

**2006**

**CHAPTER 8**

An Act to amend *The Securities Act, 1988*

(Assented to April 27, 2006)

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, 2006*.

**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) The following clauses are added after clause 2(1)(w):**

“(w.1) **‘investment fund’** means a mutual fund or a non-redeemable investment fund;

“(w.2) **‘investment fund manager’** means a person who or company that has the power to direct and exercises the responsibility of directing the affairs of an investment fund”.

**(2) Clauses 2(1)(y) and (z) are repealed and the following substituted:**

“(y) **‘material change’** means:

(i) when used in relation to an issuer other than an investment fund:

(A) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer; or

(B) a decision to implement a change mentioned in paragraph (A) made by the board of directors of the issuer or other persons acting in a similar capacity, or by senior management of the issuer who believe that confirmation of the decision by the board of directors or other persons acting in a similar capacity is probable; and

(ii) when used in relation to an issuer that is an investment fund:

(A) a change in the business, operations or affairs of the issuer that would be considered important by a reasonable investor in determining whether to purchase or to continue to hold securities of the issuer; or

(B) a decision to implement a change mentioned in paragraph (A) made:

(I) by the board of directors of the issuer or the board of directors of the investment fund manager of the issuer or other persons acting in a similar capacity;

(II) by senior management of the issuer who believe that confirmation of the decision by the board of directors or other persons acting in a similar capacity is probable; or

(III) by senior management of the investment fund manager of the issuer who believe that confirmation of the decision by the board of directors of the investment fund manager of the issuer or other persons acting in a similar capacity is probable;

“(z) **‘material fact’**, when used in relation to securities issued or proposed to be issued, means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities”.

**(3) Clauses 2(1)(dd) and (ee) are repealed and the following substituted:**

“(dd) **‘mutual fund’** means:

(i) an issuer whose primary purpose is to invest money provided by its security holders and whose securities entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets, including a separate fund or trust account, of the issuer; or

(ii) an issuer that is designated as a mutual fund in accordance with the regulations;

“(ee) **‘mutual fund in Saskatchewan’** means a mutual fund that is:

(i) a reporting issuer; or

(ii) organized pursuant to the laws of Saskatchewan;

“(ee.1) **‘non-redeemable investment fund’** means:

(i) an issuer:

(A) whose primary purpose is to invest money provided by its security holders;

(B) that does not invest:

(I) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is an investment fund; or

(II) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is an investment fund; and

(C) that is not a mutual fund; or

(ii) an issuer that is designated as a non-redeemable investment fund in accordance with section 11.1 or the regulations”.

**(4) Clause 2(1)(ff) is repealed and the following substituted:**

“(ff) **‘offering memorandum’** means a document that provides information about the business or affairs of an issuer and that has been prepared primarily for delivery to and review by a prospective purchaser to assist the prospective purchaser in making an investment decision about securities being sold in a distribution for which a prospectus would be required but for the availability of an exemption from that requirement pursuant to Saskatchewan securities laws, but does not include:

(i) an annual report, interim report, information circular, take-over bid circular, issuer bid circular, or prospectus; or

(ii) a document or type of document specified by the Director”.

**(5) Clause 2(1)(kk) is repealed.**

**(6) Subclause 2(1)(qq)(v) is repealed and the following substituted:**

“(v) whose existence continues following the exchange of securities of an issuer in connection with an amalgamation, merger, reorganization, arrangement, statutory procedure or similar transaction if one of the issuers participating in the transaction is a reporting issuer”.

**(7) Clause 2(1)(rr.1) is amended by adding “, and includes any extra-provincial securities laws adopted or incorporated pursuant to section 147.4” after “Director”.**

**(8) Clause 2(1)(ww) is amended:**

**(a) in subclause (vi) by striking out “clause 39(2)(a)” and substituting “the regulations”; and**

**(b) in subclause (vii) by striking out “clause 39(2)(a)” and substituting “the regulations”.**

**New section 11.1**

**4 The following section is added after section 11:**

**“Designation**

**11.1(1)** Subject to the regulations, if it is satisfied that it would not be prejudicial to the public interest to do so, the Commission may make an order designating all or any of the following for all or any provisions of this Act or the regulations:

(a) a futures contract, or a class of futures contracts, not to be a futures contract;

(b) a person or company to be an insider;

- (c) an issuer or a class of issuers to be, or not to be, a mutual fund;
- (d) an issuer or a class of issuers to be, or not to be, a non-redeemable investment fund;
- (e) an issuer or a class of issuers to be, or not to be, a reporting issuer.

