

SASKATCHEWAN POLICY STATEMENT 12-602

PROCEDURE FOR HEARINGS AND REVIEWS

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SASKATCHEWAN POLICY STATEMENT 12-602

PROCEDURE FOR HEARINGS AND REVIEWS

PART 1 - GENERAL

1.1 Interpretation

In this Policy:

- (a) “**Act**” means *The Securities Act, 1988*;
- (b) “**application**” includes an application:
 - (i) for review of a decision of the Chairperson or Director pursuant to section 10 of the Act;
 - (ii) for a further decision pursuant to subsection 11(7) of the Act;
 - (iii) for review of a decision of a recognized entity pursuant to section 21.7 of the Act;
 - (iv) pursuant to section 101 of the Act in connection with take-over bids and issuer bids;
 - (v) by Staff pursuant to section 134 of the Act;
 - (vi) by the Director pursuant to section 135.6 of the Act;
 - (vii) for a variation or a revocation of a decision of the Authority pursuant to section 158(3) of the Act;
- (c) “**Authority**” means the Financial and Consumer Affairs Authority of Saskatchewan;
- (d) “**electronic transmission**” means transmission by facsimile or e-mail;
- (e) “**electronic hearing**” means a hearing held by conference telephone or some other form of electronic technology allowing persons to hear and see one another;
- (f) “**file**” means to file with the Registrar in accordance with section 1.4.3;
- (g) “**intervenor**” means a person who has been granted intervenor status by order of a Panel;
- (h) “**motion**” means an application to a Panel before or during the hearing or review on a matter related to a hearing or review;
- (i) “**Panel**” means a hearing panel appointed pursuant to section 17 of *The Financial and Consumer Affairs Authority of Saskatchewan Act*;

- (j) “**Panel Chair**” means the Chairperson of the Panel;
- (k) “**party**” includes:
- (i) a person that is a party to a proceeding pursuant to provisions of the Act;
 - (ii) a person entitled by law to be a party to a proceeding;
 - (iii) a person granted party status by order of a Panel; and
 - (iv) Staff;
- (l) “**person**” means a person as defined in subsection 2(1) of the Act and includes a company as defined in subsection 2(1);
- (m) “**Policy**” means this policy statement;
- (n) “**Registrar**” means the individual designated by the Chairperson of the FCAA to be the Registrar and whose e-mail is registrarfcaa@gov.sk.ca;
- (o) “**representative**” means a person who represents a person in a proceeding and who is:
- i) governed by *The Legal Professions Act, 1990* (Saskatchewan); or
 - ii) otherwise allowed by a Panel to represent that party;
- (p) “**respondent**” means a person who is named as a respondent in a proceeding to which this Policy applies;
- (q) “**Staff**” means staff of the Securities Division of the Authority as represented by legal counsel;
- (r) “**Website**” means the Authority’s Website, www.fcaa.gov.sk.ca;
- (s) “**written hearing**” means a hearing held by means of exchange of documents, whether in written form or by electronic means; and

Words defined by the Act have the same meaning in this Policy.

1.2 General Principles

- (1) Unless otherwise provided in this Policy, this Policy applies to all proceedings before a Panel where the Authority is authorized under the Act or otherwise by law to hold a hearing.
- (2) This Policy should be construed to achieve the most expeditious and least expensive determination of every proceeding before a Panel, consistent with the requirements of natural justice.

1.3 Procedural Directions or Orders by a Panel

- (1) A Panel may exercise any of its powers under this Policy 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 this Policy 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 provision of this Policy 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 provision of this Policy, a Panel may consider factors including:
 - (a) the nature of the matters in issue;
 - (b) whether adherence to the time periods set out in this Policy 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.

1.4 Service, Sending and Filing

(See also sections 156, 156.01 and 156.1 of the Act.)

1.4.1 Information on Documents Served, Sent or Filed

- (1) A person who serves, sends or files a document will 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;
 - (c) the name of the proceeding to which the document relates; and
 - (d) the name of the person or representative being served or sent to.
- (2) If any information referred to in subsection (1) changes, the person who provided the information should notify the person to whom the information was provided and the Registrar of the change.

1.4.2 Inability to Effect Service or Sending

(1) If a person required to serve or send a document is unable to serve or send it, as the case may be, by one of the methods prescribed in the Act, the person may apply to a Panel for an order for substituted, validated or waived service or sending.

(2) The application will be filed with an affidavit setting out the efforts already made to serve or send to the person and stating:

(a) why the proposed method of substituted service/sending is likely to be successful; or

(b) why a Panel should validate or waive service on/sending to that person.

(3) A Panel may give directions for substituted service or sending, or, where necessary, may validate or waive service or sending if it considers it appropriate.

1.4.3 Filing

(1) A document required under this Policy to be filed may be filed electronically (via e-mail to the Registrar (registrarfcaa@gov.sk.ca)) and if filed electronically the electronic copy shall be deemed to be the file copy. Any document filed electronically must also be provided in paper copy, by personal delivery, mail or courier to the offices of the Authority, marked to the attention of the Registrar. A document will be deemed filed on the date it is sent electronically, unless it is sent after 4:30 p.m. (CST) on any day, in which case it will be deemed filed on the next business day after it was sent. The Registrar will confirm receipt of a document filed electronically via a return e-mail to the party who sent the document. If the party does not receive an acknowledgment from the Registrar, that party shall follow up with the Registrar by telephone.

(2) If a document cannot be filed electronically, then it must be filed in paper copy. Five copies must be provided but only one copy shall be identified as the filed copy. A document filed in paper copy may be filed by personal delivery, registered mail or courier to the offices of the Authority, marked to the attention of the Registrar. A document filed in paper copy will be deemed filed on the date that it is received by the Registrar. The Registrar may require more than five copies of the documents be filed.

(3) The filing of a document with the Registrar pursuant to this Policy does not constitute service or sending of the document on or to any party to the proceeding, including Staff or any other person.

1.4.4 Electronic Transmission

If a document is filed with the Registrar by electronic transmission, the required number of print copies of the document will be filed forthwith.

1.4.5 Lengthy Facsimile Transmissions

Documents filed by facsimile transmission will not exceed 50 pages, including the cover sheet, except with the consent of the Registrar.

1.4.6 Requirement to File Electronically

The Registrar may require a party to file an electronic version of any or all documents.

1.5 Time

(1) Subject to subsection (2), subsection 2(10) of the Act and section 2-28 of *The Legislation Act* applies to any period of time set out in this Policy.

(2) A Panel may extend or abridge any time period prescribed under this Policy, before or after the time period expires and on any conditions that the Panel considers advisable. Before a hearing begins, a Panel may authorize the Registrar to extend or abridge any time period under this Policy with respect to a hearing.

1.6 Parties

1.6.1 Appearance and Representation

In any proceeding a party may be self-represented or may be represented by a representative.

1.6.2 Representation

(1) When a party first appears before a Panel in a proceeding, the party will 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) When a person first appears as representative for a party in a proceeding before a Panel, the person will 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.

1.6.3 Change in Representation by a Party

(1) A party who is represented by a representative may change the representative by sending to the representative and 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 sending to the representative and 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.

1.6.4 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 representative for a party that seeks leave to withdraw must serve on all other parties and file a notice of motion seeking leave to withdraw. The notice of motion 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 for which solicitor client privilege has not been waived.

(3) The notice of motion will 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.

1.7 Intervenors

1.7.1 Motion for Leave to Intervene

(1) A motion for leave to intervene in a proceeding will be made pursuant to Part 3.

