

2012

CHAPTER 32

An Act to amend *The Securities Act, 1988*

(Assented to May 16, 2012)

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, 2012*.

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 adding the following clause after clause (b):

“(b.1) **‘auditor oversight organization’** means a person who or company that regulates the audit or review of financial statements that are required to be filed pursuant to this Act and the regulations”;

(b) in clause (c) by adding “, a Sunday” after “a Saturday”;

(c) by adding the following clauses after clause (l):

“(l.1) **‘credit rating’** means an assessment, publicly disclosed or distributed by subscription, of the creditworthiness of an issuer as an entity or with respect to securities or a specific pool of securities or assets;

“(l.2) **‘credit rating organization’** means a person who or company that issues credit ratings”;

(d) in clause (t.01) by striking out “results of operations” wherever it appears and in each case substituting “financial performance”;

(e) by adding the following clause before clause (ll):

“(kk.1) **‘professional corporation’** means a corporation that acts as a dealer or adviser on behalf of another dealer or adviser through one or more RPC representatives”;

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

“(nn.1) **‘quotation and trade reporting system’** means a person who or company that operates facilities that permit the dissemination of price quotations for the purchase and sale of securities and reports of completed transactions in securities for the exclusive use of registered dealers, but does not include an exchange or a registered dealer”;

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

“(oo.1) ‘**registered professional corporation**’ or ‘**RPC**’ means a corporation that is registered as a professional corporation pursuant to section 27”; **and**

(h) by adding the following clause after clause (qq.1):

“(qq.11) ‘**RPC representative**’ means an individual who acts as a dealer or adviser:

- (i) as a representative of a registered dealer or adviser acting on behalf of the dealer or adviser; and
- (ii) as an employee of or on behalf of a registered professional corporation”.

Section 2.1 repealed**4 Section 2.1 is repealed.****Section 11 amended****5 Subsection 11(1) is amended:**

- (a) by striking out “a ruling” and substituting “an order”; and**
- (b) by adding “, on matters of law only,” after “pursuant to subsection 83(1), may”.**

Section 11.1 amended**6 The following clauses are added after clause 11.1(1)(f):**

- “(g) a document or class of documents to be, or not to be, a prospectus;
- “(h) a rating or class of ratings to be, or not to be, a credit rating;
- “(i) a person or company or a class of persons or companies to be, or not to be, a credit rating organization”.

Section 15 amended**7 Subsections 15(1) and (2) are repealed and the following subsections substituted:**

“(1) On an *ex parte* application by a person appointed to make an investigation pursuant to section 12, if the Commission is of the opinion that it is necessary to protect the integrity of the investigation, the Commission may make an order prohibiting a person or company from disclosing, except to the person’s or company’s counsel, any of the following information:

- (a) the existence of the investigation;
- (b) the name of any witness examined or sought to be examined in the course of the investigation;
- (c) inquiries made by a person appointed pursuant to section 12;
- (d) any information, testimony, record, document or thing given or provided to a person appointed pursuant to section 12.

“(2) An order issued pursuant to subsection (1) is effective when it is served on the person who or company that is the subject of the order”.

Section 20 amended

8 Subsection 20(1) is amended:

- (a) in the portion preceding clause (a) by striking out “Notwithstanding sections 21 to 23” and substituting “Notwithstanding Parts V and V.1”;
- (b) by striking out “and” after clause (a); and
- (c) by adding the following after clause (a):
 - “(a.1) conduct an examination of the affairs, records, practices and procedures of:
 - (i) a credit rating organization;
 - (ii) an entity recognized pursuant to section 21.3; or
 - (iii) an entity designated pursuant to section 26.1; and”.

Section 20.1 amended

9(1) Subsection 20.1(1) is amended by striking out “reporting issuer or an investment fund” and substituting “reporting issuer, an investment fund or a credit rating organization”.

(2) Subsection 20.1(2) is amended by striking out “reporting issuer or an investment fund” and substituting “reporting issuer, an investment fund or a credit rating organization”.

