

**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 TEKNOSCAN SYSTEMS INC., PHILIP KAI-HING KUNG  
and SOON FOO (MARTIN) TAM**

(For an adjournment under Rules 1, 3, 4(2), 17, 28 and 29 of the  
Capital Market Tribunal Rules of Procedure)

**A. ORDER SOUGHT**

The Respondents TeknoScan Systems Inc., Philip Kai-Hing Kung and Soon Foo (Martin) Tam request that the Tribunal make the following order:

1. that the hearing dates set out in paragraph 5 of the Order of the Tribunal dated October 13, 2023 be adjourned such that the hearing on the merits of this matter be scheduled to be heard on February 13, 15, 16, 20, 21, 22, 23, 26, 27, 28, and 29, 2024, and for a further five days in March 2024 to be determined by the Tribunal;
2. that the deadlines for delivery of hearing briefs for the hearing on the merits and a completed *E-Hearing Checklist* set out in paragraphs 2 and 3 of the Order of the Tribunal dated August 3, 2023, be amended to be January 29 and February 5, 2024, respectively;
3. that a Settlement Conference be scheduled for a date in December 2023 or January 2024, subject to Tribunal availability; and
4. such further and other relief as we may request and this Tribunal deems just.

## **B. GROUNDS**

The grounds for the motion are:

1. By Order of this Tribunal dated October 13, 2023, our counsel was removed from the record. We have been working since that time to obtain new counsel.
2. We are finalizing arrangements to secure funding for our legal fees (which we understand will be significant for the proposed four-week hearing) and expect to confirm our new counsel shortly.
3. In the interim, while their retainer is not yet confirmed, our prospective counsel has in good faith assembled a team for this matter and, even before arrangements for legal fees are in place, they have worked to review the evidence (including transferring the document database) and to consider the issues and options for next steps, including potentially narrowing the issues and shortening the length of the merits hearing.
4. The allegations made by staff of the Ontario Securities Commission (“Staff”) include allegations of fraud and misrepresentation. These are serious allegations with serious proposed penalties that will have a significant and permanent impact on us. We are entitled and intend to put forward a full answer and defence to these allegations.

### *Proposed Adjournment Will Have Minimal Impact on Completion*

5. We acknowledge that 20 days have been scheduled for the hearing on the merits but we are of the view that this is – at most – a three-week hearing and does not require four weeks.
6. We are proposing that the hearing dates in November and December 2023 be vacated and that only one extra week be scheduled in March 2024, subject to Tribunal availability. This will provide the Tribunal and the parties with three continuous or nearly continuous weeks for the hearing.
7. The proposed adjournment will have minimal impact on the completion date for the hearing, potentially extending that completion by only a week (subject to Tribunal availability), but providing the parties with significant additional time to prepare and ensure an efficient and effective hearing.

*Evidence, Including Late Disclosed Evidence, to be Reviewed and Considered*

8. Staff's investigation in this matter has been wide ranging. The investigation has led to a significant amount of evidence being collected and disclosed that extends well beyond the period of the events that are the subject of the allegations. The scope and extent of evidence will require time for new counsel to review.
9. In addition to the scope and extent of evidence, Staff produced materially significant new evidence, comprised of three volumes of transcripts and key witness information, only for the first time within the past week. The evidence produced late on Friday afternoon consists of transcripts of examinations of two witnesses in the U.S. with the assistance of the Securities Exchange Commission in January 2022 and is central to the factual circumstances at the core of Staff's allegations.
10. All the previously disclosed evidence, and the material evidence only newly produced, will have to be reviewed and considered by our new counsel. Even working with dedication and urgency, the volume of material will take time to review and consider.
11. Even in the absence of the need for new counsel, the late and recently delivered material new evidence would warrant a request to adjourn at least the November dates in order to consider the impact of that evidence.

*Waiver of Legal Privilege to be Determined*

12. We are considering a waiver of privilege as part of our defence given our reliance legal advice in connection with the circumstances that are at the centre of Staff's allegations.
13. Our new counsel will have to review the privileged material to be able to advise us on whether to waive that privilege. Even with counsel working diligently, that will take some time to determine. That said, we will ensure that our new counsel make this issue a priority so that we avoid any further delay.
14. If we do waive privilege, we expect that some time will be required for Staff to review and consider the privileged material.

*Potential Resolution*

15. We believe that there may be opportunities to narrow the issues and consider resolution with Staff. All the parties and the Tribunal will benefit from any such narrowing and, of course, any potential resolution.
16. We are committed to undertaking that work with Staff in short order. An adjournment of the hearing will permit time for that work while counsel are preparing for the hearing.
17. A Settlement Conference would support the parties' efforts to narrow the issues and consider potential resolution and would benefit this matter.

*Adjournment Will Render Hearing More Efficient and Effective*

18. We expect that as soon as retainer arrangements are finalized, our new counsel will work with diligence and urgency. By adjourning the immediate hearing dates in 2023 and adding only a week in March 2024, the completion date for the hearing is not delayed significantly and the additional time up front for counsel and the parties to prepare and do the necessary work will make for a much more efficient hearing and will ultimately be more effective for the Tribunal in its decision-making.
19. Such further and other grounds as we may advise and this Tribunal may accept.

#### **D. EVIDENCE**

The Moving Parties intend to rely on the following evidence for the motion:

1. We intend to rely on this Notice for our motion, along with any submissions we may file; and
2. such further evidence as we may submit and this Tribunal may admit.

**DATED** this 2<sup>nd</sup> day of November, 2023.

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