

HEARING COMMITTEE BEST PRACTICES FOR ELECTRONIC PROCEEDINGS (January 2023)

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A. Introduction

1. Due to social distancing and other public health measures in response to COVID-19 in early 2020, in-person hearings were converted to electronic proceedings, either by telephone or videoconference. The Hearing Committees of the New Self-Regulatory Organization of Canada (**New SRO**) remain committed to ensuring that proceedings are conducted in the public interest in a manner that is timely, fair and safe. The use of electronic technology has shown to be an effective tool for conducting hearings. Post-pandemic, the use of technology by the Hearing Committees will very likely continue, allowing hearings to be conducted electronically or as a combination of electronic and in-person appearances, i.e., hybrid proceedings, where appropriate.
2. Hybrid proceedings involve physical and virtual modes of hearing. This means that although some participants may connect via video, others will be present in the hearing room. It may be that the entire proceeding takes place in a hybrid environment, or only parts of the proceeding, such as witness testimonies and other evidence, require a hybrid mode.
3. This document provides guidance on electronic proceedings, including hybrid hearings, before the Hearing Committees.

B. Electronic Hearings

4. New SRO's [Investment Dealer and Partially Consolidated Rules \(Rules 8402 "electronic hearing" and 8409\)](#) and [Mutual Fund Dealer Rules of Procedure \(Rule 5\)](#) (**Rules**) contemplate that a hearing may proceed electronically. The relevant provisions were developed prior to the COVID-19 pandemic with due regard for the principles of natural justice.
5. An "electronic hearing" means a hearing held by telephone conference or another form of electronic technology that allows persons to hear one another.
6. A "participant", as used in this document, includes the parties to a proceeding, their legal counsel, agents, support staff, witnesses, hearing panel members, a court reporter and registrar, but does not include a "host" and members of the public or media who have been admitted to a virtual hearing room to observe the proceeding, although they may find the guidance to be of assistance.
7. A "host" is the person who initiates and controls the admission to the hearing conference and otherwise assists on technical and administrative matters during the proceeding.
8. When a proceeding under the Rules is being scheduled, parties should discuss, as far in advance as possible, the appropriate form of a hearing. One or both parties (if proceeding on consent) may submit a request to proceed electronically for all or parts of the hearing to the National Hearing Officer (**NHO**) for hearings under Investment Dealer and Partially Consolidated Rules or the Corporate Secretary's Office (**CSO**) for hearings under the Mutual Fund Dealers Rules.
9. If a party objects to proceeding by way of an electronic or hybrid hearing, the party must state the reasons for the objection, including any prejudice an electronic or hybrid hearing may cause and the facts on which the party relies, accompanied by evidence to substantiate the objection.
10. A hearing panel may make a determination regarding the form of a hearing at a prehearing conference, on motion by a party or, subject to an objection by a party, on its own motion at any stage of the proceeding.
11. A hearing panel has wide discretion in determining the appropriate form of a hearing. In assessing when a hearing may proceed electronically, a hearing panel may, without limitations, consider:
 - a. the nature of the hearing
 - b. the subject matter of the hearing
 - c. the panel's mandate
 - d. the issues to be addressed, including whether the hearing involves the issues of fact, law or procedure
 - e. the evidence to be presented, including whether the facts are in dispute or credibility is an issue
 - f. the costs, efficiency and timeliness of the proceeding
 - g. the fairness of the hearing process to, and the convenience of, each of the parties and
 - h. accessibility of the proceeding to the public.
12. Once it is clear that the proceeding, or some of its parts, is to be conducted electronically, the parties should discuss a protocol for their electronic hearing. The protocol may include parties'

and their counsel's regular and alternative contact details, a list of their participants, handling of documents, time estimates and a plan of action if technical issues arise during the hearing. If the parties are unclear as to the appropriate protocol or wish to obtain confirmation from the hearing panel, they may seek guidance at a prehearing conference.

