

REQUEST FOR COMMENTS

Notice and Request for Comment – Publication of proposed New Brunswick Securities Commission Local Rule 15-502 *Procedure for Distribution of Disgorged Funds*, Form 15-502F1 *Notice of Possible Entitlement* and Form 15-502F2 *Distribution Claim* (LR 15-502).

Introduction

On 23 March 2009, the New Brunswick Securities Commission (Commission) approved publication for comment of proposed LR 15-502.

The text of LR 15-502 can be viewed following the Notice.

Substance and Purpose of Proposed LR 15-502

The New Brunswick *Securities Act* (*Act*) has granted the Commission rule-making authority respecting the administration and distribution of amounts disgorged to the Commission. Recent amendments to the *Act* grant the authority to the Commission to issue disgorgement orders. Disgorgement orders permit the Commission to order that a person be divested from the benefits obtained as a result of failure to comply with securities law. Disgorged funds are to be paid to the Commission.

Proposed LR 15-502 attempts to provide a simple, efficient and fair procedure for dealing with disgorged funds. Under LR 15-502, disgorged funds that have been received by the Commission are to be paid back first to any claimants to those funds. Any funds that have not been distributed will remain in a disgorgement fund and shall be distributed at the discretion of the Commission.

Request for Comment

The Commission seeks comments on the proposed LR 15-502.

How to Provide your Comments

Comments are to be provided, in writing, by no later than 8 June 2009 to:

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

We cannot keep submissions confidential. A summary of the written comments received during the comment period may be published.

Questions

If you have any questions, please refer them to:

Jake van der Laan
Director of Enforcement
New Brunswick Securities Commission
Tel: 506-658-6637
Email: jake.vanderlaan@nbsc-cvmnb.ca



Document Type	:	New Brunswick Securities Commission Local Rule
Document N°	:	15-502
Subject	:	<i>Procedure for Distribution of Disgorged Funds</i>
Publication Date	:	•
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**NEW BRUNSWICK SECURITIES COMMISSION
LOCAL RULE 15-502**

PROCEDURE FOR DISTRIBUTION OF DISGORGED FUNDS

PART 1 INTERPRETATION AND APPLICATION

1(1) Definitions – In this Rule

“Claimant” means any person who alleges that he or she has suffered financial loss as a result of the Respondent’s failure to comply with New Brunswick securities law; (*réclamant*)

“Distribution Assessment” means the Executive Director’s decision respecting the distribution of funds in the Commission’s possession as a result of a disgorgement order; (*évaluation des montants à distribuer*)

“Respondent” means a person against whom a disgorgement order has been made; (*intimé*)

“Staff” means New Brunswick Securities Commission Staff. (*membres du personnel*)

1(2) Purpose – This Rule is intended to ensure that any funds obtained by the Commission as the result of a disgorgement order are distributed fairly and in accordance with the purposes of the *Act*.

1(3) Limitations of a claim – A claim made under this Rule is not limited to a particular amount. However, a Claimant may claim no more than the actual amount provided to the Respondent.

PART 2 PROCEDURE FOR A CLAIM

2(1) General rule – Once a Commission Panel has issued a disgorgement order, any funds subsequently obtained by the Commission under that order shall be distributed according to the procedure in Parts 3, 4 and 5.

PART 3 NOTICE

3(1) Required Notice – Once the Commission receives disgorged funds under a disgorgement order, Staff shall provide notice to potential Claimants.

3(2) Form of notice – Notice provided under this part shall be in Form 15-502F1 *Notice of Possible Entitlement*.

3(3) Provision of notice to known potential claimants – The notice required to be provided under subsection 3(1) shall be sent to any known potential Claimants at their last known addresses.

3(4) Additional notice – In addition of notice under subsection 3(3), Staff may provide notice to the public on the Commission's website and in at least one newspaper of general circulation in the area where potential Claimants are likely to reside.

3(5) Costs – The cost of providing notice under this Part and any reasonable disbursements incurred by the Commission in collecting the disgorged funds may be off-set against any disgorged funds held by the Commission prior to a distribution.

