

2008

CHAPTER 35

An Act to amend *The Securities Act, 1988* and to
amend *The Securities Amendment Act, 2007*

(Assented to December 3, 2008)

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, 2008*.

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 Subsection 2(1) is amended:

(a) by repealing clause (a) and substituting the following:

“(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;

“(a.1) ‘**adviser**’ means a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising another as to the investing in or the buying or selling of securities or exchange contracts”;

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

“(n) ‘**dealer**’ means a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in securities or exchange contracts as principal or agent”;

(c) by repealing clause (ii);

(d) by repealing clause (jj.1);

(e) by repealing clauses (oo) and (pp) and substituting the following:

“(oo) ‘**register**’ means register pursuant to this Act or the regulations;

“(pp) ‘**registrant**’ means a person or company registered or required to be registered pursuant to this Act or the regulations”;

(f) by adding the following clauses after clause (qq):

“(qq.1) **‘representative’** means:

- (i) with respect to a registered dealer, an individual who trades in securities or exchange contracts on behalf of the dealer, whether or not the individual is employed by the dealer; and
- (ii) with respect to a registered adviser, an individual who provides advice on behalf of the adviser with respect to investing in, or the buying or selling of securities or exchange contracts, whether or not the individual is employed by the adviser;

“(qq.2) **‘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 a prospective purchaser, but does not include preliminary prospectuses, prospectuses, offering memoranda or amendments to those preliminary prospectuses, prospectuses or offering memoranda”; **and**

(g) by repealing clause (rr).**Section 11.1 amended****4(1) The following clause is added after clause 11.1(1)(e):**

“(f) a person or company or class of persons or companies to be or, not to be, an accredited investor”.

(2) The following subsection is added after subsection 11.1(2):

“(3) In this section, **‘accredited investor’** means an accredited investor as defined in the regulations”.

Section 20 amended**5 Subsection 20(1) is amended in the portion preceding clause (a) by striking out “24” and substituting “23”.****Section 24 repealed****6 Section 24 is repealed.****New section 27****7 Section 27 is repealed and the following substituted:****“Registration for trading**

27(1) In this section:

- (a) **‘chief compliance officer’** means chief compliance officer as defined in the regulations;
- (b) **‘ultimate designated person’** means ultimate designated person as defined in the regulations.

(2) No person or company shall:

- (a) act as a dealer or underwriter unless the person or company:
 - (i) is registered as a dealer; or
 - (ii) is registered as a representative of a registered dealer and is acting on behalf of the dealer;

- (b) act as an adviser unless the person or company:
 - (i) is registered as an adviser; or
 - (ii) is registered as a representative of a registered adviser and is acting on behalf of the adviser; or
- (c) act as an investment fund manager unless the person or company is registered as an investment fund manager.

(3) If a registered dealer, registered adviser or registered investment fund manager is required under the regulations to designate an individual as its ultimate designated person or chief compliance officer, the individual so designated shall be registered”.

Section 28 amended

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

“(2) The Director may, at any time, restrict a registration by imposing terms and conditions on the registration and, without limiting the generality of the Director’s powers, may do any of the following:

- (a) restrict the duration of the registration;
- (b) restrict the registration to trades in certain securities or exchange contracts or a certain class of securities or exchange contracts;
- (c) restrict the registration to providing advice with respect to the investing in or the buying or selling of certain securities or exchange contracts or a certain class of securities or exchange contracts”.

Section 31 repealed

9 Section 31 is repealed.

Section 33 repealed

10 Section 33 is repealed.

New section 33.1

11 Section 33.1 is repealed and the following substituted:

“Duty of registrant and investment manager to deal honestly, fairly and in good faith

33.1(1) A registrant shall deal fairly, honestly and in good faith with his, her or its clients.

- (2) An investment fund manager shall:
 - (a) exercise his, her or its powers and discharge his, her or its duties honestly, in good faith and in the best interests of the investment fund; and
 - (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances”.

Section 42 amended

12 Subsection 42(1) is repealed.

Section 43 amended

13 Subsection 43(4) is amended by striking out “salesperson” and substituting “representative”.

Sections 45 to 48 repealed

14 Sections 45 to 48 are repealed.

New section 52.1

15 The following section is added after section 52:

“Requirement to deliver copies of advertising and sales literature

52.1(1) If the Commission is satisfied that a registrant’s past conduct in connection with advertising and sales literature affords reasonable grounds for believing that it is in the public interest to do so, the Commission may order that the registrant deliver to the Director copies of advertising and sales literature that the registrant proposes to use in connection with its business as a registrant.

(2) When making an order pursuant to subsection (1), the Commission may order that the registrant deliver the advertising and sales literature to the Director within a specified period before the registrant uses it.

(3) Before making an order pursuant to subsection (1), the Commission shall give the registrant an opportunity to be heard.

