

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).

Introduction

On March 19, 2012, the New Brunswick Securities Commission (Commission) approved publication in order to obtain comments on the proposed amendments to LR 15-501.

Summary of Proposed Amendments

LR 15-501 came into force on July 9, 2008 and governs the administration of hearings. In 2011, as part of the review of LR 15-501, several areas were identified that would benefit from amendments. Among others, these areas include: changes to Part 5, *Service and Filing*, which aim to encourage the filing and use of electronic documents; clarification regarding the filing of motions in Part 6 *Motions*; the introduction of a deadline for the filing of responses (required under subsection 13(5) of LR 15-501); and a more detailed procedure for adjournment requests (currently subsection 14(5) of LR 15-501).

Further amendments have been made to LR 15-501 to streamline the hearing processes, and to reflect recent amendments to the *Securities Act*.

Request for Comment

The Commission welcomes your comments on the proposed amendments.

How to Obtain a Copy and Provide your Comments

The text of the proposed amendments follows this notice.

A paper copy of the proposed amendments may be obtained by writing, telephoning or emailing the Commission. Comments are to be provided, in writing, by no later than July 10, 2012, 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

Proposed Amendments to

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

- 1 *Local Rule 15-501 Procedures for Hearings Before a Panel of the Commission is amended by this Instrument.*
- 2 *The title of Local Rule 15-501 Procedures for Hearings before a Panel of the Commission (LR 15-501) is amended by replacing "PROCEDURES FOR HEARINGS" with "PROCEEDINGS".*
- 3 *Part 1 is amended:*

(a) by repealing the following definitions:

- (i) "Commission";*
- (ii) "Member";*
- (iii) "Secretary", and*
- (iv) "SRO";*

(b) in the definition of "Party", by adding "so" before "designated";

(c) in the definition of "Pleadings", by adding ", " after "authorized by law";

(d) by replacing the definition of "Review Proceeding" with the following:

"Review Proceeding" means a Proceeding relating to the review of a decision of the Executive Director or of an exchange, a self-regulatory organization, a quotation and trade reporting system, a clearing agency or an auditor oversight body; (procédure de révision);

(e) in the definition of "Settlement Panel", by adding "or supplementary Members" after "(2) Members";

(f) in the definition of "Staff", by adding "Enforcement" after "means"; and

(g) in subsection (2), by adding ", review a decision" after "hold a hearing".

- 4 *Part 2 is amended:*

(a) by replacing the title of Part 2 with "INTERPRETATION AND TIMING";

(b) in subsection (2), by adding “or single Panel member assigned to a matter” *after* “a Panel”; *and*

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

“2(4) Practice directions - The Secretary may, from time to time, issue practice directions in the form of a Notice from the Office of the Secretary with respect to the application of this Rule. The Secretary shall publish the practice directions on the Commission’s website.”.

5 *Part 3 is amended by replacing the heading of subsection (3) with* “Counsel information”.

6 *Part 5 is amended:*

(a) by replacing subsections (4) and (5) with the following:

“5(4) Filing - A document required to be filed under this Rule may be filed by

- (a) personal delivery of the document to the Secretary;
- (b) delivery of the document by registered mail or courier to the Secretary;
- (c) delivery by Electronic Transmission to the attention of the Secretary in a format acceptable to the Secretary; or
- (d) such other manner as the Panel may direct.

5(5) Electronic Transmission - If a document is filed by Electronic Transmission, the original must also be delivered to the Secretary forthwith. Documents filed by facsimile transmission shall not exceed 25 pages, except with the prior consent of the Secretary.

5(5.1) Electronic copies - The Secretary may require a party to provide an electronic version in a format acceptable to the Secretary of any document required to be filed under this Rule.

5(5.2) Paper copies - The Secretary may require a party to file an original and up to five (5) copies of any document required to be filed under this Rule.”.