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

- (a) the title of the proceeding in which the person making the request wishes to intervene;
- (b) the name, telephone number, facsimile number and e-mail 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) 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 is directly affected;
- (d) the likelihood that the person 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.

1.7.2 Application of this Policy

Once a person has been granted intervenor status, this Policy, including those sections regarding the service, sending and filing of documents, apply to the intervenor as if it were a party.

Commencement of Proceedings

PART 2 – APPLICATION AND NOTICE OF HEARING

(See also subsections 9(2) and (3.4) of the Act.)

2.1 Application by Staff

(1) An application by Staff pursuant to section 134 of the Act will be made by filing a Statement of Allegations. Staff shall send the Statement of Allegations to each party.

(2) At any time after a Statement of Allegations has been filed by Staff, Staff may request a first appearance date to schedule the hearing on the merits, and the Registrar will set the first appearance date and issue a Notice of First Appearance.

(3) Staff will send the Notice of First Appearance to each party at least ten days before the date on which the first appearance is scheduled.

2.2 Application for Review of a Decision of the Chairperson, Director or a Recognized Entity

(1) An application for any of the following reviews will be made in accordance with Part 16:

(a) a decision of the Chairperson or Director pursuant to section 10 of the Act;

(b) a decision of a recognized entity pursuant to section 21.7 of the Act.

(2) In the case of an application referred to in subsection 2.2(1), the Registrar will issue a Notice of Hearing only after all the documents required to be sent and filed pursuant to Part 16 have been sent and filed.

(3) The Registrar will issue the Notice of Hearing and the applicant will send it to all the parties and to any other persons as the Registrar considers necessary.

2.3 Application for a Further Decision pursuant to Subsection 11(7) of the Act or for a Revocation or Variation of a Decision pursuant to Subsection 158(3) of the Act

(1) The following applications will be made in accordance with Part 17:

(a) an application for a further decision pursuant to subsection 11(7) of the Act; and

(b) an application pursuant to subsection 158(3) of the Act for a revocation or a variation of a Panel's decision on an application to which this Policy applies.

(2) In the case of an application referred to in subsection 2.3(1), the Registrar will issue a Notice of Hearing only after all the documents required to be sent and filed pursuant to Part 17 have been sent and filed.

(3) The applicant will send the Notice of Hearing to all the parties and to any other persons as the Registrar considers necessary.

2.4 Application pursuant to Section 101 of the Act

(1) An application pursuant to section 101 of the Act in connection with a takeover bid or an issuer bid by an interested person will be made in accordance with Part 18, with any modifications as the circumstances require.

(2) The Registrar will issue a Notice of Hearing for an application referred to in subsection 2.4(1) only after all the documents required to be filed and sent pursuant to Part 18 have been sent and filed.

(3) The applicant will send the Notice of Hearing to all the parties and to any other persons as the Registrar considers necessary.

2.5 Effect of a Notice of Hearing

The Notice of First Appearance and Statement of Allegations, , will be posted on the Website upon confirmation of sending to the parties or, in any event, no later than two days following the issuance of the Notice of First Appearance.

2.6 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 bylaw made under legislation, or a common law rule, the party will:

(a) serve a notice of the constitutional question on the Attorneys General of Canada and Saskatchewan and on the other parties; and

(b) file the notice 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

PART 3 – MOTIONS

3.1 Notice of Motion

- (1) A motion will be made by filing a Notice of Motion along with any relevant documents in support of the motion, including any affidavit setting out the facts to be relied upon.
- (2) A person who wishes to file a Notice of Motion may use the Notice of Motion form set out in Appendix A. A person who wishes to file an Affidavit may use the form set out in Appendix A.1.
- (3) The Panel will direct whether the motion is to be argued in person or heard by conference telephone or any other manner which the Panel directs.

3.2 Time and Date

A person who wishes to make a motion will contact the Registrar, who will set a time and date for the hearing of the motion by a Panel.

3.2.1 Application to Extend a Temporary Order

An Application to extend a temporary cease trade order shall be sent to each party and filed at least two business days before the date on which the application 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 Part 12 must be specified in the Notice of Motion.

3.4 Response

- (1) A party sent a Notice of Motion may send one or more affidavits in response to the person making the motion and to each other party at least four days before the date on which the motion is to be heard.
- (2) The party sending an affidavit in response will file it within the time period set out in subsection (1).

3.5 Reply

- (1) A party sent an affidavit in response to a motion may send an affidavit in reply to the person making the response and to each other party at least two days before the date on which the motion is to be heard.
- (2) The party sending an affidavit in reply will file it within the period set out in subsection (1).

3.6 Memorandum of Fact and Law

(1) A person making a motion may send a memorandum of fact and law to each party and file it at least two days before the date on which the motion is to be heard.

(2) A party sent a Notice of Motion and affidavit may send a memorandum of fact and law to each party and file it at least one day before the date on which the motion is to be heard.

3.7 Affidavits

(1) Subject to subsection (2), evidence on a motion can be presented by affidavit. A form of Affidavit may be found at Appendix A.1.

(2) Where a party files an affidavit in support of a motion, the party will make the affiant reasonably available for cross-examination by any other party.

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

- (a) oral testimony in relation to an issue raised in a Notice of Motion; and
- (b) cross-examination of an affiant.

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 the sending of a Notice of Motion impractical or unnecessary; or
- (b) the delay necessary to send the documents relating to the motion 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 this Policy or directed by the Registrar, the Panel may dispose of the motion as it considers appropriate.

3.10 Withdrawal of Motion

A person that has filed a motion under this Part may withdraw the motion at any time before a determination of the motion by a Panel.

PART 4 – DISCLOSURE

4.1 Interpretation

(1) In this Part, “document” includes a sound recording, videotape, 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 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 Policy within the time limits and on any conditions that the Panel may specify.

4.3 Disclosure of Documents or Things related to Statements of Allegations

(1) Each party to a proceeding will send notice to every other party that copies of all documents that the party intends to produce or enter as evidence at the hearing are available, as soon as is reasonably practicable after the Statement of Allegations is sent, and in any case, at least 20 days before the appearance date for the scheduling of the hearing on the merits. Upon receipt of confirmation from the other party or parties to a proceeding of the location and manner of preferred delivery for disclosure, the party making the disclosure available shall promptly deliver copies of all documents referred to above to the other party or parties.

(2) In the case of an application under section 134 of the Act, Staff will make available to every other party copies of all other documents and things that are in the possession or control of Staff that are relevant to the hearing. Staff will do so as soon as is reasonably practicable after the Statement of Allegations is sent, and in any case at least 20 days before the First Appearance Call for the scheduling of the hearing on the merits. Upon receipt of confirmation from the other party or parties to a proceeding of the location and manner of preferred delivery for disclosure, and receipt of an undertaking in writing from the receiving party confirming that they will only use the information for preparing their defence and not for any other reason, Staff shall promptly deliver copies of all documents referred to above to the other party or parties.

(3) A party who does not disclose a document or thing in compliance with this section 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 Related to Allegations Between Respondent Parties

If the good character, propriety of conduct, or competence of a party is an issue between respondents in a proceeding, the party intending to raise the issue will, promptly after the Statement of Allegations is sent and in any case at least 20 days before the First Appearance conference call, provide particulars of the allegations and make available to all other parties copies of all documents and things relevant to the allegations in the possession or control of the party intending to raise the issue. The party seeking to introduce those documents and things shall promptly deliver copies of all documents referred to above to the other parties upon confirmation from the other parties of the location and manner of preferred delivery for disclosure.

