate means, including by way of a virtual hearing. To address issues relating to the pandemic after in-person hearings resume, the FCAA has established specific guidelines and procedures for in-person hearings during a pandemic which have been appended to these Guidelines.

In line with these Guidelines and the *Local Policy*, Hearing Panels retain ultimate discretion in respect to procedures to be adopted for any one hearing. It is expected that to the greatest extent possible parties will work together to proactively resolve issues that may arise as a result of these Guidelines prior to bringing any motions.

Statements of Allegations, Motions, or other filings – The Registrar will continue to receive all filings via email at registrarfcaa@gov.sk.ca in accordance with the *Local Policy*.

The term “hearings” as used above encompasses all types of hearings, including but not limited to hearings on the merits, application and motion hearings, sanctions hearings, and financial compensation hearings.

The FCAA offers its appreciation for the co-operation and understanding of all during this difficult and challenging time.

Guidelines for Virtual Hearings during a Pandemic

The FCAA has established the following guidelines in respect to virtual hearings (“Virtual Hearing Guidelines”). The Virtual Hearing Guidelines are subject to change from time to time. In addition, and notwithstanding Rule 1.3(4) of the *Local Policy*, Hearing Panels may depart from or modify the Virtual Hearing Guidelines in any manner that they consider appropriate to address issues specific to or arising from a specific case.

Preparations for the Virtual Hearing

All parties participating in a virtual hearing must download the video platform software that is to be used for that virtual hearing. The software must be downloaded and installed prior to the hearing or test run for the hearing. The FCAA’s video platform software for conducting virtual hearings is Cisco Webex, but other platforms may be adopted and utilized at the discretion of the Panel.

- It is recommended that the parties conduct test runs for each virtual hearing to assist in familiarizing themselves with the video platform software and to help work through potential technical issues. Test runs may be directed by the Registrar or the parties may file a request with the Registrar to have a test run conducted.
 - Prior to the test run, or upon request by a party, the Registrar will provide every party with information regarding the video platform software. This information sheet, which is subject to change from time to time, can be accessed at: [insert FCAA link].
 - A test run should occur one week prior to the hearing. Accordingly, parties requesting a test run should make their request for a test run to the Registrar at least 14 days before the virtual hearing.
 - Parties may request to partake in a test run together or separately and the Registrar may determine which way is advisable in all the circumstances.
 - Test runs must not involve any substantive issues, but are instead to be focused on providing the parties with an opportunity to familiarize themselves with the video platform software, better understand the technology to be used in the virtual hearing, and address any technical issues.
- A court reporter for the virtual hearing should be arranged by the Registrar. The Registrar should confirm that the court reporter is given access to the video platform software and is able to make a recording of the hearing. Court reporters may take part in test runs at their request or the Registrar’s discretion.

Notices, Summons and Pre-Hearing Communications

- Information regarding the video platform software being used should accompany every summons and every hearing notice. This information sheet, which is subject to change from time to time, can be accessed on [the FCAA website](#).

- A summons for a virtual hearing has the same legal effect and consequences as a summons for an in-person hearing.
- Summons' shall also be accompanied by information alerting the witness to the fact that the hearing may proceed by way of a virtual hearing.
- Witnesses may contact the Registrar for more information on how to participate in the virtual hearing.

Technology and Technical Assistance

- Counsel is responsible for ensuring their clients and their witnesses have appropriate technology and understand how to access and participate in the virtual hearing. The technology must be compatible with the video platform software being used and internet bandwidth must be adequate enough to handle a virtual hearing.
- A self-represented litigant, or witness who is unable to get the necessary assistance from the counsel or party calling them, may contact the Registrar to seek assistance in accessing and participating in a virtual hearing. The Registrar or a delegate of the Registrar will take all reasonable steps to assist the self-represented litigant or witness with accessing and participating in a virtual hearing. In the event these attempts are unsuccessful, the Panel may after consultation with all parties decide to hold the hearing by an alternative method, such as a written hearing, telephone hearing, or any other alternative platform considered appropriate by the Panel.

Virtual Hearing Protocols

- Extra time to conduct a virtual hearing should be expected and may be required. As such, additional time should be proactively allotted for to deal with technical or other issues.
- During a virtual hearing or test run, parties and other participants should use headphones.
- When a party or other participant is not speaking, that person must place her or his microphone on mute. If a party or other participant wishes to object or intervene, the party or other participant may verbally raise the objection or intervene when appropriate. When the objection occurs, all participants in the virtual hearing should pause until the Panel has had an opportunity to acknowledge and deal with the objection.
 - Unless otherwise decided by the Panel, the FCAA technical support team will control participant mute, screen sharing, and video displays.
- Participants in the virtual hearing need to make themselves highly visible and appear against a neutral background. Backlighting and virtual backgrounds are not permitted.
- The Panel may ask witnesses to show the contents of their desk, station, or room and to confirm that all email, texting, and other communications systems are turned off.
 - In the event a witness needs to use email, texting or any other communications systems

for the purposes of testifying, the party calling the witness should first seek leave of the Panel to do so.

