

**IN THE MATTER OF
TEKNOSCAN SYSTEMS INC., H. SAMUEL HYAMS, PHILIP KAI-HING KUNG and
SOON FOO (MARTIN) TAM**

File No.2022-19

NOTICE OF MOTION

This is a motion brought by of the Respondents TeknoScan Systems Inc. ("**TSI**"), H. Samuel Hyams ("**Hyams**"), Philip Kai-Hing Kung ("**Kung**") and Soon Foo (Martin) Tam ("**Tam**") (collectively, the "**Respondents**") for the relief set out below under Rules 1, 3, 4(2), 17, 28 and 29 of the *OSC Rules of Procedure*.

A. ORDER SOUGHT

The Respondents request, with notice, that the Ontario Securities Commission make the following order(s) based on the written material submitted or by videoconference at the next attendance currently scheduled on April 13, 2023, or on such date and at such location as the Tribunal sees fit:

1. An Order abridging the time for service and/or notice of this motion and motion record, if necessary.
2. That the Order of Adjudicator Burke dated February 13, 2023 (the "**February 13, 2023, Order**"), be amended as follows:
 - a. The dates in Paragraph 1 of the February 13, 2023, Order¹ be adjourned and/or extended from March 24, 2023, to a date at least 30 days later to allow the individual Respondents to obtain new Counsel and, possibly, for the corporate Respondent to do so as well;

¹ By which the respondents are to serve and file their witness lists, serve on Staff a summary of each witness's anticipated evidence, and indicate any intention to call expert witnesses (including providing the expert's names and the issues on which the experts will give evidence.

- b. Further, or in the alternative to (a), that the dates in Paragraph 1 of the February 13, 2023 Order be adjourned and or extended to a new date as sought by new counsel for the Respondents and agreed to by this Tribunal;
 - c. Any other subsequent dates in the timetable be adjourned or extended by a similar margin as necessary;
 - d. A further attendance be scheduled to deal with the matters that were to be dealt with at the Third Attendance currently scheduled for April 13, 2023, by video conference;
3. Such further and other relief as to this tribunal appears just.

B. GROUNDS

The grounds for the motion are:

4. The current proceeding was commenced by an Order under Subsection 11(1)(a) on November 17, 2020.
5. The OSC and its Staff continued its investigation from at least that date through to the issuance of the Statement of Allegations;
6. The Statement of Allegations was not issued until August 23, 2022, some 21 months later.
7. The primary allegations in the Statement of Allegations relate to a Notice to Shareholders of TeknoScan dated December 14, 2016, regarding an intention by a proposed purchaser to purchase up to 50% of the common shares of TeknoScan.
8. It is alleged by Staff that this transaction, set out in the Notice to Shareholders over six years ago, did not close and that the Respondents had no reasonable basis to believe the transaction would take place.

9. In reviewing the productions of Staff and seeking instructions regarding witnesses and responses to the OSC's Witness List and expected evidence, a number of conflicts of interest have become apparent. Those conflicts include:
 - i) Conflicts as between the Respondents as to how they wish to pursue the defense of this application;
 - ii) Potential Conflicts between the personal Respondents and the Corporate Respondent as to the best course of action to follow;
 - iii) Difficulties in getting clear and consistent instructions from the various Respondents which, in turn, makes the proceeding increasingly difficult to respond to;
 - iv) Incompatible positions as between the Respondents and their Counsel making continued representation extremely difficult.
10. Owing to Respondent's Counsel's continuing obligations to maintain Solicitor-Client privilege and Litigation Privilege, no further details of the nature of the conflicts is provided at this time.
11. However, in the circumstances, the Respondents request an extension of the timetable set out in the Order of February 13, 2023, as they need additional time to:
 - a. to retain new counsel for the individual respondents and, possibly, for the corporate respondent; (Once new counsel is/are retained, they may advise as to what further extensions, if any, are requested)
 - b. Seek instructions from their respective new counsel as to the propriety and issues relating to Fogler Rubinoff remaining as counsel to the Corporate Respondent;
 - c. serve their witness lists and serve on staff their summary of each witness's anticipated evidence.

12. As Staff's case is almost entirely based on events that occurred over six years ago it is suggested that there is no likelihood that any extension will cause them prejudice. Failure to provide the extension and/or adjournment will cause significant prejudice to the Respondents.
13. The Respondents rely upon Rules 1, 3, 4(2), 17, 28 and 29 of the OSC Rules of Procedure).

C. EVIDENCE

14. The Moving Parties intend to rely on the following evidence for the motion:
- a. Affidavit of Michael Donsky;
 - b. Such further and other evidence as to this Tribunal appears just.

DATED this 23rd day of March 2023.

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