



Financial
Services
Tribunal

Tribunal des
services
financiers

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

Ce document est également disponible en français

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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*.

PART I GENERAL

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.
- 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;

“Agreed Book of Documents” means the documents agreed to by the parties and upon which they intend to rely at the hearing and that they accept as being authentic and relevant;

“Book of Authorities” means the relevant legal authorities, including, but not limited to, case law and legislation, which a party intends to rely upon at the hearing;

“business day” means any day which is not a holiday;

“CEO” means the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario;

“Chair” means the Chair of the Tribunal and includes a Vice-Chair acting as chair in his or her absence or recusal from a matter;

“day” means any calendar day, including holidays;

“document” includes a written document, sound recording, videotape, file, photograph, chart, graph, map, plan, survey, book of account, and information recorded or stored by means of any device;

“electronic hearing” means a hearing held by tele-conference, video conference or some other form of electronic technology allowing persons to hear one another;

“FSRA” means the Financial Services Regulatory Authority of Ontario;

“hearing” means the opportunity for a party to present its case in a proceeding before the Tribunal in the manner described in Rule 21.02 and in accordance with Rule 15;

“holiday” means any Saturday or Sunday, and New Year's Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, and any special holiday proclaimed by the Governor General or the Lieutenant Governor ; and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays; and where Christmas Day falls on a Friday, the following Monday is a holiday;

“interrogatory” means a request in writing by a party for information or particulars relating to a proceeding, other than a request for documents, made to another party in the proceeding;

“member” means a member of the Tribunal appointed under section 2 of the Act and includes the Chair and any Vice-Chair;

“motion” means a request for an order of the Tribunal made during a proceeding;

“**oral hearing**” means a hearing at which the parties and/or their representatives attend in person before the Tribunal;

“**order**” includes an order in writing or an order made orally;

“**panel**” means one or more members of the Tribunal assigned to hear and determine a matter referred to the Tribunal;

“**party**” means a party as defined in Rule 15.04 or 15.05 and includes “parties” where the context requires;

“**person**” includes a trade union;

“**Practice Direction**” means a Practice Direction issued under Rule 2.04;

“**proceeding**” means a matter brought before the Tribunal in accordance with Rule 15, either by a Request for Hearing or by a Notice of Appeal;

“**Registrar**” means the Registrar of the Tribunal;

“**representative**” means, in respect of a proceeding to which these Rules apply, a person authorized under the *Law Society Act* or its by-laws to represent a person in that proceeding;

“**Rules**” mean these rules and include any Practice Directions issued by the Tribunal;

“**Tribunal**” means the Financial Services Tribunal continued under section 2 of the Act or, where the context requires, the members of the Financial Services Tribunal or a panel of one or more members assigned to hold a hearing;

“**Vice-Chair**” means a Vice-Chair of the Tribunal appointed under section 2 of the Act;

“**written hearing**” means a hearing held by means of the exchange of documents and written submissions.

4. Calculation of Time

4.01 To calculate time under these Rules:

- (a) where there is reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;

- (b) where the time for doing an act under these Rules expires on a day that is not a business day, the act may be done on the next business day; and
- (c) where a document is filed, or served after 4:45 p.m. or on a day that is not a business day the document shall be deemed to have been filed or served on the next business day.

5. Extending or Abridging Time

- 5.01 The Tribunal may, before or after the expiration of a prescribed time period and on such conditions as it considers just, extend or abridge the time prescribed for the performance of anything required under the Rules.
- 5.02 Where a party cannot meet a time limit prescribed by the Rules or proposes the abridgement of such a time limit, the party shall promptly file a request for an extension or abridgement of time, including the reason why it is necessary, the specific relief sought and an indication of whether the other parties consent or oppose the request.

6. French Language Services

- 6.01 A person has the right to communicate with the Registrar's office and at hearings in French as provided in the *French Language Services Act*.
- 6.02 If a person intends to communicate in French as a party in a proceeding, the person shall indicate this intention in the Request for Hearing, the Notice of Appeal, the Application for Party Status, or in a letter filed with the Registrar as early as is practicable.

7. Notice of Constitutional Question

- 7.01 A party who intends to raise a question as to the constitutional validity or constitutional applicability of the Act, of a statute of the Parliament of Canada or of the Ontario Legislature, of a regulation or by-law made under the Act or statute, of a rule of common law, or to assert a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms*, shall file and serve notice of a constitutional question on the Attorney General of Canada and the Attorney General of Ontario and the other parties to the proceeding at least 15 days before the day on which the question is to be heard by the Tribunal.
- 7.02 The notice referred to in Rule 7.01 must clearly set out the basis for raising the question or asserting the remedy and the material facts giving rise to the constitutional question.

