



*Nova Scotia Securities Commission*

Annual Accountability Report  
for the Fiscal Year 2010 - 2011

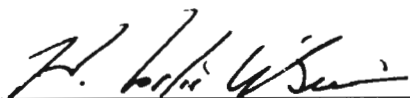
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## Accountability Statement

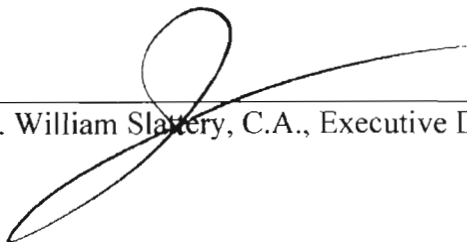
The accountability report of the Nova Scotia Securities Commission (the Commission) for the year ended March 31, 2011, is prepared pursuant to the *Finance Act* and government policies and guidelines. These authorities require the reporting of outcomes against the Commission's Statement of Mandate for the fiscal year 2010-2011. 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 Commission 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 2010-2011 Statement of Mandate.



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



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

## **Message From the Chair**

The Commission is an independent, quasi-judicial tribunal which works to fulfill the mandate assigned to it under the Securities Act which 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.

This accountability report reflects on progress made in achieving the goals and priorities set out in the Commission's 2010-2011 Statement of Mandate which can be found at <http://www.gov.ns.ca/nssc/docs/nsscsm2010-2011.pdf> and describes other significant activities and accomplishments during the year.

The data in this accountability report measures the outcomes for the 4 core business areas of the Commission which are: the Commission, properly speaking, which has two distinct roles, one regulatory and the other more broadly administrative; the Policy and Market Regulation branch; the Corporate Finance branch; and the Enforcement branch.

Overall, the Commission generally met the targets it has set for itself through the expertise and committed work of its experienced staff. The Passport System for the review of prospectuses, exemption applications and registrations is now fully mature, resulting in a very efficient system and the ability to meet the targets in these areas.

In the policy area, the Commission worked with its Canadian Securities Administrators members to develop national harmonized rules in a number of important areas, including the adoption of International Financial Reporting Standards on January 1, 2011, the regulation of securitized products and designated rating organizations and the mandated production of the Fund Facts document for mutual funds under the point of sale project.

The increase in the number and complexity of investigations and the resulting hearings has made it a challenge to meet the targets in these areas. This trend is expected to continue into 2011-2012.

Through its investor education programs and compliance reviews, which includes the New Firm Visit Program developed in 2010-2011, the Commission continues to work towards fulfilling its mandate of investor protection.



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H. Leslie O'Brien, Q.C.

Chair

Nova Scotia Securities Commission

## Financial Results

Core Business (All)	2010-2011 Estimate	2010-2011 Actual	Variance
	(\$ thousands)	(\$ thousands)	(\$ thousands)
Revenues:	\$(11,800)	\$(14,224)	2,424 <sup>1</sup>
Expenditures:			
Salaries and Benefits	\$ 1,770	\$ 1,797	(27) <sup>2</sup>
Operating Costs	\$ 662	\$ 645	17 <sup>3</sup>
Cost Recoveries	0	(56)	56
Total Expenditures	\$ 2,432	\$ 2,386	46
Net Revenue	\$ (9,368)	\$(11,838)	2,470
FTEs	21	21	0

<sup>1</sup> The increase in revenue was a result of an increase in registration fees and corporate finance filing fees compared to the prior year's actual revenues. Also, revenue was underestimated as we expected to have a decrease in revenue due to economic conditions.

<sup>2</sup> Salaries and benefits were over as there was a cost conversion to the Excluded Classification Pay Plan.

<sup>3</sup> Operating costs were less than budgeted as travel, equipment purchases and hearing costs were down for the fiscal year and supplies and services and professional membership dues were up.

