

# Re White

IN THE MATTER OF:

**The Investment Dealer and Partially Consolidated Rules**

**and**

**Michael Patrick White**

2023 CIRO 12

Canadian Investment Regulatory Organization  
Hearing Panel (Ontario District)

Heard: August 31, 2023 in Toronto, Ontario via videoconference  
Decision: August 31, 2023

**Hearing Panel:**

John Campion, Chair, Daniel Iggers and Peter Gribbin

**Appearances:**

Marie Abraham, Senior Enforcement Counsel

Lucas Cutler for Michael Patrick White

Michael Patrick White (absent)

---

## INTERIM DECISION – REQUEST FOR ADJOURNMENT

---

### Part I – Introduction

¶ 1 Michael Patrick White was a registrant with the Investment Industry Regulatory Organization of Canada and remains a registrant with the Canadian Investment Regulatory Organization (“CIRO”). Allegations have been brought against Mr. White as a registrant with CIRO.

¶ 2 A hearing on the merits relating to the allegations was first scheduled for December 12 and 13, 2022. Mr. White sought an indefinite adjournment of those December hearing dates in a motion brought on November 15, 2022.

¶ 3 After lengthy hearings, including medical evidence and counsels’ submissions made over several months, in the Interim Decision – Adjournment Motion, dated April 19, 2023 (accessible at [2023 IIROC 02](#)), the Panel granted Mr. White’s request for an adjournment. Over the objections of Enforcement Counsel, the adjournment was granted to September 25, 2023. That hearing date was made peremptory to Mr. White.

### Part II – Adjournment Request

¶ 4 Counsel for Mr. White sought a further adjournment on the grounds of a counsel conflict.

¶ 5 The Panel fixed a hearing date of August 31, 2023 to hear the adjournment request and other issues raised by letter from counsel.

**(a) Analysis**

¶ 6 As was articulated in our Interim Decision of April 19, 2023, the decision fixing the commencement date for the hearing was based upon Mr. White’s medical condition. Every effort was made by counsel on both sides and by the Panel to accommodate Mr. White’s special circumstances so as to give him a sense of personal

confidence and comfort in the setting of the dates and the conduct of the hearing.

¶ 7 Not only was Mr. White granted substantial accommodations in time and conduct for the September 2023 hearing but was also given the benefit of a lengthy delay in time so he could arrange his other legal affairs and personal circumstances to accommodate his medical issues, knowing that the date for the commencement of the hearing was firmly fixed and peremptory to him. Accommodations were granted to Mr. White in April 2023 on the basis of extensive medical evidence presented to the Panel about Mr. White's medical condition.

**(b) Further Accommodations**

¶ 8 In our April 19, 2023 Decision, certain accommodations were provided for Mr. White, but Enforcement Counsel and counsel for Mr. White were obliged to determine if further accommodations needed to be made. Those discussions and any agreement were to be completed by July 30, 2023. Counsel could not agree on all accommodations requested. As a result, a hearing before the Panel to determine the further accommodations was fixed for August 3, 2023 (well in advance of the September 25, 2023 hearing date).

¶ 9 On August 3, 2023, the Panel made a decision concerning further accommodations at the hearing on consent of both counsel and issued its reasons for decision in the Interim Decision – Accommodations at Hearing, dated August 10, 2023 (accessible at [2023 CIRO 10](#)). The reasons for decision repeated the direction that the September hearing would commence on September 25, 2023 peremptory to Mr. White.

**(c) Request for Further Adjournment**

¶ 10 As set out above, Mr. White brought a second request to adjourn the hearing in late August 2023. By letter, counsel for Mr. White informed the Panel that he had experienced a conflict with the September 25, 2023 date. A hearing was immediately scheduled by the Panel on an urgent basis to give Mr. White an opportunity to explain the reasons for this second request for an adjournment.

¶ 11 At the hearing held on August 31, 2023, the Panel was only informed that a scheduling conflict had arisen for Mr. White's counsel but was not given any information about the nature of the conflict.

¶ 12 Enforcement Counsel opposed the request for an adjournment on two grounds: (1) the matter was made peremptory to Mr. White; and (2) the three complainants had been informed that the hearing on the merits against Mr. White would commence on September 25, 2023 and coordinated their respective schedules accordingly. It was submitted that any further delay beyond September 25, 2023 would be contrary to the public interest in that the complainants would be further inconvenienced and the complaints made against Mr. White would not be determined in a timely manner, as required, in the public interest.

