

# Re White

IN THE MATTER OF:

**The Investment Dealer and Partially Consolidated Rules**

**and**

**Michael Patrick White**

2023 CIRO 10

Canadian Investment Regulatory Organization  
Hearing Panel (Ontario District)

Heard: August 2, 2023, in Toronto, Ontario (via videoconference)

Decision: August 3, 2023

Reasons for Decision: August 10, 2023

**Hearing Panel:**

John Campion, Chair, Daniel Iggers and Peter Gribbin

**Appearances:**

Marie Abraham, Senior Enforcement Counsel

Melanie Levesque, for Michael Patrick White

Michael Patrick White (absent)

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## INTERIM CONSENT DECISION – ACCOMMODATIONS AT HEARING

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### Introduction and Jurisdiction

¶ 1 Michael Patrick White was and remains a Registrant under the Canadian Investment Regulatory Organization (“CIRO”).

¶ 2 The Panel has been assured that CIRO has all of the regulatory authority previously exercised by the Investment Industry Regulatory Organization of Canada (“IIROC”). No party has opposed the jurisdiction of CIRO in this motion.

¶ 3 As a matter of record, on January 1, 2023, IIROC and the Mutual Fund Dealers Association of Canada officially amalgamated to become what is now called CIRO, so that all Hearing Panel members became members of the CIRO Hearing Panel as of that date.

¶ 4 From a point of view of jurisdiction, although the allegations against Mr. White were originally brought by IIROC under its then existing rules, the hearing in this matter can properly continue under CIRO’s Investment Dealer and Partially Consolidated (“IDPC”) Rules, thereby ensuring a continued jurisdiction of the Panel over the allegations made against Mr. White prior to January 1, 2023.

### Interim Hearing before the Panel

¶ 5 In Reasons for Decision delivered on the 12<sup>th</sup> day of April 2023, this Panel granted an adjournment requested by Mr. White until September 2023, when the hearing is to be peremptory to Mr. White. Upon agreement between the parties, the Panel now directs that the hearing take place September 25 to September 29, 2023, and be conducted virtually.

¶ 6 In paragraph 62 of our Reasons for Decision of April 12, 2023, the Panel decided, in part, as follows:

To prepare for and conduct the substantive hearing to be held in September 2023, this Panel

directs that appropriate accommodations to protect Mr. White's mental state should be discussed and agreed upon among counsel and, if necessary, the parties' medical advisors by June 30, 2023. If there is any issue regarding the nature of the accommodations under which the September hearing will be conducted, the issues regarding accommodation shall be brought back to this Panel for resolution on or before July 30, 2023.

¶ 7 Enforcement Counsel at CIRO and counsel for Mr. White could not reach an agreement on all accommodations prior to this hearing, but did manage to identify several items upon which they agreed and items upon which they did not agree, and those which were discussed pending further resolution.

¶ 8 At the hearing, there was a lengthy discussion of the issues with the continuing intent on holding a hearing that was acceptable to the public and sensitive to Mr. White's needs, allowing him to have a full defence on the merits.

#### **Consent Order and Accommodations at the Hearing**

¶ 9 As set out above, the hearing will commence on September 25, 2023 and continue until completed or September 29, 2023 peremptory to Mr. White.

¶ 10 The hearing will be conducted virtually. At that hearing, Enforcement Counsel will lead witnesses which are expected to be completed in one and one-half days of hearing, which evidence will be led and cross examined upon in the ordinary course. It is understood that extra time may be needed to complete the case put forward by Enforcement Counsel. Cross examination by counsel for Mr. White will take place in the ordinary course as the witnesses are called.

¶ 11 Mr. White is presently expected to be a witness in his own defence. If Mr. White elects to give testimony, he is free to file his evidence in chief by way of an affidavit at his own discretion. The purpose of an affidavit is to give Mr. White a road map of his testimony in chief and permit him to refer to his evidence in chief during his cross examination. Mr. White is permitted, but not required, to deliver his evidence in chief by an affidavit.