## Measuring Our Performance

The supporting data presented below reflects the measures included in the 2010-2011 Statement of Mandate 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 measure in the chart reflects the Commission's commitment to harmonize the securities laws of Nova Scotia with the securities legislation in the other Canadian jurisdictions to maintain 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	Base Year 2008-2009	Subsequent Data 2009-2010	Annual Target 2010-2011	Actual 2010-2011
Percentage of national/multilateral instruments adopted as rules within set timelines to continue the harmonization of securities laws as contemplated in the Provincial/Territorial MOU on Securities Regulation	100%	100%	100%	100%
Percentage of exemption applications considered within 5 business days of filing	100%	100%	100%	100%
Percentage of orders made within 10	95%	100%	95%	77% <sup>1</sup>

business days of the final submissions from the parties following the conclusion of a hearing				
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<sup>1</sup> In 2010-2011, the Commission heard 13 matters, 3 of which were contested or involved more complicated issues, thereby requiring more time before a decision and order were issued.

The Commission has met its targets for the timely adoption of national/multilateral instruments as rules and the review of exemption applications. The Commission was able to issue orders within 10 business day of the final submissions from the parties in the 10 settlement hearings that it considered. The other 3 remaining matters that came before the Commission in 2010-2011 were contested matters or ones that involved more complicated issues. These matters were heard by a panel which consisted of 2 or 3 Commission members. After hearing the submissions from the parties in these cases, the Commission panel reserved its decision and provided written reasons with the granting of the requested order.

### **Where do we want to be?**

In June, 2010, the Commission hired a second enforcement counsel to assist in moving investigative matters forward to the hearing stage. As a result, the Commission heard and will continue to hear a greater number of matters which are more complex in nature. There also seems to be a greater number of respondents retaining legal counsel which results in hearings being contested. Going forward, it may be more appropriate to have a separate benchmark for contested matters.

The Commission has continued to harmonize securities laws with the securities legislation of other Canadian jurisdictions in support of the Passport System for Securities Regulation through the following major initiatives:

- Publication of a consultation paper in May, 2010, for the proportionate regulation of venture issuers, followed by a consultation with stakeholders in Halifax on June 14, 2010
- Adoption of rule amendments for the first stage of the implementation of the point of sale disclosure for mutual funds which mandates the production of the Fund Facts document, a 2 page disclosure document for a mutual fund
- The repeal and replacement of Rule 51-101 *Standards of Disclosure for Oil and Gas Activities* to update and clarify the requirements in that rule
- The repeal and replacement of Rule 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* and related consequential amendments to prepare for the change over in Canada to International Financial Reporting Standards on January 1, 2011
- Publication for comment of a proposed rule to regulate securitized products, including asset backed securities

- Publication for comment of a proposed rule to regulate designated rating organizations.

The Commission also made Rule 11-504 *Amendments to the Fees Schedules in the General Securities Rules* to increase fees by 2% effective April 1, 2011, as per the direction from Treasury Board.

## **B. Core Area 2 – Policy and Market Regulation branch**

### **1. Capital Markets**

#### **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	Base Year 2008-2009	Subsequent Data 2009-2010	Annual Target 2010-2011	Actual 2010-2011
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%	91%	90%	94%
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%	92%	90%	93%



## Where do we want to be?

As we enter the second full year of the Passport System for Registration, the Capital Markets branch continues to maintain its very high efficiency level in meeting its targets. We will soon reach our goal of 95% of targeted turn around times for applications as we continue to focus on refining procedures.

Capital Markets staff have implemented a new program to monitor the use of exemptions to determine if persons selling securities in the exempt market should be registered. If it is determined that a seller should be registered as an exempt market dealer, staff will work with the seller to ensure that the appropriate action is taken.

## 2. Compliance

### Outcome:

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

### What does the measure tell us?

The measures reflect the efficiency of the compliance program and the Commission's ability 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.

### Where are we now?

Measure	Base Year 2008-2009	Subsequent Data 2009-2010	Annual Target 2010-2011	Actual 2010-2011
Initiate 7 field examinations of Nova Scotia registrants per fiscal year	8 <sup>1</sup>	6	7	8 <sup>2</sup>
Conclude 6 field examinations of Nova Scotia registrants per fiscal year	5	14 <sup>3</sup>	6	6
Respond to compliance complaints and report or refer to	100%	100%	100%	100%

enforcement as appropriate within 10 days				
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<sup>1</sup> In 2008-2009, the data was taken over a calendar year whereas the data is now measured over the fiscal year.

