

1995

CHAPTER 32

An Act to amend *The Securities Act, 1988*

(Assented to May 18, 1995)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Securities Amendment Act, 1995*.

S.S. 1988-89, c.S-42.2 amended

2 *The Securities Act, 1988* is amended in the manner set forth in this Act.

Section 2 amended

3(1) **Subsection 2(1) is amended:**

(a) **in clause (a) by adding "or exchange contracts" after "securities";**

(b) **by repealing clause (b) and substituting the following:**

"(b) `associate', where used to indicate a relationship with any person or company, means:

(i) any issuer of which that person or company beneficially owns, directly or indirectly, voting securities carrying more than 10% of the voting rights attached to all voting securities of the issuer currently outstanding;

(ii) any partner, other than a limited partner, of that person or company;

(iii) any trust or estate in which that person or company has a substantial beneficial interest or for which that person or company serves as trustee or in a similar capacity;

(iv) a spouse or spousal equivalent of that person;

(v) any relative of that person; or

(vi) any other person who has the same residence as that person";

(c) **by adding the following clause after clause (d):**

"(d.1) `clearing agency' means a person who or company that:

(i) in connection with trades in securities, acts as an intermediary in paying funds, in delivering securities or in doing both of those things;

(ii) provides centralized facilities through which trades in securities or exchange contracts are cleared; or

(iii) provides centralized facilities as a depository of securities”;

(d) by repealing clauses (f) and (g);

(e) in clause (m) by striking out “The Credit Union Act” and substituting “The Credit Union Act, 1985”;

(f) by adding the following clause after clause (m):

“(m.1) `Credit Union Central of Saskatchewan' means Saskatchewan Co-operative Credit Society Limited or Saskatchewan Co-operative Financial Services Limited”;

(g) in clause (n) by adding “or exchange contracts” after “securities”;

(h) by adding the following clauses after clause (s):

“(s.1) `exchange' means any person who or company that constitutes, maintains or provides a market place or facilities for bringing together purchasers and sellers of securities and exchange contracts;

“(s.2) `exchange contract' means a futures contract or an option that:

(i) has its performance guaranteed by a clearing agency; and

(ii) is traded on an exchange pursuant to standardized terms and conditions set forth in the bylaws, rules or regulations of that exchange at a price agreed on when the futures contract or option is entered into on the exchange;

and includes any instrument or class of instruments that meets the requirements mentioned in subclauses (i) and (ii)”;

(i) by adding the following clause after clause (t):

“(t.1) `futures contract' means a contract to make delivery or take delivery on a specified date or during a specified period:

(i) of a specified asset; or

(ii) of a specified cash equivalent of the subject-matter of that contract”;

(j) by repealing clause (u);

(k) by repealing paragraph (ff)(ii)(A) and substituting the following:

“(A) in reliance on an exemption set out in clause 81(1)(b), (c), (d), (h), (m), (n), (o), (s), (w), (z), (cc), (dd) or (ee)”;

(l) by repealing clause (jj) and substituting the following:

“(jj.1) `private issuer' means an issuer in whose articles of incorporation, partnership agreement, security holders' agreement, declaration of trust or other instrument legally constituting the issuer:

(i) the right to transfer its securities is restricted;

(ii) the number of its security holders, other than individuals:

(A) who are in the employment of the issuer or the employment of an affiliate of the issuer; or

(B) who were formerly in the employment of the issuer or an affiliate of the issuer and while in that employment were and have continued after that employment to be security holders of the issuer;

is limited to not more than 50, two or more persons who or companies that are the joint registered owners of one or more security being counted as one security holder, as the case may be; and

(iii) any invitation to the public to subscribe for its securities is prohibited”;

(m) in paragraph (kk)(i)(C) by adding “or exchange contracts” after “securities”;

(n) by repealing clause (qq) and substituting the following:

“(qq) `reporting issuer' means an issuer:

(i) that has filed pursuant to this Act:

(A) a prospectus and obtained a receipt for it; or

(B) a securities exchange take-over bid circular;

(ii) that has issued securities on or after October 1, 1967 for which a prospectus was filed and a receipt obtained pursuant to a predecessor of this Act;

(iii) any of whose securities have at any time since the day on which this Act was proclaimed in force been listed and posted for trading on any exchange recognized by the Commission for the purpose of this clause, regardless of when that listing and posting for trading commenced;

(iv) that is a corporation to which *The Business Corporations Act* applies and that has made a distribution of securities for which it was required, by this Act or any predecessor of this Act, to file a prospectus and receive a receipt, but failed to either file a prospectus or receive a receipt for that distribution; or

(v) that is an issuer that is involved in, formed for, results from or continues following an amalgamation, merger, reorganization, arrangement or a statutory procedure, where one of the issuers participating in the amalgamation, merger, reorganization, arrangement or statutory procedure is a reporting issuer”;

(o) in clause (rr) by adding “or exchange contracts” after “securities”;

(p) in clause (ss):

(i) by repealing paragraph (v)(B) and substituting the following:

“(B) an evidence of deposit issued by a bank to which the *Bank Act* (Canada) applies, by a trust corporation or loan corporation licensed pursuant to *The Trust and Loan Corporations Act*, by a credit union or by Credit Union Central of Saskatchewan”; and

(ii) by adding the following subclause after subclause (xv):

“(xvi) any item or thing not mentioned in subclauses (i) to (xv) that is a futures contract or option but is not an exchange contract”;

(q) in clause (vv):

(i) in subclause (i):

(A) by striking out “or commodity futures contract”; and

(B) by striking out “or a commodity futures contract”;

(ii) by adding the following subclause after subclause (i):

“(i.1) any entering into of an exchange contract”; and

(iii) by repealing subclauses (ii) and (iii) and substituting the following:

“(ii) any participation as a floor trader in any transaction in a security or an exchange contract on the floor of any exchange;

“(iii) any receipt by a registrant of an order to buy or sell a security or an exchange contract”; and

(r) in clause (ww):

(i) by striking out “or” after subclause (v);

(ii) by adding “or” after subclause (vi); and

(iii) by adding the following subclause after subclause (vi):

“(vii) a credit union or Credit Union Central of Saskatchewan with respect to the securities described in clause 39(2)(a) and with respect to those transactions that are designated by the regulations”.

(2) Clause 2(10)(b) is amended by adding “Saturday or” before “holiday”.

(3) The following subsection is added after subsection 2(12):

“(13) In Parts XVIII and XXI of this Act, ‘**investigation**’ is not limited to an investigation conducted pursuant to section 12 or 14”.

New section 3.1

4 The following section is added after section 3:

“Purpose of Act

3.1(1) The purposes of this Act are to provide protection to investors and to foster fair, efficient capital markets and confidence in capital markets”.

Section 4 amended

5 Clause 4(11)(a) is amended by adding “or exchange contracts” after “securities”.

New section 8.1

6 The following section is added after section 8:

“Referrals to Commission

8.1(1) The Chairperson or the Director may refer a matter at any time to the Commission.

(2) Where the Chairperson or the Director refers a matter to the Commission, the Commission may conduct a hearing into the matter.

(3) If the Commission holds a hearing into a matter pursuant to this section, the Commission shall cause notice of the hearing to be served on any person who or company that the Commission considers interested in the matter.

(4) The Commission may make an order concerning a matter mentioned in this section, or give any advice and direction to the Chairperson or Director concerning the matter that the Commission considers appropriate in the circumstances”.

Section 9 amended

7 Section 9 is amended:

(a) by adding the following subsections after subsection (3):

“(3.1) Every person who or company that is the subject of a hearing or review and is named in a notice in writing shall file with the Commission a written response to the notice admitting or denying each of the allegations in the notice.

“(3.2) The written response is to be filed at least five business days before the date set for the hearing or review.

“(3.3) The Commission may order any person who or company that does not file a written response within the time prescribed pursuant to subsection (3.2) to pay the costs of the hearing or review in an amount that the Commission considers reasonable.

“(3.4) The Commission may publish notice of its intention to hold a hearing or a review:

(a) by publication in a newspaper having general circulation; or

(b) in any other manner and to any persons and companies that the Commission considers appropriate”;

(b) in subsection (4):

(i) in the portion preceding clause (a) by adding “or review” after “hearing”; and

(ii) in clause (c) by adding “, exchange contracts” after “securities”;

(c) in clause (5)(c) by adding “, exchange contracts” after “securities”;

(d) in subsection (7) by striking out “hearing and review” and substituting “hearing or review”;

(e) in subsection (10) by adding “or review” after “hearing”;

(f) in subsection (11) by adding “or exchange contracts” after “securities”;

(g) by repealing subsection (14) and substituting the following:

“(14) Those provisions of *The Queen's Bench Rules* relating to the payment of conduct money or witness fees apply to matters heard pursuant to this Act”; **and**

(h) in subsection (15) by adding “or review” after “hearing” wherever it appears.

Section 10 amended

8 Section 10 is amended:

(a) by repealing subsection (1) and substituting the following:

“(1) The Director shall immediately notify the Commission of every decision:

(a) refusing registration pursuant to section 28;

(b) refusing to issue a receipt for a prospectus pursuant to section 70; or

(c) ordering trading to cease pursuant to section 134.1.

“(1.1) Within 30 days of the date of a decision mentioned in subsection (1), the Commission may notify the Director and every person directly affected by the decision of the Commission's intention to review the decision”;

- (b) **in subsection (2) by striking out “hearing and”;**
- (c) **in subsection (3) by striking out “hearing and”;**
- (d) **by repealing subsection (4); and**
- (e) **in subsection (5) by striking out “hearing and” wherever it appears.**

Section 12 amended

9 Section 12 is amended:

(a) in subsection (1):

- (i) in clause (b) by striking out “commodity futures” and substituting “exchange”;**
- (ii) by repealing clause (c) and substituting the following:**

“(c) committed any act that may be unfair, oppressive, injurious, inequitable or improper to or discriminatory against:

- (i) any holder, prospective holder, purchaser or prospective purchaser of any securities of that person or company;
- (ii) any purchaser or prospective purchaser of an exchange contract; or
- (iii) any creditor, prospective creditor of that person or company, or other person or company, otherwise beneficially interested in that person or company”;

(iii) in the portion following clause (d) by adding “and the regulations” after “for the due administration of this Act”;

(b) by repealing subsection (2) and substituting the following:

“(2) The Commission may, by order, appoint a person to make any investigation that it considers necessary respecting all or any of the following:

- (a) any matter relating to the administration of this Act and the regulations;
- (b) any matter relating to trading in securities or exchange contracts;
- (c) any matter relating to trading in securities or exchange contracts in any other jurisdiction; or
- (d) any matter relating to the administration of the laws of another jurisdiction that govern trading in securities or exchange contracts”;

(c) in subclause (4)(e)(v) by adding “or exchange contracts” after “securities”;

(d) in clause (5)(c) by adding “, exchange contracts” after “securities”;

(e) by adding the following subsection after subsection (5):

“(5.1) A person appointed to make an investigation pursuant to this section may seize and take possession of any documents, records, securities, exchange contracts or other property produced pursuant to subsection (5) and may make or cause to be made copies of them”;

(f) in clause (6)(c) by adding “, exchange contracts” after “securities”;

(g) by repealing subsection (7);

(h) by repealing subsection (9) and substituting the following:

“(9) If a justice of the peace or a judge of the Provincial Court of Saskatchewan is satisfied by information given under oath that there are reasonable grounds to believe that a contravention of this Act or the regulations or an order of the Commission has occurred and that there is evidence to be found at the place to be searched, the justice of the peace or judge may issue a warrant authorizing a person appointed to make an investigation pursuant to this section to enter the place named in the warrant and every part of the place named in the warrant and of the premises connected with that place to:

(a) examine the place and connected premises; and

(b) search for and seize and take possession of any documents, records, securities, exchange contracts and other property that the person has reasonable grounds to believe may constitute evidence of the contravention of this Act, the regulations or the order.

“(9.1) A person authorized to execute a warrant issued pursuant to subsection (9) may employ other persons to assist him or her”;

(i) in subsection (10) by striking out “an order” and substituting “a warrant”;

(j) by repealing subsections (11) and (12) and substituting the following:

“(11) A person appointed to make an investigation pursuant to this section shall make the documents, records, securities, exchange contracts or other property available for inspection and copying where:

(a) the person appointed to make the investigation has seized documents, records, securities, exchange contracts or other property pursuant to this section; and

(b) the person from whom or company from which the documents, records, securities, exchange contracts or other property were seized requests an opportunity to inspect or copy those documents, records, securities, exchange contracts or other property.

“(12) On the application of the person from whom or company from which documents, records, securities, exchange contracts or other property were seized pursuant to this section, the Commission may order that all or any of the documents, records, securities, exchange contracts or other property be copied and the originals be returned to the person from whom or company from which they were seized.

“(12.1) A document certified by the Commission, or by a person appointed to make an investigation, to be a copy made pursuant to this section:

(a) is admissible in evidence, without proof of the office or signature of the person appearing to have certified the document, in any proceedings before:

(i) the Commission, Chairperson or Director or any person appointed to make an

investigation; or

(ii) any court; and

(b) has the same probative force as the original document"; **and**

(k) in subsection (13) by striking out "accountant or other".

New sections 13 to 15

10 Sections 13 to 15 are repealed and the following substituted:

"Report to Commission

13 Every person appointed pursuant to section 12 to make an investigation shall provide the Commission with:

- (a) a full and complete report of the investigation;
- (b) all transcripts of evidence and material in his or her possession relating to the investigation on request; and
- (c) interim reports on request.

"Investigation ordered by the minister

14 Notwithstanding section 12, the minister may, by order, appoint any person to make any investigation that the minister considers necessary with respect to all or any of the following:

- (a) any matter relating to the administration of this Act and the regulations;
- (b) any matter relating to trading in securities or exchange contracts;
- (c) any matter relating to trading in securities or exchange contracts in any other jurisdiction; or
- (d) any matter relating to the administration of the laws of another jurisdiction that govern trading in securities or exchange contracts.

"Confidentiality

15(1) Subject to subsection (2), no person shall disclose, except to his or her counsel:

- (a) any information, testimony, record, document or thing given or provided pursuant to this Part; or
- (b) the name of any witness examined or sought to be examined pursuant to this Part.

(2) Subsection (1) does not apply to any person appointed to make an investigation pursuant to section 12 or 14 if the disclosure is required in the course of the investigation.

(3) Subject to subsection (4), a person appointed to make an investigation pursuant to section 12 or 14, a member of the Commission, the Director and any employee appointed pursuant to section 6 are not compellable to give evidence in any court or in a proceeding of a judicial nature concerning any information that comes to the knowledge of that person in the exercise of the powers, the performance of the duties or the carrying out of the functions of that person pursuant to this Part.

(4) Notwithstanding subsection (3), where the Commission considers it in the public interest to do so, the Commission may authorize the disclosure of any information, testimony, record, document or thing obtained pursuant to this Part subject to those terms and conditions that the Commission may impose".

New sections 16.1 and 16.2**11 The following sections are added after section 16:****"Extra-jurisdictional evidence**

16.1(1) Where it appears to a judge of the Court of Queen's Bench, on an application made by the Commission, that a person outside Saskatchewan may have evidence that may be relevant to an investigation ordered by the Commission pursuant to section 12 or a hearing required or permitted pursuant to this Act or the regulations, the judge may issue a letter of request directed to the judicial authority of the jurisdiction in which the person to be examined is believed to be located.