New section 20.2

10 The following section is added after section 20.1:**“Duty to maintain books and records**

20.2(1) This section applies to every entity recognized pursuant to section 21.3, every entity designated pursuant to section 26.1, every credit rating organization, every officer, director and promoter of a credit rating organization, every reporting issuer and every officer, director, promoter and transfer agent of a reporting issuer.

- (2) Every person or company mentioned in subsection (1) shall:
 - (a) maintain:
 - (i) the books and records that are necessary to properly record the person’s or company’s business transactions and financial affairs and the transactions that the person or company executes on behalf of others; and
 - (ii) any other books or records that may be required pursuant to Saskatchewan securities laws; and
 - (b) deliver to the Commission or the Director any books or records or other information that the Commission or the Director may require”.

New Parts V and V.1

11 Part V is repealed and the following substituted:

**“PART V
Recognition of Entities**

“Interpretation of Part

21 In this Part:

- (a) **‘recognized auditor oversight organization’** means an auditor oversight organization that has been recognized by the Commission pursuant to section 21.3;
- (b) **‘recognized entity’** means an entity other than an auditor oversight organization that has been recognized by the Commission pursuant to section 21.3.

“Exchange required to be recognized

21.1 A person or company shall not carry on business as an exchange in Saskatchewan unless it is recognized by the Commission pursuant to section 21.3.

“Clearing agency required to be recognized

21.2 A person or company shall not carry on business as a clearing agency in Saskatchewan unless it is recognized by the Commission pursuant to section 21.3.

“Recognition

21.3(1) On the application of a person or company, the Commission may, by order, if the Commission considers it to be in the public interest to do so, recognize the applicant as:

- (a) a self-regulatory organization;
- (b) an exchange;
- (c) a quotation and trade reporting system;
- (d) a clearing agency; or
- (e) an auditor oversight organization.

(2) The Commission may, at any time, impose any terms and conditions on an order made pursuant to subsection (1) that it considers necessary in the public interest.

(3) The Commission may vary, suspend or revoke an order made pursuant to subsection (1) if it considers the variation, suspension or revocation necessary in the public interest.

(4) The Commission shall not make a decision pursuant to subsection (2) or (3) without giving the recognized entity an opportunity to be heard.

“Recognized entity to regulate conduct

21.4 A recognized entity shall regulate the operations, standards of practice and business conduct of its members or participants and their representatives.

“Recognized auditor oversight organization to regulate conduct

21.5(1) Subject to subsection (2), a recognized auditor oversight organization shall regulate the operations, standards of practice and business conduct of its members or participants.

(2) Subsection (1) only applies to the extent that the operations, standards of practice and business conduct relate to the auditing or review of financial statements that are required to be filed pursuant to Saskatchewan securities laws.

(3) For the purposes of performing the duties mentioned in subsection (1), a recognized auditor oversight organization may adopt a rule, standard or policy for regulating its members or participants on the basis that a government or a governmental authority or other regulatory body applies the same rule, standard or policy.

“Powers of Commission

21.6 If the Commission considers it to be in the public interest to do so, the Commission may make any decision respecting any of the following:

- (a) a bylaw, rule or other regulatory instrument or policy of a recognized entity, or a direction, decision, order or ruling made pursuant to a bylaw, rule or other regulatory instrument or policy of a recognized entity;
- (b) the procedures or practices of a recognized entity;
- (c) the manner in which a recognized entity carries on business;
- (d) the trading of securities or exchange contracts on or through the facilities of an exchange;
- (e) an exchange contract trading on an exchange;
- (f) a security listed on an exchange;
- (g) issuers whose securities are listed on an exchange to ensure that they comply with this Act and the regulations.

“Review of action

21.7(1) A person or company directly affected by a direction, decision, order or ruling made pursuant to a bylaw, rule or other regulatory instrument or policy of a recognized entity may apply to the Commission for a hearing and review of the matter.

(2) A person or company applying pursuant to this section shall, within 30 days after the date of the direction, decision, order or ruling that is the subject of the application:

- (a) apply to the Commission in writing; and

- (b) send a copy of the application to:
 - (i) the Director; and
 - (ii) any affected entity.

