

THE APPEALS PANEL - PROTOCOL FOR REMOTE HEARINGS

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1. INTRODUCTION AND GUIDING PRINCIPLES

- 1.1. This document sets out the protocol for the conduct of remote hearings in proceedings before the Appeals Panel (AP).
- 1.2. The purpose of this protocol is to provide basic guidance to parties involved in AP proceedings and ensure that remote hearings are organised and conducted in a manner that is accessible, fair and efficient. It is not intended to provide rules according to which remote hearings must be conducted. Rather, it is intended to provide guidance on matters that are likely to arise in most hearings while enabling the AP and parties to adapt and arrange hearings in a manner according to the circumstances of the particular proceedings.
- 1.3. Parties are expected to adopt a ‘can do’ approach to remote hearings and show flexibility and willingness to assist the AP to the fullest extent possible to ensure hearings run in a smooth and orderly fashion.
- 1.4. This document should be read in conjunction with the Financial Services and Markets Regulations (the FSMR), and The Appeals Panel – Practice and Procedures (the AP Procedures).
- 1.5. The AP may at any time vary any of the provisions of this protocol.

2. DEFINITIONS AND INTERPRETATION

- 2.1. In this protocol capitalised terms shall, unless otherwise defined in the FSMR, have the following meanings:

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| ADGM | means the Abu Dhabi Global Market; |
| Attendee | means Participants who are only able to see and hear the Speakers but cannot themselves be seen or heard; |
| AP | means the Appeals Panel; |
| AP Procedures | means the Appeals Panel – Practice and Procedures; |
| FSMR | means the Financial Services and Markets Regulations 2015, as amended from time to time; |
| President | means the President of the Appeals Panel appointed by the Board in accordance with section 224 of the FSMR; |
| Participant | means each person who attends the remote hearing, including the AP, the Secretariat, any hearing technicians, transcribers or |

interpreters, each party’s legal counsel and representatives, witnesses, and experts, and any members of the public;

Regulator means the Financial Services Regulatory Authority;

Secretariat means the Secretariat to the Appeals Panel; and

Speaker means Participants who can be both seen and heard by all other Participants on any given day.

3. PUBLIC NATURE OF REMOTE HEARINGS

- 3.1. In accordance with paragraph 72 of the AP Procedures, all hearings before the AP shall be held in public unless the AP orders otherwise, or the FSMR or the AP Procedures provide otherwise. To enable public access to remote hearings, the AP may publish a link by which members of the public are able to observe remote hearings.
- 3.2. Similarly, the AP will generally make public any decisions it may make during the course of proceedings (except for decisions of a routine or administrative nature).
- 3.3. In exceptional circumstances, the AP may exercise its discretion not to hold proceedings in public and not to make public any decisions it may make.
- 3.4. AP decisions will generally be published on the Regulator’s website along with transcripts of hearings in AP proceedings.

4. PARTICIPANTS, SPEAKERS AND ATTENDEES

- 4.1. Each person who attends the remote hearing, including the AP, the Secretariat, any hearing technicians, transcribers or interpreters, each party’s legal counsel and representatives, witnesses, and experts, and any members of the public, are considered a (Participant).
- 4.2. In this protocol, a distinction is made between (Speakers), who are Participants who can be both seen and heard by all other Participants on any given day; and (Attendees), who are Participants who are only able to see and hear the Speakers, but cannot themselves be seen or heard.
- 4.3. Each party shall provide the Secretariat with a list of their Speakers in advance of any remote hearing. The lists shall set out the Speakers’ names and contact details and, in most cases, the Secretariat will contact the Speakers in advance of a hearing and have a test run to make sure they are able to participate clearly and to resolve any technical difficulties.

5. SPEAKERS IN GENERAL

5.1. The AP expects hearings to be conducted in a formal and professional manner. Accordingly, to the extent possible, Speakers should:

- (a) speak directly into the microphone and look directly into the camera lens when addressing the AP;
- (b) address the AP Members(s) as “Sir”, “Madam” or “Your Honour”;
- (c) be familiar with how to mute and unmute their microphone, operate their camera and speakers;
- (d) mute their microphone when not speaking (and remember to unmute their microphone when they want to address the AP);
- (e) mute notifications on their devices;
- (f) when positioning the camera on their device, be mindful of camera angles, glare from windows and the background;
- (g) dress appropriately as if they were attending before the AP in person;
- (h) to the extent possible, reduce the number of other devices using their internet connection during the hearing;
- (i) close any applications that they are not using during the hearing;
- (j) ensure they are in a well-lit room that is away from disturbances; and
- (k) make other persons in their household aware in advance about the days and times of the hearing.

6. USE OF VIDEO-CONFERENCING PLATFORM FOR REMOTE HEARING

6.1. Remote hearings will be conducted by way of a video-conferencing system arranged by the Secretariat. For each remote hearing, the link to the video-conferencing platform will be sent to the parties in advance of the hearing in accordance with this protocol and made available to members of the public on the AP page of the Regulator’s website.