¶ 12 During his evidence in chief and cross examination, Mr. White may give evidence over two days (lasting no more than two hours of questioning on each day), if required. Enforcement Counsel will be given reasonable time within which to complete the cross examination of Mr. White beyond the four hours presently allotted, which time will be fixed after a request and answer by both counsel on the understanding that the cross examination will be completed during the hearing period of September 25 to 29, 2023. On each of these days, Mr. White will be examined for a total of two hours in 30-minute segments followed by a mandatory 10-minute break between each of the four 30-minute segments. To accommodate Mr. White, his counsel may in exceptional circumstances seek further breaks. Mr. White will be cross examined by only one Enforcement Counsel unless the Panel otherwise permits upon request. Mr. White will be free to make written notes of the questions put in cross examination before answering the questions and may refer to his affidavit, if one is filed. Mr. White will not be permitted to refer to any other notes or materials beyond his affidavit filed, any exhibits filed or the questions written by him during his cross examination.

¶ 13 Mr. White is permitted to have his spouse accompany him while giving testimony. She may not have discussions with Mr. White while he is being cross examined. Mr. White is free to consume food and/or non-alcoholic beverages during the hearing.

¶ 14 In that this is a virtual hearing, the Panel orders that, during the cross examination of Mr. White, he will only see the cross examiner or other speaker such as a Panel member or his own counsel, and then only when they are speaking or delivering decisions, respectively. For example, if a Panel member puts a question, the Panel member will activate the video portion of the electronic system only during the question put and the answer given or the decision rendered. The same will apply to Enforcement Counsel and Mr. White's own counsel. Otherwise, Mr. White will only see the video of Enforcement Counsel and his own video picture during the bulk of his cross examination. Other participants in the hearing will be able to hear all participants in the hearing and see those who are permitted to activate the video portion of their system.

#### **Reasons from the Prior Procedural Hearing of April 12, 2023**

¶ 15 In the prior hearing dealing with the adjournment of this hearing until September 2023, public reasons for

decision were made available. Those reasons for decision are attached as Appendix “A” to these Reasons for Decision so that the rationale for making accommodations of this type in sensitive circumstances are understood by the public.

Dated at Toronto, Ontario this 10 day of August 2023.

John A. Campion, Chair

Daniel Iggers

Peter Gribbin

## **Appendix “A”**

### **Re White**

**IN THE MATTER OF:**

**The Investment Dealer and Partially Consolidated Rules**

**and**

**Michael Patrick White**

New Self-Regulatory Organization of Canada  
Hearing Panel (Ontario District)

Heard: December 5, 2022 and February 14, 2023 in Toronto, Ontario  
Decision: April 19, 2023

**Hearing Panel:**

John Campion, Chair, Daniel Iggers, Peter Gribbin

**Appearances:**

Natalija Popovic, Senior Enforcement Counsel

Marie Abraham, Senior Enforcement Counsel

Joe Kelly, Senior Enforcement Counsel

Charles Gibson for Michael Patrick White

Melanie Levesque for Michael Patrick White

Michael Patrick White (absent)

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## **INTERIM DECISION – ADJOURNMENT MOTION**

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### **Introduction and Jurisdiction**

¶ 1 Michael Patrick White was a registrant with the Investment Industry Regulatory Organization of Canada (“IIROC”) and remains a registrant with the New Self-Regulatory Organization of Canada (the “New SRO”).

¶ 2 The Panel has been assured that the New SRO has all of the regulatory authority previously exercised by IIROC. No party has opposed the jurisdiction of the New SRO in this motion.

¶ 3 As a matter of record, on January 1, 2023, IIROC and the Mutual Fund Dealers Association of Canada officially amalgamated to become the New SRO so that all hearing panel members became members of the New SRO Hearing Committees as of that date. Hearings concerning Investment Dealers, previously subject to the IIROC Rules, are to be conducted under the interim rules, titled the Investment Dealer and Partially Consolidated

Rules (“IDPC Rules”) until such time as new rules are promulgated.