PART II
FILING AND SERVICE OF DOCUMENTS

8. Filing Documents

- 8.01 Filing means the effective delivery of a document to the Registrar and its receipt by the Registrar.
- 8.02 All documents filed shall be legible and, unless the Registrar otherwise directs, shall be filed in quadruplicate.
- 8.03 A document may be filed by:
- (a) hand delivery;
 - (b) courier service;
 - (c) regular or registered mail;
 - (d) facsimile;
 - (e) electronic mail; or
 - (f) any other means directed by the Tribunal.
- 8.04 The Registrar shall date stamp all documents when they are received and a document is deemed to be filed as of that date, subject to clause (c) of Rule 4.01.
- 8.05 Where a filing is made by facsimile, the document shall include a cover page containing the items set out in Rule 9.06.
- 8.06 Where a filing is made by electronic mail, the document shall be attached to an electronic mail message containing the items set out in Rule 9.07.
- 8.07 A party may request confirmation from the Registrar that a document filed was properly received.
- 8.08 Where documents are filed by facsimile or electronic mail, the original and the required number of copies shall be delivered by noon on the next business day unless the Registrar otherwise directs.
- 8.09 A party shall forthwith serve all other parties with a copy of all documents filed with the Registrar, subject to Rule 11.
- 8.10 Depending on the composition of the panel, any party who wishes to file documents with the Tribunal is required to have four copies (for a panel of three), three copies (for a panel of two) or two copies (for a panel of one) available at the hearing. Additionally, any Agreed Statement of Facts, Agreed Book of Documents, written submissions and Book of Authorities shall be filed with the Registrar in four copies (for a panel of three), three copies (for a panel of two) or two copies (for a panel of one).

8.11 When parties file an Agreed Statement of Facts and written submissions with the Registrar, they shall provide the Registrar with an electronic copy of the document in Word format.

9. Service

9.01 Service means the delivery of a document to a person or to the representative of that person in accordance with these Rules.

9.02 Service may be made by:

- (a) hand delivery;
- (b) courier service;
- (c) regular or registered mail;
- (d) facsimile; or
- (e) electronic mail, subject to Rule 9.03; or
- (f) any other means directed by the Tribunal, including public advertisement, subject to such conditions as may be appropriate, including requiring a party or parties to pay the expense.

9.03 Service may be made by sending a copy of the document by electronic mail provided the recipient has consented to the delivery of documents in this manner. In addition, the Tribunal may make an order permitting a party to serve documents by electronic mail if another party unreasonably withholds consent.

9.04 Service upon a representative is effective service upon the party he or she represents unless the Tribunal has ordered otherwise.

9.05 Where an oral or electronic hearing is in progress, service of a document may also be made:

- (a) by providing it to the parties or their representatives present at the hearing;
- (b) by any other means directed by the Tribunal.

9.06 Where service is made by facsimile, the document shall include a cover page indicating:

- (a) the name, address, and telephone number of the sender;
- (b) the name of the person to be served;
- (c) the date and time the document is transmitted;
- (d) the total number of pages transmitted including the cover page;
- (e) the telephone number from which the document is transmitted; and
- (f) the name and telephone number of a person to contact if a problem arises with the transmission of the facsimile.

9.07 Where service is made by electronic mail, the document shall be attached to an electronic mail message that shall include:

- (a) the sender's name, address, telephone number and electronic mail address; and
- (b) the date and time of transmission.

9.08 Service will be effective:

- (a) if the document is delivered by hand, courier or facsimile, on the same day that the delivery is made;
- (b) if the document is delivered by regular or registered mail, on the fifth day after the date of mailing;
- (c) if the document is delivered by electronic mail, on the day the electronic message is sent;
- (d) if service is made by public advertisement, on the day of publication or the last day where there is more than one day of publication; or
- (e) if service is made by any other means, within the time frame directed by the Tribunal.

9.09 The Tribunal may direct a person who has served a document to file an affidavit of service that indicates how, when, and on whom service was made.

10. Public Record

10.01 Subject to Rule 11 and to the provisions of the *Freedom of Information and Protection of Privacy Act* protecting personal information, all documents that are filed in a proceeding pursuant to a filing requirement under, or imposed under, these Rules or that are received in evidence in a proceeding, shall be placed on the public record.

11. Confidential Documents

11.01 A party or an interested person may bring a motion for an order that all or any part of a document filed with the Tribunal or served on the parties be held in confidence, provided that the motion is brought at the earliest opportunity.

11.02 A party or an interested person who moves that all or part of a document be held in confidence may request that the Tribunal:

- (a) consider the motion before the document is served on the parties, or
- (b) direct that only a summary of the document be served before the motion is heard and decided.

11.03 The material in support of any motion to hold a document in confidence shall:

- (a) address:
 - (i) the reasons for the request including the nature and extent of the specific harm that might result if the document were publicly disclosed; and
 - (ii) any objection to placing an abridged version of the document on the public record and the reasons for such an objection; and
- (b) be filed and served on the parties.

11.04 Where a motion has been made under this Rule to hold a document in confidence, if a party, or any person who was served with the motion, has received a copy of a document, that party, or other person, shall treat the document as if it were confidential until the Tribunal has made a decision in respect of the motion.

