

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

Motion for the admission of transcripts and related evidence  
under Rules 1, 3, 4(2), and 28 of the Capital Markets Tribunal Rules of Procedure

**A. ORDER SOUGHT**

TeknoScan Systems Inc., Philip Kai-Hing Kung, and Soon Foo (Martin) Tam (together, the “TSI Respondents”) request that the Tribunal make an order:

1. admitting the transcripts of the interviews by Ontario Securities Commission staff (“Staff”) of each of Gary Jefferson and Stephen Richardson and the exhibits to each interview, on being identified on examination of Staff’s investigator;
2. waiving any requirements for the service and filing of this motion; and
3. such further and other relief as counsel may request and this Tribunal deems just.

**B. GROUNDS**

The grounds for the motion are:

1. The evidence contained in the transcripts and associated exhibits of Messrs. Jefferson and Richardson is key to Staff’s allegations against all of the Respondents. Both gentlemen had significant roles in seeking financing for the share purchase transaction proposed in 2016 that is at the core of the allegations and both are independent of the TSI Respondents.

2. The hearsay evidence in the transcripts and the exhibits is admissible, reliable and highly probative. It is necessary for the TSI Respondents to be able to make a full answer and defence – a key component of procedural fairness.

### **Testimony Given; Transcripts Prepared and Delivered**

3. At Staff's request as part of its investigation in this matter, Mr. Jefferson was compelled by the U.S. Securities Exchange Commission ("SEC") to testify by video on January 13, 2022, from Texas at an interview conducted by Staff and representatives of the SEC. A transcript of that interview was prepared.<sup>1</sup> Staff delivered a copy of that transcript to all of the Respondents in this proceeding on October 27, 2023.<sup>2</sup>
4. The TSI Respondents requested copies of the exhibits to Mr. Jefferson's interview on December 15, 2023.<sup>3</sup> Staff advised in response on January 9, 2024, that they are not in possession of stamped copies of the exhibits. In its January 9, 2024, e-mail, however, Staff provided the document identification numbers for the documents that were the exhibits at the interview.<sup>4</sup> Those documents, although not stamped, can reliably be presumed to be the exhibits to the examination.<sup>5</sup>
5. Mr. Richardson testified voluntarily by video from Singapore on June 15, 2021, at an interview conducted by Staff as part of its investigation in this matter. A transcript of that interview was prepared and Staff delivered a copy of the transcript and exhibits to the TSI Respondents through Staff's delivery of disclosure in the normal course.<sup>6</sup>
6. The transcripts and the exhibits to those interviews are admissible hearsay evidence.

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<sup>1</sup> Transcript of the Interview of Gary Jefferson on January 13, 2022, and exhibits to the examination ("Jefferson Transcript"), Exhibit "D" to the Affidavit of Sunil Joseph sworn February 19, 2024 ("Joseph Affidavit").

<sup>2</sup> E-mail communication from Hanchu Chen to the Respondents in this proceeding dated October 27, 2023, Exhibit "A" to the Joseph Affidavit.

<sup>3</sup> Letter from Susan Kushneryk to Hanchu Chen dated December 15, 2023, Exhibit "B" to the Joseph Affidavit.

<sup>4</sup> E-mail communication from Hanchu Chen to Susan Kushneryk and others dated January 9, 2024, Exhibit "C" to the Joseph Affidavit.

<sup>5</sup> Paragraph 8 and Exhibit "D" to the Joseph Affidavit.

<sup>6</sup> Transcript of the Interview of Stephen Richardson on June 15, 2021, and exhibits to the examination ("Richardson Transcript"), Exhibit "E" to the Joseph Affidavit.

## Testimony Materially Relevant to Staff Allegations

7. The operative allegations of breaches of the *Securities Act*, R.S.O. 1990, c. S-5, in Staff's Amended Statement of Allegations dated March 28, 2023, are in paragraph 31:

31. The following breaches of Ontario securities law and conduct contrary to the public interest are alleged:

- a. The Respondents directly or indirectly engaged in or participated in acts, practices or courses of conduct relating to securities that they each knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to s. 126.1(1)(b) of the Act, by causing Preferred Shareholders to convert their preferred shares to common shares under the guise of a sham transaction, thereby losing all rights associated with those preferred shares; and
- b. The Respondents made statements that were misleading or untrue in light of the circumstances in which they were made, contrary to s. 126.2 of the Act, by representing that that Davison and Double Helix intended to purchase up to 50% of common shares of TeknoScan at US \$20 per share. It was a material omission contrary to s. 126.2 of the Act to not disclose all or some of the facts set out in paragraph 20 above;
- c. The Individual Respondents, as officers and directors of TeknoScan, authorized, permitted or acquiesced in TeknoScan's breaches of the Act above and are thereby liable for such breaches pursuant to section 129.2 of the Act;
- d. Hyams and Kung made false and misleading statements contrary to subsection 122(1)(a) of the Act; and
- e. The Respondents have engaged in activity that is contrary to the public interest.  
[emphasis added]