¶ 4 From a point of view of jurisdiction, a transitional provision 1105 of the IDPC Rules provides for continuity of enforcement proceedings commenced prior to January 1, 2023. Therefore, although the allegations against Mr. White were brought by IIROC under its then existing rules, the hearing in this matter can properly continue under the New SRO interim rules, thereby ensuring a continued jurisdiction of the Panel over the allegations made against Mr. White prior to January 1, 2023.

#### **Hearings before the Panel**

¶ 5 The motion was originally heard by the Panel on November 15, 2022. The Panel directed an adjournment on consent on the basis that Mr. White’s doctor appear in person to testify about Mr. White’s health and his ability to prepare for and participate in a three-day substantive discipline hearing.

¶ 6 At the second hearing date held on December 5, 2022, the Panel heard the evidence of Mr. White’s doctor. Without opposition from counsel for IIROC or Mr. White, the Panel directed that the motion be further adjourned to February 14, 2023 to hear further medical evidence on behalf of Mr. White.

¶ 7 A third hearing took place on February 14, 2023 at which time the parties presented final argument.

¶ 8 By a letter dated March 7, 2023, evidence of the second doctor was submitted. The questions put by counsel for Mr. White, and the answers and opinions of the doctor were made available to the Panel on March 29, 2023. Enforcement Staff asked for time to consider the filings. The Panel granted Enforcement Staff time to consider and, if so advised, to file responding material.

#### **Allegations Made Against Mr. White in the Discipline Proceeding**

¶ 9 By Notice of Hearing dated March 11, 2022, Enforcement Staff alleged that, between January 2017 and January 2022, Mr. White failed to use due diligence to ensure his investment recommendations were suitable for certain clients, contrary to IIROC Dealer Member Rule 1300.1(q).

¶ 10 By a Statement of Allegations dated March 11, 2022, Enforcement Staff detailed the relevant facts related to the allegations made against Mr. White. Mr. White was described as a Registered Representative since 1990, working as an Investment Representative at Echelon Wealth Partners Inc. (“Echelon”) since 2016. It was noted that Mr. White had been on leave from Echelon since January 27, 2020.

¶ 11 On May 6, 2022, Mr. White, through counsel, responded to the Notice of Hearing denying all allegations contained in the Statement of Allegations made by Enforcement Staff.

¶ 12 The initial appearance was scheduled by way of video conference on May 17, 2022.

¶ 13 On October 28, 2022, counsel for Mr. White filed a written request for an adjournment of the hearing, *sine die*, on medical grounds.

¶ 14 By notice pursuant to Rule 8418 of the IIROC Rules of Practice and Procedure, Enforcement Staff delivered a witness list and witness statements to be used at a hearing scheduled to commence on December 12, 2022. Seven witnesses were scheduled to give testimony at the hearing. The number of witnesses to be called by Enforcement Staff appears presently to be seven witnesses, some or all of whom were allegedly impacted by the advice given by Mr. White as an investment advisor. These witnesses must be coordinated by Enforcement Staff and the hearing scheduled with their convenience in mind. The appearance of justice requires such planning and predictability.

#### **Pre-Hearing Motion – Evidence**

##### **(i) Position of the Parties**

¶ 15 By Notice of Motion dated November 4, 2022, and returnable on November 15, 2022, counsel for Mr. White made a formal request to adjourn the hearing scheduled for December 12 to 14, 2022 and other relief.

¶ 16 The grounds for the motion are related to Mr. White’s health. The grounds elaborated that Mr. White’s health prevented him from attending an interview with IIROC before the hearing. In these circumstances, counsel for Mr. White submitted that proceeding with the hearing was as follows:

- unfair to Mr. White and discriminatory;
- Mr. White's position would be prejudiced if the hearing proceeded, while IIROC would not be prejudiced by an adjournment;
- Mr. White has a right to give full answer and defence, and is entitled to procedural fairness;
- principles and duties of procedural fairness granted under sections 8 to 14 of the *Canadian Charter of Rights and Freedoms*; and
- Mr. White relied upon IIROC Rules 8422, 8404 and 8413.