(4) If a registrant has delivered advertising and sales literature to the Director pursuant to an order made by the Commission pursuant to subsection (1), the Director may require the registrant to modify the advertising and sales literature before the registrant uses it”.

Section 55.2 repealed

16 Section 55.2 is repealed.

Section 79 amended

17(1) Subsection 79(1) is amended:

(a) in the portion preceding clause (a) by striking out “dealer” wherever it appears and in each case substituting “person or company”; and

(b) in clause (b) by striking out “or section 71”.

(2) Subsection 79(2) is amended in the portion preceding clause (a) by striking out “dealer” and substituting “person or company”.

(3) Subsection 79(3) is amended:

(a) by striking out “dealer or person” and substituting “person or company”; and

(b) by striking out “or section 80”.

(4) Subsection 79(6) is amended by striking out “dealer” and substituting “person or company”.

(5) Subsection 79(7) is amended by striking out “dealer” and substituting “person or company”.

(6) Subsection 79(8) is amended in the portion preceding clause (a) by striking out “dealer” wherever it appears and in each case substituting “person or company”.

(7) Subsection 79(9) is amended by striking out “dealer” and substituting “person or company”.

(8) Subsection 79(10) is repealed.

Section 80.1 amended

18 Clause 80.1(3)(b) is amended by striking out “the offering memorandum has been amended” **and substituting** “the distribution pursuant to the offering memorandum”.

New section 83

19 Section 83 is repealed and the following substituted:

“Order re exemption or declaration

83(1) The Commission may, if the Commission considers that it would not be prejudicial to the public interest to do so, make an order:

- (a) granting an exemption from section 27 or 58;
- (b) declaring that a person or company is deemed to be a reporting issuer for any or all purposes of Saskatchewan securities laws;
- (c) declaring that a trade, an intended trade or a class of trades or intended trades is deemed to be or not to be a distribution;
- (d) declaring whether a distribution has been concluded or is still in progress;
- (e) declaring, for all or any purposes of this Act or the regulations, that a person or company is deemed not to be in default of:
 - (i) Saskatchewan securities laws; or
 - (ii) a written undertaking made by that person or company to the Commission or the Director.

(2) The Commission may make an order pursuant to subsection (1):

- (a) on its own motion; or
- (b) on the application of a person or company directly affected by the matter with respect to which the application is being made.

(3) Subject to subsection 158(3), a decision of the Commission made pursuant to subsection (1) is final and there is no appeal from that decision”.

Section 98 amended

20 Section 98 is amended by adding the following clauses after clause (b):

“(b.1) ‘**offer to acquire**’ means:

- (i) an offer to purchase securities, or a solicitation of an offer to sell securities;
- (ii) an acceptance of an offer to sell securities, whether or not the offer has been solicited; or
- (iii) any combination of the above;

“(b.2) ‘**offeror**’ means a person who or company that makes a take-over bid, an issuer bid or an offer to acquire”.

Section 125 repealed

21 Section 125 is repealed.

Section 127 repealed

22 Section 127 is repealed.

New section 128

23 Section 128 is repealed and the following substituted:

“Trades by mutual fund insiders

128 No person who or company that has access to information concerning the investment program of a mutual fund or the investment portfolio managed for a client by an adviser shall purchase or sell securities of an issuer for the person’s or company’s account if:

- (a) the portfolio securities of the mutual fund or the investment portfolio managed for a client by an adviser include securities of that issuer; and
- (b) the information is used by the person or company for the person’s or company’s direct benefit or advantage”.

Section 134 amended

24(1) Clause 134(1)(f) is repealed and the following substituted:

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

- (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 134(1):

“(1.1) In addition to the power to make orders pursuant to subsection (1), the Commission or the Director may, after providing an opportunity to be heard, make an order mentioned in subsection (1) against a person or company, if the person or company:

- (a) has been convicted of an offence arising from a transaction or carrying on a business or course of action related to securities or exchange contracts;
- (b) has been found by a court or tribunal of competent jurisdiction inside or outside of Saskatchewan to have contravened Saskatchewan securities laws or the securities laws of another jurisdiction;
- (c) is subject to an order made by a securities regulatory authority in another jurisdiction imposing sanctions, conditions, restrictions or requirements on the person or company; or
- (d) has agreed with a securities regulatory authority in another jurisdiction to be subject to sanctions, conditions, restrictions or requirements imposed by that securities regulatory authority”.

(3) Subsection 134(5) is repealed.

Section 135.6 amended

25(1) Subsection 135.6(7) is repealed.

(2) Subsection 135.6(9) is amended by adding “until the Commission makes a decision after the hearing” **after** “is stayed”.

(3) The following subsection is added after subsection 135.6(9):

“(9.1) Nothing in subsection (9) precludes a claimant from commencing an action or proceeding for compensation for the same loss, or any unclaimed loss arising out the same transaction, after the Commission opens a hearing”.

