



Nova Scotia Securities Commission

**Annual Accountability Report
For the Fiscal Year 2008-2009**

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Accountability Statement

The accountability report of the Nova Scotia Securities Commission (the Commission) for the year ended March 31, 2009, is prepared pursuant to the Provincial Finance Act and government policies and guidelines. These authorities require the reporting of outcomes against the Commission's business plan for the fiscal year 2008-2009. The reporting of the Commission's outcomes necessarily includes estimates, judgments and opinions by Commission management.

We acknowledge that this accountability report is the responsibility of the Commission's management. The report is, to the extent possible, a complete and accurate representation of outcomes relative to the goals and priorities set out in the Commission's business plan for the year.

H. Leslie O'Brien

H. Leslie O'Brien, Q.C., Chair

J. William Slattery

J. William Slattery, C.A., Executive Director

Introduction

This accountability report reflects on progress made in achieving the goals and priorities set out in the 2008-2009 business plan of the Commission and describes other significant activities and accomplishments during the year. The 2008-2009 business plan more fully describes the Commission's core business functions, goals and priorities for the year. The Commission recommends that this accountability report be read in conjunction with the business plan.

Mandate

The Commission is an independent, quasi-judicial tribunal which works to fulfill the mandate assigned to it under the Securities Act. Under the Securities Act the Commission's mandate is to provide investors with protection from practices and activities that tend to undermine investor confidence in the fairness and efficiency of capital markets and to the extent not inconsistent with an adequate level of investor protection to foster the process of capital formation.

The Commission seeks to foster a capital market in Nova Scotia that is fair and warrants investor confidence in a number of ways. These include:

- timely and responsible execution of core responsibilities;
- targeted compliance reviews of registrants;
- fair and timely enforcement proceedings;
- relevant investor education; and
- participation in coordinated policy development with other statutory and self-regulatory organizations.

Mission

The mission of the Commission is to carry out the mandate assigned to it by Government through statute and regulation.

Core Activities

The Commission has four core business areas. These are:

- A. The Commission, properly speaking. The Commission has two distinct roles, one regulatory the other more broadly administrative, and performs several functions

in each role. In its regulatory role, the Commission functions as a policy setting body and as an adjudicative body to hear enforcement matters and conduct hearings and reviews of various decisions.

In its administrative role, the Commission is responsible for the proper management of the Commission's affairs, which includes the operations of the three other core business areas, and for advising the Government of the day on a range of matters necessary for the proper execution of its mandate, including budgeting, human resources, legislation, planning, internal governance and trends in capital markets that touch upon their regulation.

- B. The Capital Markets branch which is responsible for the day to day administration of the registration system under securities legislation.
- C. The Corporate Finance branch which is responsible for the day to day administration of the prospectus and continuous disclosure system under securities legislation.
- D. The Compliance, Investor Education and Enforcement branch which undertakes compliance reviews and audits of registrants registered in Nova Scotia, develops and delivers an investor education program for the public, processes information to determine if investigations and enforcement proceedings are appropriate and initiates and carries out the enforcement proceedings.

Progress and Accomplishments

A. Core Area 1 – The Commission

Priority: *The continued nurturing of the Passport System for Securities Regulation*

In fiscal 2008-2009, the Commission's priority was to continue nurturing the Passport System for Securities Regulation set in motion by the Provincial/Territorial MOU Regarding Securities Regulation adopted in 2004 by all the provinces and territories, except for Ontario. The main components to achieving this priority were:

- Building on the harmonization and streamlining efforts of the Canadian Securities Administrators (CSA), including completion of Phase 2 of the Passport System.
- Building on the work done to date to improve regulatory enforcement of securities laws by ensuring that the adjudicative role of the Commission continues to be discharged in a fair but firm and timely manner.
- Monitoring the performance of the core areas to ensure that the priorities of the Commission are discharged fairly, effectively and in a timely manner.

During fiscal 2008-2009, there was full implementation of Phase 1 of the Passport System for exemptive relief applications which came into effect on March 17, 2008. This involved training and use of new procedures, forms and measurements for the processing of applications where the Commission is the principal regulator.