11.05 Any person may object to a motion for confidentiality by filing a response and serving it on the parties and the person who brought the motion.

11.06 After giving the person claiming confidentiality an opportunity to reply to an objection, the Tribunal may order that:

- (a) the document be placed on the public record;
- (b) the document be held in confidence;
- (c) the document be provided to certain parties and/or their representatives upon filing an undertaking of confidentiality; or
- (d) an abridged version of the document be placed on the public record;

and may make such other order as it considers just.

11.07 In considering a request under this Rule, the Tribunal shall apply the criteria in Rule 23.02.

PART III ORDERS

12. Orders

12.01 The Tribunal will determine the issues before it by order and may make an order subject to such conditions as it considers just.

12.02 The Tribunal may at any time correct a typographical error, error of calculation, misstatement, technical error or other similar error made in an order or direction issued by it or in the written reasons for an order issued by it.

12.03 The Registrar will deliver a copy of the order and the Tribunal's written reasons, if any, to the parties.

13. Procedural Orders

13.01 The Tribunal may make or amend procedural orders at any time in a proceeding, which shall govern the conduct of the proceeding.

13.02 In making a procedural order, the Tribunal may waive all or part of any Rule as it applies to a proceeding.

13.03 Where a party to a proceeding has not complied with a requirement of the Rules, the Tribunal may:

- (a) grant relief, subject to such conditions as the Tribunal considers just;
- (b) stay the proceeding until it is satisfied that the requirement has been complied with; or
- (c) make such other order as it considers just.

13.04 Where a provision of these Rules is inconsistent with a procedural order, the procedural order shall prevail.

13.05 Any procedural requirements that govern a proceeding in the Act, the *Statutory Powers Procedure Act* or any other statute or regulation may be waived with the consent of the parties and the Tribunal.

14. Motion

14.01 A party may bring a motion requesting that the Tribunal make an order at any time during a proceeding. Such motion may be initiated:

- (a) by oral submission in the course of the hearing or pre-hearing conference;
or
- (b) in writing.

14.02 Where a motion is initiated in writing, the material in support of it must:

- (a) describe the order requested;
- (b) contain reasons for the request, including any facts or documents relied on in support of the request;
- (c) where the order requested is for production of any document, attach a copy of the party's written request for the document and the responding party's response, if any;
- (d) indicate whether the requesting party wishes the Tribunal to deal with the matter in writing, in person, or electronically;

- (e) indicate whether the consent of other parties has been obtained as to any 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.

PART IV PRE-HEARING PROCEDURES

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 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 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 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 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 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. Pre-hearing conferences shall be held 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.
- 16.04 The Tribunal shall issue a pre-hearing conference memorandum setting out the results of the pre-hearing conference, setting forth orders, agreements and undertakings made at the pre-hearing, and setting out the dates of the hearing and the issues that are to be determined.
- 16.05 After the pre-hearing conference has been held, no substantive issues, other than those set out in the pre-hearing conference memorandum, may be raised or addressed without leave of the Tribunal.
- 16.06 Any member who has conducted a pre-hearing conference in which some or all of the substantive issues were settled or were attempted to be settled shall not sit on the panel conducting the hearing unless the parties consent in writing.
- 16.07 A pre-hearing conference may be adjourned and reconvened from time to time at the request of the parties or as directed by the Tribunal.

17. Notice of Pre-Hearing Conference

- 17.01 Where a pre-hearing conference is to be held, the Registrar shall give written notice of the pre-hearing conference to the parties, to those who have applied for party status and to such other persons as the Tribunal determines.

17.02 The Notice of Pre-hearing Conference may require parties by specified dates to exchange or file documents, pre-hearing submissions or provide such other information as the Tribunal deems appropriate, and such notice shall include:

- (a) the date, time, place, format and purpose of the pre-hearing conference;
- (b) notice that each party or person who has applied for party status, to whom the notice is given, is required to attend in person or through a representative who has binding authority to make agreements and undertakings on behalf of that party or person respecting the matters addressed at the pre-hearing conference;
- (c) notice that if a person to whom the notice is given does not attend in person or through a representative, the conference may continue in the absence of that person and that person will not be entitled to any further notice in the proceeding;
- (d) notice that some or all of the issues may be settled at the pre-hearing conference; and
- (e) notice that orders may be made at the pre-hearing conference that will be binding on all parties, including parties added at the pre-hearing conference, with respect to the proceeding, including setting the dates for a hearing.

18. Interrogatories

18.01 A party may direct an interrogatory to another party to:

- (a) clarify evidence filed by a party;
- (b) simplify the issues;
- (c) permit a full and satisfactory understanding of the matters to be considered; or
- (d) expedite the proceeding.

18.02 Interrogatories shall be served on all parties.

18.03 The Tribunal may, if satisfied that the parties cannot resolve the procedure for the conduct of interrogatories after making reasonable efforts to do so, issue directions regarding the conduct of the interrogatories.

