

Notice No. 15-701

IN THE MATTER OF THE
SECURITIES ACT, R.S.N.S. 1989, CHAPTER 418, AS AMENDED
(the Act)

-AND-

IN THE MATTER OF
RULE 15-501
GENERAL RULES OF PRACTICE AND PROCEDURE

NOTICE AND REQUEST FOR COMMENTS

Introduction

The Nova Scotia Securities Commission (the Commission) is publishing for comment proposed Rule 15-501 General Rules of Practice and Procedure (the Rules), a copy of which is attached. It is proposed that the Rules will repeal and replace the General Rules of Practice and Procedure made by the Commission on February 10, 1988 (the Old Rules). The Old Rules set out the provisions for the practice and procedure in relation to matters coming before the Commission, including the review of a Director's decision, references by the Director, proceedings originated by the Commission and private party applications. The Commission has determined that it is appropriate to repeal the Old Rules and replace them with a more comprehensive set of rules.

Substance and Purpose

The purpose of the Rules is to set out the practice and procedure for making an application, commencing a hearing or proceeding or bringing a motion before the Commission. The Rules apply to all hearings and proceedings before the Commission where the Commission is required under Nova Scotia securities laws, as defined in the Act, or otherwise by law to hold a hearing or afford a person or company an opportunity to be heard before making a decision.

The Commission proposes to use the Rules as a policy in hearings and proceedings coming before the Commission starting immediately to the extent that the provisions in the Rules are not inconsistent with the provisions in the Old Rules.

The Rules are expected to improve the transparency and consistency of treatment in the hearing process and provide for fair and efficient hearings and proceedings before the Commission.

Comments

The Commission is publishing the Rules for a sixty (60) day comment period. Interested parties are invited to send their comments in writing no later than May 28 , 2006.

Comments should be made in triplicate and sent to the attention of:

Shirley P. Lee, Secretary
Nova Scotia Securities Commission
P. O. Box 458
2nd Floor, 1690 Hollis Street
Halifax, Nova Scotia B3J 2P8
E-mail: leesp@gov.ns.ca

Dated at Halifax, Nova Scotia, this 29 day of March, 2006.

NOVA SCOTIA SECURITIES COMMISSION

“H. Leslie O’Brien”

H. Leslie O’Brien

“R. Daren Baxter”

R. Daren Baxter

NOVA SCOTIA SECURITIES COMMISSION
RULE 15-501
GENERAL RULES OF PRACTICE AND PROCEDURE

Part 1 - DEFINITIONS

1.1 In the Rules:

“Applicant” means a person or company who makes an application, commences a Hearing or brings a motion;

“Document” includes a sound recording, video-tape, film, photograph, chart, graph, map, plan, survey, book of account, and information recorded or stored by any means.

“Hearing” means a hearing or proceeding before the Commission and includes a pre-hearing conference under Part 9 where applicable;

“Identification List” means a list clearly identifying any persons or companies referenced or identified in a Notice of Hearing or Statement of Allegations by initials or numbers;

“Notice of Hearing” means a written notice of a Hearing which advises the Parties named in the notice of:

- a. the time and place of the Hearing;
- b. the reason for the Hearing;
- c. the relief or order sought in the Hearing;
- d. the ability to be represented by legal counsel or an authorized agent;
- e. the requirement for the Respondent or the Applicant for a Hearing commenced by an Applicant other than Staff to provide prior written notice at least seven (7) days prior to the Hearing of an intention to attend the Hearing and if no notice is provided within this time or the Respondent or Applicant fails to appear at the Hearing, that the Hearing may proceed in the Respondent’s or Applicant’s absence and an order granted and that the Respondent or Applicant is not entitled to further notice of the Hearing without leave of the Commission; and
- f. the procedure for obtaining disclosure of evidence and copies of Documents to be presented at the Hearing.