(3) Section 10 applies to a hearing and review conducted pursuant to this section in the same manner as to the hearing and review of a decision of the Chairperson or the Director.

“Record of transactions

21.8 Every exchange in Saskatchewan shall:

- (a) keep a record showing the time at which each transaction on the exchange took place; and
- (b) supply to any customer of any member of the exchange, on production of a written confirmation of any transaction with the member, particulars of the time at which the transaction took place and verification or otherwise of the matters set out in the confirmation.

“Auditors

22(1) Every recognized entity shall appoint a panel of auditors from auditors who are practising as auditors in Canada.

(2) Every member of a recognized entity shall appoint an auditor from the panel appointed pursuant to subsection (1).

(3) An auditor appointed pursuant to subsection (2) shall:

- (a) examine the financial affairs of the member of the recognized entity:
 - (i) as required by bylaws, rules or other regulatory instruments or policies of the recognized entity; and
 - (ii) in a manner satisfactory to the Commission; and

(b) report the results of each examination to the recognized entity.

(4) A bylaw, rule or regulatory instrument or policy mentioned in subclause (3)(a)(i) respecting the practice and procedure of examinations does not come into force until it has been approved by the Commission.

“Registration powers of self-regulatory organizations

23(1) The Commission may, by order, authorize a self-regulatory organization that has been recognized pursuant to section 21.3 to do any act or thing required or permitted to be done by the Director pursuant to Part VI or the regulations made for the purposes of that Part.

(2) An order made pursuant to subsection (1) must be approved by the Lieutenant Governor in Council before it comes into force.

(3) Notwithstanding that the Commission has made an order pursuant to this section, the Director may do the act or thing with respect to which the order was made.

(4) Subject to the approval of the Lieutenant Governor in Council, the Commission may revoke or vary an order made pursuant to this section.

(5) The Commission shall not revoke or vary an order made pursuant to this section without giving the recognized self-regulatory organization an opportunity to be heard.

“Duty to provide information to auditor oversight organization

24(1) On the request of a recognized auditor oversight organization, a member of or participant in the organization shall provide the organization with information or records that relate to the audit or review of financial statements that are required to be filed pursuant to this Act or the regulations.

(2) Nothing in subsection (1) requires disclosure of information or records that are subject to solicitor-client privilege.

“Directors, officers of auditor oversight organization not compellable

25 The directors, officers, employees and agents of an auditor oversight organization are not required, and must not be compelled, to give any evidence or testimony with respect to information obtained in the discharge of their duties in any proceeding, other than a criminal proceeding.

**“PART V.1
Designation of Entities**

“Interpretation of Part

26 In this Part, ‘**designated entity**’ means an entity that has been designated by the Commission pursuant to section 26.1.

“Designation

26.1(1) On the application of a person or company, the Commission may, by order, if the Commission considers it to be in the public interest to do so, designate the applicant for the purposes of Saskatchewan securities laws as:

- (a) a credit rating organization;
- (b) an investor compensation fund;
- (c) an information processor;
- (d) a trade repository;
- (e) an alternative trading system; or
- (f) any other entity that is prescribed in the regulations for the purposes of this section.

(2) The Commission may, at any time, impose any terms and conditions on an order made pursuant to subsection (1) that it considers necessary in the public interest.

(3) The Commission may vary, suspend or revoke an order made pursuant to subsection (1) if it considers the variation, suspension or revocation necessary in the public interest.

(4) The Commission shall not make a decision pursuant to subsection (2) or (3) without giving the designated entity an opportunity to be heard.

“Content of credit ratings

26.2 Nothing in this Part permits the Commission to direct or regulate the content of credit ratings or methodologies”.

Section 27 amended

12(1) Clause 27(2)(a) is amended:

- (a) by striking out “or” after subclause (i);
- (b) by adding “or” after subclause (ii); and
- (c) by adding the following subclause after subclause (ii):

“(iii) is registered as a professional corporation and is acting on behalf of the dealer”.

