

## RULES OF PRACTICE AND PROCEDURE FOR PROCEEDINGS BEFORE THE FINANCIAL SERVICES TRIBUNAL

These Rules are made under the authority of the *Statutory Powers Procedure Act* and the *Financial Services Tribunal Act, 2017*.

<b>PART I GENERAL</b>
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### 1. Application and Interpretation of Rules

- 1.01 These Rules apply to all proceedings before the Financial Services Tribunal, subject to any Practice Direction issued under Rule 2.04.
- 1.02 Subject to the requirements of the *Financial Services Tribunal Act, 2017*, and the *Statutory Powers Procedure Act*, the Tribunal may amend these Rules from time to time if it considers that such amendment is appropriate.
- 1.03 These Rules shall be broadly interpreted to produce the quickest, most just and least expensive determination of the issues before the Tribunal.

### 2. General Authority of the Tribunal

- 2.01 Where procedures are not provided for in these Rules, the Tribunal may do whatever is necessary and permitted by law to effectively determine the matter before it, including making a procedural order under Rule 13.
- 2.02 The Tribunal may exercise any of its powers under these Rules on its own initiative or at the request of a party.
- 2.03 A defect in form or other technical breach in a proceeding or in any step, document or order in a proceeding will not make the proceeding or the step, document or order in the proceeding invalid [unless the Tribunal in its discretion so orders](#).
- 2.04 The Tribunal may issue Practice Directions pertaining to certain types of proceedings or with respect to any matter the Tribunal deems appropriate.

### 3. Definitions

- (a) In these Rules, unless the context otherwise requires,

“**Act**” means the *Financial Services Tribunal Act, 2017*;

“**Agreed Statement of Facts**” means a statement agreed to by the parties outlining the facts that will not be disputed and that are relevant for purposes of the hearing;

[\[insert date\]](#)⓪

term of the order sought or as to the manner in which the request should be dealt with; and

- (f) be served on all parties and filed with the Tribunal.

14.03 Unless the Tribunal directs otherwise, parties wishing to respond to a motion that has been brought in writing must provide a written response. The response must:

- (a) set out the responding party's position on the order(s) requested;
- (b) set out the responding party's position on whether the motion should be dealt with in writing, in person, or electronically;
- (c) identify which facts set out in the motion are accepted and which are disputed;
- (d) where the order requested is for production of documents from the responding party, attach the written response to the request, if any;
- (e) provide reasons in support of the responding party's position;
- (f) set out any additional facts relied on by the responding party;
- (g) include any documents not included in the motion upon which the responding party intends to rely; and
- (h) be served on all parties and filed with the Tribunal not later than 14 days after the motion was delivered, or such other time as the Tribunal directs.

14.04 Where appropriate, the Tribunal may decide the motion on the basis of the material filed. Where a hearing on the motion is necessary, the Tribunal will determine whether the hearing will be held in writing, in person, or electronically, will set a date for a pre-hearing conference or hearing on the motion, and will make such orders as it deems appropriate for the conduct of such pre-hearing conference or hearing.

14.05 Where a party has initiated brought a motion that, in the opinion of the Tribunal:

- (a) is frivolous, vexatious or commenced in bad faith;
- (b) relates to matters that are outside the jurisdiction of the Tribunal; or
- (c) is deficient in that some aspect of the statutory requirements for bringing the motion has not been met,

the Tribunal may, if the motion is made by oral submission, dismiss the motion.

If the motion is made by written submission, the Tribunal may give notice of intention to dismiss the motion without a hearing, setting out the reasons for the proposed dismissal. The notice will be given to all parties to the proceeding in which the motion is initiated.

14.06 All parties who have been given notice under Rule 14.05 shall have the right to make written submissions to the Tribunal with respect to the dismissal of the motion within 30 days of the giving of the notice.

14.07 After considering such submissions, if any, the Tribunal may dismiss the motion without a hearing and may include in the dismissal an order requiring the party initiating the motion to seek Tribunal consent before initiating any further motions.

<b>PART IV</b> <b>PRE-HEARING PROCEDURES</b>
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## 15. Commencement of Proceedings

~~15.01~~ A proceeding is initiated by a Request for Hearing (in Form 1) or by a Notice of Appeal (in Form 2).

~~15.02~~ A Request for Hearing shall be in writing. It shall be filed within the time period set out in the statute establishing the right to a hearing, and shall be served by the requester on the CEO of FSRA and all other persons upon whom the Tribunal directs service.

~~15.03~~ 15.01 A Notice of Appeal shall be in writing. It shall be filed within the time period set out in the statute establishing the right of appeal and shall be served by the appellant on the original decision-maker (the CEO of FSRA), all parties to the proceedings before the original decision-maker and all other persons upon whom the Tribunal directs service.

~~15.04~~ 15.02 The parties to a proceeding commenced by a Request for Hearing are the person who has commenced the proceeding, the CEO of FSRA, and such other persons as the Tribunal may, by order, add as parties.

~~15.05~~ 15.03 The parties to an appeal from a decision or order of the CEO of FSRA are the person who has commenced the appeal, the original decision-maker (the CEO of FSRA), and such other persons as the Tribunal may, by order, add as parties.

~~15.06~~ 15.04 Despite subsection 9.1(1) of the *Statutory Powers Procedure Act*, the Tribunal may, on a written motion by a party in accordance with Rule 14.02, combine two or more proceedings or any part of them, or hear two or more proceedings at the same time, without the consent of the parties. In so doing, the Tribunal may consider any relevant circumstances, including the following:

- (a) The commonality of issues of fact, law, or policy;
- (b) The potential prejudice to a party;
- (c) The potential impact on such factors as expense, delay in proceedings, or witnesses;
- (d) The interest in reducing repetitious evidence;
- (e) The potential for inconsistent results related to similar fact evidence; or
- (f) Any other factor it considers relevant.