## Evidence of Mr. Jefferson

8. Mr. Jefferson was a principal of RGI Group Private Banking Consultants Inc. ("RGI Group"), which he described as follows: "We were a consulting firm. I was a facilitator for arranging debt and equity capital for commercial projects for small and medium-sized businesses."<sup>7</sup>
9. Mr. Jefferson met Dan Davison, one of Staff's intended witnesses and a key figure in the proposed 2016 transaction, through Mr. Richardson.<sup>8</sup> Mr. Davison and Mr. Richardson retained RGI Group to assist with a financing for a project related to TeknoScan Systems

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<sup>7</sup> Jefferson Transcript, page 20, lines 1 to 11.

<sup>8</sup> Jefferson Transcript, page 32, lines 9 to 23.

Inc.<sup>9</sup> Mr. Davison communicated directly with RGI Group, independently of TeknoScan Systems Inc., in connection with financing for his proposed share purchase.<sup>10</sup>

10. Mr. Jefferson's evidence contradicts Staff's allegation that the 2016 transaction was a sham in paragraph 31(a) and is relevant to the alleged misleading or untrue statement in paragraph 31(b) of the Amended Statement of Allegations. As such, that evidence is material for the TSI Respondents' defence of this proceeding.

### ***Evidence of Mr. Richardson***

11. Mr. Richardson knew Mr. Davison and was aware of Mr. Davison's company Double Helix Management Services.<sup>11</sup> Mr. Richardson introduced Mr. Davison to RGI Group after undertaking his own review of RGI Group.<sup>12</sup> Mr. Davison introduced Mr. Richardson to TeknoScan Systems Inc.<sup>13</sup>
12. Mr. Richardson's evidence of his role in connection with Mr. Davison, the RGI Group and financing for the share purchase transaction proposed in 2016 contradicts Staff's allegation that the 2016 transaction was a sham in paragraph 31(a) and is relevant to the alleged misleading or untrue statement in paragraph 31(b) of the Amended Statement of Allegations. As such, that evidence is material for the TSI Respondents' defence of this proceeding.

### **Transcripts and Exhibits Properly Admissible and Required for Fairness**

13. The transcripts of the interviews of Mr. Jefferson and Mr. Richardson and exhibits to those interviews are necessary, relevant and probative of matters at issue in this proceeding. They both provide exculpatory evidence for the Respondents in response to Staff's Amended Statement of Allegations.

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<sup>9</sup> Jefferson Transcript, page 34, lines 8 to 22, and page 37, lines 10 to 18.

<sup>10</sup> See, for example, e-mail communication from Mr. Davison at dhmsltd@gmail.com to Messrs. Jefferson and Richardson dated November 22, 2016, Exhibit A to the affidavit of Michal Krzepkowski sworn January 22, 2024, and marked as Exhibit 1 to this Proceeding.

<sup>11</sup> Richardson Transcript, page 9, questions 23 and 14.

<sup>12</sup> Richardson Transcript, page 16, lines 15 to 25, and page 17, lines 1 to 24.

<sup>13</sup> E-mail communication from DHMS Ltd. to Sam Hyams and Philip Kung dated October 25, 2010, Exhibit A to the affidavit of Michal Krzepkowski sworn January 22, 2024, and marked as Exhibit 1 to this Proceeding.

14. There would be no prejudice to anyone arising from the admission of these transcripts other than that to the Respondents arising from their inability to cross-examine either Mr. Jefferson or Mr. Richardson. While there would be no prejudice as a result of admitting the transcripts, there would be prejudice to the Respondents being denied the ability to introduce this exculpatory evidence from witnesses outside the jurisdiction.

***Admissible and Relevant***

15. The transcripts of the interviews are admissible pursuant to section 15 of the *Statutory Powers Procedure Act*, R.S.O. 199, c. S-22, section 15:

What is admissible in evidence at a hearing

15 (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

(a) any oral testimony; and

(b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

What is inadmissible in evidence at a hearing

(2) Nothing is admissible in evidence at a hearing,

(a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or

(b) that is inadmissible by the statute under which the proceeding arises or any other statute.

Conflicts

(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding.