4.5 Witness Lists and Summaries

(1) A party to a proceeding will send every other party and file with the Registrar 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) If material matters to which a witness is to testify have not otherwise been disclosed, a party to a proceeding will 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) A witness summary will 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) 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 subsections (1), (2), and (3), may not call that person as a witness without leave of the Panel, which may be on any conditions that the Panel considers just.

(5) 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) A Panel must qualify an expert witness before the witness provides expert testimony at a hearing either orally or through a written report or affidavit.

(2) A party who intends to request that a Panel qualify a witness to give evidence as an expert witness at a hearing will:

(a) inform the other parties of the intent to seek to qualify the witness as an expert witness and state the issue on which the expert will be giving evidence at least 90 days before the

commencement of the hearing; and either

(i) send the expert's report to each other party at least 60 days before the commencement of the hearing; or

(ii) if granted leave by a Panel, send an affidavit of the expert witness to each other party at least 60 days before the commencement of the hearing.

(3) A party to whom an expert's affidavit or expert's report referred to in subsection (2) has been sent and who wishes to respond with expert evidence to a matter set out in the affidavit or report, will send an expert's affidavit or expert's report in response to each other party at least 30 days before the commencement of the hearing.

(4) A party to whom a responding expert's affidavit or responding expert's report has been sent and who wishes to reply with expert evidence to a matter set out in that affidavit or report, will send an expert's affidavit or expert's report in reply to each other party at least 15 days before the commencement of the hearing.

(5) An affidavit or report referred to in subsections (2), (3) and (4) will include:

(a) the name, address and qualifications of the expert;

(b) the scope of the expert's expertise;

(c) the substance of the expert's evidence; and

(d) a list of any documents that the expert will refer to.

(6) A party who fails to comply with subsection (2) 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) A party who fails to comply with subsections (2), (3) and (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) On a request by a party, the Panel Chair (if the request is made prior to the hearing) or the Panel (if the request is made during the hearing) will consider requests to issue a summons to a witness pursuant to subsection 9(4) of the Act.

(2) Once a summons is served on a witness, it is effective for the duration of the hearing provided that the witness is advised of any adjourned dates.

PART 5 – ADMISSION OF ALLEGATIONS

5.1 Requirement to admit or deny allegations

(1) Subsections 9(3.1) and (3.2) of the Act require every person who is the subject of a hearing or review and is named in a Notice of Hearing to file, a least five business days before the date set for the hearing or review, a written response admitting or denying each of allegations against him, her or it.

(2) A written response referred to in subsection (1) should be sent to all parties and filed with the Registrar.

PART 6 – PUBLIC ACCESS TO DOCUMENTS

(See also subsection 9(13) of the Act.)

6.1 Public Documents

Subject to section 6.2, all documents required to be filed or received in evidence in proceedings will be available to the public.

6.2. Application for Confidentiality

(1) On application by any party or person, the Panel may order that any document filed with the Registrar or any document received in evidence or transcript of the proceeding be kept confidential.

(2) A party or person who makes an application pursuant to subsection (1) will advise the Panel of the reasons for the application.

(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, in full or in part, and make such other orders as it deems appropriate.

PART 7 – PRE-HEARING CONFERENCES

7.1 Directing and Requesting a Pre-Hearing Conference

(1) A Panel may direct the parties in the proceeding to participate in a pre-hearing conference at any stage of the proceeding.

(2) A party may request a pre-hearing conference by filing a request in the form of Appendix B.

7.2 Panel Not to Preside

The Panel designated to hear an application to which this Policy applies will not preside at any pre-hearing conference in connection with that matter unless the issues to be discussed at the pre-hearing conference are restricted to purely administrative case management type issues. In cases where other issues are to be discussed a new Panel will be appointed for the purposes of the pre-hearing conference only.

7.3 Notice of Pre-Hearing Conference

(1) The Registrar will give notice of a pre-hearing conference to the parties and to any other persons the Panel directs.

(2) The notice will include:

- (a) the date, time, place and general 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 section 7.4 and, if so, the issues to be addressed and the date or dates on or before which the documents or pre-hearing submissions will 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 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.

7.4 Filing and Exchange of Documents for a Pre-Hearing Conference

(1) Each party will send and provide to the Registrar a pre-hearing conference form as set out in Appendix B of this Policy at least five days before the date set for pre-hearing conference.

(2) At least three days before the date set for the pre-hearing conference, each party will:

- (a) provide to each of the other parties all documents intended to be used at the pre-hearing conference that may be of assistance; and
- (b) provide the documents to the Registrar so that they are available to the Panel at the pre-hearing conference.

7.5 Issues at a Pre-Hearing Conference

At a pre-hearing conference, a Panel may:

- (a) create a timetable for the scheduling of the hearing;
- (b) amend an existing timetable;
- (c) schedule any preliminary motions;

- (d) give consideration to the simplification or clarification of issues in the proceeding;
- (e) on consent of all of the parties, make an order resolving any matter, including matters relating to:
 - (i) facts or evidence agreed upon;
 - (ii) order the disclosure of documents; and
 - (iii) the resolution of any or all of the issues in the proceeding.
- (f) do any other thing that the Panel considers appropriate in the circumstances.

7.6 Oral or Electronic

A pre-hearing conference may be held in person or by teleconference, as the Panel may direct.

7.7 Pre-Hearing Conference is Private

(1) In order to encourage a full and frank exchange of views, a pre-hearing conference will be confidential and conducted in private. Information exchanged will not be available to the Panel hearing the matter.

(2) Any pre-hearing submissions referred to in section 7.4 will not be made available to the public.

7.8 Orders, Agreements, Undertakings

(1) After giving the parties an opportunity to make written or oral submissions, the Panel may make orders permitted by this Policy. These orders will be binding on all parties to the proceeding and become part of the record.

(2) All agreements and undertakings made or given at a pre-hearing conference will be recorded in a memorandum prepared under the direction of the Panel and circulated in draft to the parties or their representatives for corrections, if any, and then signed by the Panel.

(3) Orders, agreements and undertakings made at the pre-hearing conference govern the conduct of the proceeding and are binding upon the parties to the proceeding, unless otherwise ordered by a pre-hearing Panel, and will be available to the Panel hearing the matter on the merits.

Hearings

PART 8 – FAILURE TO PARTICIPATE AT THE HEARING AND WITHDRAWAL

8.1 Failure to Participate

If a Notice of Hearing has been sent to a 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.

(See also subsection 9(15) of the Act.)

8.2 Withdrawal

(1) A person that has filed an application under Part 2, including a Statement of Allegations, or a request for leave to intervene under section 1.7, may withdraw the application or request at any time before a final determination of the application or request by a Panel.

(2) The person referred to in subsection (1) will send a notice of withdrawal to each party and on each intervenor and file the notice with the Registrar.

(3) The proceedings relating to a Statement of Allegations or application under Part 2, or a request for leave to intervene under section 1.7, are considered withdrawn upon the notice of withdrawal with proof of sending being filed with the Registrar.

(4) In the case of a withdrawal of a Statement of Allegations or of an application under Part 2, the Statement of Allegations or the application will be removed from the Website and the notice of withdrawal will be posted on the Website.

8.3 Discontinuance of Intervention

(1) A person granted intervenor status 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 subsection (1) will send a notice of discontinuance to each party and on each intervenor and then file the notice with proof of sending with the Registrar.

PART 9 – PUBLIC ACCESS TO HEARINGS

(See also subsection 9(13) of the Act.)

