



NOTICE: AN ACT TO AMEND THE SECURITIES ACT

On 21 December 2011, *An Act to Amend the Securities Act* received Royal Assent by the New Brunswick Legislature. This Notice contains a summary of the amendments, followed by a detailed discussion of the specific amended sections. *An Act to Amend the Securities Act* amends the New Brunswick *Securities Act* (the "Act") in eight ways:

1. enables the recognition and oversight of auditor oversight boards;
2. provides a regulatory framework to regulate credit rating organizations;
3. strengthens investor protection;
4. strengthens enforcement measures;
5. improves the Commission's ability to disclose and protect information;
6. adopts terms used in international financial reporting standards;
7. enhances the Commission's rule-making authority; and
8. makes general housekeeping improvements.

A. SUMMARY

1. [Auditor Oversight Bodies](#)

The Act has been amended to provide the New Brunswick Securities Commission (Commission) with the ability to recognize auditor oversight bodies. The Canadian Public Accountability Board (CPAB) is an auditor oversight body, which derives its regulatory authority from CSA's National Instrument 52-108 *Auditor Oversight* (NI 52-108).

NI 52-108 requires an auditor of a public company to enter into a participation agreement with CPAB. The Act amendments establish a recognition structure for auditor oversight bodies and provide an auditor oversight body with statutory powers and protections to perform its mandate to contribute to public confidence in the integrity of financial reporting of public companies.

These Act amendments, which are similar to those scheduled to be added to securities acts across the country, will enable securities regulators to exercise oversight of CPAB in a manner similar to the oversight of self-regulatory organizations such as the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association.

2. Credit Rating Organizations

The Act amendments provide the Commission with the ability to regulate credit rating organizations.

The amendments enable the Commission to carry out compliance reviews of credit rating organizations. The Commission also now has rule-making authority to require that credit rating organizations implement codes of conduct and provisions to prevent conflicts of interest.

3. Investor Protection Provisions

The Act amendments streamline the existing investor recourse in the event of a misrepresentation in an offering memorandum or other prescribed document.

4. Enforcement Measures

The Act amendments strengthen enforcement measures by adding the ability to prosecute for perjury in giving evidence.

5. Protection and Disclosure of Information

The Act amendments clarify the ability of the Commission to disclose information when it is for the protection of the public and conversely to prevent confidential financial information from being disclosed. These amendments are consistent with similar provisions in securities acts in other Canadian jurisdictions.

6. International Financial Reporting Standards

The Act amendments provide for the adoption of certain terms that are used in the new *International Financial Reporting Standards* (IFRS), which have become the new accounting standards for Canadian publicly accountable enterprises.

7. Rule-making authority

The Commission has been provided with additional rule-making authority.

8. General Housekeeping

The Act amendments implement minor changes of a housekeeping nature to adjust terminology.

B. DETAILED DISCUSSION

1. AUDITOR OVERSIGHT BODIES

The addition of the ability to recognize and oversee auditor oversight bodies will harmonize the Commission's requirements and processes with those in other Canadian jurisdictions. Specific Act amendments relating to auditor oversight bodies include the following:

- The definition of **"auditor oversight body"** has been added to subsection **1(1)** and the definition of **"market participant"**, has been amended to include auditor oversight bodies. That has the effect of enabling the Commission to conduct compliance reviews of auditor oversight bodies.
- The addition of auditor oversight body to section **20** means that the statutory immunity provision applies to the body and its directors and employees.
- Auditor oversight body has been added to paragraph **35(1)(e)** to enable the Commission to recognize an auditor oversight body.
- Once recognized, an auditor oversight body has a duty to regulate under the new section **38.1**.
- Section **38.2** has been added to permit auditor oversight bodies to adopt rules, standards and policies.
- Section **38.3** has been added to permit an auditor oversight body to require an auditor to disclose information other than privileged information. Privileged information may only be disclosed with consent and such a consent does not constitute a waiver of privilege for all other purposes.
- Section **38.4** has been added to shield an auditor oversight body from being compelled to testify in a third party action, other than a criminal proceeding.
- An auditor oversight body has been added to paragraph **39(e)** to enable the Commission to make public interest decisions respecting these bodies.
- An auditor oversight body has been added to section **40** to enable the Commission to accept an application for the voluntary surrender of an auditor oversight body's recognition.
- The addition of auditor oversight body to section **43** means that it may impose requirements in addition to the Commission's requirements.
- The addition of auditor oversight body to subsection **44(1)** means that its decisions may be reviewed by the Commission.
- Auditor oversight body has also been added to a number of sections that