6.2. To join a remote hearing, a Participant will need to be able to connect with the following requirements:

- (a) **browser:** Google Chrome or Microsoft Edge (recommended but others may work);
- (b) **connectivity:** a strong and stable internet connection (preferably broadband or Wi-Fi, otherwise any stable high-speed data connection); and

- (c) **device and hardware:** a computer or laptop with a microphone and camera; Speakers may also use headphones with an in-built microphone should they wish. Attendees can also use smart phones, tablets and similar smart devices to connect to the video-conferencing platform but these are not recommended for Speakers as it may impede their ability to address the AP.
- 6.3. In most cases, the Secretariat will coordinate a test run with relevant Participants prior to the hearing to ensure all necessary technical requirements are met and ensure that all relevant Participants have a stable connection to the video-conferencing platform.
- 6.4. The test run will also enable relevant Participants to test the various technical features of the video-conferencing platform and ensure they are familiar with how to use it.
- 6.5. The AP expects remote hearings to run promptly just as they would if being held in person. Therefore, all relevant Participants shall connect well in advance of the scheduled start time of the remote hearing. This will provide time to address any connectivity issues before the start time.
- 6.6. To facilitate the effective functioning of remote hearings and minimise any possible distractions, the following guidelines should be followed:
- (a) only the Speakers shall activate the camera on their devices (including when not addressing the AP); all other Attendees (i.e. non-Speakers) shall ensure that the camera on their device is turned off; and
- (b) only the Speaker who is addressing the AP at a given time shall have their microphone turned on; all other Attendees shall ensure that their microphone is on mute.
- 6.7. Relevant Participants may lose connectivity and briefly drop in and out of a remote hearing without the Secretariat and AP realising. Accordingly, the Participants should carefully monitor throughout a hearing that necessary Participants are present and able to follow.
- 6.8. It is generally advisable for Speakers to have a method of communicating privately with their party and their legal representatives. This will be useful in a situation where Participants experience problems connecting to the video-conferencing platform. If a Speaker temporarily loses connection to the video-conferencing platform, they should promptly notify the Secretariat - either through alternate means on the video-conferencing platform, or through another Participant, so that the AP can take adequate measures to resolve the issue and resume the remote hearing.
- 6.9. If required, private virtual breakout rooms will be made available to the relevant Participants throughout the duration of the hearing. Relevant Participants should notify

the Secretariat of their requirements for a virtual breakout room in advance of any remote hearing so that appropriate arrangements can be put in place.

7. RECORDING AND TRANSCRIPTS OF THE REMOTE HEARING

- 7.1. Remote hearings will be recorded and transcribed by a third-party service provider. Any written transcript of the hearing will be made available to the parties. The parties shall endeavour to agree upon any corrections to the transcript within 7 days of receipt.
- 7.2. In order to assist transcribers and minimise potential interference from background noise, only Speakers should have their microphones turned on (whilst speaking). All other Participants should have their microphones muted.
- 7.3. When speaking, Speakers should bear in mind the proceedings are being recorded and there may be internet connectivity issues. Accordingly, Speakers should check their microphone is switched on and speak clearly and slowly.
- 7.4. Attendees to the remote hearing are not permitted to make their own audio or visual recording of the remote hearing without the prior permission of the AP.

8. SITTING DAYS AND HOURS

- 8.1. Before the start of a hearing, the AP and the parties will agree a schedule and arrange the number of days and hours required for the matter to be heard.
- 8.2. Hearing days and times should be arranged to suit the circumstances of the matter, including (if applicable) the different time zones of the relevant Participants, while having sufficient flexibility to deal with any unexpected eventualities (for example, if a witness becomes unavailable).
- 8.3. There shall generally be a lunch break of one hour each day, as well as at least one break of 15 minutes in the morning and at least one break of 15 minutes in the afternoon.
- 8.4. Parties are expected to make every effort to be punctual and not delay the start or recommencement of the hearing following breaks.
- 8.5. For hearings taking place during the Holy month of Ramadan, the parties and the AP will need to be mindful of the traditional observances that are made during this time. The AP may adjust the sitting times as appropriate if requested by participants who are fasting.

9. MIXED REMOTE AND IN-PERSON HEARINGS

- 9.1. There may be situations in which several Participants attend a remote hearing from the same physical location, while other Participants attend remotely.

- 9.2. Parties should work collaboratively before a hearing and agree upon the arrangements to enable relevant Participants to attend remotely or in person. The AP shall ensure that the parties are treated equally regardless of whether they are attending in person or remotely.
- 9.3. Unless otherwise agreed by the parties, the following arrangements should be avoided where possible:
- (a) The AP and the legal team of only one of the parties appearing in person, while the other party and their legal team (if they have one) appears remotely; and/ or
 - (b) The legal team of one of the parties examining an opposing party’s witness or expert in person, without the opposing party and/ or its legal team also present in person.

