



REQUEST FOR COMMENTS

Notice and Request for Comment

Publication of the proposed Local Rule 81-510 *Self-Dealing* as set out in Appendix A (the “**Proposed Rule**”).

Introduction

On 23 June 2021, the Financial and Consumer Services Commission (the “**Commission**”) approved the publication of the Proposed Rule in order to receive feedback from stakeholders on the Proposed Rule.

Substance and Purpose

The purpose of the Proposed Rule is to provide market participants with guidance regarding the definition of certain terms used in Part 10 of the *Securities Act* SNB 2004 c. S-5.5 (the “**Act**”) relating to insider trading and self-dealing.

The Proposed Rule will define terms that are currently used in Part 10 of the *Act*. Such definitions include but are not limited to: “significant interest”, “investment” and “responsible person”. In addition, the Proposed Rule will also clarify exemptions from the definition of the term “significant interest”.

By adopting the Proposed Rule, New Brunswick’s approach to insider trading and self-dealing will be more consistent with the approach taken in most other Canadian jurisdictions, which will in turn eliminate potential confusion by market participants.

How to Obtain a Copy and Provide your Comments

Comments are to be provided, in writing, no later than 23 August 2021 to:

Secretary
Financial and Consumer Services Commission
85 Charlotte Street, Suite 300
Saint John, N.B. E2L 2J2
Telephone: 506-658-3060
Toll Free: 866-933-2222 (in New Brunswick only)
Fax: 506-658-3059
E-mail: information@fcnb.ca

We cannot keep submissions confidential. Any submission received during the comment period may be disclosed in accordance with provincial legislation. A summary of the written comments received during the comment period may be published. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Questions

If you have any questions, please refer them to:

To-Linh Huynh

Executive Director, Securities

Financial and Consumer Services Commission

Tel: (506) 643-7856

E-mail: to-linh.huynh@fcnb.ca



APPENDIX A

FINANCIAL AND CONSUMER SERVICES COMMISSION

LOCAL RULE 81-510 SELF-DEALING

Definitions

1. The following definitions apply in this Instrument and in Part 10 of the *Securities Act*, SNB 2004, c. S-5.5 (the “*Act*”):

“**mutual fund**”, except in section 137 of the *Act*, means a mutual fund that is a reporting issuer;

“**related person**”, in relation to a mutual fund, means a person in whom the mutual fund, its mutual fund manager and its distribution company are prohibited by the provisions of Part 10 of the *Act* from making any investment;

“**responsible person**”, means:

- (a) a portfolio manager,
- (b) every individual who is a partner, director or officer of a portfolio manager,
- (c) every affiliate of a portfolio manager, and
- (d) every individual who is a director, officer or employee of such affiliate or who is an employee of the portfolio manager, if the affiliate or individual participates in the formulation of investment decisions made on behalf of the client of the portfolio manager or in advice given to such client, or if the affiliate or individual has access to such decisions or advice before implementation.

Definition of “investment”

2. In the definition “related person” in this Instrument and in sections 137 to 141 of the *Act*, “investment” means a purchase of any security of any class of securities of an issuer and a loan to persons, but does not include an advance or loan, whether secured or unsecured, that is made by a mutual fund, its mutual fund manager or its distribution company that is ancillary to the main business of the mutual fund, its mutual fund manager or its distribution company.

Significant interest, substantial security holder and beneficial ownership

3. For the purposes of sections 137 to 141 of the *Act*,

(a) a person or a combination of persons has a significant interest in an issuer, if

- i. in the case of one person, the person owns beneficially, either directly or indirectly, more than 10% of the outstanding shares or units of the issuer, or
- ii. in the case of a combination of persons, they own beneficially, either individually or together and either directly or indirectly, more than 50% of the outstanding shares or units of the issuer,

(b) a person or a combination of persons is a substantial security holder of an issuer if that person or combination of persons owns beneficially, either individually or together and either directly or indirectly, voting securities carrying more than 20% of the voting rights attached to all outstanding voting securities of the issuer, but in computing the percentage of voting rights attached to voting securities owned by an underwriter, there shall be excluded any voting securities acquired by the person as underwriter in a distribution of the securities, except that the exclusion ceases to have effect on completion or cessation of the distribution by the underwriter, and

(c) where a person or combination of persons owns beneficially, directly or indirectly, voting securities of an issuer, that person or combination of persons shall be deemed to own beneficially a proportion of voting securities of any other issuer that are owned beneficially, directly or indirectly, by the first mentioned issuer, which proportion shall equal the proportion of the voting securities of the first mentioned issuer that are owned beneficially, directly or indirectly, by that person or combination of persons.

Related person and change in beneficial ownership

4. For the purposes of Part 10 of the *Act*,

(a) any issuer in which a mutual fund holds voting securities carrying more than 10% of the voting rights attached to all outstanding voting securities of the issuer or in which the mutual fund and related investment funds hold voting securities carrying more than 20% of the voting rights attached to all outstanding voting securities of the issuer shall be deemed to be a related person of that mutual fund, or of each of those mutual funds, and

(b) the acquisition or disposition by an insider of a put, call or other transferable option with respect to a security shall be deemed to be a change in the beneficial ownership of the security to which the put, call or other transferable option relates.

Exception to section 3(c)

5. Notwithstanding section 3(c) of this Instrument, a mutual fund is not prohibited from making an investment in an issuer only because a person or a combination of persons who owns beneficially, directly or indirectly, voting securities of the mutual fund, or its mutual fund manager or distribution company is by reason of such ownership deemed to own beneficially voting securities of the issuer.

Effective Date

6. This Instrument comes into force on •.