

## **10.8 Practice and Procedure**

The practice and procedure governing hearings pursuant to this Part shall be made by a Policy.

### **POLICY 10.8 - PRACTICE AND PROCEDURE**

#### **Part 1 - General Procedure and Practice**

##### **1.1 Definitions**

*In this Policy, unless the subject matter or context otherwise requires:*

**“applicant”** means the party who instituted the proceedings for a written hearing.

**“document”** - repealed

**“electronic hearing”** means a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another.

**“oral hearing”** means a hearing at which the parties or their counsel or agents attend before the Hearing Panel in person.

**“party”** includes the staff of the Market Regulator.

**“Secretary”** means the Secretary of the Market Regulator or other officer, employee or agent of the Market Regulator designated in writing from time to time by the Secretary to perform the functions of the Secretary for the purposes of this Policy as may be specified in the designation by the Secretary.

**“written hearing”** means a hearing held by means of the exchange of documents, whether in written form or by electronic means.

##### **1.2 Procedural Power of Hearing Panel**

(1) A Hearing Panel may:

- (a) exercise any power under this Policy on its own initiative or at the request of a party;
- (b) issue general or specific procedural directions at any time before or during a hearing; and
- (c) waive any procedural requirement with the consent of the parties.

(2) A Hearing Panel may hear such evidence relating to a matter that the Hearing Panel deems relevant and the Hearing Panel is not bound by the legal or technical rules of evidence.

- (3) *If any provision of this Policy is inconsistent with any applicable statutory requirement, the Hearing Panel shall order such change in the practice and procedure as to comply with the applicable statutory requirement.*

### **1.3 Irregularity in Form**

*No determination, document, hearing, order or interim order is invalid by reason only of a defect or other irregularity in form.*

### **1.4 Language of Proceedings**

- (1) *If, in accordance with any applicable statutory requirement, a person would have a right to a hearing conducted in the French language then, upon the request of such person in writing to the Secretary or in such other manner as provided by law, all documents prepared by or on behalf of the Market Regulator and served or delivered on such person shall be in French and any hearing or other proceeding shall be conducted in French.*

- (2) *Despite subsection (1), any document to be disclosed in accordance with section 8.1(1) of this Policy shall be provided in the language that the document was originally written.*

### **1.5 Service and Filing**

- (1) **Service** - *A document required under this Policy to be served must be served by one of the following methods:*
- (a) *personal service on an individual, by leaving a copy of the document with the individual;*
  - (b) *personal service on any corporation, by leaving a copy of the document with an officer or director of the corporation, or with an individual at any place of business of the corporation who appears to be in control or management of the place of business;*
  - (c) *service by sending a copy of the document by mail, courier or telephone transmission to the last known address or fax number of the party to be served;*
  - (d) *service on a party who is represented by a solicitor or an agent by,*
    - (i) *acceptance of a copy of the document on behalf of the solicitor or the agent,*
    - (ii) *sending a copy of the document by mail, courier or telephone transmission to the officer of the solicitor or agent, or*



- (6) *Extension or Abridgment of Time - Any time period prescribed by this Policy may be extended or abridged as follows:*
- (a) *upon order of the Hearing Panel or after expiration of a prescribed time period on such terms as the Hearing Panel considers appropriate; or*
  - (b) *on consent of the parties before the expiration of a prescribed time period.*

## **Part 2 – Statement of Allegations**

### **2.1 Provision of Statement of Allegations**

*If the Market Regulator is of the opinion that a person described in subsection (1) of Rule 10.2 has contravened a Requirement or a person is liable for the contravention of a Requirement in accordance with Rule 10.3, the Market Regulator may serve a Statement of Allegations on such person.*

### **2.2 Contents of Statement of Allegations**

*A Statement of Allegations must contain:*

- (a) *a reference to the Requirement that the Market Regulator is of the opinion has been contravened;*
- (b) *the facts alleged and intended to be relied upon by the Market Regulator; and*
- (c) *the conclusions drawn by the Market Regulator based on the alleged facts.*

## **Part 3 - Offers of Settlement and Settlement Agreements**

### **3.1 Provision of Offer of Settlement**

*If the Market Regulator has served a Statement of Allegations on any person, the Market Regulator may serve an Offer of Settlement on such person concurrent with or at any time after the serving of the Statement of Allegations.*

### **3.2 Contents of Offer of Settlement**

*An Offer of Settlement must:*

- (a) *be in writing;*
- (b) *be signed by the President of the Market Regulator or such other officer of the Market Regulator as is authorized to make an Offer of Settlement;*
- (c) *specify, that if the Offer of Settlement is accepted, the date on or before which the Settlement Agreement must be served on the Market Regulator provided that the date shall not be earlier than 20 days after the Offer of Settlement has been served;*

- (d) *contain a reference to the Statement of Allegations intended to be relied upon by the Market Regulator;*
- (e) *specify the penalties or remedies to be imposed by the Market Regulator pursuant to Rule 10.5 and the assessment of any expenses to be made pursuant to Rule 10.7; and*
- (f) *contain a statement that if the Offer of Settlement is accepted by the person on whom it is served:*
  - (i) *the resulting Settlement Agreement is conditional upon the approval of the Hearing Panel, and*
  - (ii) *the person shall waive all rights under UMIR and the other Requirements to a hearing or to an appeal or review if the Settlement Agreement is approved by the Hearing Panel.*