19. Responses to Interrogatories

19.01 Where interrogatories have been directed to and served on a party, that party shall:

- (a) provide a full and adequate response to each interrogatory on a separate page or pages; and
- (b) serve the response on all parties.

- 19.02 A party who is unable or unwilling to provide a full and adequate response to an interrogatory shall explain why the party is unwilling or unable to provide the response.
- 19.03 Where a party is not satisfied with the response provided, that party may file a notice of motion to have the matter determined by the Tribunal.
- 19.04 A party who has directed an interrogatory to another party may tender any response to that interrogatory in evidence at the hearing and the responding party shall be bound by that response.

PART V HEARINGS

20. Hearing

- 20.01 The Tribunal shall set the hearing dates and determine the location and format of the hearing. Once the Registrar fixes the dates of the hearing, they cannot be modified without the permission of the Tribunal.
- 20.02 The Tribunal may hold:
- (a) an oral hearing;
 - (b) a written hearing;
 - (c) an electronic hearing; or
 - (d) a hearing that combines two or more of the above formats.
- 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;
 - (i) any other relevant factors affecting the fulfilment of the Tribunal's statutory mandate.

21. Notice of Hearing

21.01 The Tribunal shall provide, or direct the giving of, written Notice of Hearing to the parties and other persons as the Tribunal determines or requires.

21.02 Every Notice of Hearing shall include:

- (a) a reference to the statutory authority under which the hearing is being held;
- (b) a statement of the dates, time and the purpose of the hearing;
- (c) a statement that if a party does not attend or participate at the hearing, the Tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding;
- (d) if appropriate in the circumstances, a statement relating to persons not named as parties, setting out their right to request party status by a certain date, the manner of making such a request, and their rights regarding attending or participating in the hearing if such status is not obtained; and
- (e) any other information the Tribunal considers necessary for the proper conduct of the hearing.

21.03 In addition to meeting the requirements in Rule 21.02, every Notice of Hearing for an oral hearing shall include:

- (a) the place of the hearing; and
- (b) a statement that the hearing will be open to the public unless the Tribunal directs otherwise.

21.04 In addition to meeting the requirements in Rule 21.02, every Notice of Hearing for a written hearing shall include:

- (a) a statement about the manner in which the hearing will be held;
- (b) unless the Tribunal has already made an order dealing with the format of the hearing, a statement that the hearing will not be held as a written hearing if any party who has not already consented to a written hearing satisfies the Tribunal that there is good reason not to hold a written hearing; and
- (c) an indication of the procedure to be followed for objecting to a written hearing.

21.05 In addition to meeting the requirements in Rule 21.02, every Notice of Hearing for an electronic hearing shall include:

- (a) a statement about the manner in which the hearing will be held; and
- (b) unless the Tribunal has already made an order dealing with the format of the hearing, a statement that the hearing will not be held as an electronic hearing if any party who has not already consented to an electronic

- hearing satisfies the Tribunal that holding the hearing as an electronic hearing is likely to cause the party significant prejudice; and
- (c) an indication of the procedure to be followed for objecting to an electronic hearing.

22. Change in Hearing Format

- 22.01 A party who has not already consented to the holding of a written or electronic hearing may object to the holding of such a hearing by filing and serving its objection within 14 days after the Notice of Hearing was given.
- 22.02 Any other party may file and serve a written response to an objection filed pursuant to Rule 22.01 within seven days of service of the objection.
- 22.03 If the Tribunal receives an objection pursuant to Rule 22.01, and is satisfied that an electronic or written hearing would likely cause significant prejudice to the objecting party or that there is other good reason for not holding such a hearing, it may cancel the written or electronic hearing and schedule a different form of hearing.
- 22.04 The Tribunal may change the format of the hearing at any time as it deems it appropriate.

23. Hearings in the Absence of the Public

- 23.01 Subject to Rule 23.02, a hearing shall be:
- (a) in the case of an oral hearing, open to the public;
 - (b) in the case of an electronic hearing, open to the public unless it is not practical to hold the hearing in a manner that is open to the public; and
 - (c) in the case of a written hearing, open to the public in the sense that the public are entitled to reasonable access to the documentary evidence and submissions filed in the written hearing.
- 23.02 The Tribunal may direct that a hearing, or part of a hearing, be held in the absence of the public if it is of the opinion that:
- (a) matters involving public security may be disclosed; or
 - (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature that, having regard to the circumstances, the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

- 23.03 Where the Tribunal directs that a hearing, or part of a hearing, be held in the absence of the public, the Tribunal may set conditions regarding the rights and obligations of the parties and persons permitted to attend the hearing.
- 23.04 In exceptional circumstances, the Tribunal may direct that part of a hearing be held in the absence of a party and set conditions in respect of the conduct of that part of the hearing.