“Notice (Ex Parte Application)” means a written application made by Staff to the Commission without notice to any person or company containing the following information:

- a. the time and place set for the Hearing;
- b. the matter in respect of which the Hearing will be held; and
- c. the relief or order sought in the Hearing;

“Party” means an Applicant, a Respondent, Staff and any person or company designated by the Commission;

"Respondent" means the respondent in a Hearing;

“Rules” means these General Rules of Practice and Procedure;

“Secretary” means the person who is appointed by the Commission to be the Secretary under subsection 11(1) of the Act;

“Settlement Agreement” means an agreement that clearly identifies the matter or matters that the agreement is intended to resolve and that contains:

- a. a statement of agreed facts;
- b. a statement of the allegations acknowledged and admitted to by the Respondent or the statement of the Applicant;
- c. the terms of settlement agreed to by the Parties, including the provisions of any order requested of the Settlement Panel and the Respondent’s or Applicant’s consent to the order;
- d. a procedure for approval of the agreement;
- e. a provision on whether the agreement is confidential pending approval of the settlement by the Settlement Panel;
- f. Staff’s recommendation that the Hearing, or such portion as is covered by the agreement, be resolved and disposed of in accordance with the agreement;
- g. subject to approval of the agreement and granting of the requested order by the Settlement Panel, a waiver by the Parties of a full hearing and judicial review and appeal rights;
- h. a provision providing that the agreement constitutes the entirety of evidence to be submitted to the Settlement Panel regarding the matter which is the subject of the agreement;
- i. a provision that the agreement will become a public document upon its approval by the Settlement Panel; and

- j. a provision that no subsequent statements, public or otherwise, will be made by any of the Parties in any way which are inconsistent with the terms of the agreement;

“Settlement Hearing” means a Hearing held to consider a Settlement Agreement;

“Settlement Panel” means a panel of members of the Commission assigned to consider a Settlement Agreement;

“Staff” means the staff of the Commission, including the Director; and

“Statement of Allegations” means a written statement that sets out:

- a. the allegations of the Applicant;
 - b. the circumstances giving rise to the Hearing; and
 - c. the reasons why the order being sought should be granted.
- 1.2 Defined terms contained in the *Securities Act*, R.S.N.S. 1989, c. 418, as amended, and in Rule 14-501 Definitions have the same meaning in the Rules unless they are defined in the Rules.

Part 2 - APPLICATION

- 2.1 The Rules are made pursuant to section 150 of the Act and apply to all Hearings before the Commission where the Commission is required under Nova Scotia securities laws or otherwise by law to hold a hearing or to afford to the Parties to the Hearing an opportunity to be heard before making a decision, including, without limitation, a review of a decision of the Chairman, another member of the Commission or the Director pursuant to subsection 6(1) of the Act, a review of a decision of the Director pursuant to subsection 25(2) of the Act and a review of a decision, order or ruling of a self-regulatory organization pursuant to subsection 30(5) of the Act.

Part 3 - COMMENCING PROCEEDINGS

Commencement of Proceedings

- 3.1 A Hearing may be commenced by an Applicant delivering a Statement of Allegations to the Secretary together with a written request for a Hearing pursuant to Nova Scotia securities laws. The Secretary shall prepare a Notice of Hearing.

3.2 An Applicant requesting a Hearing for the review of a decision, which in this section means any direction, decision, order, ruling or other requirement made by a Director, stock exchange, self-regulatory organization or clearing agency, shall obtain from the Director, stock exchange, self-regulatory organization or clearing agency, as the case may be, and file with the Secretary a record of the proceeding relating to the decision which shall include:

- a. the application or other document, if any by which the proceeding was commenced;
- b. the notice of any hearing;
- c. any intermediate orders made in the proceeding;
- d. any documentary evidence filed in the proceeding, subject to any limitation expressly imposed by any statute, regulations or rules on the extent to which or the purpose for which any such documents may be used in any proceeding;
- e. the transcript, if any, of the oral evidence given at the hearing; and
- f. the decision that is subject to hearing and review and the reasons therefor, if reasons were given;

unless all Parties consent to the omission of any of those Documents from the record or the Commission otherwise directs.