### **3.3 Acceptance of Offer of Settlement**

*An Offer of Settlement may be accepted by a person upon whom it has been served by that person or such other individual authorized to sign on behalf of that person:*

- (a) *executing the Offer of Settlement; and*
- (b) *serving the executed document on the Market Regulator on or before the date specified in the Offer of Settlement.*

### **3.4 Submission of Settlement Agreement for Approval**

*A Settlement Agreement shall be submitted to a Hearing Panel within 20 days following the acceptance of the Offer of Settlement and the Hearing Panel may:*

- (a) *approve the Settlement Agreement; or*
- (b) *reject the Settlement Agreement.*

### **3.5 Without Prejudice Negotiations**

*All negotiations of an Offer of Settlement or a Settlement Agreement are without prejudice to the Market Regulator and all other persons involved in the negotiations and the negotiations may not be used as evidence or referred to in any proceedings.*

### **3.6 Approval of Settlement Agreement**

*If the Settlement Agreement is approved by the Hearing Panel:*

- (a) *the Hearing Panel shall issue an order in accordance with the terms of the Settlement Agreement;*

- (b) *the matter becomes final and no party to the Settlement Agreement may appeal or seek a review of the matter;*
- (c) *the disposition of the matter shall be included in the permanent record of the Market Regulator in respect of the person that accepted the Offer of Settlement;*
- (d) *the Market Regulator shall publish a summary of:*
  - (i) *the Requirement contravened,*
  - (ii) *the facts, and*
  - (iii) *the disposition of the matter, including any penalty or remedy imposed and any expenses assessed,**and such summary shall specify that any person may obtain or inspect a copy of the Settlement Agreement in the form approved by the Hearing Panel; and*
- (e) *the Market Regulator shall publish the Settlement Agreement in the form approved by the Hearing Panel and this obligation may be satisfied by the posting of the Settlement Agreement to any website maintained by the Market Regulator.*

### **3.7 Rejection of Settlement Agreement**

*If the Settlement Agreement is rejected by the Hearing Panel, the Market Regulator may proceed with a hearing of the matter and any member of the Hearing Panel that reviewed the Settlement Agreement must not participate further in any way in the matter.*

## **Part 4 – Notice of Hearing**

### **4.1 Provision of Notice of Hearing**

*If the Market Regulator has served a Statement of Allegations on any person, the Market Regulator may serve a Notice of Hearing on such person concurrent with or at any time after the serving of the Statement of Allegations provided that a Notice of Hearing may not be issued:*

- (a) *if the Market Regulator has served an Offer of Settlement, until after the date specified in the Offer of Settlement by which the Offer of Settlement may be accepted; and*
- (b) *if an Offer of Settlement has been accepted, until the Settlement Agreement has been rejected by a Hearing Panel.*

## **4.2 Contents of Notice of Hearing**

*A Notice of Hearing must contain:*

- (a) details about the manner in which the hearing will be held including, if applicable to the form of hearing, the date, time and place of the hearing;*
- (b) a reference to the statutory or other authority under which the hearing will be held;*
- (c) a statement as to the purpose of the hearing;*
- (d) a reference to the Statement of Allegations intended to be relied upon by the Market Regulator;*
- (e) if the Notice of Hearing specifies that the hearing is to be an electronic or a written hearing, a statement that the party notified may object to holding the hearing as an electronic or a written hearing and the procedure to be followed for that purpose;*
- (f) a statement respecting the effect of section 9.4 of this Policy; and*
- (g) any other information the Market Regulator or the Hearing Panel considers advisable.*

## **4.3 Date of Hearing**

- (1) Unless the party on whom the Notice of Hearing is served has consented in writing, the date of the initial hearing specified in the Notice of Hearing shall not be earlier than 45 days after the date the Notice of Hearing has been served.*
- (2) For greater certainty, any hearing of a matter after the date of the initial hearing specified in the Notice of Hearing shall be as directed or ordered by the Hearing Panel.*

## **Part 5 – Form of Hearing**

### **5.1 Factors in Determining to Hold Oral, Electronic or Written Hearing**

*In deciding whether to hold an oral hearing, written hearing or electronic hearing, the Hearing Panel shall take into account any relevant factors, which may include:*

- (a) the suitability of the hearing format considering the subject matter of the hearing, including the extent to which matters are in dispute;*
- (b) whether the nature of the evidence is appropriate for the hearing format, including whether credibility is an issue and the extent to which the facts are in dispute;*
- (c) the extent to which the matters in dispute are questions of law;*

- (d) *the convenience of the parties;*
- (e) *the cost, efficiency and timeliness of the proceedings;*
- (f) *avoidance of unnecessary length or delay;*
- (g) *ensuring a fair and understandable process;*
- (h) *the desirability or necessity of public participation or public access to the Hearing Panel's process; and*
- (i) *any other consideration which may be taken into account in accordance with applicable legislation.*

## **5.2 Notice of Objection**

- (1) *A party who objects to a hearing being held as an electronic or as a written hearing shall file and serve on all other parties a Notice of Objection within 5 days after receiving the Notice of Hearing.*
- (2) *Despite subsection (1), a party may not object to the Hearing Panel conducting an electronic hearing to deal with procedural matters.*