24. Recording of Hearing and Transcripts

- 24.01 A party at its own expense may arrange a court reporter to record all or any part of a hearing that the Tribunal does not arrange to have recorded or, with the leave of the Tribunal, all or any part of a pre-hearing conference or a hearing on a motion.
- 24.02 Where all or any part of a hearing, a pre-hearing conference or a hearing on a motion has been recorded by a court reporter, a party may obtain a copy of all or a portion of the transcript at its own expense from the court reporter.
- 24.03 A party or parties who have ordered all or a portion of a transcript must provide the Tribunal with an original certified copy thereof, as provided by the court reporter and such additional original certified copies, not exceeding three, as may be directed by the Registrar, at no cost.
- 24.04 No person shall make a visual or audio recording of any part of a proceeding before the Tribunal unless authorized by the Tribunal.

25. Adjournments

- 25.01 The Tribunal may adjourn a hearing on such conditions as it considers just.

PART VI EVIDENCE, WITNESSES AND SUBMISSIONS
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26. Disclosure, Production and Filing of Documents

- 26.01 The parties to a proceeding shall agree upon a plan for disclosure and production of relevant documents, including a timetable for carrying out the steps in the agreed-upon plan. In preparing such a plan, the parties shall take into account the principle of proportionality, and shall consider whether the costs, burden and delay that may be imposed on the parties in disclosing and producing documents are reasonable in light of the nature, scope and complexity of the matters at issue.
- 26.02 In addition to addressing procedures for the disclosure and production of relevant documents, a plan for disclosure and production of documents shall provide that:

- (a) Each party must disclose to the other parties all documents that it proposes to tender as evidence in the proceeding;
- (b) The obligation of a party to disclose and produce documents in accordance with these Rules shall continue throughout the proceeding;
- (c) No party is required to produce a document for which privilege exists that would prevent introduction of the document at the hearing.

26.03 If the parties are unable to agree on a plan for disclosure and production of relevant documents, the Tribunal will by order direct such a plan, taking into account Rule 26.02, and the considerations the parties are required to take into account under Rule 26.01.

26.04 Where a party has not produced a document after being requested to do so by another party, that other party may by motion request the Tribunal to make an order for production.

26.05 Subject to Rule 8.10 and Rule 8.11, any Agreed Statement of Facts and Agreed Book of Documents prepared under Rule 16.01(b) shall be filed with the Registrar at least seven days before the hearing or by such other date as established by the Tribunal. Written evidence, reports of experts, witness names and witness statements disclosed pursuant to Rules 28, 29 and 30 shall not be filed with the Registrar prior to the hearing, but if there is an intention to rely upon same at the hearing they shall be presented to the Tribunal during the hearing in order to determine the admissibility of such evidence. The party who wishes to rely on such evidence is responsible for bringing to the hearing sufficient copies of all documents for the panel and the Tribunal's record pursuant to Rule 8.10, as well as to provide copies to the other party (if not already provided).

27. Disclosure of Allegations of Misconduct

27.01 Where the good character, propriety of conduct or competence of a party is an issue in the proceeding, the party is entitled to be furnished with reasonable information of any allegations at least 14 days before the hearing.

28. Written Evidence

28.01 If a party intends to rely at the hearing on evidence not contained in an Agreed Statement of Facts or an Agreed Book of Documents, that party shall disclose and produce to the opposing party the evidence in question at least 30 days prior to the hearing, or as otherwise directed by the Tribunal. This obligation applies to documents, written evidence, expert reports and witness statements as described in this Part VI of the Rules. If, as a result, the opposing party wishes to present rebuttal evidence, that party shall disclose and produce such evidence at least seven days prior to the hearing, or as otherwise directed by the Tribunal.

28.02 The Tribunal may direct a party to submit evidence in a specific format.

28.03 The Tribunal may refuse to consider evidence not served or submitted in accordance with Rule 28.01 or Rule 28.02, or may direct that the evidence be tendered in a different manner or that the evidence shall only be considered on such conditions as the Tribunal may specify.

29. Reports of Experts

29.01 At least 30 days before the hearing or as otherwise directed by the Tribunal, a party who intends to call an expert witness or to rely on or refer to the written report of an expert shall serve on the other parties a signed copy of that report or a report summarizing the expert opinion that the witness will give, as the case may be, and any such report shall include the name, address, and qualifications of the expert.

29.02 Where a party receives an expert report with insufficient time to obtain its own expert report in response, that party may comply with Rule 29.01 by serving the expert report at least seven days before the hearing or as otherwise directed by the Tribunal.

29.03 The Tribunal may refuse to consider an expert report or the evidence of an expert witness where the party putting forward the report or the witness has failed to comply with Rule 29.01 or Rule 29.02 or may direct that the report or the evidence shall only be considered on such conditions as the Tribunal may specify.

30. Witnesses

30.01 Subject to Rule 30.05, witnesses at an oral or electronic hearing shall be examined under oath or affirmation, unless otherwise directed by the Tribunal.

30.02 At least 30 days before the hearing or as otherwise directed by the Tribunal, a party who intends to call a non-expert witness shall provide the other parties with the name of the non-expert witness that the party intends to call to present evidence and shall serve on the other parties a witness statement or statement of evidence the witness will give.