The Commission approved National Policy 12-203 *Cease Trade Orders for Continuous Disclosure Defaults* on August 27, 2008. The policy came into force on September 1, 2008. The policy harmonizes existing practices relating to cease trade orders, including general and management cease trade orders, provides guidance for issuers on the circumstances in which the regulators will issue a cease trade order, explains factors the regulators will consider when evaluating an application for a management cease trade order and describes what other actions issuers need to undertake if the regulators issue a management cease trade order. The Commission developed standard forms and put in place the procedures to consider such an application when one is filed.

The Commission adopted as rules several amendments to various continuous disclosure documents for reporting issuers to provide more comprehensive information to the public. The Commission also published for comment national instruments relating to insider reporting and corporate governance. The Commission is participating in the development of National Instrument 31-103 Registration Requirements (NI 31-103) which is the primary instrument necessary for completing the implementation of Phase 2 of the Passport System for Registration. This implementation has been deferred to the fall of 2009 to enable Ontario to introduce and adopt the necessary legislation for the registration requirements.

The work and performance of the other three core areas is discussed in detail below.

B. Core Area 2 – Capital Markets branch

Priority: *Maintain effective and efficient administration of the registration system in Nova Scotia*

During fiscal 2008-2009, this priority was to be achieved by:

- Implementation and efficient operation of Phase 2 of the Passport System for Registration under NI 31-103.
- Participating in the work of the Registrant Regulation Committee of the CSA.

To enable Ontario to adopt the necessary legislation, implementation of Phase 2 of the Passport System for Registration has been delayed until the fall of 2009.

Staff of the Capital Markets branch has participated in the work of various CSA committees charged with responsibility for the Passport System for Registration to ensure that the Commission will be an effective and efficient principal regulator when this system is implemented.

C. Core Area 3 – Corporate Finance branch

Priority: *Maintain effective and efficient administration of the prospectus and continuous disclosure system in Nova Scotia*

During fiscal 2008-2009, this priority was to be achieved by:

- Implementation of National Instrument 41-101 General Prospectus Requirements (NI 41-101) and being an effective and efficient principal regulator under the Passport System for Prospectuses which was implemented at the same time as NI 41-101.
- Developing and implementing an effective and efficient continuous disclosure review program for Nova Scotia based reporting issuers.
- Performing timely reviews of offering documents under the community economic development funds (CEDIFs) program and other offering documents as required.
- Participating in the prospectus, continuous disclosure and accounting committees of the CSA.

On March 17, 2008, the securities regulatory authorities across Canada, excluding Ontario, successfully implemented NI 41-101 and adopted the Passport System for Prospectuses. As one of the principal regulators under the Passport System, the Commission implemented the procedures necessary to fulfill its responsibilities to other regulators as the sole reviewer of Nova Scotia based reporting issuers and to maintain its own information data base for all issuers.

Corporate Finance successfully developed and implemented an effective and efficient continuous disclosure review program for Nova Scotia based reporting issuers. In cooperation with other principal regulators across Canada, Corporate Finance undertook full reviews of the public disclosure of six Nova Scotia based companies and issuer oriented reviews of two companies to ensure that the regulatory requirements were being met and to improve disclosure to the public.

Corporate Finance successfully completed timely reviews of offering documents as further detailed below in the “Measuring Our Performance” section of this report. In addition, to assist CEDIFs in understanding and applying the governing CEDIFs regulations, a Frequently Asked Questions was developed and posted on the Commission’s website.

Corporate Finance staff participated in a number of CSA committees relating to prospectus content and review, continuous disclosure, international financial reporting standards, accounting issues and mutual funds.

D. Core Area 4 – Enforcement, Compliance and Investor Education branch

Priorities: *i. Continue building strong and timely programs in Compliance and Enforcement*

During fiscal 2008-2009, this priority was to be achieved by:

- Increasing the number of compliance reviews of registrant branches throughout Nova Scotia.
- Detecting and decisively disrupting illicit market practices and bringing proceedings before the Commission for misconduct.
- Co-operating effectively with other securities regulators, self regulating organizations and foreign regulators to achieve the common mandate to detect and deter improper market behaviours.
- Participating in the work of the Enforcement Committee of the CSA.

Compliance examination staff conducted eight compliance examinations of Nova Scotia registrant offices. This was in excess of the target of seven examinations for the period. Of the eight compliance examinations conducted five have been concluded upon the registrants taking appropriate remedial action. The compliance staff also participates in joint compliance and examinations conducted under the auspices of the Compliance Committee of the CSA. Compliance staff have continued to develop and enhance a risk assessment tool to be used in planning for compliance examinations to ensure that resources employed in the reporting period are utilized to maximum effect.