(2) The judge hearing the application mentioned in subsection (1), or another judge of that court, shall sign the letter of request and provide the letter to the Commission.

(3) A letter of request issued pursuant to subsection (1) may request the judicial authority to which it is directed to:

- (a) order the person referred to in the letter of request to be examined under oath in the manner, at the place and by the date referred to in the letter of request;
- (b) in the case of an examination for the purposes of a hearing required or permitted pursuant to this Act or the regulations, order that a person who is a party to the hearing is entitled to:
 - (i) be present or represented by counsel at that person's expense during the examination; and
 - (ii) examine the person mentioned in clause (a);
- (c) appoint a person named in the letter of request as the examiner to conduct the examination;
- (d) order the person to be examined to produce at the examination the records and things or classes of records and things specified in the letter of request;
- (e) direct that the evidence obtained by the examination be recorded and certified in the manner specified in the letter of request; and
- (f) take any further or other action that the judge signing the letter of request considers appropriate.

(4) The failure of a person entitled pursuant to clause (3)(b) to be present or to be represented by counsel during an examination or to examine a person mentioned in clause (3)(a) does not prevent the Commission from reading in at the hearing the evidence from the examination if the examination has otherwise been conducted in accordance with any order contained in a letter of request issued pursuant to subsection (1).

(5) The Commission shall send the letter of request:

- (a) if the examination is to be held in Canada, to the Deputy Minister of Justice for the Province of Saskatchewan; or
- (b) if the examination is to be held outside Canada, to the Under-Secretary of State for External Affairs of Canada.

(6) The letter of request must have attached to it:

- (a) any interrogatories to be put to the person to be examined;
- (b) if known, a list of the names, addresses and telephone numbers, both in Saskatchewan and in the

other jurisdiction, of:

- (i) the solicitors or agents of the Commission;
 - (ii) the person to be examined; and
 - (iii) where applicable, the person entitled pursuant to clause (3)(b) to be present or represented by counsel during the examination and to examine the person mentioned in clause (3)(a); and
- (c) a translation of the letter of request and any interrogatories into the appropriate official language of the jurisdiction where the examination is to take place, along with a certificate of the translator, bearing the full name and address of the translator, that the translation is a true and complete translation.

(7) The Commission shall file with the Under-Secretary of State for External Affairs of Canada or with the Deputy Minister of Justice for the Province of Saskatchewan, as the case may be, an undertaking to be responsible for all of the charges and expenses incurred by the Under-Secretary or the Deputy Minister, as the case may be, with respect to the letter of request and to pay them on receiving notification of the amount.

(8) This section does not limit any power the Commission may have to obtain evidence outside of Saskatchewan by any other means.

(9) An order made by a judicial authority pursuant to a letter of request issued by a judge pursuant to subsection (1) does not determine whether the evidence obtained pursuant to the order is admissible in evidence in a hearing before the Commission.

(10) Except where otherwise provided by this section, the practice and procedure in appointing a person to conduct an examination, conducting an examination and certifying and returning an appointment pursuant to this section are to be the same as far as is practicable or possible as those that govern similar matters in civil proceedings in the Court of Queen's Bench.

"Extra-jurisdictional request for evidence

16.2(1) In this section, **'qualifying letter of request'** means a letter of request that:

(a) is issued by a court or tribunal of competent jurisdiction in a jurisdiction other than Saskatchewan;

(b) is issued on behalf of the body that is, in the jurisdiction from which the letter is issued, empowered by the laws of that jurisdiction to administer or regulate the trading of securities or exchange contracts;

(c) is issued in relation to:

(i) a matter under investigation by the body mentioned in clause (b); or

(ii) a matter that is the subject of a hearing before the body mentioned in clause (b); and

(d) requests that evidence relating to the investigation mentioned in clause (c) be obtained from a person believed to be located in Saskatchewan who is specified in the letter of request.

(2) On receipt of a qualifying letter of request, a judge of the Court of Queen's Bench may make any order the judge considers appropriate, including:

(a) an order that the person mentioned in clause (1)(d) be examined under oath in the manner, at the place and by the date requested by the foreign court or tribunal;

(b) in the case of an examination for the purposes of a hearing mentioned in subclause (1)(c)(ii), an order that a person who is a party to the hearing is entitled to:

- (i) be present or represented by counsel at that person's expense during the examination;
and
 - (ii) examine the person mentioned in clause (a);
 - (c) an order appointing a person named in the qualifying letter of request as the examiner to conduct the examination;
 - (d) an order that the person mentioned in clause (1)(d) produce at the examination any records and things or classes of records and things specified in the qualifying letter of request;
 - (e) an order directing that the evidence obtained by the examination be recorded and certified in the manner requested in the qualifying letter of request;
 - (f) an order respecting any further matter that the judge considers appropriate.
- (3) An order made pursuant to subsection (2) may be enforced in the same manner as if the order were made in or with respect to a proceeding brought in the Court of Queen's Bench.
- (4) Where a person mentioned in clause (1)(d) fails, without lawful excuse, to comply with the order, the person is liable to be committed for contempt by a judge of the Court of Queen's Bench in the same manner as if that person were in breach of an order or judgment of that court.
- (5) A person ordered to give evidence pursuant to subsection (2) has the same right:
- (a) to receive conduct money or any other money that a witness would have had if the examination were held in relation to a civil proceeding in the Court of Queen's Bench; and
 - (b) to refuse to answer questions and produce records and things or classes of records and things that the person would have if that person were a witness in a proceeding in the Court of Queen's Bench.
- (6) A person appointed as the examiner pursuant to this section has the authority to administer an oath or affirmation to the person to be examined.
- (7) Except where otherwise provided by this section, the practice and procedure in appointing a person to conduct an examination, conducting an examination and certifying and returning an appointment pursuant to this section are to be the same as far as is practicable or possible as those that govern similar matters in civil proceedings in the Court of Queen's Bench".

Sections 17 to 19 repealed

12 Sections 17 to 19 are repealed.

New section 20**13 Section 20 is repealed and the following substituted:****"Examinations by the Commission**

20(1) Notwithstanding sections 21 to 24, the Commission may, in writing, appoint any person to:

(a) conduct an examination of the affairs and records of:

(i) a registrant;

(ii) an issuer;

(iii) a reporting issuer;

(iv) a transfer agent;

(v) a custodian of assets of a mutual fund; or

(vi) a custodian of shares or units of a mutual fund pursuant to a custodial agreement or other arrangement with a person or company engaged in the distribution of shares or units of the mutual fund; and

(b) prepare those financial or other statements and reports that the Commission may require.

(2) The person conducting the examination has, concerning the person or company whose affairs are being examined, the power to:

(a) enter the premises of that person or company during normal business hours;

(b) make and take a copy of the books, records and other documents relating to the financial affairs of that person or company; and

(c) require any information relating to the affairs of that person or company and the production of any relevant document.

(3) The person or company whose affairs are being examined shall give the person conducting the examination reasonable access to all books, records or other documents relating to the person's or the company's affairs.

(4) No person or company shall withhold, destroy, alter, conceal or refuse to give any information, book, record, document or thing that the person conducting the examination considers is reasonably required for the purposes of the examination".

Section 22 amended

14 Section 22 is amended by striking out "stock".

Section 23 amended

15 Section 23 is amended by striking out "stock":

- (a) in subsection (1); and**
- (b) in subsection (3).**

Section 25 amended

16 Section 25 is amended:

- (a) in subsection (1) by striking out "a stock" wherever it appears and in each case substituting "an";**
- (b) in subsection (2):**
 - (i) by striking out "stock":**
 - (A) in clause (a);**
 - (B) in clause (b);**
 - (C) in clause (c) wherever it appears; and**
 - (D) in clause (d);**
 - (ii) by striking out "or" after clause (d);**
 - (iii) by striking out "a stock" in clause (e) and substituting "an";**
 - (iv) by adding "or" after clause (e); and**
 - (v) by adding the following clause after clause (e):**
 - "(f) respecting any exchange contract that is trading on an exchange";**
- (c) in subsection (3) by striking out "a stock" and substituting "an"; and**
- (d) in subsection (4) by striking out "stock".**

Section 26 amended

17 Section 26 is amended by striking out "stock".

Section 27 amended

18 Section 27 is amended:

- (a) in subsection (1):**
 - (i) in the portion preceding clause (a) by striking out "38 and 39" and substituting "38, 39 and 39.1";**
 - (ii) in clause (a) by adding "or exchange contract" after "security"; and**
 - (iii) in subclause (c)(ii) by adding "an employee, as" after "registered as";**

(b) in subsection (2) by striking out “and the person or company has received written notice of the registration from the Director”;

(c) by repealing subsections (3) and (4) and substituting the following:

“(3) The termination of the employment with a registered dealer or registered adviser of a registrant who is an individual operates as a suspension of the registration of the registrant until:

(a) notice in writing has been received by the Director from another registered dealer or registered adviser of the employment of that individual by the other registered dealer or registered adviser; and

(b) the reinstatement of the registration has been approved by the Director.

“(4) The Director may designate as ‘**non-trading**’ any employee or category of employees of a registered dealer if the employee or category of employees does not usually trade in securities or exchange contracts”; **and**

(d) in subsection (5) by adding “, employee, partner or officer” after “salesperson”.

Section 28 amended

19 Subsection 28(2) is repealed and the following substituted:

“(2) The Director may, in the Director's discretion, restrict a registration by doing all or any of the following:

(a) imposing terms and conditions on the registration;

(b) restricting the duration of the registration;

(c) restricting the registration to trades in certain securities or exchange contracts or in a certain class of securities or exchange contracts;

(d) restricting the registrant to giving advice concerning certain securities, trades or exchange contracts or concerning a class of securities, trades or exchange contracts”.

New section 29**20 Section 29 is repealed and the following substituted:****“Voluntary surrender of registration**

29(1) On an application by a registrant, the Commission may accept the voluntary surrender of the registration of the registrant where the Commission is satisfied that:

- (a) the financial obligations of the registrant to his, her or its clients have been discharged; and
- (b) the surrender of the registration would not be prejudicial to the public interest.

(2) The Commission may impose any terms and conditions on a voluntary surrender that it considers appropriate”.

Section 35 amended**21 Clause 35(1)(b) is repealed and the following substituted:**

“(b) at the date of the application, is registered in a capacity corresponding to that of a dealer, adviser, underwriter, partner, officer, employee or salesperson pursuant to the laws of a jurisdiction in Canada governing securities or exchange contracts in which he or she last resided and has been so registered or authorized for at least one year immediately prior to the date of the application”.

New section 37**22 Section 37 is repealed and the following substituted:****“Notice of changes**

37(1) In this section, `civil proceedings' means all civil proceedings that relate to the registrant's business as a registered dealer, adviser, underwriter or individual registrant and that are conducted:

- (a) in Saskatchewan; or
- (b) outside Saskatchewan, where the amount of the claim, counterclaim, settlement or judgment is for \$200,000 or more.

(2) Subject to the regulations, every registered dealer shall, within five business days of the event, notify the Director, in the form prescribed by the regulations, of:

- (a) any change in address for service in Saskatchewan of the registered dealer;
- (b) any change in business address of the registered dealer;
- (c) any change in directors, partners or officers of the registered dealer and the reason for any resignation, dismissal, severance or termination of employment or office;
- (d) any change in the holders of its voting securities;
- (e) the commencement and termination of employment of every registered salesperson and, in the case of termination of employment, the reasons for it;
- (f) the opening or closing of any branch office in Saskatchewan and, in the case of the opening of any branch office in Saskatchewan, the name and address of the person in charge of it;
- (g) any change in the name or address of the person in charge of any branch office in Saskatchewan;

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- (h) any intention to cease to carry on business in Saskatchewan;
- (i) the settlement of a claim by a client resident in Saskatchewan that involves a payment to that client of an amount in excess of \$50,000;
- (j) any commencement of proceedings pursuant to the *Criminal Code* against the registered dealer;
- (k) any conviction pursuant to the *Criminal Code* against the registered dealer;
- (l) any commencement of civil proceedings against the registered dealer, and any settlement entered into by the registered dealer or judgment issued against the registered dealer as a result of those civil proceedings; and
- (m) any change, in addition to one described in clauses (a) to (l), that is a significant change in the business of the registered dealer.
- (3) Subject to the regulations, every registered adviser and underwriter shall, within five business days of the event, notify the Director, in the form prescribed by the regulations, of:
- (a) any change in address for service in Saskatchewan of the registered adviser or underwriter;
- (b) any change in business address of the registered adviser or underwriter;
- (c) any change in directors, partners or officers of the registered adviser or underwriter and the reason for any resignation, dismissal, severance or termination of employment or office;
- (d) the commencement or termination of employment of every registered employee and, in the case of termination of employment, the reasons for it;
- (e) any change in the holders of his, her or its voting securities;
- (f) any intention to cease to carry on business in Saskatchewan;
- (g) the settlement of a claim by a client resident in Saskatchewan, that involves a payment to that client of an amount in excess of \$50,000;
- (h) any commencement of proceedings pursuant to the *Criminal Code* against the registered adviser or underwriter;
- (i) any conviction pursuant to the *Criminal Code* against the registered adviser or underwriter;
- (j) any commencement of civil proceedings against the registered adviser or underwriter, and any settlement entered into by the registered adviser or underwriter or judgment issued against the registered adviser or underwriter as a result of those civil proceedings; and
- (k) any change, in addition to one described in clauses (a) to (j), that is a significant change in the business of the registered adviser or underwriter.
- (4) Subject to the regulations, every registrant who is an individual shall, within five business days of the event, notify the Director, in the form prescribed in the regulations, of:
- (a) any change in address for service in Saskatchewan of the registrant;
- (b) any change in business address of the registrant;

- (c) every commencement of his or her employment with a registered dealer or adviser;
 - (d) every termination of his or her employment with a registered dealer or adviser and the reasons for that termination;
 - (e) any commencement of proceedings pursuant to the *Criminal Code* against the registrant;
 - (f) any conviction pursuant to the *Criminal Code* against the registrant;
 - (g) any commencement of civil proceedings against the registrant, and any settlement entered into by the registrant or judgment issued against the registrant as a result of those civil proceedings; and
 - (h) any change, in addition to one described in clauses (a) to (g), that is a significant change in his or her employment with a registered dealer or adviser.
- (5) Every registrant shall promptly notify the Director when:
- (a) the registrant becomes insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada);
 - (b) the registrant:
 - (i) makes an assignment or proposed assignment;
 - (ii) is the subject of a receiving order; or
 - (iii) makes a proposal;
- pursuant to the *Bankruptcy and Insolvency Act* (Canada);

(c) the registrant is subject to any proceedings pursuant to the *Winding-up Act* (Canada); or

(d) the registrant is subject to any proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada).

(6) On an application by a registrant that is a reporting issuer, the Director may make an order exempting the registrant from the requirement of clause (2)(d) or (3)(e) where, in the Director's opinion, it would not be prejudicial to the public interest to do so".