10. ELECTRONIC BUNDLES

- 10.1. The AP expects parties to work together and agree in advance the contents and structure of any bundles for a hearing. To the extent possible, bundles should contain only the relevant materials necessary for the matter to be considered and omit any irrelevant materials.
- 10.2. For remote hearings, the bundle will need to be presented electronically at the hearing. However, the Chair may, at their discretion, request that members of the AP also be provided with hard copies of the bundle. The AP will expect the parties to agree on the most appropriate format for an electronic bundle to enable it to be navigated effectively and ensure that documents are easy to locate.
- 10.3. For example, an electronic bundle may be structured into a single PDF file or portfolio, containing copies of relevant documents arranged in chronological order. The parties may also consider it appropriate to structure large electronic bundles into separate sections, for example, containing pleadings, the key documents or evidence relied on, witness statements, relevant correspondence, skeleton arguments and authorities. The key considerations should be relevance and ease of navigation.
- 10.4. An index or table of contents of the documents must also be prepared. Where possible, entries should be hyperlinked to the indexed document.
- 10.5. If possible, PDF bundles should be subject to optical character recognition (OCR). This is the process which turns the document from a picture of a document to digitized printed text which can be read as text and is word searchable.
- 10.6. If parties use a single consolidated PDF file, it should be numbered consecutively by computer generated numbering to enable relevant pages to be located easily. The page numbers shown in the index should correspond with the page numbers of the PDF file.

- 10.7. Should a witness need to be shown a document in a bundle during their examination, this will be facilitated by the relevant party calling the witness, or the Secretariat, using the ‘share screen’ function of the video-conferencing platform.
- 10.8. Bundle structures should also be flexible to allow any relevant documents produced during the course of the proceedings to be added, without altering the pagination of the rest of the bundle.

11. EXAMINATION OF WITNESSES

- 11.1. Fact witnesses will be required to swear an oath or affirm before giving their evidence.
- (a) The suggested form for the oath is *“I swear by [almighty God] that the evidence I am about to give is the truth, the whole truth, and nothing but the truth.”*
 - (b) The suggested form for the affirmation is: *“I do solemnly, sincerely and truly declare and affirm that the evidence I am about to give is the truth, the whole truth, and nothing but the truth.”*
- 11.2. If a fact witness is to swear an oath on a holy book, arrangements should be made in advance by the party calling the witness for a copy of the holy book to be made available to the witness on the day they give evidence.
- 11.3. A fact witness may provide their evidence:
- (a) from any location; and
 - (b) in the physical presence of other persons, only if approved by the AP.
- 11.4. The location from which it is proposed that each witness will give evidence, and any other persons who it is proposed will be physically present with the witness at the time they give evidence, are to be disclosed by the party calling that witness to the AP and the other parties at least 5 days before the witness is due to give evidence.
- 11.5. It is important for the AP to receive witness evidence clearly and without distraction. Therefore, at the commencement of their evidence, each fact witness should be able to confirm to the AP that:
- (a) they can see and hear the other Speakers clearly;
 - (b) no other person other than those persons approved by the AP, is in, or will enter, the room from which the witness is giving their evidence;
 - (c) the witness has access to their witness statement(s); and

- (d) the witness will not communicate with any person in any way while the witness's examination is in progress, other than through the video-conferencing platform.

11.6. Fact witnesses will be asked to make themselves available to join the video-conferencing platform at least 10 minutes before they are scheduled to give their evidence. They will be admitted to the virtual hearing room when the AP and the parties are ready for the witness to give their evidence.

11.7. If a Speaker wishes to interject during the course of questioning of a witness by the opposing party, they should first raise their hand both physically (so they can be seen on their video feed), and virtually (if the video-conferencing platform has such a feature) and wait for the AP to call on them.

11.8. Some other relevant considerations regarding witnesses include:

- (a) witnesses may sit while giving their evidence;
- (b) witnesses are discouraged from using a virtual background;
- (c) conversation does not “flow” in a remote hearing as naturally as it might in an in-person hearing. Parties should be mindful of this and allow sufficient time when asking questions;
- (d) each party should take steps before a hearing to ensure that its witnesses are familiar with the video-conferencing platform and have a general understanding of what to expect during the hearing. This might include, for example, explaining how they will be introduced, who might be asking them questions, how the bundle will be presented (should they need to be presented with any documents during their evidence) and to speak clearly when answering questions;
- (e) if interpretation services are needed, the party calling the witness should arrange this and liaise with the Secretariat and the other party accordingly to make them aware at least one week prior to any hearing;
- (f) the parties should make clear to their witnesses that they are not permitted to communicate with them about, or discuss, their evidence while the witness is in the process of giving evidence (for example, during a break or overnight when the hearing has finished for the day and the witness is still being questioned);
- (g) witnesses should be informed well in advance of any hearing when they are likely to be required to give evidence. They should make themselves available for a sufficient amount of time, which may mean setting aside a whole day or more; and

- (h) while unforeseen emergencies occasionally arise, changing the date or time of the hearing at short notice causes considerable inconvenience for the AP, the parties and other witnesses. Therefore, the parties and their witnesses should endeavour to follow the schedule arranged for the hearing as closely as possible.

Dated:

Michael Brindle KC, President of the Appeals Panel