¶ 17 Enforcement Staff refused to consent to Mr. White's motion for an adjournment and sought the following relief:

- an order denying the request for an adjournment at all and certainly not an adjournment *sine die*;
- if an adjournment were granted, that the adjournment be to a fixed date within 60 days of the hearing of the preliminary motion;
- a direction that Mr. White make his medical practitioners available for further *viva voce* evidence regarding his ability to participate in the substantive hearing with reasonable and necessary accommodations;
- identify and implement reasonable accommodations with the assistance of Mr. White's counsel and/or his medical practitioners; and
- enter into an undertaking agreement that Mr. White not work or seek work as a registered representative.

**(ii) Evidence of Michael Patrick White**

¶ 18 Mr. White swore an affidavit filed with his Notice of Motion for an adjournment which took the following factual positions:

- Mr. White has been on medical leave from his employer, Echelon, since January 27, 2020;
- the medical leave is based on Mr. White's health;
- stress lessens Mr. White's ability to cope with his medical issues;
- Mr. White appended to his affidavit as Exhibit "A" a letter from his doctor dated May 9, 2022;
- Mr. White filed an opinion of his doctor, indicating that any attendance at a hearing in December 2022 increased Mr. White's chance of suffering further ill effects on his health and that there were no accommodations that would allow Mr. White to attend the hearing;
- preventing distress on his family;
- Mr. White receives long-term disability payments;
- Mr. White has a substantial debt and is concerned about the health of his mother;
- Mr. White testified by affidavit that the stress of the hearing is too great because of his health;
- Mr. White testified that the hearing cannot proceed without his involvement as he believes he is innocent and desires to be given the opportunity to defend himself but that he was not up to the challenge; and
- Mr. White testified he was attempting to get better and undertakes that when he is fit to

attend the proceedings he will make himself available.

**(iii) Evidence of the First Doctor (on behalf of Mr. White)**

¶ 19 Mr. White's doctor presented to give testimony and be subjected to cross examination as a highly qualified expert.

¶ 20 The doctor began treating Mr. White in April 2020. The doctor wrote her first report (marked as Exhibit B3 in this proceeding) on July 19, 2021. She confirmed Mr. White's condition as of July 19, 2021.

¶ 21 The doctor rendered a second opinion in writing on August 6, 2022 (marked as Exhibit B5 in this proceeding). As at that date, the doctor added to her earlier diagnosis that Mr. White was at that time only able to engage in legal matters in a carefully spaced-out schedule.

¶ 22 The doctor wrote a third report on the health of Mr. White dated October 28, 2022 (marked as Exhibit B7). The doctor's diagnosis at that date remained largely the same as the earlier diagnoses. Significantly, at that time, the doctor gave an opinion that: "... there are no accommodations that would allow Mr. White to attend a hearing without ... " negatively affecting his health.

¶ 23 The doctor gave a final opinion for this motion on November 4, 2022 (the written opinion was marked as Exhibit B8). The doctor confirmed an earlier diagnosis and description of treatment. The doctor opined as follows: "... thus, at this time, due to the severity of Mr. White's condition, he is not able to engage in any legal matters. There are no accommodations that would decrease the negative impacts on Mr. White's health ...".

**(iv) Evidence of the Second Doctor (on behalf of Mr. White)**

¶ 24 The second doctor filed a handwritten report dated May 9, 2022 stating: "Due to Mr. White's current medical status, it is advised that he be excused from upcoming legal hearings ... and he has significant difficulty participating in such proceedings given his current medical status."

¶ 25 The Panel directed that the second doctor attend before the Panel in February 2023 to give her opinions concerning Mr. White's health. Counsel for Mr. White sought the attendance of the second doctor, but she then refused to testify as a matter of principle, namely not testifying in any hearings as part of her professional work.

¶ 26 As set out above, answers given by the second doctor to questions put by Mr. White's counsel were delivered to the Panel on March 29, 2023 after final arguments had been made.