13. Where the parties anticipate the proceeding to include confidential information, they are expected to discuss it in advance of the hearing and agree on the procedure to be followed in handling the information during the electronic hearing. Where a confidentiality order is granted, the parties must advise the hearing panel and the host before they start a confidential portion of the hearing. On instructions from the hearing panel, the host will send the individuals who are not entitled to receive the confidential information to the "lobby" (as discussed below) and allow them to return once the confidential portion of the hearing is completed.
14. As soon as possible or 14 days before the first scheduled hearing date, each party should endeavour to provide the NHO / CSO with a complete list of their participants for technology testing and training purposes as may be required. The list must include each participant's full name and username, if joining by audio or videoconference, together with email and telephone number to be used in the event of technical difficulties during the hearing.
15. At the beginning of each electronic hearing, the host will confirm that all required participants are present before the hearing panel joins the session. The Chair of the hearing panel may take a roll call before the hearing commences to confirm that the parties and other required participants are present and ready to proceed. All individuals joining the conference by themselves or as a group must identify themselves before the commencement of the hearing.

C. Technical Requirements

(a) Platform

16. Electronic hearings proceed via [Webex](#) or other approved electronic platform or technology (**Platform**).
17. All electronic proceedings are conducted through the Platform, unless participants are prevented from using the Platform by extenuating technical or personal circumstances and permitted by a hearing panel to join by telephone or other means.
18. All participants are required to install the Platform on their devices and familiarize themselves with its functions in advance of the hearing.
19. The NHO / CSO administers all proceedings and is in charge of scheduling hearings. Once hearing dates are set, the NHO / CSO will provide connection details (either an electronic link or dial-in numbers) for the hearing to all participants.

(b) Equipment & Connection

20. The minimum technical requirements for electronic and hybrid hearings are outlined in **Appendix A**.
21. Each participant is responsible for ensuring that they have proper:

- a. hardware (desktop or laptop computer, tablet, telephone, built-in or external microphone and speakers or earphones/headset, and built-in or external camera for videoconferencing)
- b. software (*i.e.*, [Webex](#) app, [Case Center](#) account)
- c. reliable Internet connection
- d. training and technical support as may be required and
- e. access to a suitable venue

so that they can fully participate and the hearing can proceed in an orderly fashion.

(c) Training and Testing

- 22. Where possible, the NHO / CSO will arrange a demo/training session for all required participants. Each of the parties should discuss and, where possible, arrange attendance of their participants for the demo/training session in advance of the hearing.
- 23. In all hearings, it is critical that participants test their equipment and Internet connectivity well in advance *in the location* they will be participating from on the day of the hearing.
- 24. Participants should also test, and have available during the proceeding, an alternative method of connection in case of technical difficulties. Such backup options may include connecting through another electronic device (another desktop or laptop computer, tablet, mobile phone), using a landline phone (for audio connection) and connecting to the Internet through an alternative local area network (**LAN**) cable, Wi-Fi, a mobile hot spot or Internet stick.

(d) Technical Matters

- 25. To improve the audio and video quality, participants may have to disconnect from a virtual private network (**VPN**), if used and close all unnecessary programs.
- 26. Where possible, connecting to the Internet through the LAN cable should be preferred over a Wi-Fi network. If Wi-Fi is unavoidable, participants are encouraged to find a location with a strong Internet signal.
- 27. In case of audio breakups, latency and echoing, participants may choose to connect their audio via a landline or cell phone (instead of using a computer audio) which could improve the sound quality for them and other participants. If switching audio sources during the hearing, immediately disconnect from the first source as having two or more audio sources in the same room may create audio feedback which makes conversation inaudible.
- 28. The devices participants use to connect to the remote hearing should be placed on a stable surface and not held. Movement requires more bandwidth and reduces both video and audio quality.
- 29. The connection may be improved if participants have sole use of the bandwidth and by limiting other audio and video streaming not related to the hearing.
- 30. In the event of a loss of connectivity or other technology-related interruptions that prevent either

the panel members, the parties, their counsel or witnesses (if giving evidence) or the court reporter from participating, an electronic hearing may be adjourned until such time these required participants are able to meaningfully participate in the proceeding.