9.1 Open to the Public Except Under Certain Conditions

(1) Subject to section 9.2, a hearing will be open to the public except, when having regard to the circumstances, the Panel is of the opinion that it would be in the public interest to order otherwise.

(2) Generally, in order for the Panel to find that it would be in the public interest to order the proceedings not be open to the public, the party seeking *in camera* proceedings would need to demonstrate with clear, cogent evidence that:

(a) such an order is necessary in order to prevent serious risk to an important interest because reasonably alternative measures will not prevent the risk; and

(b) the public interest in restricting access to the proceedings outweighs the public interest in open and accessible proceedings.

9.2 In Camera Hearing

If a party wishes to have a hearing held *in camera*, the party will make a request to the Panel before the hearing begins. 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.

9.3 Request to Make a Visual or Audio Recording

(1) Any request to make a visual or audio recording of a hearing must be made in writing to the Registrar at least five 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 subsection (1) will be subject to the direction of the Panel Chair.

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

(a) interviewing persons in the hearing room or in the vicinity of the hearing room at any time;

(b) using television lights, cables, and other equipment which could distract the persons in the hearing room;

(c) using electronic flash for still photography;

(d) moving persons or equipment while the hearing is in session; and

(e) any other behaviour that disrupts or detracts from the process of the hearing.

PART 10 – ADJOURNMENTS

10.1 How and When to Request an Adjournment

- (1) As soon as a party decides to request an adjournment, the party will advise the other parties and the Registrar.
- (2) 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) If the parties do not consent to a request for adjournment, the requesting party will file and send a Notice of Motion to the other parties as soon as possible. The Notice of Motion will 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 or the party's representative will appear before the Panel to request the adjournment orally and should be prepared to proceed if the adjournment is denied and the hearing is scheduled for that day.
- (5) After considering the submissions of the parties, the Panel may grant or deny the adjournment on any terms that it considers appropriate.

10.2 Factors Considered

In deciding whether to grant an adjournment, the Panel will consider all relevant factors, including 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) any prior adjournment requests made and by whom and the reasons for those prior requests;

- (f) the reasons provided to support the adjournment request;
- (g) the cost to the Authority 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.

PART 11 – CONDUCT OF ORAL HEARINGS

11.1 Form of Hearing

Oral hearings will be held in-person unless, at the Panel's sole discretion, it is determined that another form of hearing is appropriate. The Panel may decide to hold all or part of any hearing by electronic means, and the Panel may decide to change the form of hearing at any time, even after the hearing has commenced.

11.2 Interpreters

If a party requires an interpreter for a language other than English, the party must notify the Registrar at least 30 days before the hearing, and the Registrar will arrange for an interpreter at the requesting party's expense.

11.3 Special Needs of Parties or Witnesses

Parties must notify the Registrar at least 30 days before the hearing of any special needs of parties or their witnesses for the hearing.

11.4 Order of Proceedings

The order of proceedings at a hearing is generally as follows:

- (a) opening remarks by the Panel;
- (b) opening statements by the applicant, respondents and intervenors, if any;
- (c) the applicant presents their case:
 - (i) witness called;
 - (ii) examination-in-chief by the applicant;
 - (iii) cross-examination by respondent;
 - (iv) questions from the Panel;

- (v) questions from respondent arising from Panel's questions;
 - (vi) re-examination by applicant relating to cross-examination or panel questions;
 - (vii) repeat with other witnesses for the applicant;
- (d) respondent presents their case:
- (i) witness called;
 - (ii) examination-in-chief by respondent;
 - (iii) cross-examination by applicant;
 - (iv) questions from the Panel;
 - (v) questions by applicant arising from Panel's questions;
 - (vi) re-examination by respondent relating to cross-examination or panel questions;
 - (vii) repeat with other witnesses for the respondent;
- (e) final argument first by the applicant and then by the respondent;
- (f) closing remarks by the Panel.

11.5 Affirmation of a Witness

Oral examination of witnesses will be conducted under affirmation or oath that their evidence will be true.

11.6 Transcripts of Proceedings

Official recordings of proceedings are to be taken by a court reporting services agency retained by the Authority. Parties who wish to obtain a copy of a transcript may do so by ordering it directly from the court reporting services agency at their own expense.

11.7 Final Arguments and Submissions

(1) Except in the case of a written hearing where parties will file final written submissions pursuant to section 12.6, a party may file and send to every other party, a statement of the facts and law relied upon by the party.

(2) Final submissions should include:

- (a) facts or quotations from the oral evidence, referenced to the transcript volume and page number if a transcript is available;
- (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 will not be made public until heard by the Panel.

(4) A party referring to any court decision, legal article, or other authority will provide to the Registrar a copy for each member of the Panel and each party, except for authorities included in the List of Common Authorities. The party shall highlight the relevant portion(s) of the legal authorities provided. When relying on an authority from the List of Common Authorities in a written submission, a party shall identify the case name, citation, applicable paragraph and tab reference from the index to the List of Common Authorities, but need not append the authority to the submission.

(5) Unless agreed to by the parties and ordered by the Panel prior to final argument on the merits, parties should not make submissions as to sanctions or costs in their final argument on the merits (see PART 19, section 19.3).

(6) A party may file a draft order within the time permitted by the Panel, but will do so only if they send a copy to all other parties.

PART 12– WRITTEN HEARINGS

12.1 Application

Nothing in this Part 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.

12.2 Filing

Where this Part requires that documents be filed with the Registrar, one paper copy will be filed, which shall be the official file copy, and four additional copies must be provided. If documents are filed electronically, then the party filing the document must provide five paper copies of same to the Registrar.

12.3 Definition of an Applicant

In this Part, “applicant” means the party who commenced the proceeding or the person who is bringing a motion.

12.4 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) Subject to the Panel’s discretion, written hearings may be held in the following circumstances:

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

12.5 Converting from or to a Written Hearing

(1) A Panel may:

- (a) continue a written hearing as an oral hearing;
- (b) continue a written hearing as an electronic hearing; or
- (c) 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 will notify the parties of its decision and may provide directions as to the conduct of that hearing. Any procedures set down in this Policy for such a hearing will apply.

12.6 Submissions and Supporting Documents

(1) Within 10 days after receiving notice that a hearing will be in writing, the applicant will send to 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 will send to every other party and file.

12.7 Objection to a Written Hearing

(1) A party who objects to a hearing being held as a written hearing will file and send a Notice of Objection setting out the reasons for the objection within five days after receiving notice of the written hearing.

(2) A Notice of Objection will set out:

- (a) the grounds on which the objection is made;
- (b) a statement of the facts and evidence relied on in support of the objection; and

(c) any law relied on in support of the objection.

12.8 Response to an Objection

(1) If a party wishes to respond, the party will do so by sending the written response to every other party and filing it within seven days after the Notice of Objection has been sent to the party.

(2) The response will 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.

12.9 Decision

Upon consideration of the written record, the Panel will render a decision as to whether the matter will be heard at an oral or a written hearing.

PART 13 - FINANCIAL COMPENSATION ORDERS

13.1 Procedure Where Request for Orders under Section 135.6

The procedures set out in this Part apply when a Statement of Allegations by Staff on an application pursuant to section 134 of the Act includes a request for financial compensation orders pursuant to section 135.6 of the Act.

13.2 Determination of the Allegations

(1) The Panel will hold a hearing to either consider and decide upon the allegations set out in the Statement of Allegations or consider a proposed settlement agreement, settling the allegations set out in the Statement of Allegations.