¶ 27 The Panel invited Enforcement Staff to give their position on receiving and relying upon the March 29, 2023 evidence of the second doctor as set out in answers to questions given by her to Mr. White's counsel in writing. Enforcement Staff made an answer dated March 31, 2023. Enforcement Staff, *inter alia*, took the position that the written answers given by the second doctor were generally helpful, but the evidence should be carefully treated in that Enforcement Staff had not had an opportunity to cross examine the doctor.

¶ 28 The Panel has decided to receive in evidence the answers of the second doctor to the questions put by Mr. White's counsel and to receive the written submissions from Enforcement Staff dated March 31, 2023.

¶ 29 The second doctor gave the following relevant evidence: (a) Mr. White has been under her care since February 18, 2021; and (b) the second doctor refused to give her opinion as to whether Mr. White could attend a regulatory hearing with accommodations.

¶ 30 Subject to the caveat that the second doctor was not cross examined in the present circumstances, Enforcement Staff concedes that the Panel can accept the evidence of the second doctor given in answer to questions put by counsel from Mr. White.

¶ 31 The Panel agrees to receive the evidence of the second doctor. The Panel notes that the evidence of the second doctor is consistent with that of the first doctor as far as it goes. The evidence of the second doctor is consistent with the analysis and award hereinafter set out.

**(v) Evidence of Enforcement Staff**

¶ 32 New SRO Enforcement Staff cross examined the first doctor but did not lead any independent evidence on Mr. White's health.

**(vi) Findings of the Evidence**

¶ 33 The Panel accepts the evidence of the first doctor as confirmed by the evidence of Mr. White and supported by the evidence of the second doctor. The first doctor was cross examined. The first doctor gave written reports in advance and was cross examined to explain the conclusions that she reached concerning Mr. White's inability to prepare for and participate in the hearing as of November 2022. The first doctor's evidence and opinions were not meaningfully challenged, except on the issue of whether Mr. White could defend his case with accommodations. The second doctor expressed no opinion on the issue of accommodations.

¶ 34 The evidence of Mr. White leads to a circular result. By reason of his health, he could not be cross examined. In effect, he gave affidavit evidence of his own health which, without being the subject of cross examination, can only be used as confirmatory of the first doctor's testimony.

¶ 35 The second doctor has given testimony in writing, which has been accepted by Enforcement Staff and this Panel.

¶ 36 The Panel has two consistent descriptions of Mr. White's health from the first and second doctors.

¶ 37 The most important opinions of the first doctor affecting the outcome of this motion were:

- (1) "... the legal actions that he has been involved in with respect to a former client and subsequent investigation by his regulatory body have ... [negatively affected his health] ..."
- (2) "... attending a hearing in December ... [would negatively affect his health] ..."; and
- (3) "... there are no accommodations that would allow Mr. White to attend a hearing without [negatively impacting his health] ...".

¶ 38 The significance of the third opinion listed above is diminished in force by the earlier testimony of the first doctor in August 2022 that "... due to the severity of Mr. White's condition, he is only able to engage in legal matters on a carefully spaced-out schedule with a high level of support from his spouse ...".

¶ 39 It is difficult to reconcile the two opinions about the ability of accommodations to be made to assist Mr. White through the regulatory hearing without further negatively affecting his health. The Panel does note that the most recent opinion (December 2022) of the first doctor takes the position that no accommodation can be made to assist Mr. White at this time to permit him to have a fair hearing without the risk to his health.

¶ 40 The first doctor's opinion makes reference to the fact that the number of outstanding legal proceedings negatively affects Mr. White's health. This opinion foreshadows a solution to assist Mr. White in facing his outstanding responsibilities in these legal proceedings. The Panel encourages that legal proceedings should be organized in an orderly manner so that there is no overlap among the various outstanding proceedings that Mr. White faces.

¶ 41 The evidence of the second doctor is not at odds with the opinion of the first doctor regarding accommodations. The Panel's conclusions regarding the conduct of this hearing in September 2023 are not changed by the evidence of the second doctor. Indeed, the evidence of the second doctor indirectly supports the proposition that Mr. White can manage the regulatory hearing with appropriate accommodations as long as there is no overlap with other legal proceedings.