30.03 Where a party receives a witness statement or statement of evidence with insufficient time to obtain its own witness in response, that party may comply with Rule 30.02 by providing to the other parties the name of a witness in response and serving on them a witness statement or statement of evidence for that witness at least seven days before the hearing or as otherwise directed by the Tribunal.

30.04 The Tribunal may refuse to consider the evidence of a witness where the party putting forward the witness has failed to comply with Rule 30.02 or Rule 30.03 or may direct that the evidence shall only be considered on such conditions as the Tribunal may specify.

30.05 The Tribunal may order that:

- (a) any particular facts be proved by affidavit;
- (b) the affidavit of a witness be read at an oral or electronic hearing; and
- (c) a witness be examined under oath or affirmation before the hearing.

30.06 The Tribunal may direct a witness to confirm under oath or affirmation that certain-written evidence was prepared by the witness or under the direction or control of the witness and is accurate to the best of his or her knowledge or belief.

31. Summons to Witness

31.01 A party who wishes to summon a person to give testimony or to produce documents at a hearing shall prepare a Summons to Witness in Form 3 and submit it to the Registrar.

31.02 The Chair, Vice-Chair or member of the panel may sign the Summons to Witness.

31.03 The party requesting a Summons to Witness shall serve it personally upon the person named in the Summons and shall pay the person the participation fees set out in Appendix B.

31.04 Pursuant to sections 10(2), 10(3) and 10(4) of the Act,

- (a) Neither the CEO of FSRA, Director of Arbitrations, nor any member of the Tribunal shall be required to testify in a proceeding before the Tribunal; and
- (b) Except with the consent of the CEO of FSRA, no employee of FSRA or any person engaged by the CEO of FSRA or the Tribunal shall be required to testify in a proceeding before the Tribunal, respecting information obtained in the discharge of the person's duties under the Act, the *Financial Services Regulatory Authority of Ontario Act, 2016* or any other act.

32. Submissions

32.01 If a party intends to present to the Tribunal written submissions and/or a Book of Authorities at the hearing, the party shall provide the opposing party with a copy

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

- 32.02 Subject to Rule 8.10 and Rule 8.11, if a party intends to present to the Tribunal written submissions and/or a Book of Authorities at the hearing, the party shall 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.

PART VII SUMMARY DISMISSAL

33. Dismissal without a Hearing

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

- (a) frivolous, vexatious or commenced in bad faith;
- (b) relates to matters that are outside the jurisdiction of the Tribunal; or
- (c) 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 accordance with these Rules, the Tribunal may proceed in the absence of that party, may dismiss the proceeding without further hearing and without further notice, or may give notice of intention to dismiss the proceeding if reasonable cause is not shown within 30 days of the giving of the notice for the party's failure to appear.

35.02 A party who has been given notice of intention to dismiss under Rule 35.01 shall have the right to make written submissions to the Tribunal on the issue of reasonable cause for failure to appear within 30 days of the giving of such notice. After considering the submissions, if any, the Tribunal may dismiss the proceeding without further hearing, or may order the proceeding to continue, with or without conditions.

36. Motion for Summary Dismissal

36.01 The Tribunal may exercise its powers under Rules 33, 34 or 35 either on its own motion or on the motion of any party. A party seeking summary dismissal of a proceeding under Rules 33, 34 or 35 shall initiate its request for dismissal by motion in accordance with Rule 14.

**PART VIII
PARTIES AND PARTICIPATION****37. Party Status**

37.01 A person who is not a party and is interested in actively participating in a proceeding as a party shall file a written Application for Party Status in Form 4 and serve it on the other parties:

- (a) before the scheduled date of any pre-hearing conference, so that the Application can be dealt with at that conference; or
- (b) in accordance with the terms of the Notice of Hearing.

37.02 A party who objects to party status being granted to a person shall file and serve an objection, and the person may respond to the objection.

37.03 Applications for party status may be dealt with by the Tribunal based on the filed material.

37.04 In deciding whether to make an order granting a person party status, the Tribunal may consider:

- (a) the nature of the proceeding;
- (b) the issues;
- (c) whether the person will be directly affected by the outcome of the proceeding;
- (d) the likelihood of the person being able to make a useful and different contribution to the understanding of the issues;
- (e) any delay or prejudice to the parties; and
- (f) any other matter it considers relevant.

38. Levels of Participation

38.01 The Tribunal may, by order, grant party status to a person who has applied for such status, but may, by the terms of the order, restrict or impose conditions upon that person's participation as a party.

38.02 A person who participates in a proceeding shall comply with any restrictions or conditions set by the Tribunal in granting party status.

39. Withdrawal

39.01 A requester or appellant may withdraw a Request for Hearing or a Notice of Appeal before the Tribunal:

- (a) prior to the hearing, by filing a Withdrawal (in Form 5) signed by the party or his or her representative and serving the Form 5 on the other parties; or,
- (b) during the hearing, by bringing a motion with the permission of the Tribunal.