## **5.3 Contents of Notice of Objection**

*A Notice of Objection shall be in writing and shall:*

- (a) *state whether the holding of an electronic or written hearing is likely to cause the party significant prejudice;*
- (b) *set out reasons for the objection; and*
- (c) *state all facts upon which the party relies and provide the evidence on which the party relies in relation to the objection.*

## **5.4 Procedure When Objection Made**

*If the Hearing Panel receives a Notice of Objection, the Hearing Panel shall:*

- (a) *accept the objection, cancel the form of hearing and either schedule an oral hearing or, with consent of the parties, schedule a written hearing or an electronic hearing as the case may be;*
- (b) *if permitted by applicable law, reject the objection provided the Hearing Panel is satisfied that there will not be significant prejudice to the objecting party, inform every other party that they are not required to respond to the Notice of Objection and proceed with the form of hearing specified in the Notice of Hearing; or*
- (c) *notify all other parties that they may respond to the Notice of Objection by serving on every other party and filing a written response in such form and within such time as is directed by the Hearing Panel and, after considering*

*the objection and all responses, proceed with the form of hearing specified in the Notice of Hearing, schedule an oral hearing, or, with consent of the parties, schedule a written hearing or an electronic hearing as the case may be.*

## **5.5 Converting Type of Hearing**

- (1) *Subject to any applicable statutory requirements, the Hearing Panel may continue:*
  - (a) *a written or electronic hearing as an oral hearing;*
  - (b) *an oral or written hearing as an electronic hearing; or*
  - (c) *an oral or electronic hearing as a written hearing, unless a party objects.*
- (2) *If the Hearing Panel decides to convert the type of hearing that was specified in the Notice of Hearing, the Hearing Panel shall notify the parties of its decision and may supply directions as to the holding of that hearing and any procedures for such hearing.*

## **Part 6 - Motions**

### **6.1 Notice of Motion**

*Where a party intends to bring a motion before the Hearing Panel at a hearing, written notice shall be served on all other parties and filed with the Hearing Panel at least 5 days before the day the motion is to be heard.*

### **6.2 Contents of Notice of Motion**

*The Notice of Motion must contain the relief sought, the grounds for the motion and the evidence to be relied upon.*

### **6.3 Hearing Date for Notice of Motion**

*Except when a motion is to be heard on a scheduled hearing date or is to be argued in writing, the party bringing the motion shall, before serving the Notice of Motion, file a copy of the Notice of Motion with the Secretary and obtain a date for the Hearing Panel to hear the motion.*

## **Part 7 - Pre-Hearing Conferences**

### **7.1 Order for a Pre-Hearing Conference**

*At any time prior to a hearing, the Hearing Panel on its own initiative, or at the request of one or more of the parties, may order the parties to attend a pre-hearing conference.*

## **7.2 Composition of the Hearing Panel at the Pre-Hearing Conference**

- (1) *A pre-hearing conference shall be held before the chairman of the Hearing Panel and any other member of the Hearing Panel who may be required to assist the chairman.*
- (2) *The members of the Hearing Panel presiding at the pre-hearing conference shall not preside at the hearing of the proceeding unless all parties consent in writing or on the record;*

## **7.3 Issues to be Considered**

*At a pre-hearing conference the Hearing Panel may consider any appropriate issue, including:*

- (a) *the settlement of any or all of the issues;*
- (b) *the identification and simplification of the issues;*
- (c) *the disclosure of documents;*
- (d) *facts or evidence that may be agreed upon;*
- (e) *evidence to be admitted on consent;*
- (f) *the identification of any preliminary objections;*
- (g) *procedural issues including the dates by which any steps in the hearing are to be taken or begun, the estimated duration of the hearing, and the date that the hearing will begin; and*
- (h) *any other issue that may assist in the just and most expeditious disposition of the hearing.*

## **7.4 Notice of Pre-Hearing Conference**

- (1) **Notice to Parties and Others** - *The Secretary shall give notice of any pre-hearing conference to the parties and to such other persons as the Hearing Panel directs.*
- (2) **Contents of Notice** - *The notice of any pre-hearing conference must include:*
  - (a) *the date, time, place and purpose of the pre-hearing conference;*
  - (b) *whether parties are required to exchange or file documents or pre-hearing submissions in accordance with section 7.5 of this Policy and, if so, the issues to be addressed and the date by which the documents or pre-hearing submissions must be exchanged and filed;*

- (c) *whether parties are required to attend in person, and
  - (i) *if so, that they may be represented by counsel or agent, or*
  - (ii) *if not, that their counsel or agent must be given authority to make agreements and undertakings on their behalf respecting the matters to be addressed at the pre-hearing conference;**
- (d) *a statement that if a party does not attend in person or by counsel or an agent at the pre-hearing conference, the Hearing Panel may proceed in the absence of that party; and*
- (e) *a statement that the Hearing Panel presiding at the pre-hearing conference may make orders with respect to the conduct of the proceeding which will be binding on all parties.*