(2) Where the Panel issues a decision that includes a finding, or approves a settlement agreement that includes an admission, that a respondent has contravened Saskatchewan securities laws, the Director may, in his or her sole discretion, request orders for financial compensation on behalf of claimants who have applied for such orders.

13.3 Request by Director for Financial Compensation Orders

(1) If there is a request for financial compensation, Staff will file a Request by the Director that the Panel make orders pursuant to section 135.6 of the Act that a respondent pay financial compensation to claimants for the financial loss caused by the respondent's contravention of Saskatchewan securities laws.

(2) The Request by the Director will include:

(a) the names of each claimant;

(b) the amounts of each claimant's financial loss with documents to show that loss; and

(c) a submission on how the claimant's financial loss was caused by the respondent's contravention of Saskatchewan securities laws.

13.4 Notice of Hearing on the Request

When a Request by the Director has been filed by Staff, the Registrar will issue a Notice of Hearing on the Request forthwith.

13.5 Sending of the Notice of Hearing

Staff will promptly send the Request by the Director and the Notice of Hearing to the parties.

PART 14 – SETTLEMENT AGREEMENTS

14.1 Application to Panel for Approval of a Settlement Agreement

(1) If the parties to a proceeding governed by this Policy propose to enter into a settlement agreement to resolve the matters at issue they will apply to the Panel for approval of the settlement agreement.

(2) An application pursuant to subsection (1) will be filed jointly by the parties to the settlement no later than two days before the hearing.

(3) The application will be accompanied by:

(a) the settlement agreement signed by the settling parties, indicating the parties' consent to the draft order;

(b) a draft order; and

(c) a memorandum of argument as to why it is in the public interest to approve the settlement agreement.

14.2 Notice of Settlement Hearing

The Registrar will issue a Notice of Hearing of an application referred to in subsection 14.1(1) after all of the documents referred to in subsection 14.1(3) have been filed.

14.3 Public Settlement Hearing

(1) The hearing of an application for approval of a settlement agreement is open to the public.

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

14.4 Publication of Approved Settlement Agreement

The order approving the settlement agreement, the settlement agreement, and the Panel's reasons, if any, will be posted on the Website, unless otherwise ordered by the Panel.

PART 15 – SIMULTANEOUS HEARING WITH OTHER SECURITIES ADMINISTRATORS

(See also section 22 of *The Financial and Consumer Affairs Authority of Saskatchewan Act*.)

15.1 Request for Simultaneous Hearing

(1) At the request of a party to a proceeding or on the Authority's own initiative, the Authority may hold a hearing in or outside Saskatchewan in conjunction with any other body empowered by statute to administer or regulate securities or derivatives.

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

(3) When deciding whether to hold a simultaneous hearing, the Authority may take into account any circumstances it considers relevant, including 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 should achieve consistency in their decision-making on the matter.

(4) When deciding where to hold a simultaneous hearing, the Authority 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.

15.2 Payment of Expenses

(1) If a party requests that a simultaneous hearing be held outside Saskatchewan, the Authority may, as a condition of granting the request, require that party to undertake to pay the additional costs incurred by the Authority.

(2) The costs referred to in subsection (1) include travel and related expenses incurred by the Panel and Staff, witness fees, and expenses.

15.3. Electronic Hearing

A hearing under this Part may be an electronic hearing.

PART 16 – REVIEW OF A DECISION OF THE CHAIRPERSON, DIRECTOR, OR RECOGNIZED ENTITY

(See also sections 10 and 21.7 of the Act.)

16.1 Application

In this Part, “decision” means any direction, decision, order, ruling, or other requirement made by the Chairperson, the Director, or a recognized entity.

16.2 Application for a Hearing and Review

(1) An application for a hearing and review of a decision pursuant to section 10 or section 21.7 of the Act will:

- (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 application;
- (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.

16.3 Record

(1) The party requesting a hearing and review of a decision will obtain from the Director or recognized entity a record of the subject proceeding and file it.

(2) The record of the proceeding will include:

- (a) the application or other document by which the proceeding was commenced;
- (b) any Notice of Hearing;
- (c) any interim orders made in the proceeding along with any documents filed in relation to the application for those orders;
- (d) any documentary evidence filed in the 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) subject to section 16.6, a transcript of the oral evidence given at the hearing; and
- (g) a copy of the decision that is the subject of the request for a hearing and review and the reasons therefore, if reasons were given.

(1) Despite subsection 1, any of the documents may be omitted from the record if all parties consent and the Panel agrees.

(4) If no record is available, the parties will advise the Panel.

16.4 Sending and Filing

(1) An application for a hearing and review of a decision will be sent by the applicant to every other party to the original proceeding and then filed.

(2) The party requesting a hearing and review will 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 will perfect the application by complying with section 16.3 and subsections (1) and (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 subsection (3), the Registrar may send a notice to the requester that the request may be dismissed for delay unless it is perfected within 10 days after sending of the notice.

(5) If the party requesting a hearing and review does not cure the default within 10 days after the sending of the notice under subsection (4), or within a longer period allowed by a Panel, a Panel may make an order dismissing the request and send the order to the requester.

(6) A party sent an application for a hearing and review and record may send a record in response to the person making the application and to each other party at least 15 days before the day on which the application is to be heard.

(7) A party sent a record in response to an application for hearing and review may send to the person making the response and to each other party an affidavit in reply, at least five days before the day on which the application is to be heard.

16.5 New Evidence

If a party proposes to introduce new evidence at the hearing and review, that party will, at least 10 days before the hearing and review:

(a) advise every other party as to the substance of the new evidence; and

(b) deliver to every other party copies of all new documents that the party will rely on at the hearing and review.

16.6 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 not required to deal effectively with the hearing and review or for any reason the Panel considers appropriate.

16.7 Setting Down for a Hearing

When the record of the proceeding is perfected in accordance with section 16.4, the Registrar will give notice of the time and place for the hearing and review.

16.8 Statement of Fact and Law in an Oral Hearing

(1) When an oral hearing is to be held, the party requesting a hearing and review will, at least 30 days before the date of the hearing and review, send any memorandum of fact and law being relied upon to every other party and file it.

(2) Each other party to the hearing and review will, at least 15 days before the date of the hearing and review, send a statement of points to be argued and any memorandum of fact and law being relied upon to every other party and then file them.

PART 17 – APPLICATION FOR FURTHER DECISION PURSUANT TO SUBSECTION 11(7) OF THE ACT OR REVOCATION OR VARIATION OF A DECISION PURSUANT TO SUBSECTION 158(3) OF THE ACT

17.1 Application

(1) An application for a further decision pursuant to subsection 11(7) of the Act or an application pursuant to subsection 158(3) of the Act for a revocation or a variation of a decision made by a Panel will:

- (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 will be sent by the applicant to every other party to the original proceeding and filed.

(3) A party who has been sent an application pursuant to subsection (2) may, within 10 days of the sending, send the applicant and each other party a memorandum of fact and law and affidavits and file them with the Registrar.

17.2 New Evidence

If a party proposes to introduce new evidence at the hearing of the application pursuant to section 17.1, the party will, at least 10 days before the hearing:

- (a) advise every other party as to the substance of the new evidence; and
- (b) deliver to every other party copies of all new documents that the party will rely on at the hearing.

17.3 Whether or Not to Hold an Oral Hearing

Upon reviewing the application and any material filed by another party, 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.