**(vii) Position Taken by Enforcement Staff**

¶ 42 The Staff detailed the complaints against Mr. White, namely that he failed to ensure his recommendations were suitable for two sets of clients, all of whom were over the age of 65. The investments recommended included exempt market products for which the clients did not meet the standard of being accredited investors. The allegations indicate that the clients lost \$267,000, Mr. White earned \$60,000 in commissions on these exempt market products and new issue securities. In addition, Mr. White received fees and commissions totalling \$186,670. It is important to note that the allegations made against Mr. White are serious. The nature of the allegations are relevant to the request for a stay of proceedings in that the public interest demands that these allegations be dealt with in as timely as possible in the circumstances.

¶ 43 New SRO Enforcement Staff refused to consent to the motion for an adjournment and asked that the

adjournment motion be dismissed.

¶ 44 If the Hearing Panel were willing to grant an adjournment and vacate the hearing dates (which is now academic) New SRO Staff ask that a date within 60 days of the hearing be fixed and that Mr. White cooperate in the identification and implementation of reasonable accommodation with the assistance of his counsel and medical practitioners to set appropriate standards and timings around which to conduct a hearing.

¶ 45 New SRO Enforcement Staff ask that Mr. White enter into an undertaking that he will not work as a registered representative.

¶ 46 New SRO Enforcement Staff took the positions that:

- (a) the Applicant failed to establish that it is in the public interest to adjourn a hearing *sine die*;
- (b) it had offered Mr. White all necessary accommodations regarding the hearing dates and that it continues to agree to provide all reasonable and necessary accommodations so that the hearing can proceed;
- (c) there are former clients of Mr. White whose availability would be jeopardized if an adjournment were granted;
- (d) the continued existence of legal procedures involved in this regulatory hearing are “constant [negative triggers on Mr. White’s health] ...”. From this evidence, New SRO Enforcement Staff is encouraging that this hearing be completed to relieve Mr. White of a constant pressure of a future/impending hearing which has not yet been completed;
- (e) the first doctor gave an opinion on August 26, 2022 that a hearing could be managed with appropriate accommodations. New SRO Enforcement Staff also note the different opinion rendered in the letter of October 28, 2022 which indicates that no accommodations could be made. The second doctor takes no position on the issue of accommodations;
- (f) IIROC Rule 8422 (which continues to be in force) requires that Mr. White state the length of time requested for an adjournment. New SRO Enforcement Staff also emphasize that the public interest requires that full and fair hearings be conducted in a timely manner with finality. New SRO Enforcement Staff takes the position that an adjournment *sine die* is not consistent with principles of natural justice or procedural fairness;
- (g) The New SRO Enforcement mandate is to ensure timely investigation and prosecution of misconduct to protect investors and strengthen the public’s confidence in self-regulation. New SRO Enforcement Staff claim that it is in the public interest to proceed with the hearing dates;
- (h) all of the former clients have agreed to give testimony over the course of the hearing dates and that failing to proceed could jeopardize their availability and participation in the proceeding by reason of age; and
- (i) the costs sought by Mr. White in this motion cannot be granted by this Panel under IIROC Rule 8214.

### **Applicable Legal Principles**

¶ 47 This motion is impacted by earlier IIROC and the Ontario Securities Commission (“OSC”) regulatory decisions concerning the indicia of procedural fairness as contrasted with the public policy of deciding regulatory cases in a timely manner to maintain public confidence in the regulatory process and give predictable justice to complainants.

¶ 48 In a decision of this tribunal made in 2011, *Re Schoer* 2011 IIROC 21, the hearing panel cited with approval the decision of Zuber J. in *Stickney v. Trusz*, [1973] O.J. No. 2279 (H.C.J.) as follows: “The weight of authority is that discretion to stay an action should be exercised in extraordinary or exceptional circumstances ...

it is incumbent upon the applicant to show some reason why discretion should be exercised ...”. That decision was upheld in the Ontario Divisional Court and Court of Appeal, with leave to the Supreme Court of Canada refused.

