

REQUEST FOR COMMENTS

Notice and Request for Comment – Publication of proposed amendments to New Brunswick Securities Commission Local Rule 11-501 *Fees*.

Introduction

On 17 December 2012, the New Brunswick Securities Commission (Commission) approved publication in order to obtain comments on proposed amendments to Local Rule 11-501 *Fees*.

Substance and Purpose of Proposed Amendments

An issuer who has their registered office in New Brunswick may pre-file a draft offering memorandum with the Commission on a voluntary basis in order to seek staff comments before it is used. The scope of Commission staff's participation and what an issuer can expect when pre-filing a draft offering memorandum is set out in New Brunswick Securities Commission Local Staff Notice 45-701 *Voluntary Pre-Filing of Draft Offering Memoranda under National Instrument 45-106 Prospectus and Registration Exemptions*.

The pre-filing of an offering memorandum may require the participation of several staff members. The proposed amendments to Commission Local Rule 11-501 *Fees* will introduce a filing fee for a draft offering memorandum filed on a voluntary basis pursuant to New Brunswick Securities Commission Local Staff Notice 45-701 *Voluntary Pre-Filing of Draft Offering Memoranda under National Instrument 45-106 Prospectus and Registration Exemptions*. The proposed amendments will also introduce a filing fee for an offering memorandum filed pursuant to subsection 2.9(17) of National Instrument 45-106 *Prospectus and Registration Exemptions*.

The Commission remains sensitive to the costs borne by investors and the industry. The Commission's fee structure is designed to cover the Commission's costs to provide protection to investors and promote efficient capital markets. The reintroduction of fees for the filing of offering memoranda is not anticipated to have material financial implications for issuers and industry.

There is also a miscellaneous change to reflect the change in title to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Request for Comment

The Commission seeks comments on the proposed amendments to New Brunswick Securities Commission Local Rule 11-501 *Fees*.

How to Provide your Comments

Comments are to be provided, in writing, by no later than 19 February 2013 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 New Brunswick 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:

Kevin Hoyt
Director of Regulatory Affairs and Chief Financial Officer
New Brunswick Securities Commission
Tel: 506-643-7691
Email: kevin.hoyt@nbsc-cvmnb.ca

Amendments to
NEW BRUNSWICK SECURITIES COMMISSION
LOCAL RULE 11-501 FEES

1 Part 1 is amended:

(a) in section 1.1 by replacing "Registration Requirements" in the definition of "NI 31-103" with "Registration Requirements, Exemptions and Ongoing Registrant Obligations".

2 Part 2 is amended:

(a) in section 2.6 by

(i) deleting "for Investment Fund" in the heading of section 2.6;

(ii) repealing section 2.6;

(iii) adding the following subsections under the "Offering Memorandum" heading:

"2.6(1) The fee for a draft offering memorandum filed on a voluntary basis pursuant to New Brunswick Securities Commission Local Staff Notice 45-701 *Voluntary Pre-Filing of Draft Offering Memoranda under National Instrument 45-106 Prospectus and Registration Exemptions* is \$350.

2.6(2) Where a draft offering memorandum respecting the same offering has not been filed under subsection (1), the fee for an offering memorandum filed pursuant to subsection 2.9(17) of National Instrument 45-106 *Prospectus and Registration Exemptions* is \$350."

3 Part 3 is amended:

(b) in section 3.1 by

(i) adding "or" at the end of "paragraph (o)"; and

(ii) repealing paragraph (p).

4 This instrument comes into force on [Insert date] 2013.

NEW BRUNSWICK SECURITIES COMMISSION

LOCAL RULE 11-501 FEES

PART 1: DEFINITIONS

1.1 Definitions – In this Rule

“Act” means the *Securities Act*, S.N.B. 2004, c. S-5.5.

“Commission” means the New Brunswick Securities Commission.

“Form 33-109F7” means Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals*.

“NI 31-103” means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*.

PART 2: FEES PAYABLE

2.1 All fees set out in this Rule are payable to the New Brunswick Securities Commission.

Registration and Business Locations

2.2 The fees for registration and business locations are:

- (a) \$600 for each application for registration or reinstatement of registration as a registered firm in one or more categories,
- (b) (i) \$300 for each application for registration or reinstatement of registration as a registered individual in one or more categories,

(ii) Despite subparagraph b(i), \$100 only for the filing of a Form 33-109F7 if the subject individual did not leave the former sponsoring firm any time between 31 October and 31 December of a given year and applied for reinstatement after that 31 December,
- (c) \$600, annually on 31 December, for a registered firm to maintain registration,

- (d) \$300, annually on 31 December, for a registered individual to maintain registration,
- (e) \$100, for each new business location in New Brunswick opened by a registered firm, and
- (f) \$100 annually on 31 December, for each business location in New Brunswick operated by a registered firm.