39.02 A responding party may discontinue participation in a proceeding:

- (a) prior to the hearing, by filing a Discontinuance (in Form 5) signed by the party or his or her representative, and serving the Form 5 on the other parties; or
- (b) during the hearing, by bringing a motion with the permission of the Tribunal.

39.03 The Tribunal may impose conditions on any withdrawal or discontinuance as it considers appropriate.

39.04 Where a party withdraws or discontinues under this Rule 39, another party may request an order for costs from that party, so long as the request is filed and served within 14 days of service of the notice or letter of withdrawal or

discontinuance or the disposition of the motion to withdraw or discontinue, as the case may be.

- 39.05 Where a proceeding is ongoing, evidence received by the Tribunal from a responding party that has discontinued in accordance with this Rule shall remain on the record and the party who filed the evidence is subject to interrogatories in accordance with Rules 18 and 19 notwithstanding the discontinuance.

PART IX APPEALS FROM DECISIONS OR ORDERS

40. Appeal Process

- 40.01 Upon receiving a Notice of Appeal pursuant to Rule 15, the Registrar shall request from the CEO of FSRA a Record for the appeal. Within fifteen (15) days of receiving this request, the CEO of FSRA shall provide four (4) copies of the Record to the Registrar and one (1) copy to the appellant.

- 40.02 The Record shall consist of copies of:

- (a) the decision or order under appeal;
- (b) all documents relied upon by the CEO of FSRA in making the decision or order under appeal;
- (c) any submissions made to the CEO of FSRA by the appellant on or before the date of the decision or order.

- 40.03 During the hearing of the appeal, a party may introduce into evidence any oral testimony, document or other thing that may be admitted under section 15 of the *Statutory Powers Procedure Act*, provided that the party has complied with Part VI of these Rules.

- 40.04 If a party intends to rely at the hearing of the appeal on evidence not already contained in the Record provided by the CEO of FSRA under Rule 40.01 – 40.02, that party shall disclose and produce to the opposing party the evidence in question at least 30 days prior to the hearing of the appeal, or as otherwise directed by the Tribunal. This obligation applies to documents, written evidence, expert reports and witness statements as described in Part VI of the Rules. If, as a result, the opposing party wishes to present rebuttal evidence, that party shall disclose and produce such evidence at least seven days prior to the hearing, or as otherwise directed by the Tribunal.

- 40.05 Where evidence that a party proposes to rely on is not already contained in the Record, that evidence shall **not** be filed with the Registrar prior to the hearing of the appeal, but shall be presented to the Tribunal during the hearing of the appeal in order to determine the admissibility of such evidence. The party who wishes to rely on such evidence is responsible for bringing to the hearing

sufficient copies of all documents for the panel and Tribunal Record pursuant to Rule 8.10, as well as to provide copies to the other party (if not already provided).

- 40.06 Unless otherwise provided under this Part IX, the Rules contained in Parts I – XI apply to matters brought before the Tribunal by a Notice of Appeal pursuant to Rule 15.

PART X COSTS

41. Costs of Parties

41.01 Where the conduct or course of conduct of a party in a proceeding before the Tribunal has been unreasonable, frivolous or vexatious, or a party has acted in bad faith during a proceeding, the Tribunal may order the offending party to pay all or part of another party's costs in the proceeding.

41.02 An order for costs pursuant to Rule 41.01 shall not be made unless it is requested by a party in a proceeding before the Tribunal. This request can be made at any stage of the proceeding prior to the release by the Tribunal of its final order in the proceeding. Where costs are requested, both the party requesting costs and the party against whom the order is requested shall be given a reasonable opportunity to make submissions to the Tribunal.

42. Criteria for Costs of Parties

- 42.01 In determining whether the conduct or course of conduct of a party in a proceeding before the Tribunal has been unreasonable, frivolous or vexatious, or whether a party has acted in bad faith during a proceeding, the Tribunal shall consider all relevant circumstances, including evidence that a party:
- (a) failed to attend a hearing or pre-hearing conference before the Tribunal when properly given notice, without sending a representative and without contacting the Registrar and other parties to the hearing or pre-hearing conference;
 - (b) failed to comply in a timely manner with an undertaking, procedural order or direction of the Tribunal and thereby caused prejudice or delay to another party in the proceeding;
 - (c) failed to comply in a timely manner with the disclosure and production requirements set out in the Tribunal's Rules or in any Practice Direction adopted by the Tribunal;
 - (d) failed to cooperate with other parties during preliminary proceedings or at the hearing;
 - (e) advanced a position that was frivolous, vexatious or manifestly unfounded;
 - (f) knowingly presented false or misleading evidence to the Tribunal; or

- (g) refused to admit facts or documentary evidence not in dispute and which it should have reasonably admitted.

42.02 In determining the appropriate amount of costs under Rule 41.01, the Tribunal shall consider all relevant circumstances, including the following:

- (a) the nature and duration of the conduct or course of conduct at issue;
- (b) the degree and duration of the bad faith at issue;
- (c) the extent of the prejudice caused to the party requesting costs;
- (d) the amount of costs incurred by the party requesting costs; and
- (e) the conduct or course of conduct of the party requesting costs.