(2) Clause 27(2)(b) is repealed and the following substituted:

- “(b) act as an adviser unless the person or company:
 - (i) is registered as an adviser;
 - (ii) is registered as a representative of a registered adviser and is acting on behalf of the adviser; or
 - (iii) is registered as a professional corporation and is acting on behalf of the adviser”.

Section 28 amended

13 Subsection 28(1) is amended by striking out “On receiving an application” and substituting “Subject to section 28.1, on receiving an application”.

New sections 28.1 and 28.2

14 The following sections are added after section 28:**“Registration by Director**

28.1 The Director shall not register a professional corporation unless:

- (a) the name of the professional corporation:
 - (i) includes the words ‘Professional Corporation’ or the abbreviation ‘Prof. Corp.’; and
 - (ii) indicates that the professional corporation acts as a dealer or adviser;
- (b) the articles of incorporation of the professional corporation:
 - (i) restrict its business to acting as a dealer or adviser;
 - (ii) include a restriction that the voting shares of the professional corporation can be owned only by one or more RPC representatives, each of whom is a spouse, parent or child of the other or others;
 - (iii) subject to section 28.2, include a restriction that the non-voting shares of the professional corporation can be owned only by:
 - (A) an RPC representative;
 - (B) a spouse, child or parent of an RPC representative;
 - (C) a corporation, all of the shares of which are owned by individuals mentioned in paragraph (A) or (B); or
 - (D) a trust, all of the beneficiaries of which are individuals mentioned in paragraph (A) or (B);

(iv) include a restriction that each director of the professional corporation must be an RPC representative; and

(v) include a restriction that no owner of voting shares of the registered professional corporation shall pledge or enter into a voting trust agreement or proxy or any other type of agreement that vests in a person the authority to exercise the voting rights attached to any or all of the owner's shares.

“Vesting of shares

28.2 The voting and non-voting shares of a professional corporation may be vested in:

(a) an executor or administrator of the estate of a shareholder for the limited purpose of permitting the executor or administrator to discharge his or her duties in relation to the administration of the estate; or

(b) a trustee in bankruptcy for the limited purpose of permitting the trustee in bankruptcy to discharge his or her duties as trustee in bankruptcy of the estate of a shareholder or the professional corporation”.

New section 37.1

15 The following section is added before the heading “PART VII, Exemptions from Registration:

“Legal relationships, legal authority and liability

37.1(1) Saskatchewan securities laws apply to an RPC representative notwithstanding that the RPC representative acts as a dealer or adviser through a professional corporation.

(2) The legal relationship between an RPC representative and the dealer or adviser on whose behalf the RPC representative acts is not affected by the fact that the RPC representative acts as a dealer or adviser through a professional corporation.

(3) A dealer or adviser has the same legal authority over a professional corporation as the dealer or adviser has over the RPC representative who acts as a dealer or adviser through the professional corporation.

(4) The legal relationship between an RPC representative and a self-regulatory organization that regulates the RPC representative is not affected by the fact that the RPC representative acts as a dealer or adviser through a professional corporation.

(5) A self-regulatory organization has the same legal authority over a professional corporation as it does over the RPC representative who acts as a dealer or adviser through the professional corporation.

(6) The liability of an RPC representative to a client is not affected by the fact that the RPC representative acts as a dealer or adviser through a professional corporation.

(7) The liability of a registered dealer or registered adviser to a client of an RPC representative is not affected by the fact that the RPC representative acts as a dealer or adviser through a professional corporation.

(8) The law applicable to the confidential, ethical or fiduciary relationships between an RPC representative and a client is not affected by the fact that the RPC representative acts as a dealer or adviser through a professional corporation.

(9) All rights and obligations with respect to communications made to or information received by an RPC representative apply to the shareholders, directors, officers and employees of the professional corporation through which the RPC representative acts as a dealer or adviser”.

Section 52 amended

16 Section 52 is amended:

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

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

“(c) the merits of the disclosure record of a reporting issuer, investment fund or credit rating organization;

“(d) the fitness or conduct of an entity recognized pursuant to section 21.3; or

“(e) the fitness or conduct of an entity designated pursuant to section 26.1”.