currently list self-regulatory organizations, exchanges, and quotation and reporting systems to ensure they are treated in the same manner as those organizations.

2. CREDIT RATING ORGANIZATIONS

A new **Part 3.1** has been added to the Act to cover the regulation of credit rating organizations. This Part includes the following:

- The new section **44.1** provides the Commission with authority to designate a credit rating organization.
- Under the new section **44.2**, a designated credit rating organization has the duty to comply with prescribed requirements such as establishing a code of conduct, prohibiting conflicts of interest, furnishing information to the Commission, maintaining necessary books and records and appointing compliance officers.
- Under the new section **44.3** the Commission does not regulate the content of credit ratings or the methodologies used to determine them.

3. INVESTOR PROTECTION

- References to “documents prescribed by regulation” have been added throughout section **88**. If a document, other than a prospectus, is required by regulation, it must be filed with the Commission and delivered to the purchaser in the same manner that a prospectus.
- In section **155** a purchaser of a security under a document prescribed by regulation has the same right of action for rescission or damages as a purchaser under a prospectus.

4. ENFORCEMENT MEASURES

- An amendment to subsection **173(4)** enables the prosecution of a person for perjury in giving testimony.
- The addition of the definition of “financial loss” in subsection **188.1(0.1)** ensures that a claimant seeking an order from the Commission for compensation for a direct loss has not abandoned a tort loss, loss of profit or other indirect loss.

5. PROTECTION AND DISCLOSURE OF INFORMATION

- Section **199.1**, which covers receipt and disclosure of information, has been amended to include exchanges of information with auditor oversight boards.
- Subsection **199.1(4)** enables the Executive Director to disclose information if required for the protection of the public or the conduct of a hearing or review conducted by the Commission, of an investigation under Part 13 or

a review under section 163 or 168.

- The addition of section **199.2** provides for the protection of information and disclosure provisions of the Act to prevail over the *Right to Information and Protection of Privacy Act* in the event of conflict.

6. INTERNATIONAL FINANCIAL REPORTING STANDARDS

To accommodate the adoption of International Financial Reporting Standards (IFRS), certain terms were amended throughout the Act. These include:

- “results of operations” was replaced by “financial performance” in subsections **1(1)** - definition of “forward-looking information, **30(2)**, and section **161.1** - definition of “management’s discussion and analysis”; and
- “interim financial statements” was replaced by “interim financial reports” in **161.1** – definition of “core document.

7. RULE-MAKING AUTHORITY

The following rule-making powers have been added:

- paragraph **200(1)(m.1)** enabling the Commission to prescribe classes of documents or records to which it should not have access when exercising powers in relation to auditor oversight bodies;
- paragraph **200(1)(aa.1)** enabling the Commission to regulate credit rating organizations by prescribing requirements and the circumstances for designation;
- paragraph **200(1)(bb.2)** enabling the Commission to prescribe requirements for promoters;
- paragraph **200(1)(nnn)** respecting, for the purposes of section 177, authorized disclosure of information by a person who is subject to an order under that section;
- paragraph **200(1)(nnn.8)** respecting, for the purposes of subsection 199.1(7), authorized disclosure of information received by the Commission or any employee of the Commission; and
- in a new section **201.1**, the Secretary has been given the authority to make minor corrections of numbering and typographical errors in a rule.

8. GENERAL HOUSEKEEPING

There are amendments of a housekeeping nature throughout the Act, consisting mainly of editing changes and clarification of terminology.