17.4 Statement of Fact and Law in an Oral Hearing

(1) If the Panel decides to hold an oral hearing, the party that has made the application pursuant to section 17.1 will at least 10 days before the date of the hearing send to every other party and then file a statement of the points to be argued and any memorandum of fact and law being relied upon by it.

(2) If an oral hearing is to be held, each other party to a hearing will at least five days before the date of the hearing send to every other party and file a statement of the points to be argued and any memorandum of fact and law being relied upon by it.

17.5 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.

PART 18 – APPLICATION PURSUANT TO SECTION 101 OF THE ACT

18.1 Application

(1) An application made pursuant to section 101 of the Act in connection with a take-over bid or an issuer bid by an interested person will be made by sending it to every other party and the Director, and filing it.

(2) An application will be accompanied by a memorandum of fact and law and any affidavits that set out the facts to be relied upon.

18.2 Setting Down for a Hearing

Once all the documents for the application have been filed in accordance with section 18.1, the Registrar will 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.

18.3 Response

A party sent an application may send the applicant and each other party a memorandum of fact and law and affidavits and then file them in accordance with the schedule established by the Registrar.

18.4 Reply

A party sent a memorandum of fact and law and affidavits in response to an application may send to the person making the response and each other party, a memorandum of fact and law and any affidavit in reply, and file them in accordance with the schedule established by the Registrar.

Decisions

PART 19 – DECISIONS

(See also subsection 9(11) of the Act.)

19.1 Issuance of Decisions

- (1) A Panel may reserve its decision or may give its decision orally at the end of the hearing.
- (2) If there is a discrepancy between an oral decision rendered at the hearing and the written decision, the written decision will prevail.

19.2 Sending of Decisions and Reasons

- (1) The Registrar will send a copy of the Panel's written decision to all parties.
- (2) A decision will be published on the Website, unless a Panel orders that it will remain confidential.

19.3 Sanctions and Costs Hearings

- (1) A separate hearing will be held to determine matter of sanctions and costs, unless:
 - (a) the Panel is of the opinion that a separate hearing is not required in order to ensure procedural fairness and it is otherwise in the public interest to hold one hearing; or
 - (b) the parties to a proceeding agree otherwise.
- (2) Following the issuance of the reasons for the decision on the merits, the Registrar will set a date for the sanctions and costs hearing if such a hearing is necessary.
- (3) Staff will file submissions regarding the matters of sanctions and costs at least 10 days before the sanctions hearing, unless the Panel directs otherwise.
- (4) A respondent will file submissions regarding the matters of sanctions and costs at least five

days before the sanctions hearing, unless the Panel directs otherwise.

(5) Staff will file any reply submissions regarding the matters of sanctions and costs at least two days before the sanctions hearing, unless the Panel directs otherwise.

PART 20 – COSTS

20.1 Request for an Award of Costs

A Panel may award costs against a respondent pursuant to section 161 of the Act at the request of Staff after having considered any submissions from the parties.

20.2 Factors Considered When Awarding Costs

In exercising its discretion under section 161 of the Act to award costs against a person, 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 Authority 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 will have been admitted;
or
- (k) any other factors the Panel considers relevant.

Approved by the Commission on March 8, 2012

Amended by the Authority on January 9, 2014

Amended by the Authority on July 13, 2017.

Amended by the Authority on June 13, 2019.

Amended by the Board on May 20, 2021.

Amended by the Board on November 18, 2021.

Amended by the Board on November 17, 2022.

Amended by the Board on May 19, 2023.

“Roger Sobotkiewicz”

Roger Sobotkiewicz, Chairperson

Appendix A – Form for Motions

In the Matter of
The Securities Act, 1988

and

In the Matter of

[Name]

Notice of Motion

To: **[Name]**

TAKE NOTICE that a Panel of Financial and Consumers Affairs Authority of Saskatchewan (the Panel) will hear an Application filed by Staff of the Authority via teleconference on **[Date]** at **[Time]** (CST).

The teleconference number is: 1-866-296-5646

Pass code:

Application:

[Name] will ask the Panel to **[Relief]**.

Grounds:

[Name] brings the application for **[Relief]** on the following grounds:

1. **[Grounds]**

FURTHER TAKE NOTICE that you are entitled to be represented by legal counsel on the return date;

FURTHER TAKE NOTICE that you may call witnesses and submit such evidence relevant to the Application;

FURTHER TAKE NOTICE that the following documents are attached to this Notice of Motion:

1. **[Documents]**
2. ...

AND FURTHER TAKE NOTICE that if you do not attend at the time and place as aforesaid, the hearing of the Application will proceed in your absence and the Panel may make or give any decision or order as though you were present.

DATED at [City, Province] on [Date].

[Name]

[Title]

Note: Saskatchewan Policy Statement 12-602 *Procedure on Hearings and Reviews* (SP 12-602) sets out information on the procedures for this hearing. SP 12-602 can be found on the Authority's website at www.fcaa.gov.sk.ca.

Appendix A.1 – Form for Affidavit

**In the Matter of
*The Securities Act, 1988***

and

In the Matter of

[Name]

Affidavit of [Name]

I, **[Name]**, of **[Place of Residence]**, MAKE OATH/AFFIRMATION AND SAY THAT:

1. I am **[State relationship to the proceedings]**, and such, have personal knowledge of the matters hereinafter deposed to, except where stated to be learned from someone else, and where to stated, I do believe the same to be true.
2. **[State facts]**.

SWORN/AFFIRMED before me at
[City/Town], Saskatchewan this day of
, 20 .

[Name]

A Commissioner of Oaths
for the Province of Saskatchewan.
My Commission Expires:
or Being a Solicitor

Appendix B – Pre-Hearing Conference Form

IN THE MATTER OF *THE SECURITIES ACT, 1988*

and

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

DATE OF PRE-HEARING:

PRE-HEARING CONFERENCE SUBMISSIONS OF:

(insert name of Party)

REPRESENTATIVE:

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. Settlement Discussions

1. Have the parties discussed settlement?

Provide Details:

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

Provide Details:

C. Disclosure (Rule 4)

1. Has Staff made disclosure to the Respondent?

Provide Details:

2. Has the Respondent made disclosure to Staff?

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? (Part 11)

Provide Details:

2. Will you be requesting that the hearing, or any part of the hearing, be conducted in writing? (Part 12)

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:

Witness Name	Estimated Time for Examination –in-Chief	Estimated Time for Cross-Examination (to be completed at pre-hearing)

Dated:

Appendix C – GUIDELINES FOR SELF-REPRESENTED LITIGANTS ON MATTERS BEFORE THE FINANCIAL AND CONSUMER AFFAIRS AUTHORITY OF SASKATCHEWAN

NOTE: This material is for informational purposes only. It is not legal advice. It is intended to give an overview for self-represented litigants on matters before FCAA. Although you may act for yourself if you wish, you are encouraged to speak to a lawyer.

Introduction

There are many persons involved in the FCAA hearing process. These persons include:

- **You (Self-Represented Litigant)**

If you are not represented by a lawyer, or some other person exempted by the Rules of the Law Society, you are considered to be a "self-represented litigant". You have the right to represent yourself. There is no rule that requires you to have a lawyer to represent you.

- **Your Representative**

Your representative can be a lawyer, or another person as permitted by the Rules of the Law Society. Alternatively, you can request that the hearing panel (Panel) allow a person who is not a lawyer to represent you at the hearing.

- **Staff of FCAA**

Staff of FCAA is the party bringing the matter against you. Staff of FCAA is represented by a lawyer.