31. If technical difficulties that cannot be resolved in real-time arise during a hearing or the hearing panel determines that the electronic hearing is not working as anticipated, is otherwise inadequate or prejudicial to any party or to the integrity of the proceeding, the hearing panel may adjourn the hearing and, where appropriate and practical, may permit the parties to deliver post-hearing submissions in writing.
32. In case of technical difficulties, participants should immediately communicate with the NHO at NHO@iircc.ca / 416-943-5846 or CSO at hearings@mfsa.ca / 416-943-4607.

D. Hearing by Teleconference

33. Certain hearings may proceed by teleconference. Whether a teleconference is appropriate is determined upon assessment of the factors set out in the Rules.
34. Teleconferences are not suitable for proceedings that require presentation of oral evidence and lengthy submissions. However, teleconferences may be suitable for less document-heavy proceedings, such as prehearing conferences, motions or applications on procedural issues and hearings on agreed facts.
35. Teleconferences are scheduled using the Platform dial-in numbers in order to permit an easy conversion into videoconferences if required.
36. All participants in teleconferences should keep their microphones on mute until they are ready to present.
37. Participants should identify themselves before speaking unless their identity is obvious from the context (*e.g.*, answering a question directed to a particular individual).

E. Hearing by Videoconference

38. Videoconferences may be appropriate in contested proceedings where oral evidence is required, either through fact witnesses or experts, and/or which may have a document-heavy record.
39. All participants must connect to the videoconference at least 15 minutes before the scheduled time to ensure they have no connectivity or other technical issues before the hearing commences.

(a) Key Functionalities

40. The following functions are used to facilitate a proceeding by videoconference:
 - a) “waiting room” may be available upon joining the conference and can be used to test and address any technical issues
 - b) “lobby” and “breakout room” is administered by the host and may be used to permit private discussions or to exclude participants from the virtual hearing room where necessary, for

example, to allow the hearing panel to deliberate, or to excuse witnesses until ready to testify or while relevance or admissibility of their evidence is argued

- c) “chat” may be used for group messaging only (despite this option being available through the Platform, as privacy of communications cannot be guaranteed through this function, participants are encouraged to use other secure channels for private/privileged communications).

(b) Presentations

- 41. Panel members, parties to the proceeding, their counsel and witnesses should keep their cameras on at all times but mute their microphones (on a computer or telephone) when not speaking. All other participants and observers, unless asked to speak, must keep their cameras and microphones turned off at all times.
- 42. Participants should avoid typing on their keyboard while their microphone is unmuted.
- 43. When presenting in a videoconference, participants should:
 - a) always keep their camera and microphone on unless the hearing panel instructs them otherwise
 - b) ensure that they have sufficient lighting in the room and avoid back lighting causing a dark reflection on the screen
 - c) position their camera so that all conference participants can clearly see the speaker, particularly their whole face, shoulders and hands if possible
 - d) speak directly and audibly into the microphone
 - e) to the extent possible, avoid turning frequently side to side while speaking (it is expected that participants may need to consult documents, either printed or electronic) as the audio may fade in and out.

(c) Necessary Interruptions and Adjournments

- 44. A participant who wishes to speak when entitled to (for example, to raise an objection or a point of procedure or privilege) should “raise” or wave a hand in front of their camera or promptly say that they have an “objection”. The Chair of the hearing panel may pause the session and ask the person to verbalize the objection when appropriate. If for technical reasons the objection could not be raised prior to the witness answering the question, provided that the party objects to the question as soon as reasonably possible, the hearing panel may rule on the objection at that time.
- 45. If the hearing is adjourned on the same day for either a break, panel deliberations or any other matter, the hearing panel will advise the participants when and how the hearing will resume. When possible, participants should mute their microphones and turn their cameras off during breaks instead of disconnecting from the session. If participants suddenly become disconnected, they should use the same connection link to rejoin the session. If the hearing is

adjourned to another day, the NHO / CSO will provide new connection details to all participants in advance of the new date(s).

46. If a participant needs to leave the session for any reason while the hearing is ongoing, they should advise the hearing panel and seek their permission to do so as soon as possible.