(2) The Commission may make an order pursuant to subsection (1) on its own motion or on the application of any interested person or company”.

**Section 13 amended**

**5 Section 13 is amended by striking out “Every” and substituting “If requested to do so by the Commission, every”.**

**Section 27 amended**

**6 Subsection 27(1) is amended by striking out “Subject to subsection (2) and sections 38, 39 and 39.1” and substituting “Subject to the regulations”.**

**Part VII repealed**

**7 Part VII is repealed.**

**Section 45 amended**

**8 Subsection 45(3) is repealed and the following substituted:**

“(3) This section does not apply to securities or trades prescribed in the regulations”.

**New section 55.1**

**9 Section 55.1 is repealed and the following substituted:**

**“Fraudulent and misleading transactions prohibited**

**55.1** No person or company shall, directly or indirectly, engage in or participate in any act, practice or course of conduct relating to securities or exchange contracts that:

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or exchange contract; or
- (b) defrauds any person”.

**Part X repealed**

**10 Part X is repealed.**

**New section 80.1**

**11 Section 80.1 is repealed and the following substituted:**

**“Obligation to deliver offering memorandum**

**80.1(1)** If a person or company uses an offering memorandum in connection with a distribution of securities, the person or company shall:

- (a) deliver the offering memorandum to a prospective purchaser at the same time as, or before, the purchaser enters into an agreement to purchase the securities; and
- (b) file the offering memorandum with the Commission on or before the tenth day after the distribution pursuant to the offering memorandum.

- (2) If a person or company uses an offering memorandum in connection with a distribution of securities, the person or company shall amend the offering memorandum if:
- (a) the distribution of securities has not been completed; and
  - (b) one of the following has occurred:
    - (i) there is a material change in the affairs of the issuer;
    - (ii) it is proposed that the terms or conditions of the offering described in the offering memorandum be altered;
    - (iii) securities are to be distributed in addition to the securities previously described in the offering memorandum.
- (3) If a person or company has amended an offering memorandum in accordance with subsection (2), the person or company shall:
- (a) deliver the amended offering memorandum to a purchaser who has entered into an agreement for the purchase and sale of the securities on or after the occurrence of an event mentioned in clause (2)(b); and
  - (b) file the offering memorandum with the Commission on or before the tenth day after the offering memorandum has been amended.
- (4) Subject to subsection (5), a purchaser that receives an amended offering memorandum that has been delivered in accordance with subsection (3) has the right to withdraw from the agreement to purchase the securities by delivering a notice to the person who or company that is selling the securities, indicating the purchaser's intention not to be bound by the purchase agreement.
- (5) A purchaser must deliver the notice of withdrawal mentioned in subsection (4) within two business days after receiving the amended offering memorandum”.

**Sections 80.3 and 80.4 repealed**

**12 Sections 80.3 and 80.4 are repealed.**

**New section 81**

**13 Section 81 is repealed and the following substituted:**

**“Certificate as to status as reporting issuer**

**81(1)** Subject to subsection (3), for the purpose of determining whether or not an issuer is a reporting issuer and, if so, whether or not the reporting issuer is in default of any requirement of this Act, the regulations or a decision of the Commission, the seller is entitled to apply to the Commission for a certificate of the type mentioned in section 151 and is entitled to rely on the certificate.

(2) Subject to subsection (3), for the purpose of determining whether or not a reporting issuer is in default of any requirement of this Act, the regulations or a decision of the Commission, the seller is entitled to rely on a list of defaulting reporting issuers to be maintained by the Commission for public inspection in its offices during its normal business hours.