<sup>2</sup> The Commission records indicate that 6 files were opened; however a marketing sweep was conducted which entailed the review of marketing practices at 3 portfolio manager firms. One main file was opened and sub-files were labeled A, B, and C. In the future, separate files will be opened for each firm to better reflect the actual numbers.

<sup>3</sup> The larger number of concluded files is due to the completion of a number of contentious and complicated reviews carried over from the previous year that took longer than expected to close.

### **Where do we want to be?**

In 2010-2011, the Compliance section implemented a New Firm Visit Program, the purpose of which is to ensure that business activities of a new firm registered in Nova Scotia are consistent with representations made in the firm's registration application and to obtain a better understanding of the firm's operations. This review also gives the firm an opportunity to meet compliance staff and for staff to provide guidance regarding compliance with Nova Scotia securities laws.

One of the priorities for compliance is to increase the number of compliance reviews and have a greater presence in the registrant community through initiatives such as the New Firm Visit Program. 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. The Commission, in consultation with Government, needs to consider an increase in resources for this important function.

### **3. Investor Education**

#### **Outcome:**

The outcome for each of the performance measures in the chart below is to improve the efficiency of the investor education programs to provide effective investor protection.

#### **What does the measure tell us?**

The measures 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	Base Year 2008-2009	Subsequent Data 2009-2010	Annual Target 2010-2011	Actual 2010-2011
Percentage increase in participation in Financial Fitness Challenge (Canadian Securities Administrators (CSA) contest for students between the ages of 15 and 21)	54% <sup>1</sup>	It is difficult to compare the participation for the two fiscal years. The Financial Fitness Challenge was redesigned in 2009-2010 to include contact through Facebook and Twitter. 17,305 Canadians participated of whom 582 were resident in Nova Scotia.	10%	Down 47%.  Overall participation was down more than 50% across the country, due to significant website issues. The contest may be cancelled for 2012.
Percentage increase in distribution of CSA brochures	12%	55% <sup>2</sup>	10%	8.5%
Percentage increase in media hits – newspaper articles, radio and television ads	50% <sup>3</sup>	10% in all NS 21% overall	20%	Up 28% Noteable increase in broadcast media coverage,

<sup>1</sup> There were 619 registrants in 2008-2009, an increase of 54% over the previous year. This marked the first year of full promotion in Nova Scotia.

<sup>2</sup> It is difficult to compare the distribution of CSA brochures for the past 2 fiscal years as there were new brochures and flyers introduced in 2009-2010.

<sup>3</sup> This percentage increase is not indicative of the amount of coverage that can be expected on an annual basis going forward. This reflects the Commission's decision to increase its dedication of work resources towards communications.

				particularly Investment Executive coverage.
Participate in a minimum of 12 public education events, such as Fall and Spring Home Shows, Seniors Expo, Family Expo, surveys and contests	13	15	12	10 <sup>4</sup>
Percentage increase in hits to <i>Before You Invest</i> blog, subscribers to blog and followers on Twitter	Not applicable	New in Spring 2009 – 4936 visits	10%	+30% 6,410 visits

4 Scaled back attendance at public education events. Aimed for more strategic attendance, better use of time.

### Where do we want to be?

We are exploring new ways to measure the impact of our investor education programs. Evaluating educational success is a difficult process, and counting brochures, events and participants only tells a small part of the story. As programs are constantly evolving, it is also difficult to compare numbers year to year, as we are effectively comparing apples to oranges. The table above shows a steady decline in numbers in the Financial Fitness Challenge, for example, but does not show the impact of the new “Make it Count” program, which has reached more than 500 families, and 200 teachers in Nova Scotia. There have also been almost 100 downloads of the newly developed Make it Count iPhone App.

We want to continue to grow our online following. We want to find the right mix of large scale public event/expo presentations, and small scale community seminars and scam jams. We want to continue to reach out to students and teachers, and to nurture and develop new partnerships with other organizations and government departments who are working to spread financial literacy and prevent fraud.