3.3 Except in the case of an ex parte application, the Notice of Hearing, the Statement of Allegations and, if applicable, an Identification List, shall be served upon the Respondent. If a Hearing is commenced by an Applicant other than Staff, the Notice of Hearing shall also be served upon the Applicant.

3.4 The Notice of Hearing and the Statement of Allegations are, once served, public Documents.

3.5 In the discretion of Staff, the Notice of Hearing and Statement of Allegations may be drafted in a manner which does not make the identity of the persons or companies, other than the Parties, apparent on the face of the pleadings. This may be achieved with the use of initials, assignment of alphabetical or numerical characters, general description, or as may be otherwise appropriate in the circumstances. In such a case, the Parties named on the Notice of Hearing will provide or be provided with an Identification List.

Parties Entitled to Notice

3.6 The Commission may, on its own motion or on the application of any person or company, determine who is entitled to notice.

- 3.7 The Commission shall give notice of the time and place of a Hearing to all persons and companies who are entitled to receive notice.
- 3.8 Notice shall be sufficiently given for the purposes of the Rules if it is in writing and served upon the person or company.

Ex Parte Application

- 3.9 A Hearing may be requested by Staff on an ex parte basis by serving a Notice (Ex Parte Application), together with any affidavits or Documents in support thereof, upon the Commission.
- 3.10 Prior to the Hearing, a Notice (Ex Parte Application) and any affidavits or Documents filed with the Secretary in support thereof shall not be public documents. Upon completion of the Hearing, the Notice (Ex Parte Application) and any affidavits or Documents filed with the Secretary in support thereof shall be public documents, unless otherwise ordered.

Part 4 - SUMMONS AND PRODUCTION

- 4.1 The Commission may, on its own motion or on the application of a Party, issue a:
- a. summons to appear at a Hearing and give evidence on oath orally or in writing, or on solemn affirmation if the witness is entitled to affirm in civil matters; or
 - b. a notice to produce Documents and things,
- as the Commission deems requisite to a full hearing of the matters in the Hearing.
- 4.2 A request to the Commission for the issuance of a summons or notice under this Part shall be accompanied by oral or written submissions to establish that there is some relevance between the witness or Documents and things and the issues in the subject matter of the Hearing.
- 4.3 A summons to appear and give evidence shall be in writing and in such form as the Commission may determine and shall be served upon the person or company subject to the summons.
- 4.4 A notice to produce Documents and things shall be in writing and in such form as the Commission may determine and shall be served upon the person or company subject to the notice.

Part 5 - SERVICE OF DOCUMENTS

- 5.1 Any notice or document required under the Rules to be served may be served by any means effective to deliver the notice or document or a copy thereof to the person or company being served or to that person's or company's counsel of record. The notice or document shall be sufficiently served upon a person or company if it is served in accordance with this Part no later than ten (10) days after the issuance of the notice or document and is:
- a. personally served upon the person or company;
 - b. sent to the person or company by prepaid mail at the last address of the person or company appearing on the records of the Commission or, if not so appearing, to such address as the Commission may direct; or
 - c. given in such other manner as the Commission may direct.
- 5.2 Personal service of a notice or document is effected on a body corporate by leaving a true copy of the notice or document with the president, chairman, mayor, warden or other chief officer of the body corporate, or with the manager, secretary, city or town manager or clerk, cashier or other similar officer thereof, or in the manner provided by section 9 of the *Corporations Registration Act* (Nova Scotia).
- 5.3 Service of a true copy of a notice or document, or a facsimile copy of the notice or document, shall be service of the original notice or document, but if the person served so requests, the person shall be shown the original notice or document or a copy thereof certified by the Secretary as being a concurrent or true copy, or a facsimile copy, of the original notice or document.
- 5.4 The service of any notice or document may be proved by an affidavit, to which is attached as an exhibit a copy of all notices or documents served, which shall state by whom the notice or document was served, the day of the week, the time of day, and the date on which it was served, where it was served and how. A written acceptance of service of a notice or document by a Party's counsel of record or recognized agent need not be verified by affidavit.
- 5.5 Where a Hearing may directly affect a group of persons or companies, the Commission may direct that all notices in respect of the Hearing be given by publication in the Royal Gazette [Part I], in a publication published by the Commission, on the Commission's website, in a daily newspaper with distribution across Nova Scotia or in a newspaper regularly published in the locality of the affected group of persons or companies.
- 5.6 A notice or document required to be served upon the Commission or Staff shall be served by either personally delivering a copy of the notice or document to the offices of the Commission, marked to the attention of the Secretary, or, alternatively, by sending a copy of the notice or document by mail, courier or facsimile to the Secretary.