- The Panel retains discretion in taking steps to ensure the integrity of the proceedings, including by ensuring that witnesses are testifying alone and without inappropriate assistance from others.

Virtual Hearing Procedures

- Submissions and Documents Intended to be Tendered into Evidence:
 - All submissions and documents intended to be tendered into evidence (“Documents”) will be exchanged and provided electronically. To the extent possible, Documents and written submissions should be exchanged by the parties 14 days before the hearing.
 - All Documents are to be provided to the Registrar by email at least three days before the hearing, except for those that are unanticipated or are otherwise required to be provided during the hearing and for which leave from the Panel to introduce those Documents into evidence has been sought and granted.
 - Documents should be introduced through each witness by way of the video platform software being used so that all participants are able to view the Documents on screen during testimony. The witness’s camera will remain visible while the Document is being shared.
- The Panel is to administer oaths and affirmations by video unless the party leading the witness applies for, and is granted, leave to proceed by way of an alternative method. Alternative methods should be proposed at least 48 hours before the hearing. If a witness wishes to take an oath, that witness must have her or his own religious text to swear the oath upon.
- All participants must log onto the video platform software at least 10 minutes in advance of the scheduled start time of the virtual hearing. The virtual hearing may begin once the Panel is satisfied that all necessary participants are adequately connected and able to meaningfully participate in the hearing.
- At the outset of the virtual hearing, each participant shall identify all other persons present at the participant’s location, including those outside the ambit of the video. In addition, each participant has an ongoing obligation to alert the Panel and other parties if any additional person enters the room or joins the virtual hearing.
- Unless provided leave by the Panel, all participants, except for the court reporter and FCAA technical support, are prohibited from recording the hearing or any portion of the hearing by any method.
- The FCAA will take all reasonable steps to ensure public access to virtual hearings is available to interested media or other persons. To access hearings, interested media or other persons should email the Registrar at least two days in advance of the proceedings and provide the following information:

- name;
 - contact information (phone number, address, email address etc.); and
 - the hearing to be observed.
- The Panel may adjourn the proceeding at any time if it determines that the virtual hearing format is not adequate, is prejudicial to any party, is undermining the integrity of the proceedings, could create procedural fairness issues, or that proceeding by way of a virtual hearing is not in the public interest.

Objections to a Virtual Hearing

If a party to a matter believe(s) that a virtual hearing is not in accordance with the rules of procedural fairness or natural justice, or is otherwise not in the public interest, the party **shall submit to the Panel a plan for the safe conduct of an in-person hearing** [“Plan”]. The Plan shall:

- Explain why a virtual hearing in the specific instance is not in accordance with procedural fairness or the principles of natural justice, or is otherwise not in the public interest;
- Verify that the party or parties submitting the Plan have reviewed these Guidelines for Virtual Hearings;
- Verify that the parties have discussed virtual hearings as an option and have discussed the Plan;
- Indicate whether the other parties consent to the Plan or parts of the Plan, and where any disagreement regarding the Plan remains;
- Certify that the party or parties have reviewed and will follow the procedures proposed in the Plan and any other procedures approved or imposed by the Panel; and
- Propose specific measures to address any additional health and safety issues that arise based on any unique circumstances raised in the context of the specific case.

Please note that the following applies to all Plans:

- For matters that are already scheduled to proceed, a Plan shall be sent by the party proposing the Plan to all other parties in the matter **no later than 14 days before the hearing**.
- The parties that received the Plan shall then send their response to the Plan within 3 business days of receiving the Plan.
- The Plan shall thereafter be filed with the Registrar, along with all proofs of sending, at least 7 days before the date scheduled for the hearing.

For a matter that one or more parties, or all the parties, want to have proceed by an in-person hearing, but has yet to be scheduled for hearing, a Plan must still be sent and filed in accordance with the above guidelines. After filing, the Panel assigned to the matter will review the Plan and determine whether the matter should be set for an in-person hearing according to the Plan, or should proceed according to any other fair and practicable process.

Guidelines for In-Person Hearings during a Pandemic

The FCAA has established the following guidelines in respect to in-person hearings during a pandemic (“In-Person Hearing Guidelines”). The In-Person Hearing Guidelines are subject to change from time to time. In addition, and notwithstanding Rule 1.3(4) of the *Local Policy*, Hearing Panels may depart from or modify the In-Person Hearing Guidelines in any manner that they consider appropriate to address issues specific to or arising from a specific case.

In-Person Hearing Safety Protocols

- If at any time it appears that these In-Person Hearing Guidelines are not being followed, or that health and safety issues may be arising notwithstanding these In-Person Hearing Guidelines are being followed, the Panel may order an adjournment or impose any conditions it considers appropriate to protect the health and safety of all participants in the proceedings.
- All participants should maintain recommended physical distancing (a minimum of two metres). Where this level of distancing is not possible, the Panel retains discretion to issue directions that are necessary to best ensure the health and safety of the participants while also maintaining procedural fairness.
- All participants should bring their own masks to the hearing and wear those masks during the hearing. The Panel retains discretion to give directions regarding mask removal when doing so is necessary to ensure procedural fairness and the integrity of the proceedings.
- The 7th Floor Hearing Room may only hold eight in-person participants, including the panel and court reporter. If the parties expect that a hearing may have more than eight in-person participants at any one time, then alternate locations must be proposed by the parties to the Registrar (e.g., a conference room at the Delta Hotel). The Registrar should then take all reasonable steps to book an alternative location.
- If the hearing is to be held in the 7th Floor Hearing Room, the suggested participants totaling eight persons are:
 - Panel Members (up to three persons)
 - Counsel for the respondent (one person)
 - The respondent (one person)
 - Counsel for Staff (one person)
 - A witness (one person in the hearing room at a time, with additional witnesses waiting in a separate waiting room to be brought into the hearing room when their testimony is required)