### **7.5 Exchange of Documents**

*The Hearing Panel designated to preside at the pre-hearing conference may:*

- (a) *order the parties to exchange or file by a specified date documents or pre-hearing submissions; and*
- (b) *set the issues to be addressed in the pre-hearing submissions and at the pre-hearing conference.*

### **7.6 Oral, Written or Electronic**

*A pre-hearing conference may be held in person, in writing or electronically as the Hearing Panel may direct.*

### **7.7 Inaccessible to the Public**

- (1) **Pre-Hearing Conference** - *A pre-hearing conference shall be held in the absence of the public unless the Hearing Panel directs that it be open to the public.*
- (2) **Documents and Submissions** - *Any pre-hearing documents or pre-hearing submissions ordered under section 7.5 of this Policy shall not be disclosed to the public.*

### **7.8 Settlement of Issues**

*If the settlement of any issues is discussed at a pre-hearing conference:*

- (a) *statements made without prejudice at a pre-hearing conference may not be communicated to the Hearing Panel;*

- (b) *an agreement to settle any or all of the issues binds the parties to the agreement but is subject to approval by such other panel of the Hearing Panel as is assigned to consider the settlement; and*
- (c) *all agreements, orders and decisions which dispose of a proceeding as it affects any party shall be made available to the public unless the Hearing Panel directs otherwise.*

## **7.9 Orders, Agreements, Undertakings**

- (1) **Preparation of Memorandum** - *Any orders, agreements and undertakings made at a pre-hearing conference shall be recorded in a memorandum prepared by or under the direction of the members of the Hearing Panel presiding at the pre-hearing conference.*
- (2) **Provision of Copies** - *Copies of this memorandum shall be provided to the parties and to the members of the Hearing Panel presiding at the hearing of the matter and to such other persons as the members of the Hearing Panel presiding at the pre-hearing conference direct.*
- (3) **Binding Effect** - *Any orders, agreements and undertakings in the memorandum shall govern the conduct of the hearing and are binding upon the parties at the hearing unless otherwise ordered by the Hearing Panel.*

## **7.10 No Communication to Hearing Panel**

*Other than any orders, agreements and undertakings recorded in a memorandum prepared in accordance with section 7.9 of this Policy, no information about the pre-hearing conference shall be disclosed to the members of the Hearing Panel who preside at the hearing unless all parties consent in writing or on the record.*

## **Part 8 - Disclosure**

### **8.1 Procedure for Compliance with Disclosure Obligations**

- (1) **Documents and Other Things** - *Each party to a hearing shall, as soon as practicable after service of the Notice of Hearing, and in any case no later than 10 days before the day upon which the hearing is scheduled to commence:*
  - (a) *deliver to every other party copies of all documents that the party intends to refer to or tender as evidence at the hearing; and*
  - (b) *make available for inspection by every other party any other things that the party intends to refer to or tender as evidence at the hearing but*

*not including any document a copy of which was delivered to every other party in accordance with clause (a).*

- (2) **By Order of Hearing Panel** - *At any stage in a hearing, the Hearing Panel may order a party to provide to another party any other disclosure that the Hearing Panel considers appropriate within a time period and on terms and conditions as specified by the Hearing Panel.*
- (3) **Disclosure Obligation** – *Nothing in this section shall affect the obligation of the Market Regulator or any other party to disclose any document or other thing that may be required under common law or other applicable law.*

## **8.2 Failure to Make Disclosure**

*If a party fails to make a disclosure of a document or thing in compliance with section 8.1 of this Policy, the party may not refer to the document or thing or tender it as evidence at the hearing without the consent of the Hearing Panel on such terms and conditions as the Hearing Panel considers just.*

## **8.3 Witness Lists and Statements**

- (1) **Provision of Witness Lists and Statements** – *Subject to section 8.4 of this Policy, a party to a hearing shall, as soon as practicable after service of the Notice of Hearing, and in any case no later than 10 days before the day upon which the hearing is scheduled to commence, provide to every other party:*
  - (a) *a list of the witnesses the party intends to call to give evidence at the hearing; and*
  - (b) *in respect of each witness named on the list, either:*
    - (i) *a witness statement signed by the witness, or*
    - (ii) *a summary of the anticipated evidence that the witness is expected to give at the hearing.*
- (2) **Contents of Witness Statements** - *A witness statement or summary of the anticipated evidence that the witness is expected to give at the hearing must contain:*
  - (a) *the substance of the evidence of the witness;*
  - (b) *a reference to all documents, if any, that the witness will refer to; and*
  - (c) *the name and address of the witness, or in the alternative, the name of a person through whom the witness can be contacted.*

(3) **Failure to Provide Witness List or Statement**

*If a party fails to include a witness in the witness list or provide a witness list or a witness statement or a summary of the anticipated evidence as required by subsection (1), the party may not call the witness at the hearing without the consent of the Hearing Panel on such terms and conditions as the Hearing Panel considers just.*

(4) **Incomplete Witness Statement**

*A party may not call a witness to testify to matters not disclosed in the witness statement or summary of the anticipated evidence as required by subsection (2), without the consent of the Hearing Panel on such terms and conditions as the Hearing Panel considers just.*

#### **8.4 Expert Witness**

(1) **Notice of Intent to Call Expert** - *A party that intends to call an expert witness at the hearing shall, at least 30 days before the day upon which the hearing is scheduled to commence, inform the other parties of the intent to call the expert witness and the issue on which the expert will be giving evidence.*