- 5.7 Unless otherwise specified in the Rules or otherwise directed by the Commission or the Secretary, when a notice or document is served otherwise than by facsimile, four (4) copies shall be filed.
- 5.8 Notices or documents served after 4:30 p.m. shall be deemed to have been served on the next day that is not a holiday.
- 5.9 Documents served by facsimile shall not exceed sixteen (16) pages, inclusive of the cover sheet, except with the consent of the receiving person or company.
- 5.10 A Party who serves a notice or document shall include with it the following information:
- a. the Party's name, address, telephone number, facsimile number and e-mail address, if any;
 - b. the name of the Hearing to which the notice or document relates;
 - c. if the Party has counsel or an agent, the name, address, telephone number, facsimile number and e-mail address, if any, of the counsel or agent; and
 - d. the name of the Party or counsel or agent to be served.

Part 6 - APPEARANCE AND REPRESENTATION BEFORE THE COMMISSION

- 6.1 At a Hearing, a Party may appear on its own behalf or may be represented by counsel or an agent.
- 6.2 When a person first appears on its own behalf or as counsel or agent for a Party to a Hearing, the person shall provide the Commission with or otherwise state on the record, and keep current during the Hearing, the person's name, address, telephone number, facsimile number, and e-mail address, if any, and the name and address of the Party being represented.
- 6.3 A Party may appear by counsel or agent by serving on every other Party a written notice of the counsel's or agent's name, address, telephone number, facsimile number, and e-mail address, if any.
- 6.4 A Party who is represented by counsel or an agent may change the counsel or agent by serving on the counsel or agent, the Commission and every other Party a written notice of the change and giving the name, address, telephone number, facsimile number, and e-mail address, if any, of the new counsel or agent.
- 6.5 A Party who is represented by counsel or an agent may elect to act in person by serving on the counsel or agent, the Commission and every other Party a written notice of the intention to act in person and giving the Party's name, address, telephone number, facsimile number, and e-mail address, if any.

- 6.6 Counsel or an agent for a Party in a Hearing may withdraw as counsel or agent for the Party only with leave of the Commission upon providing a written notice of withdrawal and serving it on the Commission, the Party represented by the counsel or agent and every other Party. The written notice of withdrawal shall state, without disclosing any solicitor-client communication in which solicitor-client privilege has not been waived, all material facts and the reasons in support of the request for withdrawal.
- 6.7 Where the Commission considers it to be in the public interest, the Commission, after a Hearing, may order that an agent for a Party has ceased to be the agent for the Party.

Part 7 - NON-APPEARANCE OF A PARTY

- 7.1 If a Notice of Hearing has been served on the Parties in a Hearing in accordance with the Rules and a Party does not attend at the Hearing, the Hearing may proceed in that Party's absence and the Party is not entitled to any further notice of the Hearing without leave of the Commission.
- 7.2 Prior to proceeding in the absence of the Party, the Commission must first be satisfied that a copy of the Notice of Hearing had been served upon the Party in accordance with the Rules.