Enforcement staff employs the resources and talents of three investigators, one enforcement counsel and a paralegal to investigate, analyze and bring proceedings before the Commission in appropriate cases for violations of Nova Scotia securities laws. Eighty eight new investigations were opened for the fiscal period as a result of Nova Scotia investor complaints and referrals from other sources. Three hearings have been completed with dispositions of appropriate sanctions being imposed in the fiscal period. Enforcement staff have experienced a significant increase in the number and complexity of reported or suspected violations of Nova Scotia securities laws in the reporting period placing significant strain on enforcement staff, particularly enforcement counsel. There are a number of completed investigations awaiting the attention of enforcement counsel.

Enforcement staff have received requests from other Canadian and foreign regulators which have been accommodated in the spirit of mutual assistance. Staff have

also benefitted from reciprocal assistance afforded by foreign regulators to staff. Enforcement staff continue to foster an effective and cooperative relationship with the self-regulatory organizations. Of particular importance is the relationship with the Market Surveillance and Analysis unit at the Investment Industry Regulatory Organization of Canada.

The Deputy Director, Compliance and Enforcement, chaired the CSA Standing Enforcement Committee. The Enforcement Committee is constituted by the directors of enforcement for the thirteen Canadian jurisdictions. In that capacity the Deputy Director also serves on the CSA Communications Committee's working group on the CSA Enforcement Report.

ii. Investor Education aimed at cultivating public awareness

This priority was to be achieved by developing and implementing an investor education program aimed at raising the understanding of sound investment practices by Nova Scotia residents.

The Investor Education Officer completed a review and catalogued current resources available to Nova Scotia investors and developed new initiatives, programs and communication channels for the delivery to appropriate investors of education materials. Every opportunity was pursued to meet with Nova Scotia stakeholders to enhance investor knowledge in an effort to educate the Nova Scotia investing public about illicit investment schemes and unsuitable investment strategies. The Investor Education Officer has participated in the work of the CSA Investor Education Committee and the North American Securities Administrators Association (NASAA) Investor Education Committee. The incumbent sits on the NASAA Military Family Outreach Committee in recognition of the significant military families population in Nova Scotia.

Human Resource Strategy

In fiscal 2008 – 2009, the Commission hired an additional investigator in the area of enforcement and filled a vacancy for a program administration officer in the area of corporate finance and provided them with training using resources, training offered through the North American Securities Administrators Association and the CSA.

The CSA continued to revamp staff training in all jurisdictions, including Nova Scotia, to ensure that harmonized securities laws and the Passport System for Securities Regulation is administered consistently and harmoniously. In November, 2008, staff from the corporate finance and exemptions branches attended a national prospectus and exemptions passport training conference in Vancouver, B.C. Two of the staff from the Commission assisted in the organization of the conference.

Financial Results

Nova Scotia Securities Commission – Estimated Budget Expenditures by Core Business			
Core Business (All)	Budget 2008-2009	Actual 2008-2009	Variance
Revenues:	\$ 10,770,000	\$11,911,000	\$1, 141,000 (1)
Expenditures:			
Salaries and benefits	\$ 1,537,000	\$1,340,000	\$ 197,000 (2)
FTEs	20.0	17.5	2.5
Operating costs	\$ 1,001,000	\$ 737,000	\$ 264,000 (3)
Total Expenditures	\$ 2,538,000	\$2,077,000	\$ 461,000
Net Revenue	\$ 8,232,000	\$9,834,000	\$1,602,000

NOTES:

1. The increase in revenue was a result of an increase in filing fees of 1.9% to reflect the cost of living and an increase in the amount of registration and corporate finance fees received.
2. Salaries and benefits were less than budgeted as there were several vacancies in positions for part of the year.
3. Operating costs were less than budgeted as travel, professional services and hearing related costs were down for the fiscal year.

Measuring Our Performance

The supporting data presented below reflect the measures included in the 2008-2009 Business Plan and the most recent information available.

A. Core Area 1 – The Commission

Outcome:

The outcome for each of the performance measures in the chart below is to improve the framework of securities regulation in Nova Scotia, and ensure the efficient administration of the Commission's adjudicative and exemption granting jurisdictions.

What does the measure tell us?

