

Securities Commission General Rules of Practice and Procedure

made under Section 150 of the

Securities Act

R.S.N.S. 1989, c. 418

O.I.C. 88-188, N.S. Reg. 37/88

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1 Application

1.1 Statutory authority

These rules of practice and procedure are made pursuant to Section 150 of the Securities Act, R.S.N.S. 1989, c. 418, as amended (the "Act") and apply in relation to matters coming before the Nova Scotia Securities Commission (the "Commission") except to the extent that the Act or Securities Regulations (the "regulations") make provision to the contrary.

2 Commencement of proceedings

2.1 Reviews of Director's decisions

The Act and regulations provide that the Commission may review the decision of the Director of Securities (the "Director") in specified circumstances. Where such review is initiated by the Commission, the Commission shall state in the notice required by the Act or regulations the matter under review. Where such review is initiated by other than the Commission, the person or company making the request for review shall state in the notice required by the Act or regulations or in a document accompanying such notice, the matter requested to be reviewed, the decision or order sought from the Commission and the grounds upon which such decision or order is sought. The person or company making the request shall also provide the Director with a copy of the notice and other documentation given to the Commission. The Director shall forthwith assemble and file with the Commission

- (a) any application, complaint, reference or other document, if any, by which the proceeding giving rise to the decision under review was commenced;
- (b) the notice of any hearing in such proceeding;
- (c) any intermediate orders made by the Director in respect of the subject matter of such proceeding;
- (d) all documents presented to the Director by the person or company affected by the decision in connection with such proceeding;
- (e) the transcript, if any, of the oral evidence given at any hearing before the Director in connection with such proceeding; and
- (f) the decision of the Director under review and any written or transcribed reasons therefor which were given by the Director.

The foregoing shall constitute the record of the proceeding giving rise to the decision under review and shall be available for inspection by all persons or companies directly affected by the decision.

2.2 References by Director

Where, pursuant to the Act or the regulations, the Director refers any matter or question to the Commission, the Director shall

- (a) state the matter or question in writing and file the same with the Commission and shall forthwith send a copy thereof to all persons or companies who may be directly affected by the decision of the Commission in respect of such matter or question; and
- (b) file with the Commission such of the documents and instruments referred to in clauses (a) to (f), inclusive, of Section 2.1 as are applicable in the circumstances.

The documents and instruments referred to in clause (b) shall be available for inspection by all persons or companies who may be directly affected by the decision of the Commission in respect of such matter or question.

2.3 Proceedings originated by Commission (statutory matters)

Where the Commission, pursuant to the Act or regulations, proposes to initiate a proceeding in which a hearing before the Commission will be held, the Commission shall give written notice to all person and companies who may be directly affected by the decision of the Commission, which notice shall indicate the subject matter of the proceedings and the provision or provisions of the Act or regulations pursuant to which the proceedings are commenced.

2.4 Proceedings originated by commission (policy matters)

Where the Commission considers it in the public interest to hold a hearing with respect to a matter of policy involving the administration of the Act or regulations or with respect to any amendments which may be proposed to the Act or regulations, the Commission shall give notice to the public of such hearing by publishing the same in the Royal Gazette [Part I] or a publication published by the Commission.

2.5 Private party applications

Where a person and/or company wishes to make application to the Commission for an order or ruling pursuant to a provision of the Act or regulations, such application shall be made in accordance with the policy or policies of the Commission in effect from time to time as published in the Royal Gazette [Part I] or a publication published by the Commission, and any such policy or policies shall provide that the applicant shall have an opportunity to be heard before the matter is finally disposed of by the Commission, if the order or ruling given by the Commission differs from that requested in the application. For the purpose of this Section, an applicant will not be considered to have been denied an opportunity to be heard if the Commission grants, without a hearing, an order or ruling which differs from that requested in the application, if, pursuant to a published policy of the Commission, the applicant is given the right to a hearing to have the order ruling amended, revoked or substituted.

3 Notices

3.1 Those entitled

The Commission may, on its own motion or on the application of any person or company,

- (a) determine who are the persons or companies who are entitled to notice in accordance with the foregoing rules; and
- (b) provide that any other person or company shall be entitled to notice of the proceedings.

3.2 Of hearings

The Commission shall give written notice of the time and place of any hearing in respect of any proceeding to all persons or companies who are entitled to receive notice of the proceeding in accordance with these rules.

3.3 Sufficiency of notice

Notice shall be sufficiently given for the purposes of these rules if it is in writing and is sent to the person or company by prepaid mail at the last address of such person or company appearing on the records of the Commission, or if not so appearing, to such address as is directed by the Commission or is given in such other manner as is directed by the Commission. Where a proceeding may directly affect a group of persons or companies, the Commission may direct that all notices in respect of the proceedings be given by publication in the Royal Gazette [Part I] or a publication published by the Commission.