Section 38 amended

23 The following subclause is added after subclause 38(1)(a)(iii):

"(iii.1) a credit union".

Section 39 amended:

24(1) Subsection 39(1) is amended:

(a) in the portion preceding clause (a) by adding "in securities" after "following trades";

(b) in clause (a):

(i) by repealing subclauses (ii) and (iii) and substituting the following:

"(ii) by an authorized trustee or assignee, an interim or official receiver or a custodian pursuant to the *Bankruptcy and Insolvency Act* (Canada)"; **and**

(ii) in subclause (v) by adding "receiver, receiver-manager or" after "by a";

(c) in clause (b) by adding "a trade that is" before "an isolated trade";

(d) in clause (c):

(i) by adding the following subclauses after subclause (iii):

"(iii.1) a credit union;

"(iii.2) the Credit Union Central of Saskatchewan"; **and**

(ii) by repealing subclause (iv) and substituting the following:

"(iv) a subsidiary of any of the parties described in subclause (i), (ii), (iii) or (iii.1) where the bank, loan corporation, trust company, credit union or insurance company, as the case may be, owns beneficially all of the voting securities of that subsidiary";

(e) by repealing clause (k) and substituting the following:

“(k) the execution of an unsolicited order to purchase or sell through a registered dealer by a credit union, a bank or a trust corporation licensed pursuant to *The Trust and Loan Corporations Act* as agent for a person or company and the trade by that person or company in placing the unsolicited order with the bank or trust company, if the credit union, bank or trust company does not promote or market this service”;

(f) in subclause (m)(ii) by striking out “as incidental” and substituting “pursuant”;

(g) by adding the following clause after clause (m):

“(m.1) a trade by a reporting issuer in a security of its own issue, to a person who or company that accepts the security as settlement of part or all of a debt owing to that person or company by that reporting issuer where the person or company obtains independent advice from an adviser acceptable to the Commission”;

(h) by repealing clause (p) and substituting the following:

“(p) a trade in a security of an issuer that is exchanged by, or for the account of, an issuer with the issuer's security holders, with one or more other issuers or with security holders of one or more other issuers in connection with an amalgamation, merger, reorganization, arrangement or statutory procedure where, pursuant to the requirements of applicable legislation, the organizational documents of the issuer or a court order:

(i) an information circular, proxy statement or other similar disclosure document concerning the amalgamation, merger, reorganization, arrangement or statutory procedure is prepared and delivered; and

(ii) security holder approval of the amalgamation, merger, reorganization, arrangement or statutory procedure is obtained;

“(p.1) a trade by a security holder in securities that are being disposed of to an issuer with respect to a transaction described in clause (p)”;

(i) in clause (q) by striking out “for the account of the issuer” and substituting “for the account of an issuer”;

(j) in clause (y):

(i) by repealing subclause (i);

(ii) in subclause (iii):

(A) by striking out “of the first purchase” and substituting “after the date of approval by the Director of the offering memorandum or any other date that the Director may approve”;
and

(B) by striking out “six-month”;

(iii) by repealing paragraph (iv)(B) and substituting the following:

“(B) a senior officer or director of the issuer or an affiliate of the issuer or a spouse, spousal equivalent, parent, brother, sister, child, mother-in-law, father-in-law, brother-in-law or sister-in-law of a senior officer or director of the issuer or an affiliate of the issuer”;

(iv) by repealing subclause (v) and substituting the following:

“(v) in the case of a trade made in reliance on subparagraph (iv)(A)(I) or (II), the issuer submits information satisfactory to the Commission to prove that the investor meets the criteria prescribed in that subparagraph”;

(v) by repealing subclause (viii) and substituting the following:

“(viii) each purchaser to whom securities are sold in reliance on this exemption is furnished with an offering memorandum, and any amendment to the offering memorandum, in a form that is satisfactory to the Director before an agreement of purchase and sale is entered into with that purchaser”;

(vi) in subclause (ix) by striking out “or in clause (bb)”;

(vii) by adding the following subclause after subclause (ix):

“(ix.1) the cumulative amount raised by the issuer from all purchasers in Saskatchewan pursuant to the exemption in this clause does not exceed \$1,000,000”; **and**

(viii) by repealing subclause (x);

(k) by repealing clause (aa) and substituting the following:

“(aa) a trade by a registered real estate broker, by an authorized official of a registered real estate broker or by a registered real estate salesperson acting in the course of his or her employment in securities of an issuer where:

- (i) the trade results from the listing for sale with a broker of real estate, or of real estate and other assets, owned by the issuer;
- (ii) the securities traded include all the outstanding securities of the issuer;
- (iii) the trade is to a single purchaser or to a group of purchasers who have not been introduced to each other by the vendor or by anyone acting on behalf of the vendor; and
- (iv) the purchaser obtains advice from an adviser acceptable to the Commission before he or she enters into a binding contract of purchase”;

(l) by repealing clause (bb);

(m) by repealing clause (cc) and substituting the following:

“(cc) a trade made by an issuer in securities of its own issue with:

- (i) a senior officer or director of the issuer;
- (ii) a senior officer or director of an affiliate of the issuer;
- (iii) a spouse, spousal equivalent, parent, brother, sister, child, mother-in-law, father-in-law, brother-in-law or sister-in-law of any person mentioned in subclause (i) or (ii);
- (iv) close friends or close business associates of a promoter of the issuer, if:
 - (A) a notice of intention to trade prepared and executed in accordance with the regulations is filed by the issuer before the trade;

(B) all trades are completed within six months after the date of the notice of intention to trade, except that subsequent sales to the same purchasers may be carried out if they comply with written agreements entered into during that six-month period;

(C) there is not an invitation to the public to subscribe for the securities;

(D) no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer where that other issuer has traded in securities of its own issue pursuant to this exemption within the previous 12 months;

(E) no selling or promotional expenses connected with the offer or sale have been paid or incurred; and

(F) a statutory declaration, prepared and executed in accordance with the regulations, is completed by each purchaser and is filed by the issuer within 10 days after the completion of the offering; or

(v) a person or company all of whose securities are beneficially owned by one or more of the individuals mentioned in subclause (i), (ii), (iii) or (iv), but, where that individual is or those individuals are mentioned in subclause (iv), only if all of the conditions of subclause (iv) apply”;

(n) by repealing clause (dd);

(o) by repealing clause (ee) and substituting the following:

“(ee) a trade in a security of an issuer previously issued pursuant to the exemption in clause (y) or (cc) where each of the parties to the trade is a purchaser of the security issued under one of those exemptions”; **and**

(p) clause (ff) is amended:

(a) by striking out “where the plan” and substituting “where”; and

(b) by repealing subclauses (iii) to (v) and substituting the following:

“(iii) the plan permits the holder to elect to receive stock dividends in lieu of cash dividends or to direct that dividends, interest paid or payable or other distributions out of earnings or surplus be applied to the purchase of securities from the issuer;

“(iv) the plan may include an option of the holder to make cash payments to purchase additional securities for the issuer; and

“(v) in the case of a plan that includes an option described in subclause (iv), either:

(A) the aggregate number of securities of any class issued pursuant to the cash payment component of that plan in any financial year of the issuer does not exceed 2% of that number of the outstanding securities of that class as at the commencement of that financial year; or

(B) at the time of the subject trade, Saskatchewan residents hold not more than 5% of the outstanding securities of the class available for purchase under the cash payment option of the plan”.

(2) Subsection 39(2) is amended:

(a) by repealing subclause (a)(i) and substituting the following:

“(i) of or guaranteed by the Government of Canada, or the Government of any province or territory of Canada;

“(i.1) of or guaranteed by a country or political division of a country recognized by the Commission for the purposes of this subclause”;

(b) by repealing clause (e) and substituting the following:

“(e) a negotiable promissory note or commercial paper that:

(i) matures not more than one year from the date of issue;

(ii) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in this clause; and

(iii) has a rating prescribed in the regulations”; **and**

(c) by repealing clauses (j) and (k) and substituting the following:

“(j) a security issued by a credit union;

“(k) a security of a private issuer where it is not offered for sale to the public”.

(3) Subsection 39(4) is repealed and the following substituted:

“(4) The exemptions in this section are not available with respect to a trade:

- (a) in a security of an issuer that is in default of any requirement of this Act, the regulations or a decision of the Commission; or
- (b) by a person who or company that is in default of any requirement of this Act, the regulations or a decision of the Commission”.

New section 39.1

25 The following section is added after section 39:

“Trades, exchange contracts

39.1 Subject to the regulations, registration pursuant to subsection 27(1) is not required for the following trades in exchange contracts:

- (a) a trade in an exchange contract by a person or company acting solely through an agent who is a registered dealer;
- (b) a trade prescribed in the regulations”.

New Part VIII

26 Part VIII is repealed and the following substituted:

**“PART VIII
“Exchange Contracts**

“Trading on an exchange in Saskatchewan

40(1) No person or company shall trade in an exchange contract on an exchange in Saskatchewan unless:

- (a) the exchange is recognized by the Commission pursuant to subsection 25(1); and
- (b) the form of the exchange contract has been accepted by the Commission.

(2) For the purposes of clause (1)(b), on application by an exchange, the Commission may, by order, accept the form of an exchange contract.

(3) The Commission shall not refuse to accept the form of an exchange contract without giving the applicant an opportunity to have a hearing before the Commission.

“Trading on a recognized exchange outside Saskatchewan

41(1) No registrant shall trade in an exchange contract on behalf of another person or company on an exchange located outside of Saskatchewan unless the exchange is recognized in writing by the Commission.

(2) For the purposes of subsection (2), a person or company may apply for recognition of an exchange located outside Saskatchewan.

(3) On receipt of an application, the Commission may, by order, recognize an exchange outside Saskatchewan.

(4) The Commission shall not refuse to recognize an exchange outside Saskatchewan without giving the applicant an opportunity to have a hearing before the Commission.

(5) The Commission may recognize an exchange if the Commission is satisfied that to do so would not be prejudicial to the public interest and in making its decision, the Commission shall take into account whether, in the opinion of the Commission:

- (a) the clearing and other arrangements made and the financial condition of the exchange, its clearing agency and its members are sufficient to provide reasonable assurance that all obligations arising out of contracts entered into on the exchange and the obligations of members of the exchange to their customers will be met;
- (b) the rules and regulations applicable to exchange members and clearing house members are in the public interest and are actively enforced;
- (c) floor trading practices are fair and properly supervised;
- (d) adequate measures are taken to prevent manipulation and excessive speculation; and
- (e) adequate provision is made to record and publish details of trading including volume and open interests.

(6) In the case of an exchange in the United States of America that is designated by the Commodity Futures Trading Commission as a contract market, the Commission may accept that designation as constituting, while it remains in force, sufficient proof that the exchange complies with clauses (5)(a) to (e).

(7) The Commission may, after a hearing, withdraw its recognition of an exchange if, in its opinion:

- (a) the exchange is no longer complying with clauses (5)(a) to (e); or
- (b) it would for any other reason be prejudicial to the public interest to continue to recognize the exchange”.

New Part IX heading

27 The heading to Part IX is struck out and the following substituted:

“PART IX
“Trading in Securities and Exchange Contracts”.

New section 42

28 Section 42 is repealed and the following substituted:

"Confirmations of trades

42(1) Subject to the regulations, every registered dealer who has acted as a principal or an agent in any trade in a security or an exchange contract shall promptly send to the customer a written confirmation of the transaction.

(2) At the request of the Director, every dealer who has acted as an agent in a trade in a security or an exchange contract shall promptly:

(a) make a reasonable inquiry in order to provide to the Director particulars that are sufficient to identify the person from, to or through whom or the company from, to or through which the security or exchange contract was bought or sold; and

(b) provide to the Director the name of, and those particulars arising from the inquiry that are sufficient to identify, the person or company mentioned in clause (a)".

Section 43 amended**29 Section 43 is amended:**

(a) in subsection (2):

(i) in clause (a) by striking out "call" and substituting "attend"; and

(ii) in the portion following clause (b) by striking out "any commodity futures contract or any class of commodity futures contracts" and substituting "in any exchange contract or in any class of exchange contracts"; and

(b) by repealing subsection (4) and substituting the following:

"(4) For the purposes of this section, a person or company is deemed to have attended or telephoned where a partner, officer, director, employee or salesperson of the person or company attends or telephones on its behalf".

Section 44 amended**30 Section 44 is amended:**

(a) by repealing subsection (1) and substituting the following:

"(1) No person or company shall, with the intention of effecting a trade in a security or an exchange contract, make any representation, written or oral, that the person or company or any other person or company will:

(a) resell or repurchase a security;

(b) refund all or any of the purchase price of a security;

(c) refund all or any margin or premium paid with respect to an exchange contract; or

(d) assume all or part of an obligation under an exchange contract.

"(1.1) Subsection (1) does not apply to a security that carries or is accompanied by:

(a) an obligation of the issuer to redeem or repurchase the security; or

(b) a right of the owner of the security to require the issuer to redeem or repurchase the security";

(b) in subsection (2) by striking out "security" wherever it appears and in each case substituting "security or exchange contract"; and

(c) in subsection (3) by striking out "stock" wherever it appears.

New section 50

31 Section 50 is repealed and the following substituted:

"Representation of registration

50 No person or company shall represent that the person or company is registered pursuant to this Act unless:

(a) the representation is true; and

(b) in making the representation, the person or company specifies any conditions or restrictions that may apply to the person's or company's registration pursuant to this Act or the regulations".

Section 52 amended

32 Clause 52(b) is amended by adding ", exchange contract" after "security".

New sections 55.1 and 55.2

33 The following sections are added after section 55:

"Prohibited transaction

55.1 No person or company shall, directly or indirectly, trade in or purchase a security or exchange contract if the person or company knows or ought reasonably to know that the trade or purchase:

(a) creates or may result in a false or misleading appearance of trading activity in a security or exchange contract; or

(b) creates or may result in an artificial price for a security or exchange contract.

"Risk disclosure statement

55.2(1) A registered dealer or adviser shall provide a risk disclosure statement to a customer prior to opening an account for trading in exchange contracts for that customer.

(2) A risk disclosure statement is to be prepared and executed in accordance with, and to contain the information that is prescribed in, the regulations".

Section 56 repealed

34 Section 56 is repealed.

Section 58 amended

35 Subsection 58(3) is amended:

(a) by striking out "a stock" and substituting "an"; and

(b) by striking out "the stock" and substituting "the".

Section 69 amended

36 Subsection 69(2) is repealed.

Section 71 amended

37 Subsection 71(1) is repealed and the following substituted:

“(1) In this section, ‘**lapse date**’ means the date that is 12 months after the date of the last prospectus relating to the security that is being distributed pursuant to section 58 or pursuant to this section”.

New section 79

38 Section 79 is repealed and the following substituted:

“Obligation to deliver prospectus

79(1) A dealer shall send by prepaid mail or deliver to the purchaser the prospectus relating to the securities being sold and any amendments to the prospectus if the dealer:

- (a) is not acting as an agent for the purchaser;
- (b) receives an order or subscription for a security offered in a distribution to which subsection 58(1), (3) or (4) or section 71 is applicable; and
- (c) has not previously sent or delivered the prospectus and amendments to the prospectus.