**(d) Decision on Adjournment**

¶ 13 The Panel accepts the analysis submitted by Enforcement Counsel and dismisses the application for a further adjournment. The hearing will begin on September 25, 2023, as scheduled, in April 2023.

**Part III – Request that CIRO Issue Three Subpoenas**

¶ 14 Mr. White's counsel also requested that the hearing panel issue summonses to the three proposed respondent witnesses: JB, TG, and NE.

¶ 15 Assuming that the three proposed respondent witnesses may be called by Mr. White, certain formalities regarding the names of and evidence to be given by the witnesses are governed by subsection 8418 (2) of the Investment Dealer and Partially Consolidated Rules (the "IDPC Rules"). Regarding the evidence to be called by Mr. White, the relevant IDPC Rule states as follows:

**8418. Witness lists and statements**

...

(2) Subject to section 8417, as soon as reasonably practicable after a response is served and filed, and no later than 20 days before the commencement of the hearing on the merits, a respondent must serve:

- (i) a list of the witnesses, not including the respondent, whom the respondent intends to call to testify at the hearing, and
- (ii) in respect of each witness named on the list, a summary of the evidence the witness is expected to give at the hearing, a witness statement signed by the witness or a transcript of a recorded statement of the witness, unless the transcript was disclosed by Enforcement Staff pursuant to section 8417 or subsection 8418(1).

(3) A summary of expected evidence, witness statement or transcript served in accordance with subsection 8418(1) or 8418(2) must contain:

- (i) the substance of the evidence of the witness,
- (ii) a reference to any document the witness will refer to, and
- (iii) the name, address and telephone number of the witness or of a person through whom the witness can be contacted.

(4) A party who does not include a person in a witness list or disclose the person's expected evidence in accordance with subsections 8418(1) through 8418(3) may not call the person as a witness at the hearing without leave of the hearing panel on terms and conditions the hearing panel considers just.

(5) A witness may not testify to matters not disclosed in accordance with subsection 8418(3) without leave of the hearing panel on terms and conditions the hearing panel considers just.

¶ 16 Under subsection 8418 (2), the Respondent therefore must (i) serve a list of witnesses upon whom he intends to call to testify at the hearing and a statement signed by the witness containing the substance of the evidence of the witness, (ii) a reference to any document the witness will refer to, and (iii) the name, address and a telephone number of the witness within certain time limits (which cannot now be met).

¶ 17 The Panel hereby gives relief from the time requirements and imposes abbreviated time limits for the filing of witness lists and statements by Mr. White.

¶ 18 Counsel for Mr. White understands that Mr. White must comply with subsection 8418 (2) but, subject to the fact that witnesses will not voluntarily give testimony to Mr. White's counsel, the content of the witness statements may be altered to a more summary description of the topics that Mr. White expects the witnesses to deal with. If counsel obtained further detailed information on the evidence of the proposed witnesses, they must be delivered as soon as the evidence is available.

¶ 19 If the proposed Respondent witnesses refuse to speak with Mr. White's counsel and give their evidence, the Panel directs Mr. White's counsel to consider asking questions of the three witnesses by way of written interrogatories. In the interim, Mr. White's counsel shall deliver as fulsome a set of witness statements as possible pending any further details of evidence obtained for each proposed Respondent witness by September 10, 2023.

¶ 20 Subject to the exceptions noted above, regarding the detail necessary for the witness statements, the Panel orders that the summonses for the three named proposed Respondent witnesses be issued. Details of the names, addresses, and telephone numbers shall be delivered to the National Hearing Officer by September 10, 2023.

#### **Part IV – Conclusion**

¶ 21 In conclusion, the Panel orders that:

- a) the application to adjourn the hearing scheduled for September 25, 2023 is dismissed;
- b) the hearing dates of September 25-29, 2023 remains preemptory to Mr. White; and

- c) subject to the conditions fixed for the production of witness statements to be served on Enforcement Counsel by Mr. White's counsel, the three summonses shall be issued to the witnesses proposed to be called by Mr. White: JB, TG, and NE.

Dated at Toronto, Ontario this 9 day of September 2023.

John A. Champion

Daniel Iggers

Peter Gribbin

***Copyright © 2023 Canadian Investment Regulatory Organization. All Rights Reserved***