



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

-AND-

**IN THE MATTER OF
ERNST & YOUNG LLP**

ORDER

WHEREAS on December 3, 2012 the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing in relation to a Statement of Allegations issued pursuant to section 127 of the *Securities Act*, R.S.O. c. S.5, as amended, with respect to Ernst & Young LLP (the “Respondent”);

AND WHEREAS the Notice of Hearing stated that an initial hearing before the Commission would be held on January 7, 2013;

AND WHEREAS the Commission convened a hearing on January 7, 2013 and the matter was adjourned to a confidential pre-hearing conference to be held on March 4, 2013;

AND WHEREAS a confidential pre-hearing conference was held on March 4, 2013 and the matter was adjourned to a further confidential pre-hearing conference to be held on June 24, 2013;

AND WHEREAS a confidential pre-hearing conference was held on June 24, 2013 and the matter was adjourned to a further confidential pre-hearing conference to be held on September 6, 2013;

AND WHEREAS on September 19, 2013, the Commission ordered that the hearing on the merits (the “Merits Hearing”) shall commence on November 11, 2014 and that Staff’s case shall be presented on the following dates in 2014: November 11-14, 17, 19-21, 25-28, December 1, 3-5, 9-12, 15 and 17-19, or on such other dates as may be ordered by the Commission and that

the Respondent's case shall be presented on the following dates in 2015: January 14-16, 20-23, 26, 28-30, February 3-6, 9, 11-13, 17-20, 23, 25-27, and March 3-6, or on such other dates as may be ordered by the Commission, and that a further confidential pre-hearing conference be held on October 30, 2013 at 10:00 a.m.;

AND WHEREAS a confidential pre-hearing conference was held on October 30, 2013 and both parties made submissions and requested that a further confidential pre-hearing conference be scheduled;

AND WHEREAS on October 30, 2013 the Commission ordered, among other things, that the Respondent's proposed disclosure motion proceed on December 19, 2013 at 10:00 a.m. and that a further confidential pre-hearing conference be held on January 27, 2014 at 11:00 a.m.;

AND WHEREAS the Respondent advised Staff and the Commission that it did not intend to proceed with its proposed disclosure motion on December 19, 2013;

AND WHEREAS on December 17, 2013, the Commission ordered that the Respondent's proposed disclosure motion would not proceed on December 19, 2013, without prejudice to the Respondent's right to bring such further motion as may be necessary at a later date;

AND WHEREAS Staff and the Respondent agreed that it was not necessary to convene a pre-hearing conference on January 27, 2014;

AND WHEREAS on January 23, 2014, the Commission ordered that the pre-hearing conference scheduled for January 27, 2014 at 11:00 a.m. be vacated;

AND WHEREAS Staff requested a confidential pre-hearing conference which was held on July 25, 2014 and Staff and counsel to the Respondent attended and submissions were made;

AND WHEREAS on July 29, 2014 the Commission ordered, among other things, that the pre-hearing conference be continued on August 12, 2014 at 2:30 p.m.;

AND WHEREAS the confidential pre-hearing conference that began on July 29, 2014 continued on August 12, 2014 and Staff and counsel to the Respondent attended and submissions were made;

AND WHEREAS Staff requested a ruling requiring the Respondent to provide (i) detailed evidentiary references for each statement in the supplementary facts brief (the “Supplementary Facts”) upon which Staff allege three of the seven expert reports delivered by the Respondent are based and (ii) a list of the documents provided to certain of the Respondent’s experts in order to permit Staff to fairly and properly prepare for the Merits Hearing and to ensure an efficient and effective Merits Hearing;

AND WHEREAS Staff submitted that the Supplementary Facts document is a 25 page narrative which deals with issues central to the Merits Hearing which is not adequately supported by documentary or testimonial evidence;

AND WHEREAS Staff further submitted that the Supplementary Facts document fails to provide the factual underpinning for most of the assertions therein;

AND WHEREAS Staff entered into evidence two exhibits to support their position concerning the Supplementary Facts document;

AND WHEREAS on July 28, 2014 the Respondent delivered, by letter dated July 28, 2014 from Linda Fuerst of Lenczner Slaght to Yvonne Chisholm, Senior Litigation Counsel, Ontario Securities Commission, lists of documents (labeled as Appendix A to E to the letter of July 28, 2014) that were provided to each of the Respondent’s experts;

AND WHEREAS the Respondent submitted that all the documents that were provided to the Respondent’s experts are identified in the lists that have been provided to Staff;

AND WHEREAS the Respondent delivered, by letter dated June 20, 2014, from Linda Fuerst of Lenczner Slaght to Yvonne Chisholm, Senior Litigation Counsel, Ontario Securities Commission, with a DVD of documents enclosed that were not previously provided to Staff but were provided to the Respondent’s experts;

AND WHEREAS the Respondent undertakes to further provide Staff with a list of 10 documents that were provided to the Respondent's experts but not disclosed to Staff due to oversight on the part of the Respondent;

AND WHEREAS subrule 4.6(5) of the *Rules of Procedure of the Commission* (2012), 35 OSCB 10071 (the "*Rules of Procedure*") provides that an [expert's] affidavit or [expert's] report referred to in subrules 4.6(2), 4.6(3) and 4.6(4) shall include (a) the name, address and qualifications of the expert; (b) the substance of the expert's evidence; and (c) a list of any documents that the expert will refer to;

AND WHEREAS both Staff and the Respondent submitted that *Horodynsky Farms Inc. v. Zeneca Corp.* (2006) 83 O.R. (3d) 792 (C.A.) ("*Conceicao Farms*") established that the scope of information that may be obtained by a party "clearly encompasses not only the expert's opinion but the facts on which the opinion is based, the instructions upon which the expert proceeded, and the expert's name and address" (*Conceicao Farms* at para 14) and this proposition was applied in other cases cited to us;

AND WHEREAS the Panel has considered the submissions of Staff and the Respondent, the scope of information that must be provided to opposing parties pursuant to subrule 4.6(5) of the *Rules of Procedure* and the case law;

AND WHEREAS the Panel is of the opinion that in this case the Respondent has met the obligation under subrule 4.6(5) of the *Rules of Procedure* and the principles established in the case law;

AND WHEREAS the Panel is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED THAT:

1. The Respondent provide Staff with the list of 10 documents that were provided to the Respondent's experts but not disclosed to Staff; and
2. Staff's request for an order requiring the Respondent to provide further detailed evidentiary references for each statement in the Supplementary Facts upon which three of the seven expert reports delivered by the Respondent are based is dismissed.

Dated at Toronto this 22nd day of August, 2014.

"Mary G. Condon"

"Sarah B. Kavanagh"

Mary G. Condon

Sarah B. Kavanagh