Copies

(4) Where a tribunal is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

16. The transcripts and exhibits are reliable hearsay, being evidence given under oath. They are also directly relevant to and probative of the matters in issue in this proceeding, as described above.

### ***No Prejudice from Admission***

17. Neither Mr. Jefferson nor Mr. Richardson are parties to this proceeding. There is no risk of self-incrimination, the most significant concern underlying the usual exclusion of transcripts.
18. There is no prejudice to either of them in the event that the transcripts of their respective interviews are admitted into evidence. Mr. Jefferson was cautioned at the outset of his interview and, being in the U.S., was invited to refuse to answer questions pursuant to the Fifth Amendment of the U.S. constitution.<sup>14</sup> Mr. Richardson attended voluntarily.
19. There is no prejudice to Staff as a result of the admission of the transcripts and exhibits as Staff had full opportunity to examine each of Mr. Jefferson and Mr. Richardson, without constraint in either instance.
20. The only prejudice would be to the Respondents as a result of their inability to cross-examine either Mr. Jefferson or Mr. Richardson. This is a prejudice that the TSI Respondents are prepared to accept.<sup>15</sup>

### **Exculpatory and Required for Fairness**

21. While there is no prejudice to the interview subjects or to Staff by the admission of the transcripts and exhibits, there would be significant prejudice to all of the Respondents in this proceeding by being denied the ability to introduce and reply upon this exculpatory evidence.
22. Both Mr. Jefferson and Mr. Richardson live outside of Ontario, and in fact outside of Canada, as stated at the outset of their respective interviews. It would be cumbersome and difficult to obtain their evidence by way of *viva voce* testimony in light of their residences outside of the jurisdiction and there being nothing compelling them to participate in this

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<sup>14</sup> Jefferson Transcript, page 7, lines 23 to 25, and page 8, lines 1 to 3.

<sup>15</sup> Joseph Affidavit.

proceeding to which they are not parties. In that regard it is significant that, in his interview, Mr. Richardson even resisted providing a current address to Staff.<sup>16</sup>

23. Any attempt to compel Mr. Jefferson and Mr. Richardson would be costly and time-intensive and would necessitate a lengthy adjournment of the hearing, without assurance of success. If the transcripts and exhibits are admitted, the parties will be able to rely on this evidence without creating any delays in this proceeding.
24. While it would be challenging to obtain *viva voce* evidence from Mr. Jefferson and Mr. Richardson, the transcripts are readily available and provide both reliable and the best evidence of efforts independent of TeknoScan Systems Inc. to obtain financing for the proposed 2016 share purchase transaction.
25. Denying admission of the transcripts and exhibits would be unfair to all of the Respondents as it would deny them the evidence material to their defence.
26. Transcripts of compelled interviews, while an exception and not the norm, have been admitted by the Ontario Securities Commission in appropriate circumstances in prior cases,<sup>17</sup> which admission has been affirmed as proper by the Ontario Divisional Court.<sup>18</sup>
27. The British Columbia Securities Commission has highlighted the risk of a denial of procedural fairness to respondents, in finding that “[t]he issue is one of procedural fairness. Procedural fairness was not met because the IDA panel failed to admit relevant evidence that was readily available. In failing to admit the evidence, it denied Steinhoff the right to a fair hearing.”<sup>19</sup>
28. Such further and other grounds as counsel may advise and this Tribunal may accept.

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<sup>16</sup> Richardson Transcript, page 5, lines 7 to 9.

<sup>17</sup> See, for example: *Hutchinson (Re)*, 2019 ONSC 36 (CanLII), at para 53, <https://canlii.ca/t/j315k#par53>; *Norshield Asset Management (Canada) Ltd. et al.*, 2010 ONSC 4 (CanLII), at para 86, <https://canlii.ca/t/h4sqc#par86>; *Sextant Capital Management Inc. et al.*, 2010 ONSC 25 (CanLII), at para 25, <https://canlii.ca/t/h4ssz#par25>.

<sup>18</sup> *Fiorillo v Ontario Securities Commission*, 2016 ONSC 6559 (CanLII), <https://canlii.ca/t/gvb96>, para. 118.

<sup>19</sup> *Investment Dealers Association of Canada (Re)*, 2004 BCSECCOM 666 (CanLII), at para 44, <<https://canlii.ca/t/1swht#par44>>, retrieved on 2024-02-18 <https://canlii.ca/t/1swht#par44>

### **C. EVIDENCE**

1. The affidavit of Sunil Joseph, sworn February 19, 2024; and
2. Such further and other evidence as counsel may advise and this Tribunal may permit.

February 19, 2024

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