

REQUEST FOR COMMENTS

Notice and Request for Comment – Publishing for comments proposed amendments to New Brunswick Securities Commission Local Rule 15-501 *Procedures for Hearings Before a Panel of the Commission* (LR 15-501) and proposed new Form 15-501F1 *Summons to Witness* (together, the Proposed Materials).

Introduction

On June 21, 2010, the New Brunswick Securities Commission (Commission) approved publication in order to obtain comments on the Proposed Materials.

Summary of Proposed Materials

LR 15-501 came into force on July 9, 2008 and introduced a set of procedures regarding the administration of hearings. The proposed amendments are the result of the Commission's monitoring of the implementation of LR 15-101 and problems/issues that have arisen with practical experience of working with LR 15-101.

The proposed amendments include changes to subsection 17(4) to provide that service of Orders and Reasons for Decision issued by the Panel, will now be performed by staff of the Enforcement Division as opposed to the Secretary's office.

Amendments to Part 16, *Public Access to Proceedings and Documents*, are also proposed in order to protect the privacy of non-parties, more particularly in documentation such as affidavits and exhibits. The proposed changes would have the effect of considering all filing, except pleadings, to be confidential until the start of a hearing.

Additionally, a new Section 18 is contemplated in order to provide details regarding the procedures for applications under subsection 195(7) or section 206 of the *Securities Act*, S.N.B. 2004, c. s-5.5.

Further amendments also include changes to definitions, typographical errors and clarifications of wording.

Request for Comment

The Commission welcomes your comments on the Proposed Materials.

How to Obtain a Copy and Provide your Comments

The text of the Proposed Materials follows this notice.

A paper copy of the Proposed Materials may be obtained by writing, telephoning or e-mailing the Commission. Comments are to be provided, in writing, by no later than November 1st, 2010, to:

Secretary
New Brunswick Securities Commission
85 Charlotte Street, Suite 300
Saint John, N.B. E2L 2J2
Telephone: 506-658-3060
Toll Free: 1-866-933-2222 (within N.B. only)
Fax: 506-658-3059
E-mail: information@nbsc-cvmnb.ca

A summary of the written comments received during the comment period may be published.

Questions

If you have any questions, please refer them to:

Manon Losier
General Counsel and Secretary to the Commission
New Brunswick Securities Commission
Tel: 506-643-7690
Email: manon.losier@nbsc-cvmnb.ca

Document Type: Amendment Instrument
Document N°: 15-501
Subject: Amendment Instrument for *Procedures for Hearings before a Panel of the Commission*
Publication Date: •
Effective Date: •

Amendments to

NEW BRUNSWICK SECURITIES COMMISSION LOCAL RULE 15-501 *PROCEDURES FOR HEARINGS BEFORE A PANEL OF THE COMMISSION*

1 *Section 1 of Local Rule 15-501 Procedures for Hearings before a Panel of the Commission (LR 15-501) is amended in subsection (1)*

(a) by repealing the definition of "Document";

(b) by adding after the definition of "Party":

"Pleadings" means the specific submission by which the allegations of parties to a proceeding are presented in proper form; specifically the Statement of Allegations of Staff and the Response of a Respondent plus any additional responses to those submissions that are authorized by law but excludes evidence tendered in the course of a proceeding; (*procédure écrite*);

(c) by striking out "(secrétariat)" in the definition of "Secretary" and substituting with "(secrétaire)";

(d) by striking out "(entente de règlement)" in the definition of "Settlement Agreement" and substituting with "(règlement à l'amiable)"; and

(e) in the definition of "Settlement Panel"

(i) by striking out "2" and substituting with "two (2)"; and

(ii) by striking out " (comité d'audition du projet de règlement) and substituting with " (comité d'audience du projet de règlement)".

(f) by adding the following after subsection (3):

"1(4) Document – In this Rule, references to the word document, where it applies, includes but is not limited to a film, photograph, video tape, chart, graph, map, plan, survey, book of account, recording of sound, or information recorded or stored by means of any device."

2 Section 5 of LR 15-501 is amended in Paragraphs 5(4)(a) and (b) by striking out "the original and 5 copies (or a greater number if so directed by the Secretary)" and substituting with "the original and five (5) copies (or another number if so directed by the Secretary)"..

3 Section 6 of LR 15-501 is amended

(a) in subsection (4)

(i) by striking out "Notice of Hearing" wherever it appears and substituting with "Notice of Hearing of Motion"; and

(ii) by striking out "serve on the other Parties a Notice of Motion" and substituting with "serve on the other Parties motion materials".

