

SASKATCHEWAN STAFF NOTICE 11-701 COMMISSION REGULATORY INSTRUMENTS

Commission Regulations

The Securities Commission (Regulation Procedures) Regulations ("the Procedure Regulations"), which came into force on October 15, 1997, made effective the Saskatchewan Securities Commission's power to make Commission regulations. In amendments to section 154 of *The Securities Act, 1988* ("the Act"), which were proclaimed in force May 15, 1996, the Commission was given the power to make regulations in respect of matter or thing authorized by in regulations made the Lieutenant Governor in Council.

In the Procedure Regulations the Lieutenant Governor in Council has given the Commission power to make regulations respecting any matter or thing set out in subsection 154(1) of the Act except for:

- prescribing fees,
- defining words and expressions used in the Act, and
- prescribing the procedures the Commission must follow when making regulations.

The Procedure Regulations also set out the procedure the Commission must follow when it makes regulations. The main provisions are:

- the Commission must publish its proposed regulations for comment for a period of 60 days; and
- the Commission must submit its proposed regulations to the minister for approval before they are effective. The minister is deemed to approve the proposed regulations if the minister does not accept, reject or return the proposed regulations within 60 days of receiving them.

Commission regulations are legislative in nature. They must be complied with and they are enforceable by the Commission. Commission regulations have the same effect as rules made by the securities commissions in other provinces.

Local Policy Statements

Section 154.1 of the Act restates the Commission's power to make policies. Under section 154.1 the Commission may issue policy statements which:

- outline principles, standards, criteria or factors that relate to a decision or the exercise of a discretion by the Commission or the Director pursuant to the Act or the regulations;
- outline the manner in which a provision of the Act or the regulations is interpreted or applied by the Commission or the Director;

- outline practices generally followed by the Commission or the Director in the performance of the Commission or the Director's duties and responsibilities under the Act or the regulations; and
- are not enforceable.

There are no prescribed procedures for adopting policies, and the Commission will continue to follow its practice of publishing draft policy statements for comment.

General Rulings/Orders (GROs)

The Commission's power to grant general exemptions remains unchanged. It will continue to grant general rulings pursuant to section 83 and orders pursuant to section 160 that are of general application and don't specifically relate to one person or company. The Procedure Regulations do not apply to general rulings and orders.

Staff Notices

From time to time staff may issue notices that outline:

- factors which relate to the exercise of a discretion by staff;
- the manner in which the Act, the regulations or policies are interpreted by staff, or
- the practices generally followed by staff in the performance of its responsibilities.

The publication of staff notices in a timely manner is critical to the goals of transparency and efficiency. Staff views on various issues should be published so that the public is aware of those views.

There is no prescribed procedure for adopting staff notices.

Factors which may determine whether a particular instrument is a staff notice or a Commission policy are:

- If staff's views on a particular issue have crystallized, the instrument is more likely to be a policy. If the views are still being formed and developed by staff, then the instrument is more likely to be a staff notice.
- Staff notices will tend to be based on a particular set of circumstances. Commission policies will be based on a broader range of factual circumstances.
- If the issue addressed by the instrument occurs frequently and has a broad impact on market participants, the instrument is more likely to be a policy than a staff notice.

- If the communication is permissive rather than restrictive, it is more likely to be a notice than a policy.
- Issues which are primarily of an administrative or procedural nature are more likely to be notices rather than policies.
- If the Commission has been extensively involved in an instrument and subscribes to its content, the instrument is more likely to be a policy. If the commission has had limited involvement, the instrument is probably a staff notice.

Numbering

Staff Notice 11-702 - *Numbering System for National and Local Regulatory Instruments* sets out how the Commission will number Commission regulations, Local Policy Statements, and Staff Notices.

National Instruments

The Commission also adopts national instruments and national policies along with other provincial securities regulators through the Canadian Securities Administrators. They promote and maintain harmonization and consistency among jurisdictions.

National instruments are legislative in nature. They are adopted as rules or regulations in jurisdictions in which the securities commission or similar body has rule or regulation making power, and as policies in jurisdictions without rule or regulation making power. The manner in which a national instrument is made by a particular jurisdiction varies depending on the legislative framework in place in that jurisdiction. National instruments are adopted as a Commission regulation in Saskatchewan under subsection 154(2) of the Act.

A multilateral instrument is an instrument that has not been adopted by all provinces and territories. Otherwise, it has the same attributes as a national instrument.

National Policies are not legislative in nature, but set out principles or criteria relating the exercise of discretion by the applicable securities commission or similar body or their staff, and the manner in which they interpret their respective legislation and the practices generally followed by them in the performance of their duties. National policies are adopted as policies by all jurisdictions that adopt them.

National instruments and National policies are being drafted generically so that, to the extent practicable, they can be adopted or made in the same form by each jurisdiction. Accordingly, a national instrument or national policy will not generally refer to a particular jurisdiction or the legislation of a particular jurisdiction. Instead, national instruments and national policies will make use of terms such as "securities legislation", "securities regulatory authority", "regulator" and "local jurisdiction". To assist in interpretation, National instrument 14-101 - *National*

Definitions sets out definitions of these and certain other terms that are used with common meaning in national instruments and national polices. NI 14-101 also provides that a term used in a national instrument and defined in the securities legislation of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the securities legislation, will, for the purposes of that jurisdiction, have the meaning given to it in the securities legislation of that jurisdiction.

A user applying a national instrument to matters in Saskatchewan will read "securities legislation" to mean the Saskatchewan statute and regulations, "securities regulatory authority" to mean the Saskatchewan Financial Services Commission, and "local jurisdiction" to mean Saskatchewan. A user applying a national instrument with respect to matters in another jurisdiction will read "securities legislation" as that term is defined for that jurisdiction in the proposed national instrument for definitions, "securities regulatory authority" to mean the securities commission or similar body in that jurisdiction, "regulatory" as that term is defined for that jurisdiction in NI 14-101 for definitions and "local jurisdiction" to mean that jurisdiction.

Generally a national instrument does not refer to "distributing securities in the local jurisdiction" or "filing in that local jurisdiction". Instead, it refers to "distributing securities" or "filing". In that regard, a national instrument should be read the same way as a user reads a statute, regulation or rule adopted locally which generally does not refer to the jurisdiction making them, but applies based on activity in or a connection to the jurisdiction.

National instruments that are of a prohibitive or mandatory nature (as opposed to exemptive in nature) generally contain provisions allowing one or both of the securities regulatory authority or the regulator in a particular jurisdiction to grant an exemption to the national instrument.

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