- Court Reporter (one person)
- Those areas of the hearing room in close proximity to, and any equipment used by, testifying witnesses will be sanitized after each witness completes her or his testimony.
- Entrances and exits to and from the hearing room should be timed and staggered.
- There should not be any loitering in the hallways at anytime.
- During an adjournment, parties should gather in a designated room, wear their mask, and maintain proper social distancing. The designated rooms are to be communicated to hearing participants at the time of the hearing, and may include the Delta lobby, the 6th Floor Boardroom, or available office spaces.
- Hand sanitizer shall be provided to Counsel, the Respondent, witnesses, and each Panel member. All participants should utilize hand sanitizer after entering the room and prior to leaving the room.
- Witnesses shall wait in a waiting room until called to testify. Counsel or a self-represented litigant shall advise their witnesses when it is time for them to testify and have them enter and exit safely and in accordance with these In-Person Hearing Guidelines.
- Participants shall bring their own water as the water cooler will not be available.

Remote Attendance (by Video or Telephone)

- Any hearing participant who wishes to attend the hearing remotely, must apply to the Registrar in advance to seek leave of the Panel to do so.
 - If a witness wishes to appear remotely, a party may apply for leave of the Panel to do so on behalf of that witness.
- Video or phone testimony is required in relation to the following class of persons as they will be excluded from in-person participation at an in-person hearing (the “Excluded Persons”):
 - Those who have traveled outside of Saskatchewan in the 14 days before the hearing;
 - Those who have traveled in the 14 days before the hearing to any location within Saskatchewan that has a declared outbreak (see <https://www.saskhealthauthority.ca/news/releases> for declared outbreaks);
 - Those who are exhibiting or have exhibited any symptoms associated with Covid-19 during the 14 days before the hearing;
 - Those who have had contact in the 14 days before the hearing with anyone who has tested positive or is under investigation for Covid-19;
 - Those who have been advised by Public Health, a doctor, or the Saskatchewan Health Authority website to self-isolate due to possible exposure to Covid-19 and have not yet

been cleared.

- All Excluded Persons shall sign and file with the Registrar a declaration indicating that they are Excluded Persons promptly upon making that determination.
- Excluded Persons must also advise counsel or, where the respondent is self-represented, the respondent of their status as Excluded Persons promptly upon making that determination.
- In the event there are Excluded Persons, counsel or a self-represented party will be expected to propose alternative methods of participating (video or phone) as soon as reasonably possible.

Public Hearing Status Maintained

- The public and media will not be allowed to attend in-person for a hearing held in the 7th Floor Hearing Room. The FCAA will take all reasonable steps to ensure public access to in-person hearings is available to interested media or other persons through alternate means. To access hearings, interested media or other persons should email the Registrar at least two days in advance of the proceedings and provide the following information:
 - name;
 - contact information (phone number, address, email address, etc.); and
 - the hearing to be observed.

Required Confirmations and Communications Prior to the In-Person Hearing

- One day prior to the hearing, counsel or a self-represented party shall confirm to the Registrar that they have screened their hearing participants, as well as themselves, and that as of the day of the confirmation there are no Excluded Persons other than those who have previously been identified to the Registrar. In the event that, after screening, an Excluded Person arises, counsel or the self-represented litigant shall promptly advise the Registrar.
- At least 7 days before the hearing, Counsel or the self-represented litigant shall communicate to all participants all of the expectations included in these In-Person Hearing Guidelines.
- The Registrar shall communicate a reminder in this regard to Counsel and self-represented litigants at least 10 days before the hearing.

In-Person Hearing Procedures

- The following processes apply to submissions and Documents, with any necessary modification as individual cases may require or Hearing Panels may consider appropriate:
 - All submissions and Documents are to be exchanged by the parties electronically prior to the hearing.
 - No paper shall be exchanged or submitted at any time during the hearing.

- At least three days before the hearing, the parties shall provide a proposed exhibit book containing all Documents sought to be introduced by the parties into evidence to the Registrar by email, cloud storage, or a sanitized USB flash drive.
- The Registrar shall provide each Panel member with a copy of the proposed exhibit book prior to the commencement of the hearing. The Panel members will not review the Documents in advance of them being tendered by the parties during the hearing.
- Documents that are introduced into evidence during the hearing and that are not part of the proposed exhibit book should be tendered and submitted by email, cloud storage, or a sanitized USB flash drive.
- Witnesses will testify to Documents as projected on a laptop or, if practicable, on a projector screen in a hearing room.