(2) The dealer shall send the prospectus and any amendment to the prospectus pursuant to subsection (1):

- (a) before entering into an agreement of purchase and sale resulting from the order or subscription;
or
- (b) not later than midnight on the second business day after entering into the agreement.

- (3) An agreement of purchase and sale of a security offered in a distribution mentioned in subsection (1) is not binding on the purchaser if the dealer or person from whom the purchaser purchased the security receives notice in writing indicating the intention of the purchaser not to be bound by the agreement of purchase and sale at any time up to two business days after receipt by the purchaser of the prospectus and any amendments to the prospectus that the purchaser is entitled to receive pursuant to this section or section 80.
- (4) Subsection (3) does not apply where the purchaser:
- (a) is a registrant; or
 - (b) sells or otherwise transfers beneficial ownership of the security, other than to secure indebtedness, before the expiration of two business days after the purchaser's receipt of the prospectus or amendment.
- (5) For the purposes of this section, where the prospectus or amendment to the prospectus is sent by prepaid mail, the prospectus or amendment to the prospectus is deemed to have been received in the ordinary course of mail by the person to whom or company to which it was addressed.
- (6) The receipt of the prospectus or amendment to the prospectus by a dealer that is acting as an agent or, after receipt, begins to act as an agent of the purchaser respecting the purchase of a security mentioned in subsection (1) is deemed, for the purposes of this section, to be receipt by the purchaser as of the date on which the agent received the prospectus or amendment to the prospectus.
- (7) The receipt of the notice mentioned in subsection (3) by a dealer who acted as agent of the vendor respecting the sale of the security mentioned in subsection (1) is deemed, for the purposes of this section, to be receipt by the vendor as of the date on which the agent received the notice.
- (8) For the purposes of this section, a dealer is not considered to be acting as an agent of the purchaser unless the dealer:
- (a) is acting solely as an agent of the purchaser in the purchase and sale in question; and
 - (b) has not received and has no agreement to receive compensation from or for the vendor with respect to the purchase and sale.
- (9) The onus of proving that the time for giving notice pursuant to subsection (3) has expired is on the dealer from whom the purchaser agreed to purchase the security.
- (10) Where an issuer acts as its own dealer in a trade, the issuer is deemed to be subject to the obligations and liabilities of a dealer pursuant to this section".

New sections 80.1 to 80.4**39 The following sections are added after section 80:****“Obligation to amend offering memorandum**

80.1(1) An amendment to an offering memorandum must be filed with the Commission where:

- (a) the offering memorandum has been filed with the Commission in accordance with subsection 81(3) and the distribution under that offering memorandum has not been completed; and
- (b) one of the following has occurred:
 - (i) there is a material change in the affairs of an issuer;
 - (ii) it is proposed that the terms or conditions of the offering described in an offering memorandum be altered;
 - (iii) securities are to be distributed in addition to the securities previously described in an offering memorandum.

(2) The amendment to an offering memorandum must be filed pursuant to subsection (1) as soon as is practicable, but in any case not later than 30 days after a change described in clause (1)(b) occurs.

(3) An amendment to an offering memorandum and any other report prescribed in the regulations must be filed with the Commission where:

- (a) there is a material change in the affairs of an issuer after the offering memorandum has been filed with the Commission in accordance with subsection 81(3);
- (b) the issuer has met its minimum offering amount and an initial closing has occurred in accordance with the offering memorandum; and
- (c) the issuer is continuing to distribute securities under that offering memorandum.

(4) The amendment to an offering memorandum and the report must be filed pursuant to subsection (3) as soon as is practicable, and in any event within 30 days after the change occurs.

(5) Where an amendment to an offering memorandum is required to be filed pursuant to this section, trading pursuant to the offering memorandum is to cease immediately until the amendment is filed.

“Statement of rights

80.2(1) Every offering memorandum and amendment to an offering memorandum must contain a statement outlining the rights a purchaser may have pursuant to this Act concerning:

- (a) the right to withdraw from an agreement of purchase and sale; and
- (b) the right to rescission or damages.

(2) The statement mentioned in subsection (1) must include a statement that the rights must be exercised within the periods prescribed in section 147 of this Act.

“Obligation to deliver offering memorandum

80.3(1) A person or company not acting as an agent of the purchaser shall, unless he, she or it has previously done so, send by prepaid mail or deliver to the purchaser an offering memorandum relating to the securities sold and any amendments to the offering memorandum where the person or company receives from the purchaser an order or subscription for a security being sold pursuant to a trade that:

- (a) relies on an exemption set out in clause 81(1)(b), (c), (d), (h), (m), (n), (o), (s), (w), (z), (cc),

- (dd) or (ee) where an offering memorandum is used; or
- (b) is made pursuant to a decision of the Commission where the decision requires that an offering memorandum be used.
- (2) The person or company required to send or deliver an offering memorandum and any amendments to the offering memorandum pursuant to subsection (1) shall send or deliver them before entering into an agreement of purchase and sale resulting from the order or subscription.
- (3) An agreement of purchase and sale of a security is not binding on the purchaser if:
- (a) the security is offered in:
- (i) a trade that relies on an exemption set out in clause 81(1)(s);
- (ii) a trade that relies on the exemption set out in clause 81(1)(z) where an offering memorandum is used; or
- (iii) a trade that is made pursuant to a decision of the Commission where the decision requires that an offering memorandum be used; and
- (b) the person from whom or company from which the security was purchased receives notice in writing indicating the intention of the purchaser not to be bound by the agreement of purchase and sale at any time up to two business days after receipt by the purchaser of the offering memorandum and any amendments to the offering memorandum that the purchaser is entitled to receive pursuant to this section or section 80.4.
- (4) Subsection (3) does not apply where the purchaser:
- (a) is a registrant; or
- (b) sells or otherwise transfers beneficial ownership of the security mentioned in subsection (3), other than to secure indebtedness, before the expiration of two business days after the purchaser's receipt of the offering memorandum and any amendments to the offering memorandum.
- (5) For the purposes of this section, where the offering memorandum or amendment to the offering memorandum is sent by prepaid mail, it is deemed to have been received in the ordinary course of mail by the person to whom or company to which it was addressed.
- (6) The receipt of the offering memorandum or amendment to the offering memorandum by a person who or company that is acting as an agent or, after receipt, begins to act as an agent of the purchaser respecting the purchase of a security mentioned in subsection (1) is deemed, for the purposes of this section, to be receipt by the purchaser as of the date on which the agent received the offering memorandum or amendment to the offering memorandum.
- (7) The receipt of the notice mentioned in subsection (3) by a person who or company that acted as an agent of the vendor respecting the sale of the security mentioned in subsection (1) is deemed, for the purposes of this section, to be receipt by the vendor as of the date on which the agent received the notice.
- (8) For the purposes of this section, a person or company is not considered to be acting as an agent of the purchaser unless the person or company:
- (a) is acting solely as an agent of the purchaser for the purchase and sale in question; and
- (b) has not received and has no agreement to receive compensation from or for the vendor with respect to the purchase and sale.

(9) The onus of proving that the time for giving notice pursuant to subsection (3) has expired is on the person from whom or company from which the purchaser agreed to purchase the security.

“Obligation to deliver amended offering memorandum

80.4(1) Where there is a material change in the affairs of an issuer in the circumstances described in subsection 80.1(3), the issuer shall, unless the issuer has already done so, send by prepaid mail or deliver to the purchaser:

- (a) a copy of the material change report filed pursuant to subsection 80.1(3), if the purchaser has entered into an agreement of purchase and sale for the security before the date of the material change; or
- (b) a copy of the amendment to the offering memorandum filed pursuant to subsection 80.1(3), if the purchaser has entered into an agreement of purchase and sale for the security on or after the date of the material change.

(2) Subsections 80.3(4), (5) and (7) apply, with any necessary modification, to the requirements of this section”.

Section 81 amended

40(1) Subsection 81(1) is amended:

(a) in the portion preceding clause (a) by adding “in securities” after “distribution”;

(b) in clause (a):

(i) by adding the following subclauses after subclause (iii):

“(iii.1) a credit union;

“(iii.2) Credit Union Central of Saskatchewan”;

(ii) by repealing subclause (iv) and substituting the following:

“(iv) a subsidiary of any of the parties described in subclause (i), (ii), (iii) or (iii.1) where the bank, loan corporation, trust company, credit union or insurance company, as the case may be, owns beneficially all of the voting securities of that subsidiary”;

(c) by adding the following clause after clause (a):

“(a.1) the trade is made:

(i) by an executor, administrator, guardian or committee;

(ii) by an authorized trustee or assignee, an interim or official receiver or a custodian pursuant to the *Bankruptcy and Insolvency Act* (Canada);

(iii) by a receiver pursuant to *The Queen's Bench Act*;

(iv) by a liquidator pursuant to *The Companies Winding Up Act*, the *Winding-up Act* (Canada), the *Canada Business Corporations Act* or *The Business Corporations Act*;

(v) at a judicial sale; or

(vi) by a sheriff pursuant to *The Executions Act*;

where, prior to the completion of the trade, the purchaser delivers a certificate of independent advice in the form prescribed in the regulations to the person or company completing the trade”;

(d) in subclause (f)(ii) by striking out “as incidental” in the portion preceding paragraph (A) and substituting “pursuant”;

(e) by adding the following clause after clause (f):

“(f.1) the trade is made by a reporting issuer in a security of its own issue, with a person who or company that accepts the security as settlement of part or all of a debt owing to that person or company by that reporting issuer where the person or company obtains independent advice from an adviser who meets qualifications set out in the regulations”;

(f) by repealing clause (i) and substituting the following:

“(i) the trade is in a security of an issuer that is exchanged by or for the account of an issuer with the issuer's security holders, with one or more other issuers or with security holders of one or more other issuers respecting an amalgamation, merger, reorganization, arrangement or statutory procedure where, pursuant to the requirements of applicable legislation, the organizational documents of the issuer or a court order:

(i) an information circular, proxy statement or other similar disclosure document with respect to the amalgamation, merger, reorganization, arrangement or statutory procedure is prepared and delivered; and

(ii) the approval, by security holders, of the amalgamation, merger, reorganization, arrangement or statutory procedure is obtained;

“(i.1) the trade is made by a security holder in securities that are being disposed of to an issuer with respect to a transaction described in clause (i)”;

(g) in clause (j):

(i) by striking out “a trade” and substituting “the trade is”;

(ii) by striking out “for the account of the issuer” and substituting “for the account of an issuer”;

(h) in clause (k) by striking out “a trade” and substituting “the trade is”;

(i) in clause (n) by striking out “those escrow or pooling agreements that the Director may consider necessary” and substituting “an escrow or pooling agreement satisfactory to the Director”;

(j) in clause (s):

(i) by repealing subclause (i);

(ii) in subclause (iii):

(A) by striking out “of the first purchase” and substituting “after the date of approval by the Director of the offering memorandum or any other date that the Director may approve”;
and

(B) by striking out “six-month”;

(iii) by repealing paragraph (iv)(B) and substituting the following:

“(B) a senior officer or director of the issuer or an affiliate of the issuer or a spouse, spousal equivalent, parent, brother, sister, child, mother-in-law, father-in-law, brother-in-law or sister-in-law of a senior officer or director of the issuer or an affiliate of the issuer”;

(iv) by repealing subclause (v) and substituting the following:

“(v) in the case of a trade made relying on subparagraph (iv)(A)(I) or (II), the issuer submits information satisfactory to the Commission to prove that the investor meets the criteria prescribed in that subparagraph”;

(v) in subclause (viii) by striking out “or clause (y)”;

(vi) by repealing subclause (ix) and substituting the following:

“(ix) each purchaser to whom securities are sold relying on this exemption is furnished with an offering memorandum, and every amendment to the offering memorandum, in a form that is satisfactory to the Director before an agreement of purchase and sale is entered into with that purchaser; and

“(ix.1) the cumulative amount raised by the issuer from all purchasers in Saskatchewan pursuant to the exemption in this clause does not exceed \$1,000,000”; **and**

(vii) by repealing subclause (x);

(k) in clause (w) by striking out “a company” in the portion preceding subclause (i) and substituting “an issuer”;

(l) by repealing clause (y);

(m) by repealing clause (z) and substituting the following:

“(z) the trade is made by an issuer in securities of its own issue with:

(i) a senior officer or director of the issuer;

(ii) a senior officer or director of an affiliate of the issuer;

(iii) a spouse, spousal equivalent, parent, brother, sister, child, mother-in-law, father-in-law, brother-in-law or sister-in-law of any person mentioned in subclause (i) or (ii);

(iv) close friends or close business associates of a promoter of the issuer, if:

(A) a notice of intention to trade prepared and executed in accordance with the regulations is filed by the issuer before the trade;

(B) all trades are completed within six months after the date of the notice of intention to trade, except that subsequent sales to the same purchasers may be carried out if they comply with written agreements entered into during that six-month period;

(C) there is not an invitation to the public to subscribe for the securities;

(D) no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer where that other issuer has traded in securities of its own issue pursuant to this exemption within the previous 12 months;

(E) no selling or promotional expenses connected with the offer of sale have been paid or incurred; and

(F) a statutory declaration, prepared and executed in accordance with the regulations, is completed by each purchaser and is filed by the issuer within 10 days after the completion of the offering; or

(v) a person or company all of whose securities are beneficially owned by one or more of the individuals mentioned in subclause (i), (ii), (iii) or (iv), but, where that individual is or those individuals are mentioned in subclause (iv), only if all of the conditions of subclause (iv) apply”;

(n) by repealing clause (aa);

(o) by repealing clause (bb) and substituting the following:

“(bb) the trade is made in a security of an issuer previously issued by the issuer pursuant to the exemption in clause (s) or (z) where each of the parties to the trade is a purchaser of the security issued under one of those exemptions”; **and**

(p) clause (cc) is amended:

(i) by striking out “where the plan” and substituting “where”; and

(ii) by repealing subclauses (iii) to (v) and substituting the following:

“(iii) the plan permits the holder to elect to receive stock dividends in lieu of cash dividends or to direct that dividends, interest paid or payable or other distributions out of earnings or surplus be applied to the purchase of securities from the issuer;

“(iv) the plan may include an option of the holder to make cash payments to purchase additional securities of the issuer; and

“(v) in the case of a plan that includes an option described in subclause (iv), either:

(A) the aggregate number of securities of any class issued pursuant to the cash payment component of that plan in any financial year of the issuer does not exceed 2% of that number of the outstanding securities of that class as at the commencement of that financial year; or

(B) at the time of the subject trade, Saskatchewan residents hold not more than 5% of the outstanding securities of the class available for purchase under the cash payment option of the plan”.

(2) Subsections 81(3) and (4) are repealed and the following substituted:

“(3) A person or company shall file, in accordance with subsection (3.1), a copy of an offering memorandum with the Commission, if the person or company:

(a) is required, pursuant to clause (1)(s), to furnish an offering memorandum to a purchaser;

(b) sends or delivers an offering memorandum to a purchaser pursuant to a trade pursuant to clause (1)(b), (c), (d), (h), (m),(n), (o), (w), (z) (cc), (dd) or (ee); or

(c) is required by a decision of the Commission to furnish an offering memorandum to a purchaser.