Part 8 - DISCLOSURE

Pre-Hearing Disclosure

- 8.1 In the case of a Hearing under section 134 of the Act and subject to section 8.12, Staff shall, as soon as reasonably practicable after service of the Notice of Hearing, and in any case at least fifteen (15) days before the date on which the Hearing is to commence, make available for inspection by every other Party all Documents and things which are in the possession or control of Staff that are relevant to the Hearing and provide copies, or permit the inspecting Party to make copies, of the Documents and things at the inspecting Party's expense.
- 8.2 Staff shall, as soon as reasonably practicable after service of the Notice of Hearing, and in any case at least fifteen (15) days before the date on which a Hearing is to commence, deliver to the Respondent:
- a. the Statement of Allegations;
 - b. the identity of witnesses in accordance with this Part;
 - c. summaries of the testimony that witnesses are expected to give on behalf of Staff in accordance with section 8.7; and
 - d. copies of all Documents and a list of the Documents protected by section 8.12 that Staff intends to produce or enter as evidence at the Hearing.

- 8.3 A Party other than Staff shall, as soon as reasonably practicable after service of the Notice of Hearing, and in any case at least fifteen (15) days before the date on which a Hearing is to commence, deliver to the Secretary and to Staff:
- a. an outline of the Party's case;
 - b. materials expected to be used in presenting the case;
 - c. the identity of witnesses in accordance with this Part;
 - d. summaries of the testimony that witnesses are expected to give on behalf of the Party in accordance with section 8.7; and
 - e. copies of all Documents and a list of the Documents protected by section 8.12 that the Party intends to produce or enter as evidence at the Hearing.
- 8.4 A Party may, subject to section 8.12, seek an order of disclosure in advance of a Hearing by bringing a motion before the Commission.

Witnesses

- 8.5 Each Party shall provide to the other Parties and to the Secretary, at least fifteen (15) days before the date on which a Hearing is to commence, a list of the witnesses each intends to call to testify on its behalf at the Hearing.
- 8.6 The witness list shall contain the civic address of any proposed witness, or alternatively, the name and address of the person or company through whom the witness can be contacted.
- 8.7 Each Party shall provide to the other Parties and to the Secretary, at least seven (7) days before the date on which the Hearing is to commence:
- a. the text of written statements made by witnesses intended to be called;
 - b. in the absence of a written statement, a tape recording or transcription of any interview conducted by that Party, and a summary of the expected testimony of the witness; or
 - c. an outline of the evidence expected to be elicited from the witness.
- 8.8 A Party who fails to include a witness in the witness list or to provide disclosure of a witness' evidence may not call the witness at the Hearing without leave of the Commission.

Expert Witnesses

- 8.9 Where a Party intends to call an expert to give evidence at a Hearing, written notice shall be given by that Party to the other Parties and to the Secretary, as soon as reasonably practicable, but not less than fifteen (15) days before the date on which the Hearing is to commence, informing of the intent to call the expert and the issue upon which the expert will be giving evidence, and attaching a copy of the report prepared and signed by the expert containing the following information:
- a. the name, address and qualifications of the expert;
 - b. the substance of the expert's evidence; and
 - c. a list identifying the Documents, if any, which the expert considered.
- 8.10 A Party who fails to provide notice of intent to call an expert witness may not call the expert as a witness at the Hearing without leave of the Commission.

Documents Relied on in a Hearing

- 8.11 A Party who fails to make disclosure of a Document in accordance with the Rules may not refer to the Document or introduce it in evidence at a Hearing without leave of the Commission.

Exclusions from Disclosure

- 8.12 Notwithstanding anything contained in the Rules, no disclosure is required to be made:
- a. which would contravene subsection 148(2) of the Act;
 - b. of information which is protected from disclosure by privilege;
 - c. of a fact or matter which is inadmissible by virtue of the Nova Scotia securities laws; or
 - d. of information which would not otherwise be disclosable by law.