PART 4 CLAIMS

4(1) Claim form – A claim made under this Rule shall be made by submitting a completed Form 15-502F2 *Distribution Claim* to the Executive Director on or before the deadline set out in the notice provided to the Claimant under Part 3.

4(2) Incomplete claims – If the claim is incomplete, the Executive Director shall advise the Claimant and request that additional information be provided to complete the claim.

PART 5 EXECUTIVE DIRECTOR'S ASSESSMENT

5(1) Assessment – Upon receiving a completed Form 15-502F2, the Executive Director shall review the claim to ensure that:

- (a) the Commission has made a disgorgement order with respect to the Respondent(s) identified in the claim; and
- (b) the claim demonstrates that the Respondent(s) caused the loss and that the amount claimed is supported by the documents provided.

5(2) Filing of claim – If the Executive Director is satisfied that:

- (a) the claim meets the requirements of subsection 5(1), and
- (b) the Claimant has not colluded or participated in any way in the Respondent's contravention of securities law,

the Executive Director shall file the Form 15-502F2 with the Secretary's Office.

5(3) Refusal to file claim – If the Executive Director is not satisfied in accordance with 5(2), the Executive Director shall not file the claim and shall provide the Claimant with the reason(s) for the refusal.

5(4) Assessment of value – Once filed, the Executive Director shall assess the value of the claim based on the information contained in Form 15-502F2.

5(5) Notification of filed claim – Once the claim has been filed and the value assessed, Staff shall notify the Claimant of its filing and its assessed value.

5(6) Resolution of filed claims – All filed claims shall be resolved in accordance with the provisions of Part 6.

PART 6 RESOLUTION OF CLAIMS BY EXECUTIVE DIRECTOR

6(1) Distribution assessment – After the deadline for filing a claim has passed, the Executive Director shall assess the net disgorged amount(s) available to be paid on all filed claims relating to the same proceeding by:

(a) calculating the total value of the claims as the sum of the values of all filed claims; and

(b) deducting the costs set out in subsection 3(5) from the amount of disgorged funds held by the Commission in relation to the proceeding.

6(2) Amount of distribution – If the net disgorged funds calculated under subsection 6(1) exceed the total value of the claims calculated under paragraph 6(1)(a), then the value of each claim is the amount that shall be paid to each Claimant.

6(3) Pro-rata distribution – If the net disgorged funds under subsection 6(1) are less than the total value of the claims calculated under paragraph 6(1)(a), then the amount paid for each claim shall be equal to the following calculation:

$$\text{(Net Disgorged Funds / Total Value of Claims) x the Value of the Claim}$$

6(4) Remaining funds – If the Executive Director is satisfied that all claims are paid in full in accordance with subsection 6(2), any remaining funds shall

remain in the Commission's Disgorgement Fund, to be distributed at the discretion of the Commission.

PART 7 EFFECT OF CLAIM UPON A CIVIL CLAIM

7(1) Commencement of civil claim – The filing of a claim under this Rule does not prevent the Claimant from commencing a civil court proceeding for compensation arising out of the same transaction.

PART 8 EFFECTIVE DATE

8(1) Effective date – This Rule comes into force on **[enter date]**.



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Document N° : 15-502F1
Subject : *Notice of Possible Entitlement*
Publication Date : ●
Effective Date : ●

FORM 15-502F1
NOTICE OF POSSIBLE ENTITLEMENT

To: [POTENTIAL CLAIMANT]

Background

On [DATE OF ORDER] a hearing panel of the New Brunswick Securities Commission (Commission) issued a disgorgement order (Order) against the following respondents:

- [LIST RESPONDENTS – NAME AND ADDRESS]

The above Respondent(s) were ordered to disgorge funds as a result of their non-compliance with New Brunswick securities laws. A copy of the Order [(ATTACH IF AVAILABLE – IF NOT AVAILABLE PROVIDE ONCE COMPLETE) and the hearing panel's Reasons for Decision, which detail the Respondent(s)' violation(s) of New Brunswick securities laws] is/are attached for your reference.