“(3.1) The person or company shall file with the Commission the copy of the offering memorandum pursuant to subsection (3):

- (a) prior to or contemporaneously with any trade; or
- (b) at any other time that the Commission may require or allow.

“(4) Where a trade has been made in reliance on clause (1)(a), (b), (c), (d), (f.1), (m), (n), (s), (t), (v), (w), (z), (bb) or (ee), the vendor shall, within 10 days of the completion of the offering, file with the Commission a report prepared and executed in accordance with the regulations”.

(3) Subsection 81(5) is amended:

(a) by striking out “or” after clause (a); and

(b) by adding the following after clause (b):

“(b.1) a credit union; or

“(b.2) Credit Union Central of Saskatchewan”.

(4) Clause 81(6)(a) is repealed and the following substituted:

“(a) clause (1)(a), (b), (c), (d), (m), (n), (s), (t), (v), (w), (z), (bb) or (ee)”.

(5) Clause 81(7)(c) is amended:

(a) by repealing subclauses (i) and (ii) and substituting the following:

“(i) are common shares or preferred shares that comply with the requirements prescribed in the regulations, are listed and posted for trading on an exchange recognized for this purpose by the Commission and have been held for at least six months from the later of the date:

(A) of the initial exempt trade;

(B) of the issue of the right or obligation to purchase, convert, exchange or receive the security; and

(C) the issuer became a reporting issuer;

“(ii) are bonds, debentures or other evidences of indebtedness that comply with the requirements prescribed in the regulations or are preferred shares that comply with the requirements prescribed in the regulations and have been held for at least six months from the later of the date:

(A) of the initial exempt trade;

(B) of the issue of the right or obligation to purchase, convert, exchange or receive the security; and

(C) the issuer became a reporting issuer”;

(b) in subclause (iii) by striking out “a stock” and substituting “an”; and

(c) by repealing subclause (iv) and substituting the following:

“(iv) have been held for at least 18 months from the later of the dates:

(A) of the initial exempt trade;

(B) of the issue of the right or obligation to purchase, convert, exchange or receive the security; or

(C) the issuer became a reporting issuer”.

(6) Subsection 81(8) is amended by repealing the portion preceding clause (a) and clause (a) and substituting the following:

“Subject to subsection (6), the first trade in a security acquired by the vendor pursuant to a trade that was made in reliance on the exemption in clause (1)(a.1), (f), (f.1), (g), (h), (i), (i.1), (j), (k), (o), (cc) or (dd), and the first trade in previously issued securities of an issuer that has ceased to be a private company, other than a further trade exempted by subsection (1), is a distribution unless:

(a) the issuer of the security is a reporting issuer and has been a reporting issuer for the preceding 12 months”.

(7) The following subsections are added after subsection 81(8):

“(8.1) Notwithstanding subsection (8), sections 58 and 71 do not apply to a trade in a security that is a distribution by virtue of subsection (8) where:

(a) the issuer of the security is not incorporated, organized or continued pursuant to the laws of Saskatchewan;

(b) at the time the security was acquired, Saskatchewan residents held not more than 10% of the outstanding securities of the particular class, and the number of Saskatchewan residents holding securities of the particular class is not more than 10% of the total number of holders of securities of the particular class;

(c) the trade is executed:

(i) either:

(A) through the facilities of an exchange; or

(B) through an organized over-the-counter market recognized for this purpose by the Commission; and

(ii) in accordance with the rules of the exchange or market on which the trade is made and with the applicable laws of the jurisdiction where the exchange or market is located; and

(d) security holders of the issuer resident in Saskatchewan are sent on a continuous basis disclosure information of the issuer that is substantially similar to that which is sent to security holders of the issuer in other jurisdictions.

“(8.2) Where a person or company acquires securities that are subject to subsection (6) or (8), by way of gift or otherwise without valuable consideration, the first trade of those securities by that person or company is subject to the provisions of subsection (6) or (8), as the case may be, as if the trade were being made by the person from whom or company from which the securities were acquired”.

(8) Subsection 81(9) is amended by striking out “at least 12 months” and substituting “the preceding 12 months”.

(9) Subsection 81(10) is amended by repealing clause (b) and substituting the following:

“(b) the following conditions apply:

(i) the issuer of the security is a reporting issuer and has been a reporting issuer for the preceding 18 months;

(ii) if the vendor is an insider of the issuer, the vendor has reasonable grounds to believe that the issuer is not in default of any requirement of this Act or the regulations;

(iii) the vendor has held the security or, in the case of debt securities, the principal amount of securities of the class to be distributed for at least six months;

(iv) the vendor acquired the security pursuant to a trade that was made in reliance on clause (1)(a), (a.1) (b), (c), (d), (f), (f.1), (h), (i), (i.1), (j), (k), (m), (n), (o), (s), (t), (v), (w), (z), (bb), (cc), (dd) or (ee) and the seller has held all the securities of the class owned by the seller for:

(A) at least six months after the date on which the last security of the class was acquired under an exemption mentioned in this clause, if the securities are listed and posted for trading on an exchange recognized for this purpose by the Commission and are common shares or preferred shares that comply with the requirements prescribed in the regulations;

(B) at least six months after the date on which the last security of the class was acquired under an exemption mentioned in this clause, if the securities are bonds, debentures or other evidences of indebtedness that comply with the requirements prescribed in the regulations or are preferred shares that comply with the requirements prescribed in the regulations;

(C) at least 12 months after the date on which the last security of the class was acquired under an exemption mentioned in this clause, if the securities are listed and posted on an exchange recognized for this purpose by the Commission or are bonds, debentures or other evidences of indebtedness issued or guaranteed by the reporting issuer whose securities are so listed; or

(D) at least 18 months after the date on which the last security of the class was acquired under an exemption mentioned in this clause;

(v) the vendor:

(A) files with the Commission, and with any exchange recognized by the Commission for this purpose on which the securities are listed at least seven days and not more than 14 days prior to the first trade made to carry out the distribution:

(I) a notice of intention to sell in the form prescribed by the regulations; and

(II) a declaration signed as at a date not more than 24 hours prior to its filing and prepared and executed in accordance with the regulations;

(B) files, within three days after the completion of any trade, a report of the trade in the form prescribed for the purposes of Part XVII; and

(C) renews and files the notice required to be filed pursuant to subparagraph (A)(I) and the declaration required to be filed pursuant to subparagraph (A)(II) at the end of 60 days after the original date of filing, and at the end of each 28-day period after that, as long as any of the securities specified under the original notice have not been sold or until notice has been filed that the securities so specified or any part of them are no longer for sale; and

(vi) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or other consideration is paid with respect to the trade”.

(10) Subsection 81(14) is repealed.

(11) Subsection 81(18) is amended:

(a) in subclause (a)(ii) by striking out “stock”; and

(b) in clause (b) by striking out “or arrangement” wherever it appears and in each case substituting “, arrangement or statutory procedure”.

Section 82 amended

41 Clause 82(1)(b) is amended by striking out “stock” wherever it appears.

New section 82.1

42 The following section is added after section 82:

"Exemptions not available

82.1 The exemptions in sections 81 and 82 are not available with respect to a trade:

- (a) in a security of an issuer that is in default of any requirement of this Act, the regulations or a decision of the Commission; or
- (b) by a person or company that is in default of any requirement of this Act, the regulations or a decision of the Commission".

Section 83 amended

43 Section 83 is amended:

(a) in subsection (1):

- (i) by striking out "or" after subclause (a)(iii);**
- (ii) by striking out "and" after subclause (a)(iv) and substituting "or"; and**
- (iii) by adding the following after subclause (a)(iv):**

"(v) that, for any or all purposes of the Act or the regulations, any person or company is deemed not to be in default of:

(A) any written undertaking made by that person or company to the Commission or the Director; or

(B) any provision of this Act, the regulations or a decision of the Commission or the Director; and"; **and**

(b) in subsection (2) by striking out "A decision" and substituting "Subject to subsection 158(3), a decision".

Section 84 amended

44 The following subsection is added after subsection 84(3):

"(3.1) Notwithstanding subsections (2) and (3), where the Director considers that it is in the public interest that the material change be disclosed, the Director, after giving the reporting issuer an opportunity to be heard, may order that the material change be made public".

Section 87 amended

45 Subsection 87(1) is repealed and the following substituted:

"(1) In this section, `auditor', where used in relation to a reporting issuer or mutual fund, includes:

- (a) an auditor of the reporting issuer or mutual fund who is acceptable to the Director; or
- (b) any other independent public accountant who is acceptable to the Director”.

Section 88 amended**46 The following subsections are added after subsection 88(2):**

“(3) A reporting issuer or mutual fund in Saskatchewan that sends financial statements pursuant to this section shall file a report with the Commission verifying that the issuer or the mutual fund has complied with the requirements of this section.

“(4) The report mentioned in subsection (3) must be in the form and contain the information prescribed in the regulations”.

Section 92 amended**47 Clause 92(b) is amended by striking out “or organized” and substituting “, organized or continued”.****Section 98 amended****48 Clause 98(1)(b) is amended by adding “or” after subclause (i).****Section 102 amended****49 Section 102 is amended by striking out “a stock”:**

- (a) in clause (1)(a);
- (b) in clause (4)(f);
- (c) in clause (4)(g); and
- (d) in subsection (5);

and in each case substituting “an”.

Section 103 amended**50 Section 103 is amended:**

- (a) in subsection (3) by striking out “a stock” and substituting “an”; and
- (b) in clause (8)(c) by striking out “does to” and substituting “does not”.

Section 109 amended**51 Subsection 109(3) is amended by striking out “105(5)” and substituting “108(5)”.****Section 110 amended****52 Section 110 is amended:**

- (a) in subsection (1):

(i) **by striking out** “, other than pursuant to a formal bid”; **and**

(ii) **by adding** “, or securities convertible into voting or equity securities,” **after** “voting or equity securities” **in the portion following clause (b); and**

(b) **in clause (2)(a) by adding** “or securities convertible into,” **after** “control or direction over,”.

Section 131 amended

53 Section 131 is amended:

(a) **by repealing subsection (3) and substituting the following:**

“(3) Every person who or company that does any of the following is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000,000, to imprisonment for a term of not more than two years or to both that fine and imprisonment:

(a) makes a statement in any material, evidence or information filed, submitted or given pursuant to any hearing, process, procedure, investigation, examination or review carried out pursuant to this Act or the regulations to the Commission, its representative, its employees, the Director or any person appointed or designated to make an investigation, examination or review pursuant to this Act that, at the time and in the light of the circumstances under which it is made, is false, misleading or a misrepresentation;

(b) makes a statement in any application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular or other document required to be filed or furnished pursuant to this Act or the regulations that, at the time and in the light of the circumstances pursuant to which it was made, is false, misleading or a misrepresentation;

(c) contravenes this Act, the regulations or a decision of the Commission or the Director;

(d) fails to observe or to comply with any direction, decision, ruling, order or other requirement made pursuant to this Act or the regulations; or

(e) fails to comply with or contravenes a written undertaking made by that person or company to the Commission or the Director.

“(3.1) Every person who or company that is a member or an employee of a member of a self-regulatory organization that has been recognized by the Commission for the purposes of this subsection and who or that does any of the following is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000,000, to imprisonment for a term of not more than two years or to both that fine and imprisonment:

(a) contravenes a bylaw, rule, or regulation of the self-regulatory organization; or

(b) contravenes a direction, decision, order or ruling made pursuant to any bylaw, rule or regulation of the self-regulatory organization”;

(b) in subsection (4) by adding “false, misleading or” before “a misrepresentation”; and

(c) by repealing subsections (5) to (7) and substituting the following:

“(5) The following persons are guilty of an offence and liable on summary conviction to a fine of not more than \$1,000,000, to imprisonment for a term of not more than two years or to both that fine and imprisonment:

(a) every director or officer of a company that has committed an offence described in subsection (3);

(b) every other individual who directed, authorized, permitted, assented to or participated in the commission of an offence described in subsection (3) by a company or a person that is not an individual.

“(5.1) The individuals mentioned in subsection (5) are guilty of the offence whether or not that company or that person has been prosecuted or convicted of the offence.

“(6) Where a person or company has contravened subsection 85(3), (4) or (5), the person or company shall pay, in addition to any other penalty, a fine:

(a) of not less than the profit made or loss avoided by the person or company by reason of the contravention, if that profit made or loss avoided is known or determinable; and

(b) of not more than:

(i) \$1,000,000; or

(ii) an amount equal to triple the profit made or loss avoided by the person or company by reason of the contravention.

“(7) For the purposes of subsection (6), ‘**profit**’ means:

(a) respecting a person who or company that purchased securities in contravention of subsection 85(3), the amount determined by:

- (i) ascertaining the average market price of the security over the 20 trading days following general disclosure of the material fact or material change; and
 - (ii) subtracting from the average market price ascertained pursuant to subclause (i) the amount paid by that person or company for the securities;
- (b) respecting a person who or company that sold securities in contravention of subsection 85(3), the amount determined by:
- (i) ascertaining the amount received by that person or company for the securities; and
 - (ii) subtracting from the amount ascertained pursuant to subclause (i) the average market price of the securities over the 20 trading days following general disclosure of the material fact or material change;
- (c) respecting a person who or company that informed one or more other persons or companies of a material fact or material change in contravention of subsection 85(4) or (5) and received any direct or indirect consideration for the information, the value of the consideration received by that person or company”.

Section 133 amended**54 Subsection 133(1) is amended:**

(a) by striking out “and” after clause (d); and

(b) by adding the following after clause (e):

“(f) setting aside a transaction relating to trading in securities;

“(g) requiring the issuance or cancellation of a security or the purchase, disposition or exchange of a security or exchange contract;

“(h) prohibiting the voting of a security or the exercise of a right attaching to a security or exchange contract; and

“(i) appointing or removing a director of the person who or the company that is the subject of the application”.

Section 134 amended**55 Section 134 is amended:**

(a) by repealing subsection (1) and substituting the following:

“(1) Where, in the opinion of the Commission, it is in the public interest, the Commission may order, subject to any terms and conditions that it may impose, one or more of the following:

(a) that any or all of the following exemptions do not apply to the person or company named in the order, either generally or concerning those trades, securities, exchange contracts or bids specified in the order:

(i) the exemptions in sections 38, 39, 39.1, 81, 82 and 102;

(ii) the exemptions in the regulations providing for exemptions from sections 27,

58, 71 or 104 to 109; and

(iii) an exemption in any decision of the Commission providing for an exemption from any provision of the Act or regulations;

(b) that trading shall cease respecting any securities or exchange contracts for a period that is specified in the order;

(c) that advising shall cease respecting any securities, trades or exchange contracts for a period that is specified in the order;

(d) that a person or company cease trading in securities, specified securities, exchange contracts or specified exchange contracts for a period that is specified in the order;

(e) that a person or company cease giving advice respecting securities, specified securities, trades, specified trades, exchange contracts or specified exchange contracts for a period that is specified in the order;

(f) that a person or company comply with or cease contravening, and that the directors and senior officers of the person or company cause the person or company to comply with or cease contravening:

(i) a provision of this Act or the regulations;

(ii) a decision of the Commission or the Director;

(iii) a written undertaking made by that person or company to the Commission or the Director;

(iv) a bylaw, rule, or other regulatory instrument or policy or a direction, decision, order or ruling made pursuant to a bylaw, rule or other regulatory instrument or policy of a self-regulatory body or exchange, as the case may be, that has been recognized by the Commission pursuant to subsection 131(3.1); or

(v) a policy statement made or adopted by the Commission;

(g) that a person or company:

(i) is prohibited from disseminating to the public, or authorizing dissemination to the public, any information or record of any kind that is described in the order;

(ii) is required to disseminate to the public, by the method described in the order, any information or record relating to the affairs of the person or company that the Commission or the Director considers must be disseminated; or

(iii) is required to amend, in the manner specified in the order, any information or record of any kind described in the order before disseminating the information or record to the public or authorizing its dissemination to the public;

(h) that a person or company:

(i) resign any position that the person or company holds as a director or officer of an issuer or registrant;

(ii) be prohibited from becoming or acting as a director or officer of any issuer or registrant; and

(iii) not be employed by any issuer or registrant;

(i) that a registrant be reprimanded;

(j) that the registration of a registrant be suspended, cancelled or restricted"; and

(b) in subsection (2) by striking out "a cease trading order pursuant to subsection (1)" and substituting "an order pursuant to clauses (1)(a), (b), (c), (d) and (e)".