(b) in subsection (6)

(i) by striking out "A Party served with a notice of motion may serve on the person" and substituting with "A Party served with a Notice of Hearing of Motion, who intends to provide evidence in reply, must serve on the person"; and

(ii) by striking out "5" and substituting "five (5)".

(c) in subsection (7)

(i) by striking out "the Act permits an ex parte application" and substituting with "the Act permits an ex parte motion"; and

(iii) by striking out "render service of a notice of motion impractical" and substituting with "render service of a Notice of Hearing of Motion impractical".

(d) in subsection (8)

(i) by striking out "Member hearing motion" and substituting with "Member hearing procedural motion"; and

(ii) by striking out "that a single Panel Member decide the motion" and substituting with "that a single Panel Member decide a procedural motion".

4 Section 8 of LR 15-501 is amended in subsection (2) by striking out "a completed Summons to Witness form." and substituting with "a completed Form 15-501F1 Summons to Witness."

5 Section 9 of LR 15-501 is amended in subsection (4)

(a) by striking out "shall prepare a Notice of Hearing for a settlement hearing." and substituting "shall prepare a Notice of Settlement Hearing.";

(b) by striking out "Staff shall serve the Notice of Hearing upon the Parties" and substituting with "Staff shall serve the Notice of Settlement Hearing upon the Parties"; and

(c) by striking out "5" and substituting with "five (5)".

6 Section 10 of LR 15-501 is amended in subsection (3)

(a) by striking out "the Member assigned to hold the pre-hearing conference shall prepare a memorandum" and substituting with "the Member assigned to hold the pre-hearing conference may prepare a memorandum"; and

(b) by striking out "and shall provide each Party with a copy thereof." and substituting with "and, if one is prepared, shall provide each Party with a copy thereof.".

7 Section 11 of LR 15-501 is amended

(a) in paragraph (4)(a) by striking out "the application or other Document" and substituting with "the application or other Pleadings";

(b) in subsection (5) by striking out "or in the event such provision is impractical within 30 days, shall so advise the Applicant and provide an estimate" and substituting with "or in the event such provision is impractical shall so advise the Applicant within 30 days and provide an estimate";

(c) in subsection (6) by striking out "specified in subsection 10(4)" and substituting with "specified in subsection 11(4)"; and

(d) in subsection (7) by striking out "Upon the filing of the record an proof of service," and substituting with "Upon the filing of the record and proof of service,".

8 Section 13 of LR 15-501 is amended

(a) in subsection (2)(c)

(i) by striking out "if the Respondent fails to attend" and substituting with "if the Respondent(s) fail(s) to attend"; and

(ii) by striking out "imposed in the Respondent's absence" and substituting with "imposed in the Respondent's(s') absence";

(b) in subsection (2)(e) by striking out "the Respondent may be heard" and substituting "the Respondent(s) may be heard";

(c) in subsection (5) by striking out "a Respondent who files a response with the Secretary must outline:" and substituting with "a Respondent must file a response with the Secretary which outlines:";

(d) by repealing subsection (6) and substituting with the following:

"Identification of Non-Parties in Statement of Allegations – In order to preserve the privacy of non-Parties referred to in a Statement of Allegations, the names and other identifying facts regarding non-Parties must be replaced with alphabetical, numerical or alphanumeric characters that with respect to a name, are not the initials or an abbreviation of the non-Party's name or general descriptions. In such a case, the Parties to the Proceeding shall be provided with a confidential identification list, clearly identifying the replaced names and identifying facts, which shall be served with the Notice of Hearing and shall be kept strictly confidential." ; **and**

(e) in subsection (7) by striking out "with the exclusion of any Identification List, on its web site" and substituting with "with the exclusion of any identification list, on its website" .

9 Section 14 of LR 15-501 is amended

(a) in subsection (1) by striking out "5" and substituting with "five (5)"; and

(b) in subsection (2) by striking out "5" and substituting with "five (5)".

10 Part 16 of LR 15-501 is amended

(a) in Part 16's title by striking out "PROCEEDINGS AND DOCUMENTS" and substituting with "PROCEEDINGS, PLEADINGS AND OTHER DOCUMENTS";

(b) in section 16

(i) by striking out in paragraph (1) "Subject to the provisions in Part 9, Documents required to be filed or received in evidence in a Proceeding shall be available to the public." and substituting with "Subject to the provisions in Part 9 and to subsection 16(2), Pleadings shall be available to the public. Other documents will remain confidential until the start of the hearing."; and

(ii) by striking out in paragraph (1) "The public may inspect these Documents" and substituting with "The public may inspect Pleadings";

(c) in subsection 16(2) by striking out "interested person, the Panel may" and substituting with "interested person or on its own motion, the Panel may";

(d) in subsection 16(3) by striking out "in Part 9, a hearing is open" and substituting with "in Part 9 and to subsection 16(2), a hearing is open";

(e) in subsection 16(4) by striking out "the media may cover a hearing." and substituting with "the media may cover a hearing subject to the direction of the Panel."; and

(f) by repealing subsection 16(5) and replacing it with the following:

"16(5) Visual or Audio Recording – Visual or audio recording of any part of a hearing is not permitted."