Prospectuses and Annual Information Forms

2.3 The fees for prospectuses and annual information forms are:

- (a) \$ 850 per issuer for a preliminary prospectus or a *pro forma* prospectus where the Commission is not the principal regulator,
- (b) \$1,250 per issuer for a preliminary prospectus or *pro forma* prospectus where the Commission is the principal regulator,
- (c) in addition to the fees in (a) and (b), where the issuer of the securities is a natural resource company, \$100 for each property of the issuer that is the subject of a report filed with the preliminary prospectus or *pro forma* prospectus,
- (d) \$1,200 for an annual information form filed by an issuer eligible to file a short form prospectus,
- (e) \$100 for an annual information form filed by an issuer that is not eligible or seeking to be eligible to file a short form prospectus,
- (f) \$1,200 per issuer for a preliminary simplified prospectus or *pro forma* simplified prospectus accompanied by an annual information form, where the Commission is not the principal regulator,
- (g) \$1,650 per issuer for a preliminary simplified prospectus or *pro forma* simplified prospectus accompanied by an annual information form, where the Commission is the principal regulator, and
- (h) where a preliminary prospectus or a *pro forma* prospectus includes more than one class of securities or more than one type of unit offering, \$300 for each additional class of securities or each type of unit offering.

Financial statements

2.4 The fee for the annual financial statements filed by each issuer under the regulations is \$150 unless the reporting issuer has securities listed and posted for trading on a stock exchange in Canada, in which case the fee is \$250.

Report of Exempt Distribution for Investment Fund

2.5 The fee for a report of exempt distribution filed by an investment fund is \$100.

Offering Memorandum ~~for Investment Fund~~

~~2.6 — The fee for an offering memorandum filed by an investment fund is \$350.i~~

~~2.6(1) The fee for a draft offering memorandum filed on a voluntary basis pursuant to New Brunswick Securities Commission Staff Notice 45-701 Voluntary Pre-Filing of Draft Offering Memoranda under National Instrument 45-106 Prospectus and Registration Exemptions is \$350.~~

~~2.6(2) Where a draft offering memorandum respecting the same offering has not been filed under subsection (1), the fee for an offering memorandum filed pursuant to subsection 2.9(17) of National Instrument 45-106 Prospectus and Registration Exemptions is \$350.~~

Amendments

2.7(1) The fee for each amendment to a preliminary prospectus, a *pro forma* prospectus or a prospectus, is \$100 per issuer.

2.7(2) In addition to the fee in subsection (1), if an amendment to a preliminary prospectus, a *pro forma* prospectus or a prospectus is accompanied by a report on a property or by an amended financial statement, \$150 for each property reported upon and each amended financial statement.

Shelf prospectus supplement

2.8 The fee for each shelf prospectus supplement filed under National Instrument 44-102 *Shelf Distributions*, other than a pricing supplement, is \$850.

Prospecting syndicate agreements

2.9 The fee for each prospecting syndicate agreement filed is \$150.

Request to review decision of Executive Director

2.10 The fee for each request to the Commission for a hearing and review under subsection 193(1) Act is \$300.

Applications

2.11 The fees for applications to the Commission or Executive Director for orders are:

- (a) \$450 for each application for an order under subsection 55(1) of the Act or for an order under subsection 80(1) of the Act, or for an order under

both of these subsections,

- (b) \$450 for each application for an order under subsection 92(1) of the *Act*,
- (c) \$450 for each application for an order under subsection 105(1) of the *Act*,
- (d) \$450 for each application for an order under subsection 129(2) of the *Act*,
- (e) \$450 for each application for an order under subsection 148(1) of the *Act*,
- (f) \$450 for each application for an order under section 208 of the *Act*,
- (g) for each application for an order under a rule, a regulation, or a policy, a fee of \$450 for each rule, regulation or policy,
- (h) \$350 for each request to review an application on an expedited basis, and
- (i) \$350 for each application for which a fee is not otherwise provided.

Rights offering circular

2.12 The fee for each rights offering circular filed under National Instrument 45-101 *Rights Offerings* is \$350.

Take-over Bids and Issuer Bids

2.13(1) The fee for each take-over bid or issuer bid circular filed is \$350.

2.13(2) The fee for each directors' circular, individual director's or officer's circular filed is \$100.

2.13(3) The fee for each notice of change or variation in respect of a take-over bid circular or issuer bid circular filed is \$100.

Certificates

2.14 The fee for a certificate referred to in subsection 196(1) of the *Act* is \$50 plus \$1 per page photocopied.

Certified documents

2.15 The fee for a copy of a decision, document, record or matter certified by the Commission, Executive Director, Secretary or other authorized official, is \$50 plus \$1 per page photocopied.

Searches

2.16(1) The fee for each on-site search is \$20.

2.16(2) The fee for an off-site record search is:

- (a) \$100 per day or any part of a day, and
- (b) The total amount of disbursements properly incurred by the Commission.