(2) **Provision of Expert's Report** - *A party that intends to refer to or to tender as evidence a report prepared by an expert witness at a hearing shall, at least 15 days before the day upon which the hearing is scheduled to commence, provide to every other party a copy of the report signed by the expert containing:*

- (a) the name, address and qualifications of the expert;*
- (b) the substance of the anticipated evidence of the expert; and*
- (c) a list of all the documents, if any, to which the expert will refer.*

(3) **Failure to Advise of Intent to Call Expert** - *A party that fails to comply with subsection (1) may not call the expert as a witness without the consent of the Hearing Panel on such terms and conditions as the Hearing Panel considers just.*

(4) **Failure to Provide Expert's Report** - *A party that fails to comply with subsection (2) may not refer to or tender as evidence the expert's report without the consent of the Hearing Panel on such terms and conditions as the Hearing Panel considers just.*

## **Part 9 – Conduct of Hearing**

### **9.1 Particular Practice and Procedure for Oral Hearing**

- (1) *A person served with a Notice of Hearing shall, within 20 days from the date of service, serve on the Market Regulator a Reply signed by the person or by an individual authorized to sign on behalf of the person that specifically denies, with the particulars of the supporting facts and arguments, any or all of the facts alleged or the conclusions drawn by the Market Regulator as set out in the Statement of Allegations.*
- (2) *The Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the Market Regulator in the Statement of Allegations that are not specifically denied, with the particulars of the supporting facts and arguments, in the Reply.*
- (3) *A person served with a Notice of Hearing is entitled at an oral hearing of the matter:*
  - (a) *to attend and be heard in person;*
  - (b) *to be represented by counsel or an agent;*
  - (c) *to call and examine witnesses and to present arguments and submissions; and*
  - (d) *to conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of the facts in relation to which they have given evidence.*

### **9.2 Particular Practice and Procedure for Written Hearing**

- (1) **Submissions and Supporting Documents** - *The applicant shall, within 7 days after receiving notice of the written hearing, file and serve on all other parties its written submissions setting out,*
  - (a) *the grounds upon which the request for the remedy or order is made;*
  - (b) *a statement of the facts relied on in support of the remedy or order requested;*
  - (c) *the evidence relied on in support of the remedy or order requested; and*
  - (d) *any law relied on in support of the remedy or order requested.*
- (2) **Additional Information** - *The Hearing Panel may require the applicant to provide further information, and this information must be supplied to every other party.*

- (3) **Response** - A party may respond to the submissions of the applicant by filing and serving on every other party a written response within 5 days after the submissions and supporting documents of the applicant are served on the party which response shall set out the submissions of the responding party relating to the matter before the Hearing Panel and be accompanied by a statement of the facts and any evidence and any law relied on in support of the response.
- (4) **Reply to Response** - The applicant may reply to a response by filing and serving on every other party a written reply within 5 days after a response from a party is served on the applicant which reply to the response must set out the position of the applicant to the response and be accompanied by any additional facts, evidence and law that the applicant relies on in support of the reply.
- (5) **Questions and Answers** - If a written hearing involves evidentiary issues, the Hearing Panel may direct that,
- (a) the applicant and any responding party may ask such questions of the other as are reasonably necessary for the purpose of clarification of the other's evidence by filing and serving on every other party written questions within such time as is directed by the Hearing Panel; and
  - (b) the party to whom the questions are directed shall file and serve on every other party written answers to such questions within such time as is directed by the Hearing Panel.
- (6) **Evidence** - The evidence must:
- (a) be in writing, or when electronic transmission is permitted, it must be in the form directed by the Hearing Panel;
  - (b) identify the person giving the evidence and be in certified form or in affidavit form; and
  - (c) include all documents and things a party is relying on to support the remedy or order requested or the response or to otherwise support the position a party is taking in the hearing.
- (7) **No Oral Examination** - Unless ordered by the Hearing Panel, there will be no oral examination.

- (8) **Presentation of Witness** - *If a party requests, the Hearing Panel may order that a party present a witness to be examined or cross-examined upon such conditions as the Hearing Panel directs.*

### **9.3 Particular Practice and Procedures for Electronic Hearing**

*The Hearing Panel may, in deciding that a hearing will be held electronically, impose conditions including specifying the party responsible for making the necessary arrangements for the electronic hearing and requiring that a party requesting an electronic hearing pay all or part of the cost of providing the facilities necessary for the conduct of the hearing electronically.*

### **9.4 Failure to Reply, Attend or Participate**

*If a person served with a Notice of Hearing fails to:*

- (a) *in the case of an oral hearing, serve a Reply in accordance with section 9.1 of this Policy;*
- (b) *in the case of a written hearing, serve a Response in accordance with section 9.2 of this Policy; or*
- (c) *attend or participate at the hearing specified in the Notice of Hearing,*  
*the Market Regulator may proceed with the hearing on the matter on the date and at the time and place set out in the Notice of Hearing without further notice to and in the absence of the person, and the Hearing Panel may, unless precluded by law, proceed on the facts alleged or the conclusions drawn by the Market Regulator in the Statement of Allegations and the Hearing Panel may impose any one or more of the penalties or remedies authorized by UMIR and assess expenses as authorized by UMIR.*