Section 137 amended

26 Subsection 137(1) is amended in the portion preceding clause (a) by striking out “is deemed to have relied on that misrepresentation if it was a misrepresentation at the time of purchase and has” **and substituting** “has, without regard to whether the purchaser relied on the misrepresentation,”.

Section 138 amended

27 Subsection 138(1) is amended in the portion preceding clause (a) by striking out “is deemed to have relied on that misrepresentation, if it was a misrepresentation at the time of purchase, and has” **and substituting** “has, without regard to whether the purchaser relied on the misrepresentation,”.

Section 138.1 amended

28(1) Subsection 138.1(1) is repealed.

(2) Subsection 138.1(3) is amended in the portion preceding clause (a) by striking out “is deemed to have relied on that misrepresentation if it was a misrepresentation at the time of purchase and has” **and substituting** “has, without regard to whether the purchaser relied on the misrepresentation,”.

Section 138.2 amended

29 Subsection 138.2(1) is repealed and the following substituted:

“(1) If an individual makes a verbal statement to a 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 has, without regard to whether the purchaser relied on the misrepresentation, a right of action for damages against the individual”.

Section 139 amended

30(1) Subsection 139(1) is amended in the portion preceding clause (a) by striking out “every security holder of the offeree issuer is deemed to have relied on the misrepresentation and may” **and substituting** “a security holder of the offeree issuer may, without regard to whether the security holder of the offeree issuer relied on the misrepresentation,”.

(2) Subsection 139(2) is amended by striking out “is deemed to have relied on the misrepresentation and has” **and substituting** “has, without regard to whether the security holder relied on the misrepresentation,”.

Section 141 amended

31 Subsection 141(2) is amended:

- (a) in the portion preceding clause (a) by striking out “person who” and substituting “person who or company that”; and**
- (b) in the portion following clause (c) by striking out “dealer” and substituting “vendor”.**

Section 142 amended

32 Subsection 142(3) is repealed and the following substituted:

“(3) Any person who or company that:

- (a) has access to information concerning the investment program of a mutual fund in Saskatchewan or the investment portfolio managed for a client by a registered adviser or a registered dealer; and
- (b) uses that information for the person’s or company’s direct benefit or advantage to purchase or sell securities of an issuer for the person’s or company’s account where the portfolio securities of the mutual fund or the investment portfolio managed for the client by the registered adviser or registered dealer include securities of that issuer;

is accountable to the mutual fund or the client of the registered adviser or registered dealer, as the case may be, for any benefit or advantage received or receivable as a result of that purchase or sale”.

Section 144 repealed

33 Section 144 is repealed.

Section 154 amended

34 Subsection 154(1) is amended:**(a) by repealing clause (b) and substituting the following:**

“(b) prescribing requirements respecting applications for registration and the amendment, expiration or surrender of registration, and respecting suspension, reinstatement, cancellation, revocation or termination of registration”;

(b) in clause (c):**(i) by striking out “and” after subclause (ii); and****(ii) by adding the following after subclause (iii):**

“(iv) requirements that apply to non-resident registrants;

“(v) requirements with respect to participation in a dispute resolution process;

“(vi) requirements with respect to handling of complaints;

“(vii) requirements with respect to systems of control and supervision, including requirements respecting the appointment and registration of individuals responsible for those systems, and the responsibilities of those individuals; and

“(viii) requirements respecting referral arrangements”;

(c) by repealing clause (d) and substituting the following:

“(d) requiring unregistered directors, partners, officers, representatives, employees and security holders of registrants to comply with all or any requirements prescribed in clause (c)”;

(d) by adding the following clauses after clause (d.1):

“(d.2) prescribing requirements respecting disclosure by a registered dealer, registered adviser or registered investment fund manager respecting the termination of the registrant’s relationship with an individual who has been acting on the registrant’s behalf to the Commission and the individual;

“(d.3) prescribing requirements respecting the disclosure of information to the public and the Commission by persons and companies that have an interest in the voting securities of a registrant;

“(d.4) for the purposes of section 27, defining ‘chief compliance officer’ and ‘ultimate designated person’”;

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

“(f) prescribing requirements respecting the disclosure or furnishing of information to customers and clients, prospective customers and clients, the public or the Commission by registrants and directors, partners, officers, representatives, employees and security holders of registrants”;
and

(f) in clause (ff.7) by striking out “(ff.6)” and substituting “(ff.5)”.**S.S. 2007, c.41 amended**

35(1) *The Securities Amendment Act, 2007* is amended in the manner set forth in this section.

(2) That part of section 32 that repeals section 79 of *The Securities Act, 1988* is repealed.

(3) Subsection 56(1) is repealed.

Coming into force

36 This Act comes into force on proclamation.