New section 134.1

56 The following section is added after section 134:

"Failure to file statutory filings

134.1(1) The Director may, without a hearing, make an order pursuant to subsection (2) where a person or company fails to do any of the following:

(a) to file a record or any information that is required to be filed pursuant to this Act or the regulations; or

(b) to file a record or any information mentioned in clause (a) that is adequate, complete or satisfactory.

(2) In the circumstances described in subsection (1), the Director may order either or both of the following:

(a) that all trading cease in a security or exchange contract or class of securities or exchange contracts related to the record or information mentioned in subsection (1), or under a prospectus related to the record or information mentioned in subsection (1);

(b) that any person or company or class of persons or companies cease trading in a security or exchange contract or class of securities or exchange contracts related to the record or information mentioned in subsection (1).

(3) An order of the Director may remain in force only until the person or company files with the Director the record or information mentioned in subsection (1), in the form and with the content that are satisfactory to the Director.

(4) The Director shall send written notice of an order made pursuant to this section to any person who or company that is directly affected by the order.

(5) Any person who or company that is directly affected by an order made pursuant to this section may

request a hearing before the Director.

(6) A request for a hearing pursuant to subsection (5) must be in writing”.

New sections 135.1 to 136

57 Sections 135 and 136 are repealed and the following substituted:

“Administrative penalty

135.1(1) The Commission may make an order pursuant to subsection (2) where the Commission, after a hearing:

(a) is satisfied that a person or company has contravened or failed to comply with:

(i) a provision of this Act or the regulations;

(ii) a written undertaking made by that person or company to the Commission or the Director; or

(iii) a decision of the Commission; and

(b) considers it to be in the public interest to make the order.

(2) In the circumstances described in subsection (1), the Commission may order all or any of the following:

(a) that the person or company pay an administrative penalty of up to \$100,000;

(b) that the person or company be given a private or public reprimand; or

(c) that the person or company pay the cost, to a maximum of \$100,000, of producing material specified by the Commission to promote knowledge of participants in the capital markets of investment and regulatory matters.

(3) The Commission may make an order pursuant to this section notwithstanding the imposition of any other penalty on the person or company or the making of any other order by the Commission related to the same matter.

“Enforcement orders when registration is lapsed or terminated

135.2 Notwithstanding that the registration of a registrant has lapsed or terminated, the Commission may make an order pursuant to clause 134(1)(i) or (j) and section 135.1 within one year of the later of:

(a) the lapse date of the registrant's registration; and

(b) the date of acceptance of termination of the registration of the registrant pursuant to section 29.

“Resolution of proceeding by consent

135.3(1) Notwithstanding any other provision of this Act, a proceeding pursuant to this Act may be disposed of by:

(a) an agreement approved by the Commission;

(b) a consent order made by the Commission;

(c) a written undertaking made by a person or company to the Commission that has been accepted by the Commission; or

(d) if the parties have waived the hearing or compliance with any requirement of this Act, a

decision of the Commission made:

- (i) without a hearing; or
- (ii) without compliance with the other requirements of this Act.

(2) An agreement, order, written undertaking or decision made, accepted or approved pursuant to subsection (1) may be enforced in the same manner as an agreement, order, written undertaking or decision made, accepted or approved pursuant to any other provision of this Act.

“Orders to freeze property

135.4(1) In this section:

- (a) **‘Crown disposition’** has the same meaning as in *The Crown Minerals Act*;
- (b) **‘department’** means the department responsible for the administration of *The Crown Minerals Act*.

(2) The Commission may make an order pursuant to subsection (3) where:

- (a) the Commission:
 - (i) is about to make, or has made, an order to investigate a person or company pursuant to section 12;
 - (ii) is about to make, or has made, an order pursuant to section 134 that trading in any security or exchange contract by any person or company shall cease; or
 - (iii) is about to make, or has made, a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in a security or exchange contract;
- (b) an investigation of a person or company pursuant to section 12 or 14 is commenced or completed; or

(c) any of the following prosecutions or proceedings are about to be or have been instituted against a person or company, where the prosecution or proceeding, in the opinion of the Commission, is connected with or arises out of any security or exchange contract or trade in any security or exchange contract or out of any business conducted by that person or company:

(i) prosecutions or other proceedings pursuant to this Act concerning a contravention of this Act, the regulations or a decision of the Commission;

(ii) prosecutions or other proceedings pursuant to *The Securities Act*, as that Act existed on the day before the coming into force of this Act, concerning a contravention of that Act or the regulations made pursuant to that Act; or

(iii) prosecutions or other proceedings pursuant to *The Business Corporations Act* concerning a contravention of that Act.

(3) In the circumstances described in subsection (2), the Commission may, by notice in writing:

(a) order any person or company having on deposit, under control or for safekeeping any funds, securities, exchange contracts or other property of the person or company mentioned in clauses (2)(a) to (c) to hold those funds, securities, exchange contracts or other property; or

(b) order the person or company mentioned in clauses (2)(a) to (c) to:

(i) refrain from withdrawing any funds, securities, exchange contracts or other property from any other person or company having any of them on deposit, under control or for safekeeping;

(ii) hold all funds, securities, exchange contracts or other property of clients or others in his, her or its possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed pursuant to:

(A) the *Bankruptcy and Insolvency Act* (Canada);

(B) *The Business Corporations Act*;

(C) *The Queen's Bench Act*;

(D) the *Winding-up Act* (Canada); or

(E) section 135.5 of this Act; or

(iii) hold all funds, securities, exchange contracts or other property of clients or others in his, her or its possession or control until the Commission revokes in writing the order or consents to release any particular fund, security, exchange contract or other property from the direction.

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- (4) An order issued pursuant to subsection (3), unless the order states otherwise, does not apply to:
- (a) funds, securities, exchange contracts or other property in a clearing agency; or
 - (b) securities in the process of transfer by a transfer agent.
- (5) Where a person or company named in an order issued pursuant to subsection (3) is in doubt as to the application of the direction to a particular fund, security, exchange contract or other property, the person or company may apply to the Commission for an order of clarification.
- (6) On the application for an order of clarification, the Commission may make an order on any terms or conditions that it may impose:
- (a) revoking that order issued pursuant to subsection (3); or
 - (b) consenting to the release of any fund, security, exchange contract or other property with respect to which the order was issued pursuant to subsection (3).
- (7) In any of the circumstances mentioned in subsection (3), the Commission may send to the Registrar of Land Titles or the department a notice that proceedings are being or are about to be taken that may affect land or a Crown disposition belonging to the person or company mentioned in the notice.
- (8) The notice of the Commission:
- (a) is to be registered or recorded against the lands or rights mentioned in it; and
 - (b) has the same effect as the registration or recording of a certificate of *lis pendens* or a caveat.
- (9) The Commission may revoke or modify in writing its notice at any time.
- (10) As soon as is practicable, and in no case more than 15 days after the issuance of an order pursuant to subsection (3), the Commission shall apply to a judge of the Court of Queen's Bench for an order continuing the Commission's order or for any other order that the Court may consider appropriate.

"Appointment of receiver

135.5(1) The Commission may apply to a judge of the Court of Queen's Bench for the appointment of a receiver, receiver and manager, trustee or liquidator of the property of a person or company where:

- (a) the Commission:
 - (i) is about to make, or has made, an order to investigate the person or company pursuant to section 12;
 - (ii) is about to make, or has made, an order pursuant to section 134 that trading concerning any security or exchange contract by the person or company shall cease; or
 - (iii) is about to make, or has made, a decision suspending or cancelling the registration of the person or company or affecting the right of the person or company to trade in a security or exchange contract;
- (b) an investigation of a person or company pursuant to section 12 or 14 is commenced or completed;
- (c) any of the following prosecutions or proceedings are about to be or have been instituted against a person or company, where the prosecution or proceeding, in the opinion of the Commission, is connected with or arises out of any security or exchange contract or trade in any security or exchange contract or out of any business conducted by that person or company:

- (i) prosecutions or other proceedings pursuant to this Act concerning a contravention of this Act, the regulations or a decision of the Commission;
 - (ii) prosecutions or other proceedings pursuant to *The Securities Act*, as that Act existed on the day before the coming into force of this Act, concerning a contravention of that Act or the regulations made pursuant to that Act; or
 - (iii) prosecutions or other proceedings pursuant to *The Business Corporations Act* concerning a contravention of that Act; or
- (d) the person or company fails to or neglects to comply with the minimum net asset requirements, investment restrictions, ownership restrictions or capital requirements prescribed by the regulations for the person or company.
- (2) On an application pursuant to subsection (1), the judge may appoint a receiver, receiver and manager, trustee or liquidator of the property of the person or company where the judge is satisfied that the appointment of the receiver, receiver and manager, trustee or liquidator of all or any part of the property of the person or company is in the best interests of:
- (a) the creditors of the person or company;
 - (b) any persons who or companies that have any property in the possession or under the control of the person or company; or
 - (c) in a proper case, the security holders of or subscribers to the person or company.
- (3) On an *ex parte* application made by the Commission, the judge may make an order pursuant to subsection (2) appointing a receiver, receiver and manager, trustee or liquidator for a period not exceeding 15 days.
- (4) A receiver, receiver and manager, trustee or liquidator of the property appointed pursuant to this section shall:
- (a) be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company; and
 - (b) when directed by the judge, have authority to wind up or manage the business and affairs of the person or company and have all the powers necessary or incidental to that function.
- (5) An order made pursuant to this section may be enforced in the same manner as any order or judgment of the Court of Queen's Bench and may be varied or discharged on an application made by notice.

"Limitation period

136(1) No proceedings pursuant to this Part are to be commenced in a court later than six years from the date of the occurrence of the last material event on which the proceedings are based.

(2) No proceedings pursuant to this Act are to be commenced before the Commission later than six years from the date of the occurrence of the last material event on which the proceedings are based".

New sections 138 to 138.2

58 Section 138 is repealed and the following substituted:

"Misrepresentation in offering memorandum

138(1) Where an offering memorandum, together with any amendment to the offering memorandum, sent or delivered to a purchaser contains a misrepresentation, a purchaser who purchases a security covered by the offering memorandum or an amendment to the offering memorandum is deemed to have relied on that misrepresentation, if it was a misrepresentation at the time of purchase, and has a right of action for damages against:

- (a) the issuer or a selling security holder on whose behalf the distribution is made;
 - (b) every promoter and director of the issuer or the selling security holder, as the case may be, at the time the offering memorandum or the amendment to the offering memorandum was sent or delivered;
 - (c) every person or company whose consent has been filed respecting the offering, but only with respect to reports, opinions or statements that have been made by them;
 - (d) every person who or company that, in addition to the persons or companies mentioned in clauses (a) to (c), signed the offering memorandum or the amendment to the offering memorandum; and
 - (e) every person who or company that sells securities on behalf of the issuer or selling security holder under the offering memorandum or amendment to the offering memorandum.
- (2) Where a purchaser described in subsection (1) purchased the security from a person or company mentioned in clause (1)(a), the purchaser may elect to exercise a right of rescission against that person or company and, when the purchaser so elects, the purchaser shall have no right of action for damages against that person or company.
- (3) No person or company is liable pursuant to subsection (1) or (2) if the person or company proves that the purchaser purchased the securities with knowledge of the misrepresentation.
- (4) No person or company, other than the issuer or selling security holder, is liable pursuant to subsection (1) or (2) if the person or company proves that:
- (a) the offering memorandum or the amendment to the offering memorandum was sent or delivered without the person's or company's knowledge or consent and that, on becoming aware of its being sent or delivered, the person or company immediately gave reasonable general notice that it was so sent or delivered;
 - (b) after the filing of the offering memorandum or the amendment to the offering memorandum and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the offering memorandum or the amendment to the offering memorandum, the person or company withdrew the person's or company's consent to it and gave reasonable general notice of the person's or company's withdrawal and the reason for it;
 - (c) with respect to any part of the offering memorandum or of the amendment to the offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, the person or company had no reasonable grounds to believe and did not believe that:
 - (i) there had been a misrepresentation;
 - (ii) the part of the offering or of the amendment to the offering memorandum did not fairly represent the report, opinion or statement of the expert; or
 - (iii) the part of the offering memorandum or of the amendment to the offering memorandum was not a fair copy of or extract from the report, opinion or statement of the expert;

(d) with respect to any part of the offering memorandum or of the amendment to the offering memorandum purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert that contains a misrepresentation attributable to failure to represent fairly his, her or its report, opinion or statement as an expert:

(i) the person or company had, after reasonable investigation, reasonable grounds to believe, and did believe, that the part of the offering memorandum or of the amendment to the offering memorandum fairly represented the person's or company's report, opinion or statement; or

- (ii) on becoming aware that the part of the offering memorandum or of the amendment to the offering memorandum did not fairly represent the person's or company's report, opinion or statement as an expert, the person or company immediately advised the Commission and gave reasonable general notice that such use had been made of it and that the person or company would not be responsible for that part of the offering memorandum or of the amendment to the offering memorandum; or
- (e) with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, the statement was a correct and fair representation of the statement or copy of or extract from the document and the person or company had reasonable grounds to believe, and did believe, that the statement was true.
- (5) No person or company, other than the issuer or selling security holder, is liable pursuant to subsection (1) or (2) for any part of the offering memorandum or the amendment to the offering memorandum purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert, unless the person or company:
- (a) failed to conduct a reasonable investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; or
 - (b) believed there had been a misrepresentation.
- (6) No person or company, other than the issuer or selling security holder, is liable pursuant to subsection (1) or (2) for any part of the offering memorandum or the amendment to the offering memorandum not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert, unless the person or company:
- (a) failed to conduct a reasonable investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; or
 - (b) believed there had been a misrepresentation.
- (7) A person or company described in clause (1)(e) is not liable pursuant to subsection (1) or (2) if that person or company can establish that he, she or it cannot reasonably be expected to have had knowledge of any misrepresentation in the offering memorandum or the amendment to the offering memorandum.
- (8) In an action for damages pursuant to subsection (1), the defendant is not liable for all or any portion of the damages that he, she or it proves do not represent the depreciation in value of the security resulting from the misrepresentation relied on.
- (9) All or any one or more of the persons or companies specified in subsection (1) are jointly and severally liable, and every person who or company that becomes liable to make any payment pursuant to this section may recover a contribution from any person who or company that, if sued separately, would have been liable to make the same payment.
- (10) Notwithstanding subsection (9), the court may deny the right to recover a contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of a contribution would not be just and equitable.
- (11) In no case shall the amount recoverable pursuant to this section exceed the price at which the securities were offered to the public.
- (12) The right of action for rescission or damages conferred by this section is in addition to and does not derogate from any other right the purchaser may have at law.