### **9.5 Order for Particulars or Amendment**

*At any time in a hearing, the Hearing Panel may order:*

- (a) *any party to provide to any other party such particulars as the Hearing Panel considers necessary for a full and satisfactory understanding of the subject of the hearing; and*
- (b) *after providing the parties an opportunity to make submissions, that the Statement of Allegations be amended in accordance with the evidence introduced at the hearing.*

## **9.6 Disposition**

- (1) *The Hearing Panel shall give its final decision and order, if any, in a hearing in writing and shall give reasons in writing.*
- (2) *The Hearing Panel shall send to each party to the hearing a copy of its final decision and order, if any, including the reasons therefor if any have been given by any method of service permitted under section 1.4 of this Policy.*
- (3) *The disposition of the matter shall be included in the permanent record of the Market Regulator in respect of the person that is the subject of the hearing.*
- (4) *The Market Regulator shall publish a summary of the decision and order, including:*
  - (a) *the Requirement contravened or alleged to be contravened;*
  - (b) *the facts;*
  - (c) *the disposition of the matter, including any penalty or remedy imposed and any expenses assessed; and*
  - (d) *a statement that any person may obtain or inspect a copy of the decision and order of the Hearing Panel.*
- (5) *The Market Regulator shall publish the decision and order of the Hearing Panel and this obligation may be satisfied by the posting of the decision and order to any website maintained by the Market Regulator.*

## **9.7 Public Access to Hearing**

- (1) *Subject to subsections (2) and (3), each hearing shall be conducted in a manner:*
  - (a) *in the case of an oral hearing, to be open to the public;*
  - (b) *in the case of a written hearing, to provide the public with reasonable access to the documents submitted at the office of the Market Regulator during ordinary business hours; and*
  - (c) *in the case of an electronic hearing, to provide the public with reasonable access to the proceedings.*
- (2) *A hearing shall be conducted in the absence of the public in the case of an oral or electronic hearing or without access to the documents submitted in the case of a written hearing if:*

- (a) *a specific provision of UMIR or any Policy provides that a hearing be conducted in the absence of the public or without access to the documents submitted;*
  - (b) *in the opinion of the Hearing Panel, the absence of the public from an oral or electronic hearing is necessary for the maintenance of order at the hearing; and*
  - (c) *in the opinion of the Hearing Panel, intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.*
- (3) *Despite subsection (2), a hearing by a Hearing Panel in Quebec shall be public provided the Hearing Panel, on its own initiative or at the request of a party, may order the hearing be held in camera or ban the publication or release of any information or documents it indicates in the interest of morality or public order.*
- (4) *If a Hearing Panel decides that a hearing to consider a Settlement Agreement shall be conducted in the absence of the public in the case of an oral or electronic hearing or without access to the documents submitted in the case of a written hearing;*
  - (a) *any record or transcript of the hearing or any document or other thing tendered at the hearing shall be made available to the public if the Hearing Panel approves the Settlement Agreement; and*
  - (b) *any record or transcript of the hearing and any document or other thing tendered at the hearing shall not be made available to the public if the Hearing Panel rejects the Settlement Agreement.*
- (5) *Despite subsection (4), if a Hearing Panel in Quebec approves a Settlement Agreement, any record or transcript of the hearing or any document or other thing tendered at the hearing shall not be made available to the public if the hearing is subject to an order that the hearing be held in camera or a ban on the publication or release of any information or documents except to the extent that such order is varied or vacated.*

## Part 10 – Selection of Hearing Panels

### 10.1 Selection of Hearing Panel

*Upon the issuance of a Notice of Hearing or upon acceptance of an Offer of Settlement, the Secretary shall select a Hearing Panel in accordance with Schedule C.1 to the Investment Industry Regulatory Organization of Canada’s Transition Rule 1 – Hearing Committee and Hearing Panels Rule.*