Pursuant to the Order, the Commission has received \$[AMOUNT RECEIVED] from [RESPONDENT(S)]. These disgorged funds are being held by the Commission pending the receipt and assessment of any potential claims to the funds pursuant to Local Rule 15-502 *Procedure for Distribution of Disgorged Funds* (LR 15-501). A copy of LR 15-501 is attached for your reference.

If you provided money to the Respondent(s) and lost this money as a result of the Respondent(s) violations of New Brunswick securities law, you may be eligible to make a claim for distribution of some of the above-noted disgorged funds.

Procedure

To make a claim, please review and complete the enclosed Form 15-502F2 *Distribution Claim* and return the completed Form 15-502F2 to the Commission by [NOTE DEADLINE IN BOLD] as soon as possible. Be sure to include all of the

requested information in the form. Form 15-502F2 contains detailed instructions on what information is required to complete the claim.

Following a review of your claim, you will be advised whether or not your claim will be filed and assessed by the Commission.

Contact Information

Please contact the following Commission staff representative if you have any questions about a potential claim or the requirements for Form 15-502F2:

[NAME/CONTACT INFORMATION FOR RESPONSIBLE STAFF MEMBER FROM ENFORCEMENT DIVISION]

Deadline

Only completed claims received prior to the deadline of [RESTATE DEADLINE IN BOLD] will be considered for distribution.



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Document N° : 15-502F2
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FORM 15-502F2
DISTRIBUTION CLAIM

General Instructions

This form is to be used by anyone wishing to make a claim under Local Rule 15-502 *Procedure for Distribution of Disgorged Funds*.

Please use additional sheets of paper if necessary.

1. Claimant (Please use your proper legal name and provide all details required):

Name: _____ Date of Birth: _____
Address: _____
City: _____ Province: _____ Postal Code: _____
Work Telephone: _____ Home Telephone: _____
Fax: _____ E-mail address: _____

What is your preferred language of communication?

- English
- French

How do you prefer that we send you correspondence?

- Email
- Fax
- Mail

2. Respondent(s) (please identify the person against whom you are making the claim):

The persons must all be Respondents in the same proceeding. If you intend to claim against multiple persons in different proceedings, you must file a separate claim for each proceeding. If you know the Respondent's employer, please provide contact details.

Respondent #1:

Name:

Address:

City:

Province:

Postal Code:

Work Telephone:

Home Telephone:

Fax:

E-mail address:

Respondent #2:

Name:

Address:

City:

Province:

Postal Code:

Work Telephone:

Home Telephone:

Fax:

E-mail address:

Respondent #3:

Name:

Address:

City:

Province:

Postal Code:

Work Telephone:

Home Telephone:

Fax:

E-mail address:

3. What is the amount of your claim?: \$

Claims are limited to actual amounts paid to the above identified Respondent(s) against whom a claim is made. Please list your net claim, after deducting any reimbursements or other credits you may have received. You can claim no more than the actual amount you provided to the Respondent; incidental damages, such as any loss of investment income, loss of opportunity, interest, costs or mental distress cannot be recovered under this claim.

4. Why and how did you pay the money to the Respondent(s)?

Please provide a concise chronological description of the events surrounding your investment, including statements made by any of the Respondent(s) and materials provided by any of the Respondent(s). Please provide dates when you can. Reference and attach copies of any documents which you received from the Respondent(s) or which you sent. Also include copies of proof of the amount(s) paid by way of cancelled cheque(s), account statement(s), agreement(s), receipt(s), etc.

5. How did the Respondent(s) cause your loss?

Please explain why you believe the Respondent(s) is/are responsible for your loss. In particular, provide particulars of what you relied on in making your decision to provide money to the Respondent(s), including any verbal statements made by the Respondent(s) or anything else the Respondent(s) did which you believe is relevant to your claim.

6. Other proceedings

Have you or anyone on your behalf started any law suits or other court action in relation to this loss?

- No
- Yes. Please provide particulars (Court, Court file number, date of proceeding and current status. If judgment has been obtained, please attach a copy and provide particulars of any collection efforts to date):