Part 9 - PRE-HEARING CONFERENCE

- 9.1 The Commission may direct the Parties in a Hearing to participate in a pre-hearing conference at any stage of the Hearing either upon its own initiative or upon the request of a Party to consider:
- a. identification of issues;
 - b. admission of facts and authenticity and contents of Documents;

- c. completion and extent of disclosure;
 - d. identification of any preliminary objections or motions;
 - e. determination of the date by which any steps towards the Hearing are to be taken or completed; or
 - f. any other matter that will promote a fair and expeditious hearing.
- 9.2 A Party may request a pre-hearing conference before the Commission by delivering to the Secretary a written request for a pre-hearing conference setting out the reasons for the pre-hearing conference.
- 9.3 The Secretary shall give notice of any pre-hearing conference to the Parties and to such other persons and companies as the Commission considers appropriate and directs be given notice. The form of notice shall include:
- a. the date, time, place and purpose of the pre-hearing conference;
 - b. whether the Parties are required to exchange or file Documents or pre-hearing submissions and, if so, the issues to be addressed and the date or dates on or before which the Documents or pre-hearing submissions must be exchanged and filed;
 - c. whether the Parties are required to attend in person and,
 - i. if so, that they may be accompanied by counsel or an agent; and
 - ii. if not, that they may be represented by counsel or an agent who has the authority to make agreements and undertakings on their behalf respecting the matters to be addressed at the pre-hearing conference;
 - d. a statement that if a Party does not attend in person or by counsel or an agent, as required, at the pre-hearing conference, the Commission may proceed in the absence of that Party; and
 - e. a statement that orders may be made by the Commission at the pre-hearing conference, which will be binding on all Parties with respect to the conduct of the Hearing.
- 9.4. The Commission, at a pre-hearing conference, may:
- a. direct that the Parties are required, by a specified date, to exchange and to file copies of, Documents or pre-hearing submissions; and
 - b. prescribe the issues to be addressed in the pre-hearing submissions and at the pre-hearing conference.

- 9.5 The purpose of a pre-hearing conference is to resolve preliminary issues and to narrow the issues for the Parties in the Hearing. Negotiations and pre-hearing conference discussions are without prejudice to the right of a Party to later contest issues which were under discussion and negotiation but which were not resolved by agreement at the pre-hearing conference or otherwise.
- 9.6 A pre-hearing conference is not open to the public.
- 9.7 The Commission member presiding at a pre-hearing conference may, after giving the Parties an opportunity to make submissions, make such orders with respect to the conduct of the Hearing as he or she sees fit.
- 9.8 All agreements, undertakings and orders made or given at a pre-hearing conference shall be recorded in a memorandum prepared under the direction of the Commission member presiding at the pre-hearing conference and circulated in draft to the Parties or their counsel for corrections, if any, and then signed by the Commission member presiding at the pre-hearing conference.
- 9.9 Agreements, undertakings and orders made at a pre-hearing conference govern the conduct of the Hearing and are binding upon the Parties in the Hearing unless otherwise ordered by the Commission.

Part 10 - SETTLEMENTS

Settlement Discussions

- 10.1 Settlement discussions may occur at any time, including prior to the issuance of a Notice of Hearing.

Settlement Agreement

- 10.2 A settlement shall be evidenced by a Settlement Agreement between Staff and a Respondent or an Applicant and signed by these Parties.

Commission Review and Approval of Settlement Agreement

- 10.3 A Settlement Agreement is subject to review and approval by a Settlement Panel.
- 10.4 The Secretary shall prepare a Notice of Hearing for a Settlement Hearing. Copies of the Settlement Agreement will be forwarded to and distributed by the Secretary to the Settlement Panel in advance of the date set for the Settlement Hearing.
- 10.5 Based upon the Settlement Agreement and any submissions of the Parties, the Settlement Panel will determine whether the proposed settlement is appropriate and in the public interest, and, if so, approve the Settlement Agreement and issue any related order.

- 10.6 Unless the Settlement Panel otherwise determines, the Settlement Agreement shall not be made public prior to its approval by the Settlement Panel. Upon approval by the Settlement Panel, the Settlement Agreement shall become a public document.

In Camera Settlement Hearing

- 10.7 Unless the Settlement Agreement expressly provides otherwise, such portion of the Settlement Hearing during which the Settlement Agreement is under review by the Settlement Panel shall not be open to the public without the prior leave of the Settlement Panel.
- 10.8 Upon a Settlement Panel making a determination to approve a Settlement Agreement, a Settlement Hearing may be open to the public by the Settlement Panel during the delivery of the Settlement Panel's reasons for approval.