"Misrepresentation in sales literature

138.1(1) In this section:

- (a) **`advertising'** includes television and radio commercials, newspaper and magazine advertisements, billboards, signs, displays and all other sales material generally disseminated through the communications media, including electronic mail, electronic bulletin boards or similar facilities;
 - (b) **`sales literature'** includes records, videotapes, audiotapes, discs, cassettes and similar material, written matter and all other material designed for use in presentation to a prospective purchaser, whether or not that material is given or shown to the prospective purchaser, but does not include preliminary prospectuses, prospectuses, offering memoranda or amendments to them.
- (2) Subsection (3) applies to trades of securities pursuant to:
- (a) a prospectus pursuant to section 58 or 71;
 - (b) an exemption contained in subsection 81(1) or section 82; or
 - (c) a decision of the Commission.
- (3) Where advertising or sales literature that is disseminated in connection with a trade of securities mentioned in subsection (2) contains a misrepresentation, a purchaser who purchases a security referred to in that advertising or sales literature is deemed to have relied on that misrepresentation if it was a misrepresentation at the time of purchase and has a right of action against:
- (a) the issuer or a selling security holder on whose behalf the trade is made;
 - (b) where a prospectus is used in connection with the trade, each underwriter of the securities who is required to sign the certificate required by section 67 or an alternative certificate pursuant to section 68;
 - (c) every promoter or director of the issuer or selling security holder, as the case may be, at the time the advertising or sales literature was disseminated; and
 - (d) every person who or company that, at the time the advertising or sales literature was disseminated, sells securities on behalf of the issuer or selling security holder in the offering with respect to which the advertising or sales literature was disseminated.
- (4) Where a purchaser described in subsection (3) purchased the security from a person or company mentioned in clause (3)(a) or (b) or from another underwriter of the securities, the purchaser may elect to exercise a right of rescission against that person, company or underwriter, and, when the purchaser so elects, the purchaser shall have no right of action for damages against that person, company or underwriter.
- (5) No person or company is liable pursuant to subsection (3) or (4) if the person or company proves that the purchaser purchased the securities with knowledge of the misrepresentation.
- (6) No person or company, other than the issuer or selling security holder, is liable pursuant to subsection (3) or (4) if the person or company proves that:
- (a) the advertising or sales literature was disseminated without the person's or company's knowledge or consent and that, on becoming aware of its dissemination, the person or company immediately gave reasonable general notice that it was so disseminated;
 - (b) after the dissemination of the advertising or sales literature before the purchase of the securities

by the purchaser, on becoming aware of any misrepresentation in the advertising or sales literature the person or company withdrew the person's or company's consent to it and gave reasonable general notice of the person's or company's withdrawal and the reason for it; or

(c) with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, the false statement was a correct and fair representation of the statement or copy of or extract from the document and the person or company had reasonable grounds to believe, and did believe, that the statement was true.

(7) No person or company, other than the issuer or selling security holder, is liable pursuant to subsection (3) or (4) with respect to any part of the advertising or sales literature purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert unless the person or company:

(a) failed to conduct a reasonable investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been a misrepresentation.

(8) No person or company, other than the issuer or selling security holder, is liable pursuant to subsection (3) or (4) with respect to any part of the advertising or sales literature not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert, unless the person or company:

(a) failed to conduct a reasonable investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been a misrepresentation.

(9) A person or company described in clause (3)(d) is not liable pursuant to subsection (3) or (4) if that person or company can establish that he, she or it cannot reasonably be expected to have had knowledge that the advertising or sales literature was disseminated or contained a misrepresentation.

(10) No underwriter is liable for more than the total public offering price represented by the portion of the distribution underwritten by it.

(11) In an action for damages pursuant to subsection (3), the defendant is not liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the security resulting from the misrepresentation relied on.

(12) All or any one or more of the persons or companies specified in subsection (3) are jointly and severally liable and every person who or company that becomes liable to make any payment pursuant to this section may recover a contribution from any person who or company that, if sued separately, would have been liable to make the same payment.

(13) Notwithstanding subsection (12), the court may deny the right to recover a contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of a contribution would not be just and equitable.

(14) In no case shall the amount recoverable pursuant to this section exceed the price at which the securities were offered to the public.

(15) The right of action for rescission or damages conferred by this section is in addition to and does not derogate from any other right the purchaser may have at law.

“Verbal misrepresentation

138.2(1) Where an individual makes a verbal statement to a prospective purchaser of a security that contains a misrepresentation relating to the security purchased and the verbal statement is made either before or contemporaneously with the purchase of the security, the purchaser:

(a) is deemed to have relied on the misrepresentation, if it was a misrepresentation at the time of the purchase; and

(b) has a right of action for damages against that individual.

(2) No individual is liable pursuant to subsection (1) if that individual proves that the purchaser purchased the securities with knowledge of the misrepresentation.

(3) No individual is liable pursuant to subsection (1) if that individual can establish that he or she cannot reasonably be expected to have known that his or her statement contained a misrepresentation.

(4) No individual is liable pursuant to subsection (1) if, prior to the purchase of the securities by the purchaser, that individual notified the purchaser that the individual's statement contained a misrepresentation.

(5) In no case is the amount recoverable pursuant to this section to exceed the price at which the securities were offered to the public.

(6) In an action for damages pursuant to subsection (1), the defendant is not liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the security resulting from the misrepresentation relied on.

(7) The right of action for or damages conferred by this section is in addition to and does not derogate from any other right the purchaser may have at law”.

New section 140

59 Section 140 is repealed and the following substituted:

“Standard of reasonableness

140 In determining what constitutes reasonable investigation, reasonable grounds for belief, or what someone could reasonably be expected to have known for the purposes of sections 137, 138, 138.1, 138.2 and 139, the standard of reasonableness shall be that required of a prudent person in the circumstances of the particular case”.

Section 141 amended

60 Section 141 is amended:

(a) in subsection (1) by striking out “pursuant to a trade by a vendor” and substituting “or an exchange contract from a vendor who is trading”; and

(b) in subsection (2):

(i) in clause (a) by adding “or any amendment to a prospectus” after “prospectus”; and

(ii) by repealing clause (b) and substituting the following:

“(b) a purchaser of a security to whom an offering memorandum or an amendment to an offering memorandum was required to be sent or delivered but was not sent or delivered in accordance with subsection 80.3(1)”.

Section 146 repealed

61 Section 146 is repealed.

Section 147 amended

62 Clause 147(b) is amended:

- (a) in subclause (i) by striking out "180 days" and substituting "one year"; and
- (b) in subclause (ii) by striking out "three" and substituting "six".

Section 149 amended

63 Section 149 is amended:

- (a) in subsection (2) by adding ", partner or officer" after "salesperson";
- (b) in subsection (3) by adding ", partner or officer" after "salesperson";
- (c) in subsection (4) by adding ", partner or officer" after "salesperson";
- (d) in subsection (5):
 - (i) in the portion preceding clause (a) by adding "and section 134" after "Part VI"; and
 - (ii) by striking out "salesperson" wherever it appears and in each case substituting "salesperson, partner or officer"; and
- (e) in clause (6)(a) by adding ", partner or officer" after "salesperson".

Section 150 amended

64 Section 150 is amended by adding ", partner or officer" after "salesperson".

New sections 151.1 and 151.2

65 The following sections are added after section 151:

"Admissibility in evidence of certified statements

151.1 Any of the following statements by the Investment Dealers' Association of Canada, by an exchange or by another self-regulatory organization recognized by the Commission for the purposes of this section and purporting to be certified by the chief administrative officer or the chief administrative officer's delegate are, without proof of office or signature of the person certifying, admissible in evidence, so far as they are relevant, for all purposes in any action, proceeding or prosecution:

- (a) a statement about the membership or non-membership of any person or company;
- (b) a statement about the filing or non-filing of any document or material required or permitted to be filed;
- (c) a statement about any other matter relating to membership, non-membership, filing or non-filing or about any person, company, document or material;
- (d) a statement about any rule or bylaw;

(e) a statement about any decision of the Investment Dealers' Association or of an exchange or other self-regulatory organization recognized by the Commission for the purpose of this section that is within its statutory authority or duly delegated authority.

"Final decision or undertaking with court

151.2(1) In this section, **"undertaking"** means a written undertaking made by a person or company to the Commission or the Director.

(2) The Commission may file a decision or undertaking in the office of the local registrar of the Court of Queen's Bench.

(3) On receipt of a decision or undertaking, the local registrar of the Court of Queen's Bench shall enter the decision or undertaking as a judgment of the Court of Queen's Bench and that decision or undertaking may be enforced as a judgment of that Court".

New section 152.1

66 The following section is added after section 152:

"Confidentiality

152.1(1) Subject to subsections (2) and (3) and section 152, the Commission shall hold in confidence all information contained in internal reports and records of the Commission, including information, evidence and witness names obtained otherwise than pursuant to section 12 or 14, as long as the Commission considers that it is in the public interest to do so.

(2) Notwithstanding subsection (1), information contained in internal reports and records of the Commission may be disclosed in the course of a hearing or review before the Commission or Director.

(3) Notwithstanding subsection (1), the Commission may make available any information contained in internal reports and records of the Commission to:

- (a) any securities commission, securities administrator, securities board or securities agency;
- (b) any exchange;
- (c) the Investment Dealers' Association of Canada;
- (d) the Canadian Investor Protection Fund;
- (e) any other agency designated by the Commission for the purposes of this subsection to be a regulatory agency; or
- (f) a law enforcement agency".

New sections 153.1 and 153.2

67 The following sections are added after section 153:

"Act applies to the Crown

153.1(1) Subject to subsection (2), this Act applies to:

- (a) the Crown in Right of Canada;
- (b) the Crown in Right of Saskatchewan;

- (c) the Crown in Right of any other province or territory of Canada; and
- (d) any agents and servants of the Crown as described in clauses (a) to (c).

(2) Subsections 12(5), (6), (9) and (10) and section 131 do not apply to the Crown in right of Canada, the Crown in right of Saskatchewan, the Crown in right of any other province or territory of Canada or to any agent or servant of the Crown where the matter arises from:

- (a) an act done in good faith in the performance of a duty or the exercise of a power imposed on or given to the Crown; or
- (b) any neglect or default in the performance of a duty or the exercise of a power imposed on or given to the Crown where the matter arose from the Crown in right of Canada, the Crown in right of Saskatchewan, the Crown in right of any other province or territory of Canada, or any agent or servant of the Crown, as the case may be, acting in good faith.

“Contingency fund not insurer

153.2 Each compensation fund or contingency trust fund approved by the Commission and established by an organization mentioned in section 23 or a trust company pursuant to *The Trust and Loan Corporations Act*:

- (a) is deemed not to be an insurer within the meaning of *The Saskatchewan Insurance Act*; and
- (b) is not required or entitled to be licensed as an insurer pursuant to *The Saskatchewan Insurance Act*.

New sections 154 to 154.2

68 Section 154 is repealed and the following substituted:

“Regulations

154(1) The Lieutenant Governor in Council may make regulations:

- (a) prescribing categories of persons and companies and the manner of allocating persons and companies to categories, including permitting the Director to make those allocations;
- (b) prescribing requirements respecting applications for registration and the renewal, amendment, expiration or surrender of registration and respecting suspension, cancellation or reinstatement of registration;
- (c) prescribing categories or sub-categories of registrants, classifying registrants into categories or sub-categories and prescribing the conditions of registration or other requirements for registrants or any category or sub-category, including:
 - (i) standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients;
 - (ii) requirements that are advisable for the prevention or regulation of conflicts of interest; and
 - (iii) requirements with respect to membership in a self-regulatory organization;
- (d) requiring unregistered directors, partners, officers, salespersons and employees of registrants to comply with all or any requirements prescribed pursuant to clause (c);
- (e) respecting bonds to be furnished by registrants and the forfeiture of those bonds, including:
 - (i) the conditions on which a bond becomes forfeited;
 - (ii) the method by which a bond may be cancelled and the consequences of cancellation;

- (iii) the enforcement of the liability on a forfeited bond; and
- (iv) the disposition of the proceeds of a forfeited bond;
- (f) prescribing requirements respecting the disclosure or furnishing of information to the public or the Commission by registrants;
- (g) prescribing requirements for persons and companies respecting attending at or telephoning to residences for the purposes of trading in securities or exchange contracts;
- (h) prescribing requirements respecting books, records and other documents that market participants shall keep, including the form in which and the period for which the books, records and other documents shall be kept;
- (i) regulating the listing and trading of securities or exchange contracts, including prescribing requirements for keeping records and reporting trades and quotations;
- (j) regulating the trading of securities or exchange contracts other than on an exchange recognized by the Commission;
- (k) regulating exchanges, self-regulatory organizations and clearing agencies;
- (l) regulating trading or advising in securities or exchange contracts to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors;
- (m) designating activities, including the use of documents or advertising, in which registrants or issuers are permitted to engage or are prohibited from engaging in connection with distributions;
- (n) respecting the content of material required or permitted to be distributed or used by a person or company with respect to a security or exchange contract, whether in the course of a distribution or otherwise;
- (o) prescribing requirements respecting prospectuses, preliminary prospectuses, pro forma prospectuses, and short forms of prospectuses;

- (p) varying the application of this Act to establish procedures for or requirements respecting the preparation and filing of preliminary prospectuses and prospectuses and the issuing of receipts for preliminary prospectuses and prospectuses in order to facilitate or expedite the distribution of securities or the issuing of the receipts, including:
- (i) requirements respecting the distributing of securities by means of a prospectus incorporating other documents by reference;
 - (ii) requirements respecting the distributing of securities by means of a simplified or summary prospectus;
 - (iii) requirements respecting the pricing of distributions of securities after the issuance of a receipt for the prospectus filed in relation to those securities; and
 - (iv) procedures respecting the issuing of receipts for prospectuses after expedited or selective review of prospectuses;
- (q) prescribing the requirements for the escrow of securities in connection with distributions;
- (r) prescribing requirements, in addition to the requirements pursuant to this Act, respecting the preparation and dissemination and other use by reporting issuers of documents providing for continuous disclosure, including requirements respecting:
- (i) an annual report;
 - (ii) an annual information form; and
 - (iii) supplemental analysis of financial statements;
- (s) prescribing requirements respecting financial accounting, reporting and auditing for purposes of this Act and the regulations, including:
- (i) defining accounting principles and auditing standards acceptable to the Commission;
 - (ii) financial reporting requirements for the preparation of future-oriented financial information and pro forma financial statements; and
 - (iii) standards of independence and other qualifications for auditors;
- (t) requiring issuers or other persons and companies to comply, in whole or in part, with Part XIV (Continuous Disclosure);