(3) No person who or company that knows or ought reasonably to know that a reporting issuer is in default of any requirement of this Act or the regulations may rely on the certificate mentioned in subsection (1) or on the list mentioned in subsection (2)”.

**Section 82 repealed**

**14 Section 82 is repealed.**

**Section 134 amended**

**15 Clause 134(1)(a) is repealed and the following substituted:**

“(a) that any or all of the exemptions in Saskatchewan securities laws 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”.

**Section 135.1 amended**

**16(1) Clause 135.1(1)(a) is repealed and the following substituted:**

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

- (i) Saskatchewan securities laws; or
- (ii) a written undertaking made by that person or company to the Commission or the Director”.

**(2) The following subsection is added after subsection 135.1(3):**

“(4) If the Commission has made an order against a person or company pursuant to this section, the Commission may also make an order pursuant to this section against:

- (a) every director or officer of that person or company who directed, authorized, permitted, assented to, acquiesced in or participated in the contravention of or failure to comply with Saskatchewan securities laws or an undertaking to the Commission or Director by that person or company; and
- (b) every other individual who directed, authorized, permitted, assented to, acquiesced in or participated in the contravention of or failure to comply with Saskatchewan securities laws or an undertaking to the Commission or Director by that person or company”.

**Section 138.1 amended**

**17(1) Clause 138.1(2)(b) is repealed and the following substituted:**

“(b) an exemption prescribed in the regulations”.

**(2) Subsection 138.1(3) is amended in the portion preceding clause (a) by adding “for damages” after “has a right of action”.**

**Section 141 amended**

**18 Clause 141(2)(b) is amended by striking out “subsection 80.3(1)” and substituting “section 80.1”.**

New Part XIX.1 added

19 The following Part is added after section 147:

“PART XIX.1  
Interjurisdictional Compliance

“Definitions

147.1(1) In this Part and in section 154:

(a) **‘extra-provincial authority’** means any power, function or duty of an extra-provincial securities commission that is, or is intended to be, performed or exercised by that commission pursuant to the extra-provincial securities laws under which that commission operates;

(b) **‘extra-provincial securities commission’** means a securities commission established pursuant to the laws of another province or territory of Canada and includes any other securities authority, administrator or regulator operated by or that forms a part of the government of another province or territory of Canada;

(c) **‘extra-provincial securities laws’** means the laws of another province or territory of Canada that, with respect to that province or territory, deal with the regulation of securities markets and the trading in securities and exchange contracts in that province or territory;

(d) **‘foreign securities laws’** means the laws of a non-Canadian jurisdiction that, with respect to that jurisdiction, deal with the regulation of securities markets and the trading in securities and exchange contracts in that jurisdiction;

(e) **‘Saskatchewan authority’** means any power, function or duty of the Commission or of the Director that is, or is intended to be, performed or exercised by the Commission or the Director pursuant to Saskatchewan securities laws.

(2) A reference in this Act or the regulations to an extra-provincial securities commission includes, unless otherwise provided:

(a) its delegate; and

(b) any person who with respect to that extra-provincial securities commission performs functions that are substantially similar to the functions carried out by the Director pursuant to this Act.

“Delegation and acceptance of authority

147.2(1) In accordance with any regulations made pursuant to section 154 and subject to subsection (2), the Commission, for the purposes of this Part:

(a) may delegate any Saskatchewan authority to an extra-provincial securities commission; and

(b) may accept a delegation of any extra-provincial authority from an extra-provincial securities commission.

(2) The Commission must not delegate any power, function or duty of the Commission or of the Director that is, or is intended to be, performed or exercised by the Commission or the Director pursuant to section 11.1, Part II, this Part or section 154.

**“Subdelegation**

**147.3(1)** Subject to any restrictions or conditions imposed by an extra-provincial securities commission with respect to a delegation of extra-provincial authority to the Commission, the Commission may subdelegate that extra-provincial authority in the manner and to the extent that the Commission or the Director, as the case may be, may delegate any Saskatchewan authority pursuant to Saskatchewan securities laws.