11 Section 17 of LR 15-501 is amended

(a) in subsection (4) by striking out "will be served by the Secretary on every Party" and substituting with "will be served by Enforcement Staff on every other Party";

(b) in subsection (5) by striking out "reasons, if any, may be posted" and substituting with "reasons, if any, will be posted"; and

(c) in subsection (7) by striking out " at least 5 days before a hearing on sanctions and Staff shall file any reply submissions at least 2 days before" and substituting with "at least five (5) days before a hearing on sanctions and Staff shall file any reply submissions at least two (2) days before".

12 Part 18 of LR 15-501 is repealed and replaced with the following:

PART 18 FURTHER DECISION PURSUANT TO SUBSECTION 195(7) OF THE ACT OR REVOCATION OR VARIATION OF A DECISION PURSUANT TO SECTION 206 OF THE ACT

18(1) Application – An Applicant for a further decision pursuant to subsection 195(7) of the *Act* or for an order revoking or varying a decision of the Commission pursuant to section 206 of the *Act* must serve on every other Party to the original Proceeding, and must file with the Secretary, an application:

- (a) identifying the decision in respect of which the request is being made;
- (b) stating the interest in the decision of the Party filing the request;
- (c) stating the factual and legal grounds for the request and the evidence in support of any factual grounds (new material or significant change in circumstances) to be relied upon not already before the Panel); and
- (d) stating the relief sought.

18(2) Hearing on Application – Upon reviewing the application filed in accordance with subsection 18(1), the Panel may:

- (a) grant the application;
- (b) refuse to grant the application;
- (c) request written submissions from the Parties in accordance with Part 15; or
- (d) decide to hold an oral hearing in accordance with Parts 13 and 14 to consider the application.

18(3) New Evidence – If a Party proposes to introduce new evidence in support of written submissions or at the oral hearing of the 18(1) application, the Party must, at least 10 days before the deadline for

filing written submissions or at least 10 days before the oral hearing, provide every other Party with a copy of the new evidence and must deliver to every other Party copies of any new document that the Party will rely on."

13 LR 15-501 is amended by adding, after Part 18, the following:

"Part 19 EFFECTIVE DATE

19(1) This Rule comes into force on 9 July 2008."

14 LR 15-501 is amended by adding the following form:

"Form 15-501F1

IN THE MATTER OF THE *SECURITIES ACT*

S.N.B. 2004, c. S-5.5

AND

IN THE MATTER OF

**[enter matter]
(Respondents)**

SUMMONS TO WITNESS

TO: [enter name and address of witness]

You are required to attend at the hearing of this matter to give evidence at the request of Staff of the New Brunswick Securities Commission ("the Commission")

TIME: [enter time of hearing]

DATE: [enter date of hearing]

PLACE: Suite 300, 85 Charlotte Street

Saint John, New Brunswick

and to remain in attendance until excused. You are required to bring with you all records and things in your possession or control relating to:

[enter required information]

You may give evidence in the English or French language. You must advise Staff of the Commission immediately whether you would like to be examined in English or in French. If you do not indicate a preference, Staff intend to examine you in the language of the hearing, which is *English/French* [~~strike out inapplicable portion~~].

If you fail to attend or remain in attendance as required by this Summons, you may be liable for contempt.

Manon Losier
Secretary to the Commission

The party causing this Summons to Witness to be served on you is:

[enter your name, title, if any, address, telephone, e-mail address and fax number] "

15 This instrument comes into force on xx Month 2010.

Proposed Form 15-501F1

IN THE MATTER OF THE *SECURITIES ACT*

S.N.B. 2004, c. S-5.5

AND

IN THE MATTER OF

**[enter matter]
(Respondents)**

SUMMONS TO WITNESS

TO: [enter name and address of witness]

You are required to attend at the hearing of this matter to give evidence at the request of Staff of the New Brunswick Securities Commission ("the Commission")

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Saint John, New Brunswick

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Manon Losier
Secretary to the Commission

The party causing this Summons to Witness to be served on you is:

[enter your name, title, if any, address, telephone, e-mail address and fax number]