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The New Brunswick Securities Commission, being of the opinion that it is advisable and facilitates the exercise of the powers and the performance of its duties issues New Brunswick Local Policy 12-601-*General Procedure for Applications to the Commission*.

**DATED** at Saint John, New Brunswick this 30<sup>th</sup> day of August, 2004.

Donne W. Smith  
Chair

## **LOCAL POLICY 12-601** **General Procedure for Applications to the Commission**

### **Part 1 - Types of Applications and Fees**

- 1.1 A number of sections in the *Securities Act* (the “Act”) and rules require an application to the New Brunswick Securities Commission (the “Commission”) for an order granting relief from various securities law requirements.
- 1.2 The procedures set forth in this Policy Statement apply to those applications made to the Commission for relief under appropriate sections of the Act, the rules made under the Act, and policy statements.
- 1.3 These procedures do not apply to applications for registration and applications to the Executive Director.
- 1.4 The fee payable to the Commission for an application under the Act or the rules is found in New Brunswick Local Rule 11-501 *Fee Rule*.

### **Part 2 - Submissions of Applications**

- 2.1 All applications to the Commission shall be addressed to:

Secretary  
New Brunswick Securities Commission  
606-133 Prince William Street  
Saint John, New Brunswick E2L 2B5

- 2.2 Cheques should be submitted with the application and made payable to the New Brunswick Securities Commission.

### **Part 3 - Number of Copies and Confidentiality**

- 3.1 The original executed application, two copies and an electronic version should be submitted. Additional copies may be requested from the applicant. If the supporting material appended to the application is bulky, only one copy of the supporting material need be filed.
- 3.2 Upon receipt by the Commission of an application, one copy of the application shall be placed immediately in the public file unless confidentiality is specifically requested. Where confidentiality is requested, applicants should be prepared to demonstrate that such confidentiality is reasonable in the circumstances and would not be contrary to the public interest. Reference may be made in this regard to subsection 198(4) of the Act.

### **Part 4 - Contents and Format**

Applications are prepared in letter form. They should be divided into parts dealing with each of the following headings including relevant information indicated below:

#### **4.1 Summary**

- 4.1.1 Include the name of the issuer, the name of the applicant (if different from the issuer), the statute, rule or policy statement pursuant to which the application is made and the nature of the relief sought.

#### **4.2 The Issuer**

- 4.2.1 the name of the issuer;
- 4.2.2 jurisdiction and date of incorporation or (in the case of unincorporated entities) organization;
- 4.2.3 capital structure – authorized and issued capital and debt obligations if not otherwise dealt with in an exhibit such as financial statements or an annual report;
- 4.2.4 whether the issuer is a reporting issuer;
- 4.2.5 listing status - whether listed on any stock exchange or trading over-the-counter, and recent price and trading volume data, if relevant;
- 4.2.6 a statement that the issuer is not on the list of defaulting reporting issuers maintained pursuant to section 97(2).

#### **4.3 The Applicant**

- 4.3.1 If the applicant is a person other than the issuer, include those items in clause 4.2 which are relevant to the applicant and explain the applicant's relationship to the issuer.

#### **4.4 Order or Decision Sought**

- 4.4.1 the facts on which the application is based;
- 4.4.2 the reasons for making the application;
- 4.4.3 relevant considerations including case law, prior Commission decisions, policies and argument regarding the foregoing;

- 4.4.4 other relevant circumstances including regulatory decisions, applications pending, conditions or recommendations;
- 4.4.5 supporting documents may be included as schedules or exhibits to the application and references may be made in the application to those supporting documents;
- 4.4.6 a draft order in electronic form for the consideration of the Commission staff; and
- 4.4.7 where more than one order is sought, fees applicable to each order will apply.

4.5 Verification

- 4.5.1 Each application must be signed by the party submitting the application and must contain a statement certifying the truth of the facts. If the application is not signed by the applicant and is made by an agent for the applicant this statement may be omitted if the application is accompanied by a statement made by the applicant confirming the authority of the agent to prepare and file the application and confirming also the truth of the facts contained in the application. Sample language might include:

We authorize the making and filing of the attached application by \_\_\_\_\_ and confirm the truth of the facts contained therein.

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
authorized officer

**Part 5 - Commission Procedure**

- 5.1 Upon receipt of an application with the correct fee, a member of the Commission staff will be assigned to review the application and recommend disposition. The staff member may contact the applicant if further information or clarification is required. Where the additional information or clarification sought is not provided in a reasonable period of time, the Commission on its own motion or on the recommendation of the staff member may decide that the application should be treated as abandoned. The staff member may recommend that the Commission make a certain decision without a hearing. If such a recommendation is accepted, an order will be prepared and signed by two members of the Commission without a hearing. No application will be refused without the applicant being afforded the opportunity of a hearing.
- 5.2 Where the staff member recommends denial of an application or where the matter involves a material question affecting the public interest or raises a novel question of interpretation, the application will be set down for hearing before the Commission. The staff memorandum respecting the application will be sent to the applicant. The applicant will be given an opportunity to present the application and the staff member who dealt with the application may be present at the hearing.
- 5.3 The application and all relevant supporting material and the staff memorandum must be delivered to the Commission no later than eight days prior to the regular Commission meeting at which the application will be heard.

- 5.4 In those cases where a clear and compelling situation exists, requests may be made to the Secretary of the Commission or to the staff member dealing with the application to expedite the hearing. An additional fee will be required.
- 5.5 The Commission is generally reluctant to issue rulings which have retroactive effect. As an alternative, the Commission may in appropriate circumstances determine that no action will be taken with respect to a particular transaction for which an additional fee may be charged.
- 5.6 An application may be withdrawn at any time before the Commission has reached a decision on the matter without prejudice to the right of the applicant to re-apply. Decisions of the Commission, except rulings made under sections 55 and 80 of the Act, are subject to appeal to the Court of Appeal of New Brunswick with the prior leave of a judge of the Court of Appeal.

#### **Part 6 – Effective Date**

- 6.1 This policy comes into effect August 30, 2004