¶ 49 In *Re Jenkins* 2020 IIROC 44, the panel considered whether a sanctions hearing should be adjourned pending a decision of the Mutual Fund Dealers Association. The panel in that case recited principles from *Re Darrigo* 2014 IIROC 48 at para. 9, as follows:

¶ 9 The Panel acknowledges that the law on procedural fairness requires that a person must know the case being made against him and be given an opportunity to answer it before the decision maker. [...] It is also clear that the scope and extent of the right to procedural fairness is flexible depending on the circumstances of the particular case and the rights of the individual must be balanced against the effective and expeditious performance of public duties. [...] the essence of administrative law is the balancing of rights to be accorded individuals in the protection of their rights with the need of society for efficiency in administrative decisionmaking... [...] An agency exists to accomplish some statutory purpose [...]. One cannot determine the fairness of the situation without taking into account that which the agency is supposed to accomplish and the practical restraints facing it in its task.

and further in *Re Jenkins* at para. 15:

¶ 15 IIROC’s primary purpose is to protect investors. In this case there is no ongoing investor harm, and we are assured there is no risk of future investor harm. The respondent is no longer registered with IIROC. [...]

¶ 50 In *Re Storelli* 2021 IIROC 20, the issue arose about proceeding in the absence of the respondent. Mr. Storelli led medical evidence that with appropriate accommodations such as frequent breaks, short hearing days allowing submissions in writing, allowing participation by video conference and allowing him to have someone present to assist him, Mr. Storelli would not suffer significant harm to his health if the matter proceeded though he would suffer stress, fatigue and some short term effects. The panel decided to proceed in Mr. Storelli’s absence in that: (a) he had ample opportunity to respond to allegations and defend himself; (b) everything possible has been done to accommodate Mr. Storelli’s medical condition; (c) the panel was prepared to make reasonable accommodations to facilitate his attendance; (d) the panel was willing to consider any other forms of accommodation that Mr. Storelli might request; and (e) the protection of the public requires that allegations of regulatory infringements be heard and decided.

¶ 51 In *Re Darrigo*, (2016) 39OSCB5443, the OSC reviewed an IIROC decision concerning Mr. Darrigo’s request to adjourn an IIROC hearing regarding allegations made against Mr. Darrigo. The adjournment request was one of many adjournments he had requested at the last minute. The adjournment was refused at the IIROC level. The OSC then considered whether this refusal was a failure of natural justice. The OSC found at paras. 8-9 as follows:

- (a) Mr. Darrigo bore the onus to establish a proper evidentiary record for his adjournment request;
- (b) the regulator had to balance the public interests in a timely hearing against Mr. Darrigo’s interest in knowing the case against him and having an opportunity to answer it;
- (c) the OSC found that because almost four years had passed since the alleged misconduct and that two of the IIROC proposed witnesses were elderly and that there was no resolution in sight for Mr. Darrigo’s alleged medical issues, the IIROC panel was correct in hearing the merits and by doing so did not deny Mr. Darrigo’s right to natural justice; and
- (d) a hearing cannot be delayed indefinitely.

¶ 52 In *Re Odorico* 2022 IIROC 6, an IIROC panel heard a request for an adjournment that was the third time of asking. The panel in the adjournment request found that: (a) the doctor’s letter, like earlier letters, was vague; (b) the respondent’s submission consisted of only vague unsubstantiated and old complaints; (c) an earlier adjournment order was granted on a peremptory basis that no further adjournment would be allowed; (d) further adjournments would impair witnesses’ ability to give testimony; and (e) the former clients of the respondent

have a right to expect that allegations would be dealt with expeditiously so that justice may be served in their particular cases; and (f) the rights to procedural fairness had been satisfied. These findings were consistent with the decision in *Re Darrigo*. No further adjournment was granted after balancing these interests.

### **Analysis**

¶ 53 The Panel finds that Mr. White has the right to an opportunity to answer the serious allegations made against him. Mr. White's former clients are alleged to have lost significant monies. The former clients will be witnesses in the hearing. Some of the witnesses are declared to be over the age of 65.