- (u) requiring registered holders or beneficial owners of securities of reporting issuers or other persons or companies on behalf of whom the securities are held to comply, in whole or in part, with Part XIV (Continuous Disclosure) and Part XV (Proxies and Proxy Solicitation), including varying the application of those Parts to reporting issuers, recognized clearing agencies, registered holders, registrants and other persons or companies who hold securities on behalf of persons or companies but who are not the registered holders by prescribing additional requirements;
- (v) regulating mutual funds or non-redeemable investment funds and the distribution and trading of the securities of the funds, including:
- (i) varying the application of Part XI (Prospectuses - Distribution) or Part XIV (Continuous Disclosure) by prescribing additional disclosure requirements with respect to the funds and requiring or permitting the use of particular forms or types of additional offering or other documents in connection with the funds;
 - (ii) prescribing permitted investment policy and investment practices for the funds and prohibiting or restricting certain investments or investment practices for the funds;
 - (iii) prescribing requirements governing the custodianship of assets of the funds;
 - (iv) prescribing minimum initial capital requirements for any of the funds making a distribution and prohibiting or restricting the reimbursement of costs in connection with the organization of a fund;
 - (v) prescribing matters affecting any of the funds that require the approval of security holders of the fund, the Commission or the Director, including, in the case of security holders, the level of approval;
 - (vi) prescribing requirements respecting the calculation of the net asset value of mutual funds;
 - (vii) prescribing requirements respecting the content and use of sales literature, sales communications or advertising relating to the funds or the securities of funds;
 - (viii) designating mutual funds as private mutual funds and prescribing requirements for private mutual funds;
 - (ix) respecting sales charges imposed by a distribution company or contractual plan service company under a contractual plan on purchasers of shares or units of a mutual fund, and commissions or sales incentives to be paid to registrants in connection with the securities of a mutual fund;
 - (x) prescribing the circumstances in which a plan holder under a contractual plan has the right to withdraw from the contractual plan; and

- (xi) prescribing procedures applicable to mutual funds, registrants and any other person or company with respect to sales and redemptions of mutual fund securities and payments for sales and redemptions;
- (w) respecting fees payable by an issuer to an adviser as consideration for investment advice, alone or together with administrative or management services provided to a mutual fund or non-redeemable investment fund;
- (x) prescribing requirements relating to the qualification of a registrant to act as an adviser to a mutual fund or non-redeemable investment fund;
- (y) prescribing requirements for the validity and solicitation of proxies;
- (z) regulating take-over bids, issuer bids, insider bids, going-private transactions and related party transactions, including:
 - (i) providing for exemptions in addition to those set out in subsections 102(1) and (4), or removing or restricting any exemption set out in those subsections;
 - (ii) providing for exemptions from section 103 or removing or restricting any exemption set out in that section;
 - (iii) prescribing requirements in addition to those set out in section 104 and varying any requirement set out in that section;
 - (iv) providing exemptions from section 110;
 - (v) prescribing the form and content of any circular, report or other document required to be delivered or filed pursuant to Part XVI (Take-over Bids and Issuer Bids);
 - (vi) prescribing requirements respecting issuer bids, insider bids, going-private transactions and related party transactions, for disclosure, valuations, review by independent committees of boards of directors and approval by minority security holders; and
 - (vii) prescribing requirements respecting defensive tactics in connection with take-over bids;
- (aa) prescribing the requirements respecting reverse take-overs, including requirements for disclosure that are substantially equivalent to those provided by a prospectus;
- (bb) respecting any matter or thing necessary or advisable to carry out effectively the intent and purpose of sections 85 and 142, including prescribing standards for determining when a material fact or material change has been generally disclosed;

- (cc) regulating commodity pools, including:
 - (i) varying the application of Part XI (Prospectuses - Distribution) or Part XIV (Continuous Disclosure), prescribing additional disclosure requirements with respect to commodity pools and requiring or permitting the use of particular forms or types of additional offering or other documents in connection with commodity pools;
 - (ii) prescribing requirements respecting, or in relation to, promoters, advisers, persons and companies who administer or participate in the administration of the affairs of commodity pools;
 - (iii) prescribing standards in relation to the suitability of investors in commodity pools;
 - (iv) prohibiting or restricting the payment of fees, commissions or compensation by commodity pools or holders of securities of commodity pools and restricting the reimbursement of costs in connection with the organization of commodity pools;
 - (v) prescribing requirements respecting the voting rights of security holders; and
 - (vi) prescribing requirements respecting the redemption of securities of a commodity pool;
- (dd) regulating derivatives or varying the application of this Act to derivatives including:
 - (i) prescribing disclosure requirements and requiring or prohibiting the use of particular forms or types of offering documents or other documents; and
 - (ii) prescribing requirements that apply to mutual funds, non-redeemable investment funds, commodity pools or other issuers;
- (ee) respecting the designation or recognition of any person, company or jurisdiction considered advisable for the purposes of this Act, including:
 - (i) recognizing exchanges, self-regulatory organizations and clearing agencies; and
 - (ii) designating, for the purposes of section 97(1), the jurisdictions whose requirements are substantially similar to the requirements of Part XV (Proxies and Proxy Solicitation);
- (ff) prescribing the fees payable to the Commission in connection with the administration of this Act or any service provided by the Commission, including fees respecting filings, applications for registration or exemptions, audits and investigations made by the Commission and hearings before the Commission or the Director;

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- (gg) prescribing requirements respecting the ownership, acquisition and retention of securities or exchange contracts by members of the Commission and any agents, employees or officers of the Commission;
- (hh) respecting the conduct of the Commission and its employees in relation to duties and responsibilities and discretionary powers pursuant to this Act, including:
- (i) the conduct of investigations and examinations carried out under Part III (Investigations); and
 - (ii) the conduct of hearings;
- (ii) respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required pursuant to or governed by this Act, and the regulations and all documents determined by the regulations to be ancillary to the documents;
- (jj) respecting the filing of records pursuant to this Act or the regulations;
- (kk) varying the application of this Act to permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of:
- (i) documents or information required pursuant to or governed by this Act or the regulations; and
 - (ii) documents determined by the regulations to be ancillary to documents required pursuant to or governed by this Act or the regulations;
- (ll) establishing requirements for and procedures with respect to the use of an electronic or computer-based system for the filing, delivery or deposit of documents or information;
- (mm) prescribing the circumstances in which persons or companies are deemed to have signed or certified documents on an electronic or computer-based system for any purpose of the Act;
- (nn) defining words and expressions used in this Act but not defined in this Act;
- (oo) exempting any person, company, trade or security from all or any provision of this Act or the regulations, including prescribing any terms or limitations on an exemption and requiring compliance with those terms or limitations;
- (pp) authorizing the Commission or the Director to exempt any person, company, trade or security from all or any provision of the regulations, including authorizing the Commission or the Director to prescribe any terms or limitations on an exemption and requiring compliance with those terms or limitations;
- (qq) removing any exemption granted by this Act or the regulations, including prescribing any conditions or restrictions on removal of the exemption;
- (rr) authorizing the Commission or the Director to remove any exemption granted by these regulations, including authorizing the Commission or the Director to prescribe any conditions or restrictions on the removal of an exemption;
- (ss) adopting or incorporating by reference all or any part of any standard, procedure or guideline as that standard, procedure or guideline exists at the time the regulation is made or as amended from time to time and requiring compliance with the standard, procedure or guideline being adopted or incorporated by reference;
- (tt) authorizing the Commission to make regulations pursuant to subsection (2) respecting any

matter or thing set out in this subsection, other than those matter or things mentioned in clauses (nn), (ff) and (uu) and in this clause);

(uu) prescribing procedures the Commission shall follow, and the conditions the Commission shall adhere to, in making regulations pursuant to subsection (2);

(vv) designating banking transactions for the purposes of subclause 2(1)(ww)(vi);

(ww) prescribing the practice and procedure by which the Commission recognizes exempt purchasers for the purposes of clause 39(1)(d) and 81(1)(c);

(xx) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations;

(yy) respecting any matter or thing that the Lieutenant Governor in Council considers necessary or desirable to carry out the purposes of this Act.

(2) Subject to any conditions prescribed pursuant to the regulations made pursuant to subsection (1) and in accordance with any procedures prescribed pursuant to the regulations made pursuant to subsection (1), the Commission may make regulations respecting any matter or thing with respect to which the Commission is authorized pursuant to clause (1)(tt) to make regulations.

(3) A regulation pursuant to this section may be of general or specific application and may be limited as to time or place.

(4) The regulations made by the Lieutenant Governor in Council pursuant to subsection (1) prevail in the case of any conflict between the regulations made by the Lieutenant Governor in Council and the regulations made by the Commission pursuant to subsection (2).

"Policy statements

154.1(1) In this section, 'policy statement' means a policy statement issued by the Commission after this section come into force.

(2) The Commission may issue policy statements that outline:

- (a) principles, standards, criteria or factors that relate to a decision or the exercise of a discretion by the Commission or the Director pursuant to this Act or the regulations;
 - (b) the manner in which a provision of this Act or the regulations is interpreted or applied by the Commission or the Director; and
 - (c) the practices generally followed by the Commission or the Director in the performance of the Commission's or Director's duties and responsibilities pursuant to this Act or the regulations.
- (3) Policy statements are not enforceable by the Commission.

"Transitional - policy statements

154.2 The Lieutenant Governor in Council may make regulations adopting policy statements adopted or issued by the Commission before the coming into force of this section and requiring compliance with those policy statements".

Section 156 amended

69 The following subsection is added after subsection 156(4):

"(5) For the purposes of this Act, service of any document may be proved by oral evidence given by the person claiming to have served it either under oath or by that person's affidavit or solemn declaration".

New section 156.1

70 The following section is added after section 156:

"Manner of filing, etc.

156.1 Where this Act or the regulations require a document, notice or other material to be filed or deposited with, or delivered or sent to, the Commission, the Commission may by order specify the manner in which the document, notice or other material is to be filed, deposited, delivered or sent".

New sections 157 to 158.2

71 Sections 157 and 158 are repealed and the following substituted:

"Commission exempt from certain fees

157(1) The Commission shall be given certificates or certified copies of documents that the Commission may require without charge from:

- (a) the registrars of Land Titles Offices throughout Saskatchewan;
 - (b) the court officials for any of the judicial centres throughout Saskatchewan;
 - (c) the registrar of the Personal Property Registry; and
 - (d) any department of the Government of Saskatchewan.
- (2) Any member of the Commission, the Director and any person employed or engaged by the Commission or the Director may search without charge any of the public records of any land titles office, any judicial centre, the Personal Property Registry or any department of the Government of Saskatchewan.

"Decisions of the Commission

158(1) The Commission or the Director may direct, in any decision, that:

(a) the decision or any portion or provision of it comes into force:

(i) at a future fixed time;

(ii) on the occurrence of any contingency, event or condition specified in the order; or

(iii) on the performance, to the satisfaction of the Commission, the Director or a person named in the order for the purpose, of any terms that the Commission or Director may impose on any party interested; and

(b) the whole or any portion of the decision shall be in force for a limited time only or until the occurrence of a specified event.

(2) Instead of making a decision final in the first instance, the Commission or Director may make an interim decision and reserve further directions, either for an adjourned hearing of the matter or for further applications.

(3) Where, in the opinion of the Commission, it would not be prejudicial to the public interest, the Commission may, on the application of an interested person or company or on its own motion, make an order on any terms and conditions that it may impose revoking or varying any previous decision made by it.

“Effective date of order

158.1 The Commission may direct, in any order, that the order or any portion or provision of it comes into force on a date prior to the date on which the order is made.

“Sending of further documents

158.2 There is no requirement to send further documents pursuant to Part XIV or XV to a person or company until the person or company provides to the sender notification in writing of his, her or its new address where the documents required to be sent pursuant to Part XIV or XV were:

(a) sent to a person or company by prepaid post; and

(b) returned on three successive occasions because the person or company cannot be found”.

New sections 161 and 161.1**72 Section 161 is repealed and the following substituted:****"Costs**

161(1) Subject to the regulations and after conducting a hearing, the Commission may order a person or company to pay the costs of or related to the hearing if the Commission is satisfied that the person or company whose affairs were the subject of the hearing has not complied with any provision of:

- (a) this Act;
- (b) the regulations;
- (c) a decision of the Commission; or
- (d) a bylaw, rule, or regulation of a self-regulatory organization that has been recognized by the Commission pursuant to subsection 131(3.1), where the person or company is a member or an employee of a member of that self-regulatory organization.

(2) For the purposes of subsection (1), the costs that the Commission may order the person or company to pay include all or any of the following:

- (a) costs incurred with respect to services provided by a person appointed or engaged pursuant to section 8, 12 or 14;
- (b) costs of obtaining a warrant pursuant to subsection 12(9);
- (c) costs associated with obtaining an order pursuant to section 135.5;
- (d) costs of matters preliminary to the hearing;
- (e) costs for time spent by the Commission or the staff of the Commission;
- (f) fees paid to a witness;
- (g) costs of legal services provided to the Commission.

(3) Where a person or company is guilty of an offence pursuant to section 131, the Commission may, after giving the person or company an opportunity to be heard, order the person or company to pay, subject to the regulations, the costs of any investigation carried out with respect to that offence, including any costs incurred with respect to either or both of the following:

- (a) the provision of services by persons appointed or engaged pursuant to section 8, 12 or 14;
- (b) the appearance of any witnesses.

(4) The Director may file with the registrar of the Court of Queen's Bench a certificate certifying the amount of the costs that the person or company is required to pay pursuant to subsection (1), (2) or (3).

(5) A certificate filed pursuant to subsection (4) with the registrar of the Court of Queen's Bench has the same force and effect as if it were a judgment of the Court of Queen's Bench for the recovery of debt in the amount specified in the certificate together with the cost of filing.

(6) *The Queen's Bench Rules* respecting costs and the taxation of costs do not apply to costs mentioned in this section.

(7) No provision of this Act or the regulations shall be interpreted as precluding a court from ordering costs payable to the Commission.

(8) If costs are awarded to the Commission in any proceeding, the court shall award a counsel fee to the Commission, notwithstanding that the Commission was represented by an employee of the Commission.

"Non-application of *The Saskatchewan Evidence Act* in certain circumstances

161.1 No provision of *The Saskatchewan Evidence Act* shall exempt any of the following from this Act or the regulations:

- (a) a bank to which the *Bank Act* (Canada) applies;
- (b) a credit union;
- (c) an officer, director or employee of any bank or credit union".

Schedule 1

73 The provisions listed in Schedule 1 are amended by striking out "Chairman" or "chairman" wherever it appears and in each case substituting "Chairperson".

Schedule 2

74 The provisions listed in Schedule 2 are amended by striking out "vice-chairman" wherever it appears and in each case substituting "vice-chairperson".

Coming into force

75 This Act comes into force on proclamation.

Schedule 1

[*Section 73*]

- section 2
- section 4
- section 5
- section 7

- section 8
- section 9
- section 10
- section 21

- section 25
- section 70
- section 96

Schedule 2

[*Section 74*]

- section 2
- section 4
- section 7