

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

File No. 2022-19

**MOTION OF THE MOVING PARTY
DLA PIPER (CANADA) LLP**

(For an Order Removing the Respondents' Counsel of Record
Under Rule 21(2) of the *Capital Markets Tribunal Rules of Procedure*)

A. ORDER SOUGHT

The Moving Party, DLA Piper (Canada) LLP, requests with notice, that the Tribunal make the following order(s):

1. An order removing DLA Piper (Canada) LLP ("**DLA Piper**") as counsel of record to the Respondents TeknoScan Systems Inc. ("**TeknoScan**"), H. Samuel Hyams ("**Hyams**"), Philip Kai-Hing Kung ("**Kung**") and Soon Foo (Martin) Tam ("**Tam**") and collectively with TeknoScan, Hyams and Kung, the "**Respondents**").
2. An order adjourning the October 2, 2023 deadline for the exchange of Document Briefs and October 6, 2023 deadline for the completion of the E-Hearing Checklist, nunco pro tunc if necessary, to a date to be fixed by the Capital Markets Tribunal (the "**Tribunal**").

B. GROUNDS

The grounds for the motion are:

3. DLA Piper seeks to be removed as counsel of record for the Respondents for non-payment of a substantial amount of fees.
4. On August 23, 2022, the Staff of the Ontario Securities Commission ("**Staff**") commence the within proceeding against the Respondents. Staff served an Amended Statement of Allegations on March 28, 2023, in which Staff seek the following relief against the Respondents:

- a. an order that the Respondents cease trading in any securities or derivative permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the Act;
- b. an order that the Respondents be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
- c. an order that any exemption contained in Ontario securities law not apply to the Respondents permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;
- d. an order that the Respondents be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- e. an order that each of the Respondents be prohibited from becoming or acting as a registrant or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- f. an order that each of the Respondents pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;
- g. an order that the Respondents disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;
- h. an order that each of Hyams, Tam and Kung resign any position he may hold as a director or officer of an issuer permanently or for such period as is specified by the Commission, pursuant to paragraph 7 of subsection 127(1) of the Act;
- i. an order that each of Hyams, Tam and Kung be prohibited from becoming or acting as a director or officer of any issuer permanently or for such period

as is specified by the Commission, pursuant to paragraph 8 of subsection 127(1) of the Act;

- j. an order that each of Hyams, Tam and Kung resign any position that he may hold as a director or officer of a registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act;
 - k. an order that each of Hyams, Tam and Kung be prohibited from becoming or acting as a director or officer of a registrant, pursuant to paragraph 8.2 of subsection 127(1) of the Act;
 - l. an order that the Respondents pay costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act;
5. The allegations in the pleading all relate to the 2016-2017 time period. The matter was investigated by Staff in 2020. Years have gone by without this matter proceeding, and it cannot be said that this matter is one of urgency for Staff, given the passage of time.
6. The Respondents retained DLA Piper to act as their counsel in the within proceeding on May 17, 2023. Having been retained for just over four months, DLA Piper does not have extensive or historical institutional knowledge of the matters at issue in this proceeding.
7. Prior to retaining DLA Piper, the Respondents were represented by Fogler, Rubinoff LLP ("**Fogler**"). Fogler had been acting as counsel to the Respondents in relation to this matter since Staff began its investigation in or around the fall of 2020 and had historically acted as counsel to TeknoScan.
8. In the four months that DLA Piper acted as counsel to the Respondents, DLA Piper performed a significant amount of work to advanced the Respondents' position in this proceeding.

9. DLA Piper has issued a total of four invoices to the Respondents in relation to this matter. The first two invoices were paid, but the last two invoices, issues on July 19, 2023 and August 14, 2023, respectively, were not.
10. DLA Piper has no confidence that its two outstanding invoices or any future invoices will be paid by the Respondents and has good cause to withdraw its representation of the Respondents.
11. DLA Piper provided the Respondents with reasonable notice of its intention to withdraw for non-payment of fees and the removal of DLA Piper as counsel of record will not prejudice the Respondents.
12. DLA Piper has provided all of its work product and all of the documents it has in its possessions that are relevant to the Respondents' defence of the within proceeding, including all documents provided to DLA Piper by Fogler, to the Respondents. The Respondents have had, and continue to have, ample time to retain new counsel prior to the commencement of the merits hearing on November 14, 2023. If the Respondents decide to not retain new counsel, they are capable of representing themselves at the merits hearing.
13. DLA Piper also seeks an adjournment of the October 2, 2023 deadline for the exchange of Document Briefs and October 6, 2023 deadline for the completion of the E-Hearing Checklist, as prescribed by the Procedural Order dated August 3, 2024, to provide the Respondents, or their new counsel, with additional time to prepare these two documents following the transition of the file from DLA Piper.
14. The October 2 and 6, 2023 deadlines, like all other deadlines leading up to the hearing dates, were set only recently – last month, in the Order of the Tribunal dated August 3, 2023. The dates to be extended have not been fixed for an extended period of time.
15. Rules 21(2) of the *Capital Markets Tribunal Rules of Procedure*.

16. Such further and other grounds as counsel may advise and the Tribunal may permit.

C. EVIDENCE

The moving party intends to rely on the following evidence for the motion:

17. The Affidavit of Michael Reid sworn September 29, 2023; and,

18. Such other materials as counsel may advise and the Panel may permit.

DATED this 29 day of September, 2023

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