~~15.07~~15.05 Despite subsection 9.1(5) of the *Statutory Powers Procedure Act*, the Tribunal may treat evidence that is admitted in a proceeding as if it were also admitted in another proceeding that is heard at the same time, without the consent of the parties to the second-named proceeding.

## 16. Pre-Hearing Conference

16.01 The Tribunal may direct the parties to participate in pre-hearing conferences to consider:

- (a) the identification and simplification of the issues;
- (b) facts and evidence that may be agreed upon through an Agreed Statement of Facts and an Agreed Book of Documents which the parties shall make reasonable efforts to prepare;
- (c) the dates by which any steps in the proceeding are to be taken or begun;
- (d) the estimated duration of and dates for the hearing; and
- (e) any other matters that may assist in the just and most expeditious disposition of the proceeding, including:
  - (i) the preparation of a plan for disclosure and production of documents as required by Rule 26.01;
  - (ii) identifying and resolving preliminary objections or procedural issues including particulars, interrogatories, witness statements, expert witnesses, expert reports and exchanges of submissions;
  - (iii) deciding procedural issues including the dates by which any steps in the proceeding are to be taken or begun;
  - (iv) considering applications for party status;
  - (v) encouraging the parties to explore whether settlement is possible in the circumstances; and
  - (vi) determining the form of the Notice of Hearing, who should give it and bear the costs for it, and to whom and in what manner the Notice should be given.

The Tribunal may dispense with a pre-hearing conference when, in the opinion of the Tribunal, such a conference would not assist in the just and expeditious disposition of the proceeding.

16.02 A pre-hearing conference may be held in person or electronically. In this regard, p~~Pre-hearing conferences shall be held electronically by teleconference~~, unless a party satisfies the Tribunal that holding it in this format would likely cause that party significant prejudice, or unless the Tribunal directs otherwise.

16.03 The member or members of the Tribunal conducting a pre-hearing conference may make such orders as are considered necessary or advisable with respect to the conduct of the proceeding, including adding parties.

[insert date]@

- (d) a hearing that combines two or more of the above formats.

For any part of a hearing where some or all of the participants are physically present in the hearing room, the chair of the panel (but not necessarily all members of the panel) will be physically present in the hearing room unless otherwise ordered by the Tribunal.

20.03 In deciding whether to hold a written or electronic hearing in lieu of an oral hearing, or to hold a hearing in a combination of formats, the Tribunal shall consider whether an alternative hearing format will likely cause any party significant prejudice and may consider any relevant factors, including:

- (a) the subject matter of the hearing;
- (b) the nature of the evidence, including whether credibility is an issue and the extent to which 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 proceeding;
- (f) avoidance of unnecessary length or delay;
- (g) ensuring a fair and understandable process;
- (h) the desirability of facilitating public participation or public access to the Tribunal's process;
- (h)(i) the consent of all parties; and
- (i) any other relevant factors affecting the fulfilment of the Tribunal's statutory mandate, including corroborated personal health issues raised by a party, public health and safety concerns or compliance with government public health restrictions.

20.04 Where a panel has ordered that an oral hearing or oral part of a hearing proceed with some or all participants physically present in the hearing room, all participants must be prepared for the format of any part of the hearing to change on short notice at the panel's discretion if circumstances set out in Rule 20.03 change.

~~a witness giving oral testimony, and any person (whether party or representative) examining or cross-examining the witness will be physically present in the hearing room, and other participants in the hearing may also be physically present in the hearing room or may participate electronically; and~~

~~all other oral parts of hearings, or oral hearings without witnesses will proceed electronically. a witness giving oral testimony, and any person (whether party or representative) examining or cross-examining the witness will be physically present in the hearing room, and other participants in the hearing may also be physically present in the hearing room or may participate electronically; and~~

~~all other oral hearings, or oral parts of hearings, will proceed electronically.~~

(i) —

file with the Registrar these submissions and/or Book of Authorities at least seven days prior to the hearing or as directed by the Tribunal.

<b>PART VII</b> <b>SUMMARY DISMISSAL</b>
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### 33. Dismissal without a Hearing

33.01 Where a party has initiated a proceeding that, in the opinion of the Tribunal, is:

- (a) is frivolous, vexatious or commenced in bad faith;
- (b) relates to matters that are outside the jurisdiction of the Tribunal; or
- (c) is deficient in that some aspect of the statutory requirements for bringing the proceeding has not been met,

the Tribunal may give notice of intention to dismiss the proceeding without a hearing, setting out the reasons for the proposed dismissal. The notice will be given to all parties to the proceeding.

33.02 All parties who have been given notice under Rule 33.01 shall have the right to make written submissions to the Tribunal with respect to the dismissal of the proceeding within 30 days of the giving of the notice.

33.03 After considering such submissions, if any, the Tribunal may dismiss the proceeding without a hearing.

### 34. Dismissal for Delay

34.01 Where a party who has initiated a proceeding has taken no step in the proceeding for an undue period, the Tribunal may give notice of intention to dismiss the proceeding without a hearing unless such steps as are directed by the Tribunal are taken within 30 days of the notice or reasonable cause is shown for failure to take those steps. The notice will be given to all parties to the proceeding.

34.02 All parties who have been given notice under Rule 34.01 shall have the right to make written submissions to the Tribunal with respect to the dismissal of the proceeding within 30 days of the giving of the notice.

34.03 After considering such submissions, if any, the Tribunal may dismiss the proceeding without a hearing.

### 35. Non-Attendance by Party who has initiated a Proceeding

35.01 Where a party who has initiated a proceeding does not appear at a scheduled hearing or pre-hearing conference of which proper notice has been given in

[insert date]⑥