7 *Part 6 is amended:*

(a) in subsection (1) by

(i) deleting “before a hearing on the merits”; *and*

(ii) *adding* “at any time during a Proceeding” *after* “before a Panel”;

(b) *by inserting the following after subsection (1)*;

“6(1.1) Temporary relief - Staff may bring a motion for temporary relief before a Statement of Allegations is filed in an Enforcement Proceeding.”;

(c) *in subsection (2) by adding* “in a Proceeding” *after* “jurisdiction”;

(d) *in subsection (3), by replacing* “intends” *with* “wishes”;

(e) *by replacing subsection (5) with the following*:

“6(5) Evidence in support of motion - Subject to subsection 6(5.1), all evidence in support of a motion shall be by way of sworn affidavit confined to:

- (a) facts within the personal knowledge of the deponent; and
- (b) statements as to the information and belief of the deponent, provided the source of the information and belief are stated.”;

(f) *by inserting the following after subsection (5)*:

“6(5.1) Oral testimony on motion - The Panel may grant leave on any terms and conditions for:

- (a) a witness to give oral testimony in relation to an issue raised in the motion and cross-examination; and
- (b) cross-examination of a deponent to an affidavit.”;

(g) *in subsection (7) by replacing* “A Panel may permit a Party to” *with* “Staff may”;

(h) *in subsection (8), by adding* “or an *ex parte* motion” *after* “procedural motion”; *and*

(i) *by inserting the following after subsection (8)*:

“6(8.1) Motion proceeding in writing - The Panel or single Panel member assigned to decide a procedural motion or an *ex parte* motion may elect to proceed on the basis of written submissions.”.

8 Subsection 7(2) is amended by

(a) deleting the word “deliver”; and

(b) adding “provide” before “copies”.

9 Part 8 is amended by

(a) replacing subsection (3) with the following:

“8(3) Conduct money - At the time of service of the Summons to Witness, the witness shall be provided with conduct money as follows:

(a) for each day of necessary attendance, an amount of \$50; and

(b) if the witness resides outside of the municipality where the Proceeding is to be held, 39¢ per kilometer between his or her residence and the location of the Proceeding.”.

(b) inserting the following after subsection (3):

“8(3.1) Witness expenses - If the witness resides outside of the municipality where the Proceeding is to be held and is required to remain at the location of the Proceeding overnight, the Party calling the witness shall arrange for the witness to be provided, free of charge, with reasonable hotel accommodations.”.

10 Part 9 is amended:

(a) in subsection (4) by

(i) replacing the heading with “Settlement procedure”;

(ii) replacing “proposed settlement” with “proposed Settlement Agreement”; and

(iii) adding “then” after “Staff shall”;

(b) by adding the following after subsection (4):

“9(4.1) Settlement hearing in writing - A settlement hearing may proceed in writing in accordance with Part 15.”;

(c) by replacing the heading in subsection (6) with “In camera hearing”; and

(d) by deleting “Where” in the heading of subsection (7).

11 Subsection 10(3) is replaced with the following:

“10(3) Orders or agreements - At the conclusion of a pre-hearing conference, the Panel or the member assigned to hold the pre-hearing conference may issue an order or a memorandum of the agreements reached, directions provided and any other matters resolved at the pre-hearing conference.”.

12 Part 11 is amended:

(a) in subsection (1) by replacing “or an SRO” with “or of an exchange, a self-regulatory organization, a quotation and trade reporting system, a clearing agency or an auditor oversight body”;

(b) in subsection (4) by

(i) replacing “or SRO” with “or from an exchange, a self-regulatory organization, a quotation and trade reporting system, a clearing agency or an auditor oversight body”;

(ii) adding “unless all Parties consent to the omission of any of the following documents from the record or the Panel otherwise directs” after “shall include”;

(iii) replacing “,” with “.” at the end of paragraph (e); and

(iv) deleting “unless all Parties consent to the omission of any of the above Documents from the record or the Panel otherwise directs.” after paragraph (e);

(c) in subsection (5), by replacing “or SRO” with “or an exchange, a self-regulatory organization, a quotation and trade reporting system, a clearing agency or an auditor oversight body”, and

(d) by inserting the following after subsection (6):

“11(6.1) Time for service and filing of record - The Applicant must file the Request for Hearing and proof of service in accordance with subsection 11(6) within 30 days from the date of receipt of the record from the Executive Director or from an exchange, a self-regulatory organization, a quotation and trade reporting system, a clearing agency or an auditor oversight body.”.

