



FINANCIAL AND CONSUMER SERVICES COMMISSION

RULE CO-001 CONFLICT OF INTEREST

1. Definitions

(1) In this Instrument

“Act” means the *Financial and Consumer Services Commission Act* S.N.B. 2013, c. 30; (*loi*)

“employee” means an individual employed in either a part-time or full-time capacity with the Commission; (*employé*)

“Securities Act” means the *Securities Act* S.N.B. 2004 c.S 5.5; (*loi sur les valeurs mobilières*)

“supervisor” means

(a) the Chief Executive Officer in the case of employees of the Commission,

(b) the Chair in the case of the Chief Executive Officer and members of the Commission, and

(c) the Chair of the Audit Committee in the case of the Chair; (*surveillant*)

(2) The definitions contained in the Act apply to this rule, unless the terms in question are defined in this section.

2. Purpose and application

(1) Members and employees of the Commission discharge important public duties and accordingly are expected to comport themselves in a manner befitting the trust and confidence placed in them. The purpose of this rule is to ensure that public confidence and trust in the integrity, objectivity and impartiality of the Commission are protected and enhanced.

(2) This rule applies to

(a) members of the Commission, including the Chair, and

- (b) employees of the Commission.

3. General conduct

- (1) No individual to whom this rule applies shall
 - (a) use confidential information obtained in the course of employment or appointment with the Commission for personal gain;
 - (b) act in a manner that might result in or create the appearance of
 - (i) a public office being used for private benefit, gain or profit,
 - (ii) a person receiving preferential treatment from the Commission,
 - (iii) the efficiency of the Commission being impeded or the resources of the Commission being misused, or
 - (iv) loss of independence or impartiality of the Commission;
 - (c) act in a manner that might result in the loss of public confidence in the integrity of the Commission;
 - (d) disclose, in advance or otherwise, confidential information unless authorized by law to do so;
 - (e) use the individual's official position or authority to act in a matter in which the individual has a personal interest;
 - (f) be involved, directly or indirectly, in any business or financial affairs or matters which conflict with the individual's official duties and responsibilities; or
 - (g) engage in any activity that could result in a reasonable perception that the individual is not fulfilling the duties and responsibilities of that individual's position impartially or effectively.
- (2) An individual to whom this rule applies may seek a determination from his or her supervisor as to whether a proposed activity constitutes a prohibited activity under paragraphs (1)(a) to (g).
- (3) No individual to whom this rule applies shall hold office in or be a director of an entity which is subject to regulation by the Commission, unless:

- (a) the individual is authorized to do so by financial and consumer services legislation; or
- (b) the entity is a private issuer as defined in National Instrument 45-106 Prospectus and Registration Exemptions.

4. Political activity

- (1) A member or employee of the Commission must not
 - (a) engage in political activity while performing the work of the Commission, or
 - (b) associate his or her position with any political activity.
- (2) Members of the Commission and Regulators appointed under the *Act* are empowered to make decisions under financial and consumer services legislation, and as such must not engage in political activity which could result in a perception of bias.
- (3) Subject to subsections (1) and (2), a member or an employee of the Commission has the right to engage in political activity provided that
 - (a) it is not done on Commission time or at Commission expense; and
 - (b) it does not result in a loss of independence or impartiality by the Commission.

5. Securities Transactions

- (1) No individual to whom this rule applies shall, whether directly or indirectly or through an associate, do any of the following:
 - (a) purchase or trade a security of an issuer with knowledge of a material fact or material change in respect of that issuer that the individual knows or ought reasonably to know has not been generally disclosed;
 - (b) if the individual knows a fact about an issuer or of a change in the affairs of an issuer and that the fact or change is a material fact or material change in respect of the issuer, inform, other than in the necessary course of duty, another person of that material fact or material change before it has been generally disclosed;
 - (c) purchase or trade a security of an issuer when the individual has knowledge that, in respect of any security held or issued by that issuer;

- (i) the filing of a prospectus, a preliminary prospectus or an amendment to a prospectus is being processed in confidence or is the subject of a pre-filing application or is being processed by New Brunswick as a principal regulator; or
 - (ii) an application is pending for a decision under the *Securities Act* by the Commission or the Executive Director of Securities;
 - (d) purchase or trade a security of an issuer when the individual has knowledge that the status of the issuer, under the *Securities Act* or the regulations under the *Securities Act*, is being investigated or otherwise considered to determine if there has been a violation of a provision of the *Securities Act* or of the regulations under the *Securities Act*; or
 - (e) purchase or trade a security of an issuer when the individual has knowledge that the issuer is under investigation by the Commission, or is involved in an application or other proceeding before the Tribunal.
- (2) The Commission may require an individual subject to this rule, who acquires a security or obtains other financial gain as a result of an intentional or accidental violation of subsection (1) to dispose of the security or to forfeit the financial gain.
- (3) Terms in this section not defined under section 1 have the definition attributed to them under the *Securities Act*.

6. Disclosure of conflict of interest

- (1) A member or employee of the Commission must immediately advise his or her supervisor in writing if the individual has any actual or potential conflict of interest, including but not limited to if
- (a) the individual has any interest in a security or any personal interest in an issuer or project that is the subject or part of the subject of any matter that
 - (i) in the case of an employee, is assigned to the employee as part of the employee's duties, or
 - (ii) in the case of a member of the Commission, is being dealt with by the individual in the exercise or performance of powers or duties under the *Act*, or

- (b) the individual's prior employment or relationship with any person or prior involvement with any project may prejudice or affect
 - (i) in the case of an employee of the Commission, any matter assigned to the employee of the Commission as part of his or her duties, or
 - (ii) in the case of a member of the Commission, the exercise or performance of powers or duties under the *Act*.

7. Exemptions

- (1) Individuals to whom this rule applies may present a written application to their supervisor for an exemption from the provisions of this rule.
- (2) On an application under subsection (1), the supervisor may grant the exemption if the supervisor is of the opinion that the applicable provision is not appropriate in the circumstances.
- (3) When an exemption is refused under this section, the supervisor will provide written reasons for the refusal to the applicant.

8. Breaches and penalties

- (1) Where an individual to whom this rule applies becomes aware of a breach of this rule, that individual must report the possible breach to:
 - (a) his or her supervisor; or
 - (b) where the individual is not comfortable reporting the possible violation to his or her supervisor, due to the nature of the violation or those involved, to the Chair of the Commission or the Chair of the Audit Committee.
- (2) The supervisor, Chair of the Commission or Chair of the Audit Committee, as applicable, has an obligation to investigate a possible breach reported by any person in respect of an individual to whom this rule applies.
- (3) No individual who in good faith reports a possible breach shall suffer harassment, retaliation or adverse employment consequence as a result of the reporting of the possible breach, and no individual shall retaliate against someone who has reported a possible breach in good faith.
- (4) In addition to the redress set out in subsection 5(2), an individual to whom this rule applies who breaches this rule may be subject to disciplinary action up to and including the termination of that individual's appointment or employment.

9. Annual Reminder

- (1) Supervisors must provide all employees and members with an annual reminder of the requirements in this rule and its supporting policy.
- (2) Employees and members must provide written confirmation to their supervisor that they have received the annual reminder set out in 9(1) and that they have reviewed this rule and its supporting policy.

10. Effective date

This rule comes into force on 9 January 2015.