Where Settlement Agreement Not Approved

- 10.9 If the Settlement Panel does not approve the Settlement Agreement, reasons will be provided at the request of a Party to the Settlement Agreement, in oral or written form at the discretion of the Settlement Panel. The Settlement Agreement and the reasons for not approving the Settlement Agreement shall not normally be made public where the Settlement Hearing is in camera unless the Settlement Panel otherwise determines.
- 10.10 Where a Settlement Agreement is not approved, a Party may proceed to the Hearing commenced by the Notice of Hearing. No settlement discussions, proposals or communications, written or otherwise, nor the content of the Settlement Agreement for which approval was not granted may be referred to in any way by a Party in the Hearing.
- 10.11 Failure to obtain approval of any Settlement Agreement does not preclude the Parties from completing a subsequent Settlement Agreement.

Constitution of Subsequent Hearing Panel

- 10.12 Where any Settlement Agreement is not approved, no member of the Settlement Panel will sit on a hearing panel at a subsequent Hearing of the issues, except with the prior consent of the Parties to the Settlement Agreement.

Part 11 – MOTIONS

- 11.1 Where an Applicant intends to bring a motion before the Commission:
- a. the Applicant shall notify the Secretary in writing of its intention to bring the motion;
 - b. the Secretary shall prepare a Notice of Hearing and notify the Parties of the time and place set for the hearing of the motion; and

- c. the Applicant shall serve on the other Parties and the Commission, at least five (5) days before the day on which the motion is to be heard, written notice of the motion setting out the relief sought, the grounds for the motion and a summary of the evidence and authority including copies of case law relied upon.
- 11.2 Upon the hearing of a motion, the Commission may make any order it deems just in the circumstances on any issue brought before the Commission.

Part 12 - ABRIDGEMENT OF TIME FRAMES

- 12.1 The Commission, on a motion, may in its discretion abridge any notice period or time limitation provided in the Rules upon being satisfied that it is just in the circumstances and not prejudicial to the public interest.

Part 13 - HEARING PROCEDURE

- 13.1 Hearings shall, subject to the discretion of the Commission, be conducted as follows:
- a. the Commission calls the Hearing to order, introduces the Commission members and requests the Parties and their counsel or agent to introduce themselves;
 - b. the Commission will require that only one person speak at a time, in the order directed by the Commission;
 - c. the Commission will establish valid service of the Notice of Hearing by asking the Respondent, or its counsel or agent, whether it is prepared to admit that notice has been given;
 - d. if the Respondent does not admit service, Staff will be requested to provide the Commission with an affidavit of service or oral evidence as proof of service upon the Respondent;
 - e. unless the Commission determines otherwise, the procedure at the Hearing shall be as follows:
 - i. to hear opening statements, if any;
 - ii. to hear preliminary applications, if any;
 - iii. to hear evidence from the Parties regarding the allegations;
 - iv. to hear submissions;
 - v. to consider all relevant evidence and submissions and render and issue a decision; and
 - vi. to send a copy of the decision to all Parties;
 - f. each witness shall be sworn or affirmed before testifying;
 - g. a person or any representative of a company whose conduct is the subject of a Hearing is compellable to testify at a Hearing;

- h. the Applicant presents its case first to prove the allegations against the Respondent;
- i. the Applicant's witnesses give their testimony and any Documents are entered by the Applicant as exhibits if allowed by the Commission;
- j. the Respondent may cross-examine each witness presented by the Applicant;
- k. the Respondent shall then state its case;
- l. the Respondent may call witnesses to give testimony and any Documents are entered by the Respondent as exhibits if allowed by the Commission;
- m. the Applicant may cross-examine each of the Respondent's witnesses;
- n. at the close of the Respondent's case, the Applicant has an opportunity to reply;
- o. a person or any representative of a company, other than the Parties, may, with leave of the Commission, cross-examine each witness presented by a Party;
- p. a person or any representative of a company, other than the Parties, may, with leave of the Commission, call witnesses to give testimony, and Documents are entered by the person or representative of the company as exhibits if allowed by the Commission;
- q. the Applicant or Respondent followed by Staff may cross-examine each witness presented by any other person or representative of a company;
- r. the Commission may also ask questions of each witness;
- s. the Parties will make closing summaries and arguments in the following order:
 - i. any other Party with leave of the Commission;
 - ii. the Applicant or Respondent; and
 - iii. Staff; and
- t. post hearing submissions may be submitted to the Commission only with leave of the Commission or at the request of the Commission.