¶ 54 Based on the facts set out above regarding the public and client interests in an expeditious and timely hearing, there is a public interest in having this matter dealt with in a reasonable timeframe. Absent Mr. White's medical condition, an adjournment for less than 60 days as requested by counsel for Enforcement Staff would be reasonable.

¶ 55 The Panel does have the medical evidence of the first and second doctors as supported by the unexamined evidence of Mr. White. The Panel finds that the evidence of the first doctor raises serious concerns that Mr. White is not presently able to defend the allegations made against him in this hearing because of his health if he were compelled to proceed as of November and December 2022. The Panel accepts the evidence of the first and second doctors as supported by the affidavit of Mr. White that Mr. White has serious health issues.

¶ 56 The Panel is not persuaded that there cannot be a hearing with appropriate accommodations to protect from a negative impact on Mr. White's health. The accommodations are for the preparation for the hearing and the hearing itself. Although not within the control of this Panel, all attempts should be made by counsel to avoid any other overlapping legal proceedings in the period of July to September 30, 2023.

¶ 57 The Panel is required to balance Mr. White's medical condition and the ability of Mr. White to raise a defence on the merits against the public interest of having the alleged injured investors and former clients of Mr. White have their case heard in a timely and expeditious manner. While the present balance is weighted in favour of Mr. White, it cannot last forever without putting the public interest in jeopardy.

### **Order**

¶ 58 Applying the principles set out above to the facts raised before this tribunal, the Panel grants the adjournment requested by Mr. White until the end of September 2023. The date for commencement of the hearing, when fixed, will be peremptory to Mr. White.

¶ 59 Enforcement counsel and counsel for Mr. White should agree upon a date in September 2023 for the substantive hearing of the allegations made against Mr. White to commence. If counsel cannot agree on a date in September, counsel will seek directions from this Panel on or before July 30, 2023, at which time the date in September to commence the hearing will be fixed. The date in September will be fixed having regard to the convenience of all parties, with particular attention given to the needs and convenience of members of the public who will be giving testimony at the hearing.

¶ 60 In the balance between Mr. White's personal medical concerns and the public interest, this Panel is granting an admittedly lengthy ten-month adjournment from the day that the request for an adjournment was first made. It is necessary to avail Mr. White of the opportunity, with his medical advisors and counsel, to prepare himself for the hearing in September and to give the parties time to negotiate appropriate accommodations for the preparation of and the conduct of the hearing to minimize the impact of the hearing on Mr. White's medical condition.

¶ 61 To prepare for and conduct the substantive hearing to be held in September 2023, this Panel directs that appropriate accommodations to protect Mr. White's health should be discussed and agreed upon among counsel and, if necessary, the parties' medical advisors by June 30, 2023. If there is any issue regarding the nature of the accommodations under which the September hearing will be conducted, the issues regarding accommodation shall be brought back to this Panel for resolution on or before July 30, 2023.

¶ 62 The hearing to settle the date for the substantive hearing and/or accommodations to be made for the preparation and conduct of the hearing will be heard by this Panel on or before July 30, 2023.

¶ 63 This interim decision assumes that Mr. White is voluntarily not giving advice or otherwise, directly or indirectly, as an investment advisor to the public or any third parties. If this assumption is incorrect, counsel for Mr. White or Mr. White must immediately inform New SRO and this Panel so that they can further consider the request by Enforcement Staff that Mr. White give an undertaking to the same effect.

¶ 64 There will be no costs of this motion for an adjournment.

### **Confidentiality**

¶ 65 Counsel for Mr. White made a request that the hearing be in camera at the outset of the oral evidence in this matter. Under the New SRO Rules, the Panel is required to consider whether personal information contained in the Reasons for Decision should be eliminated from the public record. The Panel has produced two sets of Reasons: (1) for the parties, without any redaction of personal information; and (2) for the public with redaction of personal information. The Panel also directs that the motion hearing be in camera and that the motion materials be sealed except for the ongoing hearing regarding Mr. White.

Dated at Toronto, Ontario this 19 day of April, 2023.

John A. Campion, Chair

Daniel Iggers

Peter Gribbin

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