- **FCAA**

FCAA has a responsibility to enforce a number of laws including those under *The Securities Act, 1988*. One of the purposes of the Act is to provide protection to investors. The FCAA has a duty to ensure that all proceedings are fair and follow the principles of natural justice.

- **The Chairperson of FCAA**

The Chairperson of FCAA (the Chairperson) is appointed by Saskatchewan Lieutenant Governor in Council and reports to Saskatchewan Minister of Justice.

The Chairperson is responsible for appointing members to a Panel.

- **The Panel Chair**

The Chairperson selects a member of the Panel to act as Panel Chair and it is the Panel Chair that usually controls the hearing and writes the decision of the Panel. The Panel Chair and Panel Members (see below) are also responsible for ensuring that the proceedings they are appointed to oversee are conducted in accordance with the Act, the Local Policy, procedural fairness, and the principles of natural justice.

- **The Panel Members**

The Panel members review the evidence that was given at the hearing and together with the Panel Chair, make a final decision.

The Panel Chair and Panel Members are not staff members of FCAA.

- **The Registrar**

The Registrar is a staff member of FCAA. The Registrar's duties are to coordinate the hearing process and provide assistance to a Panel and parties involved in the hearing. This may include:

- Providing self-represented litigants and parties involved in the hearing process with information on hearings and reviews before FCAA
- Helping parties file their documents and other information in accordance with the Act and Local Policy
- Making sure the Panel members have all relevant information needed for the hearing
- Providing communication between the parties and the Panel
- Answering requests by the parties to see exhibits and transcripts
- Making sure the dates and location of the hearing are booked, the parties are told the date and time for the hearing, and that all equipment needed during the hearing is available when needed
- Arranging for a qualified person, typically a trained court reporter, to attend and record the hearing ("Hearing Recorder")
- Making sure the final decision is sent to the parties
- Making sure the Panel's decision is posted to the FCAA website

- **The Hearing Recorder**

By law, all oral evidence must be taken down in writing or recorded by electronic means. The role of the Hearing Recorder is to record hearings where oral evidence is given so that he or she can prepare a transcript of the proceedings if requested by the parties. The

Hearing Recorder marks the exhibits as they are entered into evidence and maintains a list of them.

- **Expert Witnesses**

Panel members may require the services of an expert to assist them in understanding technical information.

- **The Start of the Proceedings**

A proceeding against you is started either when a temporary cease trade order is issued or when staff of FCAA files a Statement of Allegations that sets out the claims against you and sends that Statement of Allegations to you. If a temporary cease trade order (the “TCTO”) is issued against you, the TCTO will be sent to you and filed with the Registrar.

- **Statement of Allegations and Notice of First Appearance**

Once the Statement of Allegations is sent to you, you will receive notice from FCAA staff that disclosure of its evidence is available to you. You will need to provide the FCAA Staff with proof of your address for the purposes of receiving disclosure, and advise how you would like to receive the disclosure (electronic or paper). Once this information is received by the Registrar, FCAA staff will provide you with the disclosure materials. Concurrently, staff will prepare a Notice of First Appearance, which is the notice you will receive that states the date and time of the First Appearance Conference Call.

- **First Appearance Conference Call**

The Notice of First Appearance that you receive will have a date and time listed for a conference call, along with the telephone number and passcode for the call. The date and time will be at least 10 days after the date you are deemed to have received the Notice of First Appearance. The purpose of this first appearance conference call is to schedule a date or dates for the hearing of the matter. You should participate in this first appearance conference call to ensure that the scheduled date(s) for the hearing is/are suitable to you.

If you are unable to participate in the first appearance conference call, you should contact the Registrar, by phone at (306) 787-5646 or by email at registrarfcaa@gov.sk.ca, before the call in order to ask for a new date for the first appearance conference call.

If you do not participate in the first appearance conference call, it may proceed in your absence and a date or dates for the hearing of the matter may be scheduled in your absence.

If, after the date(s) for the hearing is/are scheduled, it becomes known to you that you are unable to attend on the scheduled date(s), you must contact the Registrar as soon as possible to request that the hearing be re-scheduled.

If you do not attend at the hearing, it may proceed in your absence and you may not receive any further notice of the proceedings.

Options during the Proceedings

1. Negotiate a Settlement Agreement;
2. Negotiate an Agreed Statement of Facts; or
3. Attend a Hearing.

1. Negotiating a Settlement Agreement

If you agree with the claim against you and you do not wish to go through with the hearing, you should contact legal counsel for staff of FCAA to discuss settlement. It may be possible for you to enter into a Settlement Agreement. Settlement can occur at any time prior to the date of the hearing. If settlement is reached before the hearing date, the parties still need to present the Settlement Agreement to the Panel for approval. If approved, a settlement has the effect of concluding the matter.

2. Negotiating an Agreed Statement of Facts

If you are in agreement with some of the facts in the Statement of Allegations, it may be possible to admit those facts prior to the hearing.

The facts that you have admitted would be presented to the Panel at the hearing of the matter. This means there will not be any need for staff of FCAA to prove the facts which you have admitted. If you do not admit all the facts in the Statement of Allegations, there will still be a hearing to deal with those portions of the Statement of Allegations that you disagree with and to impose sanctions.

3. Attending a hearing

If you disagree with some or all of the facts in the Statement of Allegations, you can contact the Registrar of FCAA who will provide you with information on hearings such as [Saskatchewan Policy Statement 12-602 – Procedure on Hearings and Reviews Before the Commission \(Local Policy\)](#).

Applications

You may bring an application (sometimes referred to as a motion) to the hearing panel before or during the hearing. An example of an application is an application for adjournment. The panel directs whether the application is to be argued in person or heard by conference call.

The person making the application is called “the applicant” for the purposes of that application. Generally, you will send the application to FCAA staff. However, in exceptional circumstances, you may ask for permission from the Hearing Panel to bring an application without sending it to FCAA staff.

As the applicant, you must:

- Contact the Registrar to set a time and date for the panel to hear the motion,

- File a notice of motion with a sworn statement(s) (affidavit) including documents in support of the application,
- File proof that you have sent the application to FCAA Staff at least seven days before the date when the application is to be heard unless you received permission from the hearing panel not to send the application to FCAA staff,
- Send a summary of your argument in relation to the application to FCAA staff unless you received permission from the hearing panel not to send the application to FCAA staff
- File a summary of your argument in relation to the application with the Registrar at least two days before the day on which the application is to be heard.

The form for a notice of motion and the form of affidavit are at pages 34-38. You can also bring an application by sending a letter to the registrar setting out what you are seeking.

Note that you should send your application to the Registrar not to the hearing panel.

Hearing Procedure

- **Disclosure**

Legal counsel for Staff of FCAA is required to disclose all relevant information in FCAA's possession to you. If you do not receive all relevant information, you should contact legal counsel for Staff of FCAA and make a request for the information. The purpose of disclosing all relevant information to you is to assist you in preparing for your response. There are limitations on what disclosure can be used for. Unless otherwise instructed by the Hearing Panel, you will be required to provide an undertaking in writing confirming that you will only use the information for preparing for your defence, and not for any other reason, prior to receiving the disclosure documents.

In most cases disclosure will be provided to you in PDF format on a USB stick. If you want disclosure in a different format, you should inform legal counsel for Staff of FCAA. If you do not have access to a computer or printer, you can ask legal counsel for staff of FCAA to provide you with disclosure in paper format.

You must deliver to staff of FCAA copies of all documents that you intend to produce or enter as evidence at the hearing as soon as possible and at least 20 days before the day of the hearing. If you do not disclose a document, you may not refer to it at the hearing without permission from the Panel.