Photocopying or scanning services

2.17 The fee for photocopying or scanning services is \$1 per page.

Electronic copies

2.18 The fee for an electronic copy of an existing document is \$25.

Late documents

2.19 The fee for each document filed outside the prescribed time period is \$100.

PART 3: NO FEES PAYABLE

3.1 For greater certainty, there is no fee required for:

- (a) a request for consent to the release of securities from, or the transfer of securities within, escrow,
- (b) any filing relating to a permitted individual as defined in NI 31-103,
- (c) the designation of a person as a supervisor or branch manager of a business location of a registered firm,
- (d) any matter which does not require the formal consent or approval of the Commission or the Executive Director, not otherwise provided for in this Rule,
- (e) the filing of the audited annual financial statements of a registered firm,
- (f) the filing of a proof of bonding coverage,
- (g) an application for an order exempting an individual from the proficiency requirements under NI 31-103,
- (h) the filing of Form 31-103F1 *Calculation of Excess Working Capital*,

- (i) the filing of Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service*,
- (j) the filing of Form 31-103F3 *Notice of Principal Regulator*,
- (k) the filing of Form 33-109F1 *Notice of Termination*,
- (l) the filing of Form 33-109F2 *Change or Surrender of Individual Categories*,
- (m) the filing of Form 33-109F5 *Change of Registration Information*,
- (n) any filing made by an issuer of securities of
 - i) a news release,
 - ii) an interim financial statement filed under NI 51-102,
 - iii) a pricing supplement to a shelf prospectus,
 - iv) Form 51-102F6 *Statement of Executive Compensation*,
 - v) any filing made in compliance with Parts 5, 7, 8, 11 or 12 of NI 51-102,
 - vi) any certification filed under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, or
- (o) a report of exempt distribution, unless filed by an investment fund, or
- (p) ~~an offering memorandum, unless filed by an investment fund, or~~
[repealed]
- (q) an application for a refund under section 5.1.

PART 4: RECOVERABLE FEES AND COSTS

Compliance review costs

- 4.1 For a compliance review or continuous disclosure review, the following fees and expenses are recoverable by the Commission under sections 167 and 169, as applicable, of the Act:
- (a) \$50 per hour for each employee of the Commission involved in the review,
 - (b) disbursements properly incurred by the Commission for a compliance review,
 - (c) fees paid or payable to an expert,
 - (d) disbursements properly incurred by an expert,
 - (e) fees paid or payable for legal services, and

- (f) disbursements properly incurred in connection with the provision of legal services.

Investigation costs

4.2 For any order made by the Commission in relation to investigation costs under section 185 of the *Act*, the following fees and expenses are recoverable by the Commission:

- (a) \$50 per hour per person for time spent on an investigation by any employee of the Commission,
- (b) disbursements properly incurred by the Commission for an investigation,
- (c) fees paid or payable for an expert,
- (d) disbursements properly incurred by an expert,
- (e) fees paid or payable for legal services, and
- (f) disbursements properly incurred in connection with the provision of legal services.

Hearing costs

4.3 For any order made by the Commission in relation to hearing costs under section 185 of the *Act*, the following fees and expenses are recoverable by the Commission:

- (a) \$2,000 for each day or partial day of hearing,
- (b) \$50 per hour for each employee of the Commission for time spent at a hearing,
- (c) disbursements properly incurred by any employee of the Commission for a hearing,
- (d) fees paid or payable for an expert or witness,
- (e) disbursements properly incurred by an expert or a witness,
- (f) fees paid or payable for legal services,
- (g) disbursements properly incurred in connection with the provision of legal services, and
- (h) \$50 per hour for each employee of the Commission for time spent

preparing for a hearing.

PART 5: REFUNDS AND DISCRETIONARY FEE REDUCTION

Refunds

5.1 Where:

- (a) an application for registration is abandoned,
- (b) an application is incomplete or filed in error,
- (c) a filing is incomplete or filed in error, or
- (d) a preliminary prospectus or prospectus is withdrawn,

the Executive Director may, upon the application of the person who made the application or the filing, grant a refund of the fee paid on the making of the application or the filing or such part thereof as the Executive Director considers fair and reasonable.

Discretionary fee reduction

5.2 If the Commission considers it to be in the public interest, the Commission may order that any fee which it is required to charge:

- i) be varied by reducing the fee or cost payable, or
- (ii) does not apply.

5.3 If the Executive Director considers it to be in the public interest, the Executive Director may order that any fee which the Executive Director is required to charge:

- (i) be varied by reducing the fee or cost payable, or
- (ii) does not apply.

PART 6: EFFECTIVE DATE

6.1 Subject to section 6.2, this rule comes into force on 21 September 2009.

6.2 The definition of NI 31-103, paragraphs 2.2(c), (d) and (f), 3.1(b), (g), (h), (i), (j), (k), (l) and (m) come into force on 21 September 2009.