(2) Subject to any restrictions or conditions imposed by the Commission with respect to a delegation of Saskatchewan authority to an extra-provincial securities commission, nothing in this Part is to be construed as prohibiting the extra-provincial securities commission from subdelegating that Saskatchewan authority in the manner and to the extent that the extra-provincial securities commission may delegate its authority pursuant to the extra-provincial securities laws pursuant to which it operates.

**“Adoption or incorporation of extra-provincial securities laws**

**147.4(1)** In accordance with any regulations made pursuant to section 154, the Commission may adopt or incorporate as Saskatchewan securities laws all or any provisions of any extra-provincial securities laws to be applied to:

- (a) persons or companies based in that extra-provincial jurisdiction; or
- (b) securities or trades both in Saskatchewan and that extra-provincial jurisdiction.

(2) If the Commission adopts or incorporates an extra-provincial securities law pursuant to subsection (1), it may adopt or incorporate it, as amended from time to time or otherwise, whether before or after the adoption or incorporation, and with any changes the Commission considers necessary.

**“Compliance with extra-provincial securities laws**

**147.41** In accordance with any regulations made pursuant to section 154, the Commission may, by order, exempt a person, company, security or trade or a class of persons, companies, securities or trades from compliance with all or any requirements of Saskatchewan securities laws if the person, company, security or trade or class of persons, companies, securities or trades, as the case may be, is in compliance with the applicable extra-provincial securities laws designated by the Commission.

**“Compliance with foreign securities laws**

**147.42** In accordance with any regulations made pursuant to section 154, the Commission may, by order, exempt a person, company, security or trade or a class of persons, companies, securities or trades from compliance with all or any requirements of Saskatchewan securities laws if the person, company, security or trade or class of persons, companies, securities or trades, as the case may be, is in compliance with all or any provision of any foreign securities laws designated by the Commission.



**“Adoption of decisions of extra-provincial securities commissions**

147.5(1) In accordance with any regulations made pursuant to section 154, the Commission may, without providing an opportunity to be heard, by order adopt a decision or class of decisions of an extra-provincial securities commission.

(2) A decision or class of decisions adopted pursuant to subsection (1) has the same legal effect in Saskatchewan as a decision of the Commission.

**“Immunity re Saskatchewan authority**

147.6(1) In this section:

(a) **‘Commission’** includes the Director and any member, officer, employee, appointee or agent of the Commission;

(b) **‘securities regulatory authority’** means:

(i) an extra-provincial securities commission mentioned in subsection (2) and includes any member, officer, employee, appointee or agent of that commission;

(ii) any person mentioned in clause (2)(b);

(iii) any exchange, quotation and trade reporting system or self-regulatory organization mentioned in clause (2)(c).

(2) This section applies only with respect to a Saskatchewan authority:

(a) that has been delegated by the Commission to an extra-provincial securities commission;

(b) that is being, or is intended to be, exercised by a person where that Saskatchewan authority has been subdelegated to that person by an extra-provincial securities commission, including a subdelegate of that person but not including an exchange, a quotation and trade reporting system or a self-regulatory organization recognized or authorized by that extra-provincial securities commission; or

(c) that is being, or is intended to be, exercised by an exchange, a quotation and trade reporting system or a self-regulatory organization recognized or authorized by an extra-provincial securities commission to carry on business where that Saskatchewan authority has been subdelegated to it by the extra-provincial securities commission.

(3) No action or other proceeding lies or shall be instituted against the Commission or a securities regulatory authority:

(a) for any act done in good faith in the performance or exercise, or the intended performance or exercise:

(i) of any Saskatchewan authority; or

(ii) of a delegation, or the acceptance of a delegation, of any Saskatchewan authority; or

(b) for any neglect or default in the performance or exercise in good faith:

- (i) of any Saskatchewan authority; or
- (ii) of a delegation, or the acceptance of a delegation, of any Saskatchewan authority.