<p><b>Defined Terms:</b> UMIR section 1.1 – “document”, “employee”, “hearing”, “Hearing Committee”, “Hearing Panel”, “Market Regulator”, “Policy”, “Requirements” and “UMIR”</p> <p>UMIR section 1.2(2) – “person”</p> <p>UMIR Policy 10.8 section 1.1 – “applicant”, “electronic hearing”, “oral hearing”, “party”, “Secretary” and “written hearing”</p>
<p><b>Regulatory History:</b> Effective January 30, 2004, the applicable securities commissions approved amendments to Policy 10.8 to add subsections (1), (2) and (3) of section 9.7 of Policy 10.8.</p> <p>Effective January 7, 2005, the applicable securities commissions approved amendments to Policy 10.8 as follows:</p> <ol style="list-style-type: none"><li>To replace the definition of “Secretary” in section 1.1. Prior to that date, the term was defined as follows: <p style="text-align: center;"><b>“Secretary”</b> means the Secretary of the Market Regulator or other officer or employee of the Market Regulator designated by the Board to perform such of the functions of the Secretary for the purposes of this Policy.</p></li><li>To substitute the word “by” for the word “be” in clause 2.2(b).</li><li>To substitute the reference “Rule 10.5” for “Rule 10.4” and to substitute the reference “Rule 10.7” for Rule “10.5” in clause 3.2(e).</li><li>To add the phrase “if the Notice of Hearing specifies that the hearing is to be an electronic or a written hearing,” as the start of clause 4.2(e).</li><li>To substitute the heading “Procedure for Compliance with Disclosure Obligations”; for “Requirement to Disclose” in section 8.1.</li><li>To replace clause 8.1(1)(b). Prior to that date, the clause provided: <p style="text-align: center;">(b) make available for inspection by every other party anything other than a document that the party intends to refer to or tender as evidence at the hearing.</p></li><li>To add subsection (3) to section 8.1.</li><li>To replace section 9.4. Prior to that date, the section provided: <p style="text-align: center;"><b>9.4 Failure of Defendant to Reply, Attend or Participate</b></p><p style="text-align: center;">If a person served with a Notice of Hearing fails to:</p><p style="text-align: center;">(a) in the case of an oral hearing, serve a Reply in accordance with section 9.1;</p><p style="text-align: center;">(b) in the case of written hearing, serve a Response in accordance with section 9.2 or</p><p style="text-align: center;">(c) attend or participate at the hearing specified in the Notice of Hearing,</p><p style="text-align: center;">the Market Regulator may proceed with the hearing on the matter on the date and at the time and place set out in the Notice of Hearing without further notice to and in absence of the person, and the Hearing Panel may, if permitted by law, accept the facts alleged or the conclusions drawn by the Market Regulator in the Statement of Allegations as having been proven by the Market Regulator and the Hearing Panel may impose any one or more of the penalties or remedies authorized by the Rules and assess expenses as authorized by the Rules.</p></li><li>To add subsections (4) and (5) to section 9.7.</li><li>To add the phrase “or upon the acceptance of an Offer of Settlement” in subsection 10.2(1).</li><li>To add the phrase “and who is not a current or former director, officer, partner or employee of a Participant or an Access Person” in clause 10.2(1)(a).</li><li>To add section 10.3.</li></ol>

*Effective March 11, 2005, the applicable securities commissions approved amendments to Policy 10.8 repeal the definition of "document". Prior to that date, the definition provided:*

*"document" includes a sound recording, videotape, film, photographs, chart, graph, map, plan, survey, book of account, and information recorded or stored by means of any device.*

*In connection with the recognition of IIROC and its adoption of UMIR, the applicable securities commissions approved amendments to Policy 10.8 that came into force on June 1, 2008:*

- (a) inserting in subsection (2) of section 1.4 the phrase "of this Policy" after the phrase "section 8.1(1)";
- (b) inserting in subsection (3) of section 1.5 the word "the" before the word "Secretary";
- (c) in section 3.2:
  - (i) deleting in clause (d) the phrase "upon be" and substituting the phrase "upon by",
  - (ii) deleting in subclause (f)(ii) the phrase "the Rules and" and substituting the phrase "UMIR and the";
- (d) deleting in section 3.4 the phrase "of three members";
- (e) in section 4.2:
  - (i) deleting in clause (d) the phrase "upon be" and substituting the phrase "upon by",
  - (ii) deleting in clause (e) the word "notice" and substituting the word "Notice", and
  - (iii) inserting in clause (f) the phrase "of this Policy" after the phrase "section 9.4";
- (f) deleting in clause (c) of section 5.4 the word "ever" and substituting the word "every";
- (g) deleting in the title to section 7.1 the word "Pre-hearing" and substituting the word "Pre-Hearing";
- (h) deleting in the title to section 7.2 the word "Pre-hearing" and substituting the word "Pre-Hearing";
- (i) in section 7.4:
  - (i) deleting in the title to the section the word "Pre-hearing" and substituting the word "Pre-Hearing", and
  - (ii) inserting in subclause (2)(b) the phrase "of this Policy" after the phrase "section 7.5";
- (j) in section 7.7:
  - (i) deleting in the title to subsection (1) the word "Pre-hearing" and substituting the word "Pre-Hearing", and
  - (ii) inserting in subsection (2) the phrase "of this Policy" after the phrase "section 7.5";
- (k) inserting in section 7.10 the phrase "of this Policy" after the phrase "section 7.9";
- (l) inserting in section 8.2 the phrase "of this Policy" after the phrase "section 8.1";
- (m) in subsection 8.3(1):
  - (i) inserting the phrase "of this Policy" after the phrase "section 8.4", and
  - (ii) deleting in clause (a) the word "intend" and substituting the word "intends";
- (n) in section 9.4
  - (i) deleting each occurrence of the phrase "the Rules" and substituting the word "UMIR",
  - (ii) inserting the phrase "of this Policy" after the phrase "section 9.1", and
  - (iii) inserting the phrase "of this Policy" after the phrase "section 9.2";
- (o) inserting in clause (b) of section 9.5 the word "the" after the word "providing";
- (p) in section 9.6:
  - (i) inserting in subsection (2) the phrase "of this Policy" after the phrase "section 1.4", and
  - (ii) deleting in subsection (4) the word "and" at the end of clause (b);
- (q) deleting in clause (a) of subsection (2) of section 9.7 the phrase "Rule or" and substituting the phrase "provision of UMIR or any"; and
- (r) replacing Part 10 which prior to that date read as follows