The first two measurers in the chart below reflect the Commission's efforts to harmonize the securities laws of Nova Scotia with the securities legislation in the other Canadian jurisdictions to facilitate the implementation of the Passport System for Securities Regulation.

The last two measures in the chart show how timely the Commission is in considering exemption applications and issuing orders after final submissions in a hearing.

Where are we now?

Measure	Target 2008-2009	Actual 2008-2009
Implement the second phase of the Passport System for Securities Regulation for registration on the agreed timelines	December 31, 2008	Target of September 28, 2009
Work with government to continue the harmonization of securities laws as contemplated in the Provincial/Territorial MOU on Securities Regulation	2008	All necessary legislation and rules for harmonization have been adopted by the Commission.
Percentage of exemption applications considered within 5 business days of filing	90%	100%
Percentage of orders made within 10 business days of the final submissions from the parties following the	90%	95%

conclusion of a hearing		
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The implementation of Phase 2 of the Passport System for Registration has been deferred to the fall of 2009, with a target date of September 28, 2009, to enable Ontario to adopt the necessary legislation for the equivalent system for registration.

The Commission has met its targets for the review of exemption applications and the issuance of orders after the conclusion of hearings. With the full implementation of the Passport System for exemptive relief applications, fewer applications are being filed in Nova Scotia enabling Commission staff to consider and review exemption applications in an expeditious manner.

Where do we want to be?

The Commission proposes to continue its high success rate while respecting the time constraints of other jurisdictions in the adoption of harmonized legislation. The primary emphasis in hearings is to produce an unbiased, timely, fair and legally correct decision, recognizing that more time may be required to make a decision in a complex hearing.

B. Core Area 2 – Capital Markets branch

Outcome:

The outcome for the performance measures in the chart below is to improve the level of efficiency in the administration of the registration system.

What does the measure tell us?

These two measures tell us how efficiently registration applications are reviewed and processed to enable registrants to start carrying on registerable activities in Nova Scotia.

Where are we now?

Measure	Target 2008-2009	Actual 2008-2009
Percentage of firm applicants, where the Commission was the principal regulator, that had their applications processed within 45 days of the final submission of necessary documents	90%	90%

Percentage of individual applicants, where the Commission was the principal regulator, that had their applications processed within 7 days of the final submission of necessary documents	90%	90%
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As the chart indicates, the targets have been met.

Where do we want to be?

With the implementation of the Passport System for Registration, registration applications will only be filed in Nova Scotia where the firm’s head office is in Nova Scotia or the individual’s working office is in Nova Scotia. This should provide Capital Markets staff with more time to concentrate on those applications where the Commission is the principal regulator, resulting in a more efficient review and processing of these applications.

C. Core Area 3 – Corporate Finance branch

Outcome:

The outcome for each of the performance measures in the chart below is to improve the administration of the corporate finance disclosure system in Nova Scotia.

What does the measure tell us?

The four measures relating to the issuance of a comment or non-objection letter or a receipt tells us how efficiently the Corporate Finance branch is reviewing and processing prospectuses and offering documents that have been filed with the Commission as the principal regulator. Once a receipt or non-objection letter has been issued by the Director for an offering document, an issuer can proceed to offer its securities to the public. The efficient operations of the Commission will result in an efficient capital market.

The measure relating to the review of continuous disclosure filings for a reporting issuer reflects how efficient the Commission’s continuous review program is for Nova Scotia based reporting issuers. The increased review of documents filed and the making of required amendments to continuous disclosure documents will result in improved disclosure to the public.

Where are we now?

Measure	Target 2008-2009	Actual 2008-2009
Percentage of issuers based in Nova Scotia who have received a first comment letter in their preliminary long form prospectus within 10 business days of filing the preliminary long form prospectus	90%	100%
Percentage of issuers based in Nova Scotia who have received a first comment letter on their preliminary short form prospectus within 3 business days of filing the preliminary short form prospectus	90%	100%
Percentage of issuers based in Nova Scotia who have received the receipt for a prospectus within one business day after the filing of final documents	90%	100%
Percentage of reporting issuers based in Nova Scotia that have had a review of their continuous disclosure filings in the year	15%	26%
Percentage of issuers who have received the letter of non-objection within two business days of filing of final documents under the community economic development fund program	90%	100%

As the chart indicates, the targets have been exceeded.

Where do we want to be?

With the addition of one Program Administration Officer in November, 2008, our target is to increase the review of continuous disclosure filings of reporting issuers based in Nova Scotia.