**“Immunity re extra-provincial authority**

**147.7(1)** In this section:

(a) **‘Commission’** includes the Director and any member, officer, employee, appointee or agent of the Commission;

(b) **‘securities regulatory authority’** means:

- (i) any person mentioned in clause (2)(b);
- (ii) any exchange, quotation and trade reporting system or self-regulatory organization mentioned in clause (2)(c).

(2) This section applies only with respect to an extra-provincial authority:

(a) that has been delegated by an extra-provincial securities commission to the Commission;

(b) that is being, or is intended to be, exercised by a person where that extra-provincial authority has been subdelegated to that person by the Commission, including a subdelegate of that person but not including a recognized exchange, a recognized quotation and trade reporting system or a recognized self-regulatory organization; or

(c) that is being, or is intended to be, exercised by a recognized exchange, a recognized quotation and trade reporting system or a recognized self-regulatory organization where that extra-provincial authority has been subdelegated to it by the Commission.

(3) No action or other proceeding lies or shall be instituted against the Commission or a securities regulatory authority:

(a) for any act done in good faith in the performance or exercise, or the intended performance or exercise:

- (i) of any extra-provincial authority; or
- (ii) of a delegation, or the acceptance of a delegation, of any extra-provincial authority; or

(b) for any neglect or default in the performance or exercise in good faith:

- (i) of any extra-provincial authority; or
- (ii) of a delegation, or acceptance of a delegation, of any extra-provincial authority.

**“Appeal re extra-provincial decision**

**147.8(1)** In this section, ‘**extra-provincial decision**’ means a decision of an extra-provincial securities commission made pursuant to a Saskatchewan authority delegated to that extra-provincial securities commission by the Commission.

(2) A person or company that is directly affected by an extra-provincial decision may appeal that extra-provincial decision to the Court of Appeal.

(3) An appeal pursuant to this section is to be commenced by way of a notice of motion filed with the Court of Appeal within 30 days after the date that the extra-provincial securities commission serves the notice of its decision on the person or company appealing the decision.

(4) The practice and procedure in the Court of Appeal with respect to an appeal pursuant to this section shall, with any necessary modification that the Court of Appeal or a judge of the Court of Appeal considers appropriate, be the same as on an appeal from a judgment of the Court of Queen’s Bench in an action.

(5) With respect to an appeal pursuant to this section, the Court of Appeal or a judge of the Court of Appeal may:

(a) make any order or direction that the Court or judge considers appropriate with respect to the commencement or conduct of or any matter relating to the appeal;

(b) confirm, vary or reject the extra-provincial decision; or

(c) make any decision that the extra-provincial securities commission could have made and substitute the Court’s or judge’s decision for that of the extra-provincial securities commission.

(6) The extra-provincial securities commission is the respondent to an appeal pursuant to this section.

(7) A copy of the notice of motion mentioned in subsection (3) and of the supporting documents must be served, within the 30-day period mentioned in subsection (3), on:

(a) the respondent; and

(b) the Director.

(8) Notwithstanding that the Commission is not a respondent to an appeal pursuant to this section, the Commission is entitled to be represented at the appeal and to make representations with respect to any matter before the Court of Appeal or a judge of the Court of Appeal that is related to the appeal.

(9) Notwithstanding that an appeal is commenced pursuant to this section, the extra-provincial decision being appealed takes effect immediately unless the extra-provincial securities commission, the Commission, the Court of Appeal or a judge of the Court of Appeal grants a stay pending disposition of the appeal.

(10) In this section, a reference to an extra-provincial securities commission is a reference to the extra-provincial securities commission that made the extra-provincial decision that is being appealed pursuant to this section.

**“Appeal re decision of the Commission**

**147.81(1)** In this section, **‘delegated authority’** means any extra-provincial authority that is delegated to and accepted by the Commission pursuant to section 147.2.

(2) A person or company that is directly affected by any of the following decisions may appeal that decision to the Court of Appeal:

(a) a decision of the Commission made pursuant to a delegated authority;

(b) a decision or class of decisions of an extra-provincial securities commission that is adopted by the Commission pursuant to section 147.5.

(3) Subsections 11(2) to (8) apply, with any necessary modification, to an appeal made pursuant to this section.