13 Part 13 is amended:

(a) in subsection (5), by replacing “must file a response with the Secretary” with “who wishes to oppose the relief sought by Staff shall,

within 20 days after being served with the Statement of Allegations, file with the Secretary and serve on all other Parties a response”;

(b) by inserting the following after subsection (5):

“13(5.1) No response received - Where a Respondent fails to file a response within the period set out in subsection 13(5), Staff may, upon filing with the Secretary proof of service of the Statement of Allegations upon the Respondent, request that the Panel proceed against that Respondent on the basis of written submission. The scheduled hearing date shall be retained for oral submissions.”;

(c) in the heading of subsection (6), by deleting “in Statement of Allegations”;

(d) in subsection (6), by replacing “referred to in a Statement of Allegations,” ***with*** “referred to in a Statement of Allegations and any response to the Statement of Allegations,”; ***and***

(e) in subsection (7), by replacing “publish the Notice of Hearing and Statement of Allegations,” ***with*** “publish the Notice of Hearing, Statement of Allegations and response filed under this Part,”.

14 Part 14 is amended:

(a) by inserting the following after subsection (3):

“14(3.1) Transcripts - Official transcripts of a Proceeding are prepared by a reporter retained by the Commission. Any Party who wishes to obtain a copy of the transcripts may do so directly from the reporter, and at their own expense.”;

(b) in subsection (4), by adding “and the Respondent is not entitled to any further notice of any step in the Proceeding” ***after*** “in his or her absence”;

(c) by replacing subsection (5) with the following:

“14(5) Adjournment request - The Panel may adjourn a hearing on its own motion or at the request of any Party. A Party requesting an adjournment shall, as soon as practicable, advise the Secretary and all other Parties in writing of the adjournment request and adequate reasons for the adjournment request.”;

(d) by adding the following after subsection (5):

“14(5.1) Adjournment with consent - If all Parties consent to an adjournment request, the requesting Party shall file a written

notification with the Secretary advising of the consent, and the Panel may adjourn the hearing.

14(5.2) Adjournment without consent - If all Parties do not consent to a request for an adjournment, the requesting Party must file with the Secretary and serve on all other parties a motion for the adjournment.”; **and**

(e) in subsection (6), by replacing “must give notice in compliance with the provisions of the Judicature Act.” **with** “may give notice to the Attorney General for New Brunswick and the Attorney General for Canada.”.

15 Part 15 is amended:

(a) by replacing subsection (1) with the following:

“15(1) Consent required - Subject to subsections 6(8.1) and 13(5.1), a Proceeding or motion may be dealt with by the Panel on the basis of written submissions made by the Parties if all Parties agree in writing.”;

(b) in subsection (2), by

(i) replacing the heading with “Applicant’s written submission”; **and**

(ii) replacing “a written hearing is agreed to” **with** “a Proceeding or motion is to be dealt with in writing”;

(c) in the heading of subsection (3), by replacing “Submission” **with** “written submission”;

(d) in subsection (4), by adding “, subject to the format being acceptable to the Secretary” **after** “may direct”; **and**

(e) by adding the following after subsection (4):

“15(5) Timeline - The Panel may set a timeline for the filing of submissions.”.

16 Part 16 is amended:

(a) in subsection (1) by replacing “The public may inspect Pleadings” **with** “Public documents may be inspected” **and by replacing** “or request copies upon payment” **with** “or copies may be obtained upon request and upon payment”;

(b) in subsection (2) by replacing “a Party or another interested person or on its own motion” *with* “a Party and after providing the Party with an opportunity to be heard” *and by replacing* “with the Secretary or any” *with* “with the Secretary, any”;

(c) by inserting the following after subsection (1):

“16(2.1) Restricting access to documents - The Panel may, if it is of the opinion that there are valid reasons for restricting access to a document or to the transcript of a Proceeding, declare the document or transcript confidential and make any such other orders as it deems appropriate.”;

(d) in subsection (3) by replacing “subsection 16(2)” *with* “subsections 16(2) and 16(2.1)” *and deleting* “While in the hearing room, anyone attending a hearing must turn off cellular phones, pagers and similar sound emitting devices which may interfere with the hearing.”; *and*

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

“16(3.1) Use of mobile devices - While in the hearing room, anyone attending a hearing must turn off cellular phones, pagers and similar sound emitting devices which may interfere with the hearing.”.

17 Subsection 17(6) is amended by deleting “The Panel may direct that a hearing on sanctions proceed in writing.”.

18 This instrument comes into force on xx xxxxxxx 2012.