43. Costs of the Tribunal

43.01 Where a party has engaged in conduct or a course of conduct that constitutes an abuse of the Tribunal's process, the Tribunal may order said party to pay all or part of the costs of the Tribunal.

43.02 Before making an order for costs pursuant to Rule 43.01, the Tribunal shall give notice to the party against whom the order is intended and shall give this party a reasonable opportunity to make submissions.

43.03 The costs of the Tribunal consist of the expenses that the Tribunal has incurred in connection with the proceeding.

43.04 Where the Tribunal orders that its costs be paid, the Tribunal shall:

- (a) fix the costs of the Tribunal; and
- (b) indicate by whom the costs shall be paid and in what proportion.

43.05 In determining whether a party has engaged in conduct or a course of conduct that constitutes an abuse of the Tribunal's process, the Tribunal shall consider all relevant circumstances, including the following factors:

- (a) whether a party's conduct unreasonably delayed or prolonged the proceeding;
- (b) whether a position advanced by a party was frivolous, vexatious or manifestly unfounded;
- (c) whether a party failed to comply with a procedural order or direction of the Tribunal;
- (d) whether a party was contemptuous towards the Tribunal;
- (e) whether a party knowingly presented false or misleading evidence to the Tribunal; and
- (f) whether the Tribunal was obliged to incur any extraordinary expenses in conducting the hearing as a result of (a), (b), (c), (d) or (e).

PART XI
REVIEW OF DECISIONS AND ORDERS

44. Initiating Review

- 44.01 A party may request the review of an interim or final decision or order by the panel or member that made the decision or order.
- 44.02 The panel or member that made an interim or final decision or order may at any time, on its own initiative, review that decision or order and, except where Rule 12.03 applies, shall indicate its intention to do so by serving a notice on all of the parties.

45. Procedure for Requesting Review

- 45.01 A party making a request under Rule 44.01 shall file and serve a written Request for Review, in the form set out in Rule 45.04, within 10 days of the date of the making of the decision or order that is the subject of the request.
- 45.02 A panel or member may consider a Request for Review served or filed more than 10 days after the date of the decision or order that is the subject of the request if satisfied that there is a good reason for the delay and that the request has merit.
- 45.03 A panel or member will consider only one request for review of any decision or order by a party.
- 45.04 The Request for Review shall:
- (a) state the reasons for requesting the review of the decision or order;
 - (b) state the outcome or relief sought;
 - (c) attach any documents that support the request;
 - (d) state the full name, address and telephone number of the requester;
 - (e) if the requester has a representative, state the full name, address, and telephone number of the representative;
 - (f) attach an affidavit setting out the facts relied upon by the requester; and
 - (g) be served on all parties to the original proceeding.
- 45.05 Any party who wishes to respond to a Request for Review shall file and serve its submissions within seven days of service of the request.

46. Decision on Request for Review

- 46.01 In deciding whether it is advisable to review all or part of its decision or order, the panel or member may consider any relevant circumstances, including:

- (a) whether there is a material error of law or fact such that the panel or member would likely have reached a different decision but for that error;
- (b) the extent to which any party or any other person has relied on the decision or order;
- (c) whether the decision or order is under appeal or is the subject of a judicial review application; and
- (d) whether the public interest in finality of decisions and orders is outweighed by the prejudice to the requester.

46.02 The panel or member may grant a Request for Review in whole or in part, based on the material filed, and may make procedural directions for the review.

47. Procedure for Review

47.01 The panel or member may combine its review of its decision or order with its consideration of the Request for Review.

47.02 Unless otherwise ordered, a review shall be conducted in writing.

47.03 The panel or member may add such parties to the review proceeding as is considered appropriate.

47.04 The panel or member may consider the record from the original hearing, in addition to the materials filed by the requester and any other parties.

47.05 On a review the panel or member may confirm, vary, suspend or cancel the decision or order under review.

Appendix A Forms

Form	Title
1	Request for Hearing
2	Notice of Appeal
3	Summons to Witness
4	Application for Party Status
5	Withdrawal / Discontinuance

Appendix B Participation Fees for Witnesses
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1. Participation allowance for each full or partial day of necessary participation...\$50
2. Travel allowance, where the hearing is held,
 - (a) in a city or town in which the witness resides, \$3.00 for each day of necessary participation;
 - (b) within 300 kilometres of where the witness resides, 24¢ a kilometre each way between his or her residence and the place of the hearing;
 - (c) more than 300 kilometres from where the witness resides, the minimum return air fare plus 24¢ a kilometre each way from his or her residence to the airport and from the airport to the place of the hearing;
3. Overnight accommodation and meal allowance, where the witness resides elsewhere than the place of hearing and is required to remain overnight, for each overnight stay.....\$75

Note: These fees reflect the attendance fees paid to witnesses in the Superior Court of Justice in Ontario on January 1, 2011 and are subject to change.