Part 14 - EVIDENCE

- 14.1 The Commission shall not be bound by rules of evidence. The primary test for the admission of evidence is its relevance to the allegations in the Statement of Allegations.

Part 15 - DECISION

15.1 The Commission shall give notice of its decision in a Hearing to all Parties.

Part 16 - RECORD

16.1 The record of a Hearing before the Commission shall consist of:

- a. the transcript, if any, of the oral evidence;
- b. any intermediate orders or decisions made with respect to the Hearing;
- c. the Documents introduced at the Hearing;
- d. all Documents and notices required to be given by the Nova Scotia securities laws or in accordance with the Rules, other than Documents filed after the commencement of the Hearing which are not admitted in evidence at the Hearing; and
- e. the decision and written reasons, if any.

Part 17 - PUBLIC ACCESS TO HEARINGS

- 17.1 A Hearing, other than a pre-hearing conference and the portion of a Settlement Hearing during which the Settlement Agreement is under review by the Settlement Panel, is open to the public except where the Commission determines that it would not be prejudicial to the public interest to order that the public be excluded for all or part of the Hearing.
- 17.2 Media representatives attending a Hearing are subject to the direction of the Commission.
- 17.3 Unless otherwise determined by the Commission under section 17.4, Documents for a Hearing may be inspected by the public during normal business hours of the Commission at its offices upon reasonable notice. Copies are available from the Secretary upon payment of any fees prescribed by Appendix A, Schedule 1 to the General Securities Rules.
- 17.4 Where the Commission determines that any Document in the possession of the Commission filed for a Hearing contains intimate financial, personal or other information and that the desirability of avoiding disclosure thereof in the interests of any person or company affected outweighs the desirability of adhering to the principle that Documents filed with the Commission be available to the public for inspection, the Commission may order that the Document not be open for public inspection.

Part 18 – GENERAL

- 18.1 The Commission may exercise any of its powers under the Rules on its own initiative or at the request of a Party.
- 18.2 The Commission may issue general or specific procedural directions at any time, including before or during any Hearing.
- 18.3 The Commission may waive, vary or abridge any of the Rules in respect of any Hearing if it determines that to do so would be in the public interest or would otherwise be just in the circumstances.
- 18.4 At any time during a Hearing, the Commission may order that:
 - a. a Party provide to another Party and to the Commission such particulars as the Commission considers necessary for a full and satisfactory understanding of the subject of the Hearing; and
 - b. any other disclosure required by the Rules be made by a Party, within such time and on such conditions as may be specified by the Commission.
- 18.5 The Rules shall be construed to secure the most expeditious and least expensive determination of every Hearing before the Commission on its merits, consistent, however, with the requirements of natural justice.
- 18.6 A failure in a Hearing to comply with any requirement of the Rules shall, unless the Commission otherwise orders, be treated as an irregularity and shall not nullify the Hearing, any step taken in the Hearing, or any Document, or order therein.

Part 19 - REPEAL

- 19.1 The General Rules of Practice and Procedure made by the Commission on February 10, 1988, are repealed.

Part 20 - EFFECTIVE DATE

- 20.1 The Rules come into effect on the day of , 2006.

* * *

The foregoing is hereby approved and, subject to the Act, is hereby made a rule of the Commission pursuant to the authority contained in section 150 of the Act.

In witness whereof this Instrument has been signed by the Chair and Vice Chair of the Commission, being the members of the Commission prescribed by the Chair pursuant to

subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the day of , 2006.

H. Leslie O'Brien

R. Daren Baxter