

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

File No.2022-19

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 January 12, 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 September 15, 2022 (the "**September 15, 2022, Order**"), be amended as follows:
 - a. The dates in Paragraphs 2 and 3 of the September 15, 2022, Order be adjourned and/or extended by at least 30 days.
 - b. A new date be set by which the respondents shall serve and file a motion, if any, regarding Staff's disclosure or seeking disclosure of additional documents by Staff;

- c. A further attendance be scheduled to deal with the matters that were to be dealt with at the Second Attendance previously scheduled for January 12, 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 to purchase up to 50% of the common shares of TeknoScan.
8. The intended purchaser under the Notice to Shareholders was a corporation named Double Helix Management Services ("**DHMS**").
9. 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.
10. Staff have almost two years to assemble their evidence, review their documents, and assemble their case.

11. The Respondents have had only a month or two to review all that has been assembled over that period, primarily relating to transactions that occurred several years ago.

12. At the time of the First Attendance on September 15, 2022:

a. The Respondents were aware of interviews being done by Staff of four individuals, all directors of the Respondent TeknoScan;

i. now it appears that there are at least 17 persons were interviewed with associated transcripts and exhibits as well as undertakings;

b. The Respondents were aware of what each of them had produced during his own interview, although not necessarily aware of the other documents produced by other Respondents. They had no idea what documents or evidence had been produced by non-parties to this proceeding.

i. Upon receiving Staff's documents, and the first set of productions, the "Hyperlink Index" provided by Staff indicates, there appear to be 4840 separate documents identified and produced, many made up of numerous sub-documents, and more than few numbering in the hundreds of pages.

ii. Additional documents have since been provided in a second set of productions sent out shortly after October 13, 2022, and a third set on December 8, 2022.

iii. While the latter sets are smaller than the initial set of productions, having additional documents provided while still trying to get through the first set has not made it easier to complete the review of the productions.

13. The Respondents agreed to the schedule set out in the September 15, 2022, Order without knowledge of the scale of production set out above.

14. In addition, the format of Staff's productions has created additional issues:

- a. The metadata of the productions is, according to Hanchu Chen, Senior Investigation/Litigation Counsel with the OSC, generally identical to the format in which they were received, including file name and date;
- b. While the metadata for each document would remain consistent with what Staff received, it would not necessarily relate to the actual information in the document itself;
- c. That practice results in descriptions of documents that are often far from useful and, on occasion, misleading;
- d. Coupled with the scale of production, the use of non-sensical or at least unhelpful data in the Hyperlink Index, even if it does match the meta-data, for such columns as "File Name", "Docdate", etc. slows down the review process;

15. As well, the formatting used to deliver files by Kiteworks as resulted in various problems:

- a. Documents are delivered to Fogler Rubinoff for the Respondents but the Fogler's documentation system – Net Documents – uses limited sub-folders;
- b. Meanwhile, the Documents delivered via Kiteworks by Staff were generally created with an Excel spreadsheet identifying the documents with the actual documents contained in one of a number of subfolders identified only by document ID number;
- c. Fogler Rubinoff's Systems Tech help has been necessary on a number of occasions to deal with inconsistencies between the Kiteworks productions and the storage of same on Fogler's servers;

- d. The inconsistencies between the Staff system and the Foglers system made it (1) harder to get documents to the Respondents (which ultimately, after various attempts to deliver them via Titan File, had to be delivered on USB Thumb Drives via courier);
 - e. Problems have still arisen for the Respondents in trying to review the documents, but those problems take longer without the assistance of a dedicated Tech staff;
 - f. Each of these additional steps increased the time it took to get documents to the Respondents for review and reduced the amount of time available for that review.
16. In the circumstances, the Respondents need additional time to prepare for the Second Attendance and to determine if a motion is necessary to deal with Staff Productions.
17. The Respondents rely upon Rules 1, 3, 4(2), 17, 28 and 29 of the OSC Rules of Procedure).

C. EVIDENCE

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

DATED this 30th day of December 2022.

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