- **Documents to be Filed prior to the Hearing**

At least 10 days before the hearing you and legal counsel for Staff of FCAA must provide each other, and file with the Registrar, a list of witnesses that will be called at the hearing.

At least 5 days before the hearing you must send your written response to all parties. You must then file your written response and proof you sent it to all parties with the Registrar.

The written response is a document in which you state whether you admit or deny each of the allegations made in the Statement of Allegations.

Any documents that need to be filed should be filed by personal delivery, mail, facsimile transmission or courier to the offices of FCAA, marked to the attention of the Registrar. You always have to provide a copy to legal counsel for staff of FCAA prior to filing unless the Local Policy or the Panel permits otherwise. Legal counsel for Staff of FCAA must also provide you with any documents he or she intends to file with the Registrar prior to filing, unless an exception is allowed by the Local Policy or the Panel.

- **Legal Research**

If you do not have a lawyer for the hearing, you may need to do your own legal research to learn about the specific law in your case and to develop your argument. Information on securities law may be found online at the following links:

- [Saskatchewan Securities Laws](#)
- [The Financial and Consumer Affairs Authority of Saskatchewan Act](#)
- [The Securities Act, 1988](#)
- [Regulations Under The Securities Act, 1988](#)
- Case law: <https://www.canlii.org/>

It is a good idea to make notes about how you want to present your argument at the hearing, and have copies of any law or evidence you plan to rely on. You may want to speak to a lawyer about how to present and argue your case at the hearing. If you cannot afford the services of a lawyer, Staff of FCAA may point you to publications or articles you may read to get a better sense of how to prepare your case. You should keep in mind that there is a limit to the level of assistance you may receive from Staff of FCAA.

- **Conduct of the Hearing**

Legal counsel for Staff of FCAA goes first and presents his or her evidence by calling witnesses until his or her case is completed. You then follow the same procedure.

Following the testimony of each witness (including your own) the other party has the right to cross-examine the witness on any relevant point within the knowledge of the witness. The Panel may instruct you as to what is relevant, if necessary.

It is important to keep in mind, however, that the purpose of cross-examination is to question the witness and it is NOT the time for making statements or giving evidence of your own. This will come in due course when you are called upon to do so. In preparing for the hearing, you should make a list of points you wish to ask each witness about. You are also entitled to object to questions asked to witnesses or answers provided by witnesses. The Panel reserves the right to allow or disallow your objections.

As soon as both sides have finished questioning the witnesses, all parties, starting with legal counsel for Staff of FCAA, sum up their position. This is called “closing argument” and is based upon the evidence presented to the Panel and any appropriate legal point you wish the Panel to consider. Again, it may be useful for you to make a list of points you wish to cover in your closing argument.

The Panel may ask questions to you or your witnesses in the course of the hearing and you should do your best to answer them without making any assumptions or speculations. If you do not understand a question from the Panel, it is okay to ask for clarification. If you do not know the answer, it is okay to state as such to the Panel.

Upon conclusion of the hearing, the Panel may direct you and legal counsel for Staff of FCAA to provide a written summary of your arguments. Unless otherwise specified, if a brief of law is requested from any party, it is to be filed within one week of the conclusion of the hearing.

- **Form of hearing**

Except in exceptional circumstances, hearings are conducted in person.

- **Evidence**

A case can only be proved or disproved by the use of evidence. Evidence can take the form of testimony from you, as well as from other witnesses. You may also provide pictures, diagrams, and so forth, all used to support your case. It is a good idea to gather and prepare your evidence well in advance of the hearing date.

All evidence should be given by a witness personally from his or her own observations or involvement. While hearsay evidence (evidence about what someone else said, or documents prepared by someone else) may be admitted by the Panel there is also a chance it may not be, and therefore it should be avoided if possible. You should note that hearsay evidence is sometimes not given the same weight as evidence provided by a witness who had personal knowledge.

On occasion, a party may wish to use an expert witness to give an opinion. This may be permitted upon application. If the Panel accepts that the expert is qualified to give such expert opinion evidence, and if the appropriate steps have been taken to give notice to the other party of the expert’s testimony, the Panel may permit the testimony. An example may be an accountant who is called to testify as to the proper methods to be used in creating various financial documents.

You should arrange to have your witness at the hearing venue on time on the hearing date. To ensure attendance of a witness at the hearing, you can serve a subpoena on the witness. To obtain a subpoena, you must contact the Registrar and provide the requested information.

In some circumstances, the Panel may permit a witness to be heard by telephone. If you wish to have a witness appear by telephone you should submit an application to the Registrar ahead of time to request approval from the Panel to do so. You should send a

copy of such application to legal counsel for Staff of FCAA so he or she may respond to it.

Your witnesses cannot sit in on the hearing before they testify.

- **Burden of Proof**

In matters before a Panel, legal counsel for Staff of FCAA bears the burden of proving the allegations on a balance of probabilities, meaning they must prove that it is more likely than not that the actions alleged occurred. Determining proof involves the Panel weighing and considering the evidence from both sides, like a balancing scale. If the scale weighs at least 51% in favour of the staff of FCAA's case, then it has proved its case. If it is 50-50, staff of FCAA has not proved its case.

It is important to remember that it is not the number of witnesses that gives weight to the outcome, but what the witness says, and whether the witness is believable or credible. It may be that more than one witness confirming a point will add weight or credibility to that point; however, the quality of the case is not necessarily weakened by fewer witnesses.

- **Testifying at the Hearing**

Prior to testifying at a hearing, the witness (including yourself if you choose to testify) must swear an oath or affirm that he or she will tell the truth. It is a criminal offence to give false evidence once you have been sworn or affirmed.

If you are testifying, it may be a good idea for you to prepare a point form summary which you may use to refresh your memory.

If you have documents (such as financial documents or other forms) to support your defence, they should be presented in the course of testimony. For each exhibit, you should bring the original if possible, as well as copies for legal counsel for staff of FCAA and the Panel (so, the original plus four copies). If you are uncertain about process at the hearing, you should not be afraid to ask the Panel a question.

All exhibits entered into evidence are kept by the Panel until the appeal period has passed. If no appeal is taken from the Panel's decision, the exhibits can be returned by an order of the Panel upon application/request by the party asking that the exhibits be returned.

- **General Information**

Be on time for the hearing and be ready to proceed. If you are late, the hearing may proceed in your absence, and an Order may be made.

Just as the Panel and legal counsel for staff of FCAA should be polite and courteous to you, you should be polite and courteous to the Panel and legal counsel for staff of FCAA.

At the conclusion of the case, the Panel may decide immediately, or alternatively, may "reserve" its decision. In any event, you will always receive a written decision in the

mail or email, usually within a reasonable time upon conclusion of the hearing. Ensure to provide the Registrar with your current contact information.

If you are directly affected by a decision of a Panel and the Court of Appeal gives you permission, called leave, you can appeal the Panel's decision to that Court on questions of law only. Before you can file your actual appeal, you must first apply for leave to appeal within 15 days of the decision **unless** the Court of Appeal extends this time period for you. In preparing your case, you must comply with the Court's [formal requirements](#). See also some helpful [videos](#) from the Court for self-represented litigants.

If you have any questions regarding these Guidelines, or other questions regarding FCAA hearing procedures, you should contact the Registrar by phone at (306) 787-5646 or by email at registrarfcaa@gov.sk.ca. Please note that the Registrar cannot provide legal advice and there is a limit to the type of administrative assistance the Registrar can provide.