3.4 Form of notice

There shall be no prescribed form of notice, and the Commission is empowered to determine the adequacy of any notice.

4 Summons and production

4.1 Summons

A summons shall be in such form as the Commission may determine and shall be served in such manner as the Commission may direct.

4.2 Production

A notice to produce documents and things shall be in such form as the Commission may determine and shall be served in such manner as the Commission may direct.

4.3 Application for summons and production

The Commission may, on its own motion or on the application of any person who has status in the proceeding, issue a summons or notice to produce documents or things.

5 Filings

5.1 Documents and submissions

The Commission may specify the time before which all documents and written submissions which a person who has status in a proceeding intends to introduce at a hearing or file with the Commission shall be filed with the Commission. Notwithstanding the specification of any such time by the Commission, the Commission may permit other documents and written submissions to be introduced and filed on such terms and conditions as the Commission may determine.

5.2 Copies

Unless ordered otherwise by the Commission, copies of all documents and written submissions which are filed with the Commission in respect

of a proceeding shall be served by the person filing the same on the all other persons who have status in the proceeding.

5.3 Method

The method for serving copies of documents and written submissions as required by Section 5.2 shall be the same as the method for giving notice under these rules.

6 Hearings

6.1 Conduct

The Commission shall be empowered to determine the manner in which hearings are conducted and the Commission shall not be bound by legal or technical rules of evidence.

6.2 Status at hearing

Any person who has status in the proceeding shall be entitled to be heard at any hearing in the proceeding and to be represented by counsel and, with the consent of the Commission, any other person or company may be heard and represented by counsel at a hearing.

6.3 When public

Subject to Section 6.4, hearings shall be open to the public.

6.4 When not public

Where the Commission is of the opinion that a public hearing would be unduly prejudicial to a person who has status in the proceeding or to a witness, and that it would not be contrary to the public interest, the Commission may order that the public be excluded for all or part of the hearing.

6.5 Commission counsel

The Commission's own counsel may participate in any hearing.

6.6 Evidence

All oral evidence at a hearing shall be taken down in writing or recorded and preserved, and all documentary evidence at a hearing shall be preserved. If no appeal is taken from the decision of the Commission in the proceeding, such evidence shall be preserved until the time to appeal the decision has expired, and if an appeal is taken from the decision, such evidence shall be preserved until the final disposition of the appeal. A person who has status in a proceeding shall be entitled to a copy of the transcript of the oral evidence in the proceeding on request and on paying the fees prescribed by the Commission.

7 Decision and reasons

7.1 Decision

The Commission shall give notice of its decision in any proceeding to all persons who had status in the proceedings.

7.2 Reasons

The Commission shall give written reasons for any decision of the Commission which is appealable pursuant to the Act, but otherwise shall not be obligated to give written reasons therefor.

8 Record

8.1 Record

The record of any proceeding before the Commission shall consist of

- (a) the transcript of the oral evidence;
- (b) the documentary evidence introduced at the hearing;
- (c) all documents and notices required to be given by the Act or to be filed in accordance with these rules other than
 - (i) documents filed after the commencement of the proceedings which are not introduced in evidence at the proceedings, and
 - (ii) written submissions; and
- (d) the decision and written reasons therefor, if any.

9 Public file

9.1 Public inspection

Subject to Section 9.2, the documents filed with or sent to the Commission in respect of a proceeding shall be open for inspection by the public.

9.2 Exception

Where the Commission is of the opinion that public inspection of any of the documents filed with or sent to the Commission in respect of a proceeding would be unduly prejudicial to a person who has status in the proceeding or to a witness, and that it would not be contrary to the public interest, the Commission may order that the document not be open for public inspection and the Commission may vary or rescind any such order.

10 General

10.1 Other rules

The Commission is empowered to formulate other rules not inconsistent with these rules to deal with practice and procedure in matters which may come before it and are not dealt with herein.

10.2 Ancillary procedures

The Commission may expand on the matters covered by these rules where in its opinion it is necessary or desirable to do so for the better or more efficient operation of the Commission or conduct of its proceedings.

11 Definitions

11.1 Incorporation by reference

Unless inconsistent with the context, any word or term which is used in these rules and has meaning ascribed to it in the Act shall have the same meaning ascribed to it herein as is ascribed to it in the Act.

11.2 Commission

References in these rules to "Commission" shall, where reasonable in the context, mean the members of the Commission who are assigned by the Chairman with respect to the proceedings.

11.3 Person with status

The following are persons who have status in a proceeding:

- (a) any person or company who is entitled to notice of the proceeding other than persons or companies so entitled by virtue only of being members of the public;
- (b) the Director and the staff of the Commission; and
- (c) any other person or company who the Commission designates as a person who has status in the proceeding.

12 Effectiveness

12.1 Coming into force

These rules shall come into force upon approval by the Governor in Council and publication in the Royal Gazette [Part II].