F. Documents

(a) Submitting Documents for Electronic Hearings

47. As soon as possible or at least seven days before the scheduled hearing, parties should upload the documents they intend to refer to during the hearing to Case Center. Please refer to the [Best Practice for the Use of Case Center](#).

(b) Format

48. Documents should be prepared and uploaded to Case Center in their native format following the standardization practices set out in the [Appendix to the Best Practices for the Use of Case Center](#), keeping in mind the following:
- a) the use of clear document names and numbers (firm-specific naming conventions, abbreviations, or file numbers should not be included in the document's name)
 - b) indexing and pagination will be applied automatically in Case Center
 - c) where redactions are required, they should be 'burned in' (*i.e.*, removing any underlying text) and clearly identified by a black box (white boxes should not be used as it is not possible to determine where the redactions start and end).
49. The NHO / CSO may require a new copy of the document from the party where the document appears to be illegible, imperfect or corrupt on its face or may require the party to re-upload the documents if done improperly.
50. Parties are not required to provide paper copies of their materials unless specifically requested by the hearing panel and/or the NHO / CSO.

(c) Document Presentation

51. To present and direct others to specific documents during a hearing, parties will be using Case Center's presentation tools. In Case Center, documents may be enlarged, annotated or highlighted as they are presented and will be controlled by the party making the presentation.
52. All participants should refer to documents using Case Center's index and page numbers (not their own numbers) for everyone's ease of reference and consistency.

G. Witnesses

53. In preparation for a proceeding, parties and/or their counsel are expected to advise their witnesses of any protocol they agreed to and practices set out in this document and the

[Best Practices for the Use of Case Center](#), where applicable.

54. Witnesses will be asked to make themselves available at a scheduled date and time. As typically a witness has to be excluded from a hearing before their testimony, they may have to wait until invited into the virtual hearing room by the host.
55. At the beginning of their testimony, witnesses are sworn in and asked to confirm that, while giving evidence, they would not:
- a) be accompanied by anyone in the room except as permitted by the hearing panel
 - b) refer to any notes or script
 - c) review any documents or access the Internet or any other electronic resources other than the documents put to them during their examination or as they may be permitted to review and
 - d) communicate with any person about the substance of their testimony (except to the extent permitted by the law societies' code/rules of professional conduct).
56. If the witness's testimony is interrupted for technical or other reasons, the witness would be cautioned not to discuss the testimony during the break and asked to confirm that is the case when returning to complete the testimony.
57. Where relevance or admissibility of the evidence is raised, witnesses may be excused at the request of a party and at the discretion of the hearing panel. Normally, the witness is not required to leave the session, but may be sent into the "lobby" and allowed to return to the hearing when appropriate.

H. No Recording

58. No recording of proceedings (either audio or video recording, photos or screen captures) is allowed except by the NHO / CSO or a court reporter, for the preparation of an official transcript, or as permitted or directed by the hearing panel.
59. A registrar or a host is responsible for marking documents entered into the hearing record.

I. Public Access

60. Where a proceeding is open to the public, members of the public or media interested to attend the hearing should contact the NHO via NHO@iirc.ca or the CSO at hearings@mfsa.ca at least two business days in advance of the hearing. A requestor will be asked to provide their name and contact information for registration and connectivity purposes. The NHO / CSO will confirm the registration and provide connection details.
61. Members of the public or media are able to observe but not participate in hearings. They will have their microphones muted and cameras turned off for the duration of the proceeding.

J. Etiquette, Attire and Decorum

62. The formality, solemnity and propriety of the in-person hearing process remains and should be

observed in electronic and hybrid proceedings.