(4) A person or company that has a right to appeal a decision pursuant to this section may, subject to any direction of the Court of Appeal or a judge of the Court of Appeal, exercise that right of appeal whether or not that person or company may have a right to appeal that decision to a court in another jurisdiction.

(5) Notwithstanding subsection (4), if a decision mentioned in subsection (2) is being appealed to a court in another jurisdiction, the Court of Appeal or a judge of the Court of Appeal may stay an appeal pursuant to this section pending the determination of the appeal in the other jurisdiction”.

**Section 154 amended**

**20(1) The following clause is added after clause 154(1)(t):**

“(t.1) designating issuers or a class of issuers as reporting issuers”.

**(2) Clause 154(1)(v) is amended:**

**(a) by repealing subclause (viii); and**

**(b) by adding the following subclause before subclause (ix):**

“(viii.1) designating issuers or a class of issuers as non-redeemable investment funds”.

**(3) The following clause is added after clause 154(1)(ee.5):**

“(ee.6) requiring evaluations of reporting issuers’ internal controls over financial reporting and requiring reporting issuers to obtain audits of their internal controls over financial reporting, including their management’s evaluation”.

**(4) The following clauses are added after clause 154(1)(ff):**

“(ff.1) respecting the delegation by the Commission of any Saskatchewan authority to an extra-provincial securities commission pursuant to section 147.2;

“(ff.2) respecting the acceptance by the Commission of any delegation of an extra-provincial authority from an extra-provincial securities commission pursuant to section 147.2;

“(ff.3) respecting any amendments to, or the revocation of, any delegation or acceptance of a delegation mentioned in clause (ff.1) or (ff.2);

“(ff.4) respecting the adoption or incorporation of extra-provincial securities laws pursuant to section 147.4, including the administration of those laws once adopted or incorporated;

“(ff.5) respecting the administration of exemptions from Saskatchewan securities laws pursuant to sections 147.41 and 147.42;

“(ff.6) respecting the adoption of decisions or classes of decisions of extra-provincial securities commissions pursuant to section 147.5, including the administration of those decisions or classes of decisions once adopted;

“(ff.7) respecting the administration of extra-provincial securities laws arising from or as a result of any matters described in clauses (ff.1) to (ff.6)”.

**(5) Clause 154(1)(ww) is amended by striking out “exempt purchasers for the purposes of clause 39(1)(d) and 81(1)(c)” and substituting “accredited investors for the purposes of this Act and the regulations”.**

**(6) The following clauses are added after clause 154(1)(ww):**

“(ww.1) designating issuers as mutual funds or non-redeemable investment funds for all or any provisions of this Act or the regulations;

“(ww.2) prescribing securities or trades to which section 45 does not apply;

“(ww.3) prescribing exemptions for the purposes of clause 138.1(2)(b)”.

**Section 161 amended**

**21(1) The following subsection is added after subsection 161(2):**

“(2.1) If the Commission has made an order against a person or company pursuant to subsection (1), the Commission may also make an order to pay costs against:

(a) every director or officer of that person or company who directed, authorized, permitted, assented to, acquiesced in or participated in the failure to comply with the provisions set out in subsection (1) by that person or company; and

(b) every other individual who directed, authorized, permitted, assented to, acquiesced in or participated in the failure to comply with the provisions set out in subsection (1) by that person or company”.

**(2) The following subsection is added after subsection 161(3):**

“(3.1) If the Commission has made an order against a person or company pursuant to subsection (3), the Commission may also make an order to pay costs against:

(a) every director or officer of that person or company who directed, authorized, permitted, assented to, acquiesced in or participated in the commission of an offence pursuant to section 131 by that person or company; and

(b) every other individual who directed, authorized, permitted, assented to, acquiesced in or participated in the commission of an offence pursuant to section 131 by that person or company”.

**(3) Subsection 161(4) is repealed and the following substituted:**

“(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, company, director, officer or individual is required to pay pursuant to any of subsections (1) to (3.1)”.

**Coming into force**

**22** This Act comes into force on proclamation.