**Part 10 – Hearing Committee and Hearing Panels**

**10.1 Composition of Hearing Committee**

1. *On the date that a marketplace retains the Market Regulator to be its regulation services provider and every third annual anniversary thereafter, each marketplace that has retained the Market Regulator to be its regulation services provider shall be entitled to nominate 20 persons to be a member of the Hearing Committee in each jurisdiction in which the marketplace is:*

- (a) *in the case of an Exchange or QTRS, recognized or exempt from recognition as an Exchange or QTRS in accordance with applicable securities legislation; and*
  - (b) *in the case of an ATS, registered in accordance with applicable securities legislation.*
2. *At least one-third of the persons nominated by a marketplace in each jurisdiction shall be:*
    - (a) *a member in good standing of the Law Society of that jurisdiction or a person retired from membership of the Law Society of that jurisdiction in good standing; and*
    - (b) *a director, officer, partner or employee of a Participant or an Access Person of the marketplace or a former director, officer, partner or employee of a Participant or an Access Person.*
  3. *A committee of the Board comprised solely of independent members of the Board shall:*
    - (a) *review each person nominated for membership on the Hearing Committee and in such review shall consider general knowledge of business practices and securities legislation, experience, regulatory background, availability for hearings, reputation, ability to conduct hearings in either French or English, jurisdictions in which the person would be entitled to serve; and*
    - (b) *appoint to the Hearing Committee those persons which it considers to be suitable.*
  4. *Each person appointed to the Hearing Committee shall serve for a term of three years from the date of their appointment provided that, if the person is serving on a Hearing Panel at the expiration of the three-year term, the term of that person shall be automatically extended until the completion of the proceeding then before the Hearing Panel.*
  5. *If the Market Regulator ceases to be the regulation services provider for a marketplace every member of the Hearing Committee nominated by that marketplace shall be automatically removed from the Hearing Committee effective as of the date that the Market Regulator ceased to be the regulation services provider for the marketplace provided that, if the person is serving on a Hearing Panel on that date, the term of that person shall be automatically extended until the completion of the proceeding then before the Hearing Panel.*

**10.2 Selection of Hearing Panel**

- (1) *Upon the issuance of a Notice of Hearing or upon acceptance of an Offer of Settlement, the Secretary shall select a Hearing Panel from the members of the Hearing Committee for the jurisdiction in which the hearing will be held comprised of:*
  - (a) *one member of the Hearing Committee who is or was a member of the Law Society for that jurisdiction and who is not a current or former employee of a Participant or an Access Person and this person shall act as chair of the Hearing Panel; and*
  - (b) *two members of the Hearing Committee, at least one of whom shall be a current or former director, officer, partner or employee of a Participant or an Access Person.*
- (2) *If any member of a Hearing Panel is unable to continue to be a member of the Hearing Panel in accordance with subsection 7.2(2), the Secretary shall select a replacement for such person such that the composition of the Hearing Panel shall be as provided in subsection (1).*
- (3) *The Secretary shall not select any person to be a member of a Hearing Panel who is precluded from acting in such capacity by reason of:*
  - (a) *subsection (2) of Rule 10.6;*
  - (b) *subsection 7.2(2) of this Policy;*
  - (c) *any statutory requirement applicable to the jurisdiction in which the hearing will be held; or*
  - (d) *any requirement in the recognition order or registration under applicable securities legislation of the relevant marketplace.*

**10.3 Quorum Provisions**

- (1) Subject to subsection 10.2(2), if a member of a Hearing Panel becomes incapacitated or is otherwise unable to serve on a Hearing Panel for whatever reason, the remaining member or members of the Hearing Panel may continue to deal with any matter and may make any order or decision that a Hearing Panel may make in accordance with the Rules and Policies provided that if the Hearing Panel is comprised of a single member the Hearing Panel may only continue to deal with any matter with the consent of all parties.
- (2) Any order or decision of a Hearing Panel may be made by a majority of the members of the Hearing Panel and in the event that the Hearing Panel is comprised of two members the order or decision shall be unanimous.

**Disciplinary Proceedings: In the Matter of Steven James Regoci ("Regoci") and David Stanley Chernoff ("Chernoff") (April 21, 2004) Decision 2004-003**

*Facts - On July 16, 2003, TSX Venture Exchange Inc. (TSXV) released a Notice of Hearing which named Regoci and Chernoff. The purpose of the hearing was to determine whether Chernoff and Regoci contravened Vancouver Stock Exchange Rules ("VSE") and Alberta Stock Exchange ("ASE") By-Laws. During the relevant period, both Regoci and Chernoff were within the jurisdiction of the VSE and ASE. The jurisdictions of those bodies was assumed, effective November 29, 1999, by the Canadian Venture Exchange Inc (now TSXV). After a pre-hearing conference and prior to the hearing date, the TSX withdrew its Notice of Hearing and took the position that the subject matter of the allegations would be referred to the British Columbia Securities Commission. Counsel for Chernoff objected, asserting that the TSXV could not unilaterally withdraw the Notice of hearing and that the panel should instead dismiss the matter.*

*Held – Subject to specific circumstances, which are satisfied in this matter, the TSXV has the authority to unilaterally withdraw a Notice of Hearing.*

*Comparable UMIR Provision – Rule 10.8*