63. When joining a virtual hearing session, participants may be prompted to select a display name. An appropriate display name may contain their first name or first initial and their last name.
64. All participants presenting by videoconference should be dressed in appropriate business attire.
65. To the extent possible, participants should use a neutral background. Image-heavy virtual backgrounds use up bandwidth, often causing pixilation or interruption and should not be used.
66. Participants should refrain from eating and limit their beverage intake to water or other soft beverages, which are to be consumed in a manner that avoids attracting undue attention.
67. Typically, electronic hearing sessions are open in advance of the scheduled time and may have frequent breaks as agreed by the parties and directed by the hearing panel. All participants are expected to be punctual and ready to proceed on time.
68. If joining an electronic hearing from home or public space, participants should eliminate or at least minimize all possible interruptions. Participants may need to advise their household members about the timing and duration of the hearing, remove all unnecessary objects from the room, avoid crowded or public places and turn off notifications on electronic devices.

Appendix A - Minimum Technical Requirements

Software	<ul style="list-style-type: none">• Webex• Case Center
Hardware	<ul style="list-style-type: none">• Electronic device (desktop/laptop computer or tablet)• Camera (built-in or external)• Microphone (built-in or external) or landline phone• Speakers or earphones (headset recommended)• Phone (iPhone/iPad iOS 10 or later and Android OS 5.1 or later)
Operating System	<ul style="list-style-type: none">• Windows 7 – Windows 10• Mac OS X 10.9 (Mavericks) – Mac OS 10.15 (Catalina)• Android OS 5 (Lollipop) – Android OS 9 (Pie)
Web Browser	<ul style="list-style-type: none">• Google Chrome, version 59 or later• Mozilla Firefox, version 58 or later• Internet Explorer, latest version• Microsoft Edge, latest version• Apple Safari, latest version
Internet Connection	<ul style="list-style-type: none">• LAN (recommended), Wi-Fi or LTE network• High Definition Video: 2.5 Mbps (Receive) and 3.0 Mbps (Send)• High Quality Video: 1.0 Mbps (Receive) and 1.5 Mbps (Send)• Standard Quality Video: 0.5 Mbps (Receive) and 0.5 Mbps (Send)

Appendix B - E-Hearing Preparation Checklist

No.	Item	Check
Prior to the electronic hearing		
1	Confirm that you and all your participants have: <ul style="list-style-type: none"> a) the minimum technical requirements as outlined in Appendix A b) training and technical support (if required) c) access to a suitable venue 	
2	Discuss the protocol with the other side as soon as practicable and seek guidance from the hearing panel if required	
3	As soon as practicable or 14 days before the hearing, provide the list of your participants and their phone numbers and email addresses to the NHO / CSO in the event of technical difficulties	
4	As soon as practicable or at least seven days before the hearing, upload all documents you intend to refer to during the hearing into the appropriate case on Case Center	
5	Ensure you have connection details for the hearing (either an electronic link or dial-in numbers)	
6	Schedule a demo/test session(s) for yourself and all your participants	
7	Have a back-up plan for technical issues (<i>i.e.</i> , another device [desktop or laptop computer, tablet or mobile phone]; use a landline or mobile phone for audio connection; connect via an alternative LAN or Wi-Fi network, mobile hot spot or Internet stick)	
8	Ensure that your witnesses and other participants are aware of the protocol and best practices	
Day of the electronic hearing		
9	Close all programs not needed during the electronic hearing, mute all messaging and phone notifications, and remove all other background noise	
10	Test your Internet speed	
11	Test private alternative communications with your client, legal team and opposing counsel	
12	Log-in to Webex 15 minutes earlier and test that audio and video connections are clear	
13	Log-in to Case Center and open the case in review screen before the start of the hearing	
During the electronic hearing		
14	Present yourself and identify any other persons present at your location	
15	For videoconferencing, keep your camera on but mute your microphone when not speaking	
16	When speaking, look at the camera and speak directly into your microphone	
17	To present, have your documents open on Case Center and direct participants to a particular document or point by using Case Center's presentation tools or calling the document name, tab and page number as indexed by Case Center	
18	To raise an objection or a point of procedure or privilege, "raise" or wave your hand in front of your camera and state that you have an "objection"	
19	Tell the hearing panel and the host if you, your witness or other participants need to be excused or sent to a "lobby"/"break-out room"	
20	During breaks, mute your microphone and turn off your camera and return to the session promptly when the hearing is scheduled to resume	
21	Advise the hearing panel and the host in advance if you must leave the session earlier	