D. Core Area 4 – Enforcement, Compliance and Investor Education branch

Outcome:

The outcome for each of the performance measures in the chart below is to improve the efficiency of the programs in compliance and enforcement to deter undesirable behavior in capital markets and provide effective investor protection.

What does the measure tell us?

The measures relating to compliance reflect the Commission’s efficiency of the compliance program and enable the Commission to request registrants to correct deficiencies in compliance with ongoing registration requirements to ensure that business practices and procedures create a safe environment for meeting clients investment needs and objectives.

The measures relating to complaints, investigations and litigation enable Commission staff to detect and disrupt decisively market practices and misconduct that pose a danger to the investing public and bring more cases for prosecution in hearings before the Commission. This results in a deterrence of undesirable behaviours in capital markets and provides more effective investor protection.

The measures relating to investor education tell us how effectively the Commission is developing and implementing an investor education program aimed at raising the understanding of sound investment practices by Nova Scotia residents so that they can recognize questionable products and practices.

Where are we now?

Measure	Target 2008-2009	Actual 2008-2009
<u>Compliance</u>		
a) To initiate six field examinations of Nova Scotia registrants per calendar year	a) six	a) eight
b) To conclude six field examinations of Nova Scotia registrants per calendar year.	b) six	b) five
c) To respond to compliance	c) 100 %	c) 100%

complaints and report or refer to enforcement as appropriate within 10 days		
<u>Litigation</u>		
a) Enforcement Counsel to complete initial review of investigation files referred to Counsel and provides written response within 30 days.	a) 100 %	a) 100%
b) Enforcement Counsel to issue a Statement of Allegations and Notice of Hearing within 60 days of referral and conclusion of settlement discussions.	b) 100 %	b) 100 %
c) Enforcement Counsel to issue Notice of Hearing and Statement of Allegations in an interim cease trade order within 3 days of referral.	c) 100%	c) No interim cease trade orders for this fiscal year.
<u>Investor Education</u>		
Review the previous year's program files to establish a baseline, and work to increase public contacts and dissemination of information, including:	Review	Completed Review

<p>a) 10% increase in participation in the Financial Fitness Challenge (CSA contest for students between the ages of 15 and 21, with a \$750 prize in each province);</p> <p>b) 10% increase in distribution of CSA brochures;</p> <p>c) 20% increase in media hits – newspaper articles, radio and television ads.</p> <p>d) Develop and print a Nova Scotia specific brochure, detailing the Commission and what we do, and distribute minimum of 1500 to the Nova Scotia public.</p> <p>e) Attend a minimum of 12 public education events, such as Fall & Spring Home Shows, Seniors Expo and Family Expo.</p> <p>f) Develop new Nova Scotia specific education programs, and plan</p>	<p>a) 10 %</p> <p>b) 10 %</p> <p>c) 20%</p> <p>d) N/A</p> <p>e) 12</p> <p>f) Developed</p>	<p>a) 54%</p> <p>b) 12%</p> <p>c) 50 %</p> <p>d) Project deferred due to budgetary constraints.</p> <p>e) 13</p> <p>f) Developed Nova Scotia specific website and blog for investor</p>
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<p>to deliver CSA Investor Education programs and messages (as outlined in CSA Investor Education Committee's strategic plan) to the appropriate sectors in Nova Scotia's capital markets.</p>		<p>education.</p>
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The Investor Education Officer has embarked upon a number of new initiatives to deliver investor education messages and material to Nova Scotia investors. She has employed conventional media, and programs such as trade shows, special interest forums and events. New initiatives were undertaken and developed using the internet and social media such as blogs and Twitter to reach Nova Scotia investors of all demographics.

Where do we want to be?

We were not able to complete the target number of field examinations this fiscal year. The Commission, in consultation with Government, will need to consider an increase in resources to allow targets to be met for this important function. The compliance examination program is preventative in nature and provides a significant return in protecting against investor losses, increased confidence in the Nova Scotia capital markets and the consequential reduction in referrals to enforcement staff for investigation.

Steps have been taken to increase the capacity of the enforcement litigation group with the approval of an additional FTE for enforcement counsel to prosecute cases completed by the investigators. It is anticipated that this will result in an increase in the number of proceedings brought before the Commission with the adjunct general and specific deterrence value of enforcement proceedings.