### 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 disclosure 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	Base Year 2008-2009	Subsequent Data 2009-2010	Annual Target 2010-2011	Actual 2010-2011
Percentage of issuers based in Nova Scotia who received a first comment letter for their preliminary long form prospectus within 10 business days of filing the preliminary long form prospectus	100%	100%	95%	100%
Percentage of issuers based in Nova Scotia who received a first comment letter for their preliminary short form prospectus within 3 business days of filing the preliminary short form prospectus	100%	88% <sup>1</sup>	95%	100%
Percentage of issuers based in Nova Scotia who received the receipt for a prospectus within 1	100%	100%	95%	100%

business day after filing final documents				
Percentage of reporting issuers based in Nova Scotia that had a review of their continuous disclosure filings in the year	26%	25.5%	25% of average capitalization of large issuers  10% of the number of other issuers	23%
Percentage of issuers who received a first comment letter on their offering document within 10 business days of filing their offering document under the community economic development investment fund program	No base data for 2008-2009	91% <sup>2</sup>	95%	87.5% <sup>3</sup>
Percentage of issuers who received the letter of non-objection within 2 business days of filing final documents under the community economic development investment fund program	100%	100%	95%	100%

<sup>1</sup> Exceeded by one day for one prospectus.

<sup>2</sup> With the filers' permission, filings made in August/September were used for staff training and the normal 10 day limit was exceeded in 2 cases.

<sup>3</sup> The target was not met for 2 filings – one had an incomplete filing record and the other required clarification from the Department of Finance concerning eligibility for the program.

### **Where do we want to be?**

The performance measures for prospectus and continuous disclosure reviews are meeting targets and the variance in community economic development investment fund (“CEDIF”) reviews is due to factors beyond the control of the branch. For the next year, the amended and updated *Community Economic-Development Corporations Regulations*,

which became effective on April 12, 2011, should assist CEDIFs in completing their filings.

#### **D. Core Area 4 – Enforcement branch**

##### **Outcome:**

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

##### **What does the measure tell us?**

The measures enable Commission staff to decisively detect and disrupt 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.

##### **Where are we now?**

Measure	Base Year 2008-2009	Subsequent Data 2009-2010	Annual Target 2010-2011	Actual 2010-2011
Complaints and Investigations				
Enforcement staff to refer to Director, Enforcement, for review and confirmation of initial assessment of each complaint within 3 days of receipt of complaint	100%	100%	100%	100%
Enforcement staff to conclude investigation and report to Director, Enforcement, on 60% of investigations within 9 months and all	46% of investigations completed within 9 months. 90% completed within 24 months. 10%	55% of investigations completed within 9 months. 96% completed within 24 months. 4%	60% within 9 months  100% within 24 months	37% of investigations completed within 9 months. 75% completed within 24 months. 25%

investigations within 24 months	remain outstanding	remain outstanding		remain outstanding
Litigation				
Enforcement counsel to complete initial review of investigation files referred to counsel and provide written response within 30 days	100%	100%	100%	100%
Enforcement counsel to issue a Statement of Allegations and Notice of Hearing within 60 days of referral and conclusion of negotiations	100%	100%	100%	100%
Enforcement counsel to issue Notice of Hearing and Statement of Allegations for an interim cease trade order within 3 days of referral	No interim cease trade orders for this year	No interim cease trade orders for this year	100%	No interim cease trade orders for this year

**Where do we want to be?**

The ability of staff to meet its milestones on case handling and conclusion is largely dependent on the nature and complexity of the cases that arise in the Nova Scotia capital markets coming to the attention of enforcement staff. As seen in the results for 2010-2011, complex files can consume significantly more resources causing the benchmarks to be missed. There is no effective means to forecast either the number nor the nature of the files requiring attention.

It is anticipated that there will be an increase in the number of investigations for the next reporting period 2011-2012. It is hoped that additional training, as is available, together with the garnering of experience by the investigative staff will yield dividends in



the ability to conclude more cases more expeditiously. Such incremental improvements may not result in achieving existing benchmarks. If the existing benchmarks are not achieved, then a review of the benchmarks themselves is warranted together with a review of the expectations of management, investors and the capital markets in Nova Scotia.