Section 55.13 amended

17 Clauses 55.13(1)(a) and (b) are repealed and the following substituted:

“(a) make a statement in any material, record, evidence or information given or submitted to the Commission or any person acting under its authority that, in a material respect and at the time and in the light of the circumstances under which it is made, is false or misleading;

“(b) omit facts from any material, record, evidence or information mentioned in clause (a) necessary to make the material, record, evidence or information not false or misleading”.

Section 134 amended

18(1) The following clauses are added after clause 134(1)(h.1):

“(h.2) that a person or company mentioned in subsection (1.01) submit to a review of his, her or its practices and procedures;

“(h.3) that a person or company mentioned in subsection (1.01) make changes to his, her or its practices and procedures”.

(2) The following subsection is added after subsection 134(1):

“(1.01) An order pursuant to clause (1)(h.2) or (h.3) may be made against any of the following:

(a) an entity recognized pursuant to section 21.3;

(b) an entity designated pursuant to section 26.1;

(c) a credit rating organization;

(d) a registrant;

- (e) a partner, director, officer, insider or control person of a registrant;
- (f) a person providing record-keeping services to a registrant;
- (g) a person who manages a compensation, contingency or similar fund formed to compensate clients of dealers or advisers;
- (h) an issuer;
- (i) an investment fund manager or custodian of assets or securities of an investment fund;
- (j) a director, officer, insider or control person of an issuer;
- (k) a general partner of a person or company mentioned in clauses (a) to (j);
- (l) a person who or company that has been exempted from one or more provisions of Saskatchewan securities laws pursuant to an order of the Commission”.

Section 135.4 amended

19 Subsection 135.4(10) is amended by striking out “15” and substituting “30”.

Section 135.5 amended

20 Subsection 135.5(3) is amended by striking out “15” and substituting “30”.

Section 135.6 amended

21 Subsection 135.6(4) is amended in the portion preceding clause (a) by striking out “of not more than \$100,000”.

New section 135.8

22 The following section is added after section 135.7:

“Compellability and liability with respect to proceedings against RPC representatives

135.8 If an RPC representative is subject to a proceeding pursuant to this Act:

- (a) the shareholders, directors, officers and employees of the professional corporation through which the RPC representative acts as a dealer or adviser are compellable to give evidence in the proceeding; and
- (b) the professional corporation through which the RPC representative acts as a dealer or adviser and its shareholders, directors and officers are jointly and severally liable for any administrative penalties and costs the RPC representative is ordered to pay”.

Section 136.01 amended

23 Section 136.01 is amended:

- (a) in clause (b) by striking out “interim financial statements” wherever it appears and in each case substituting “interim financial reports”; and**
- (b) in clause (i) by striking out “results of operations” and substituting “financial performance”.**

Section 141 amended

24 Subsection 141(2) is amended:

- (a) in clause (a) by striking out “subsection 79(1)” and substituting “this Act or the regulations”; and**
- (b) in clause (b) by striking out “section 80.1” and substituting “this Act or the regulations”.**

Section 147 amended

25 Section 147 is amended:

- (a) in the portion preceding clause (a) by adding “or the regulations” after “this Part”;**
- (b) in clause (a) by adding “or cancellation” after “rescission”; and**
- (c) in clause (b):**
 - (i) in the portion preceding subclause (i) by adding “or cancellation” after “rescission”; and**
 - (ii) by striking out “or” after subclause (i) and substituting “and”.**

Section 151.1 amended

26 Section 151.1 is amended:

- (a) by striking out the portion preceding clause (a) and substituting the following:**

“Any of the following statements by an entity recognized by the Commission pursuant to section 21.3 and purporting to be certified by its chief administrative officer 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:”; **and**
- (b) by repealing clause (e) and substituting the following:**

“(e) a statement about any decision of the entity for the purpose of this section that is within its authority”.

Section 153 amended

27 Subsection 153(1) is amended:

- (a) by striking out “or” after clause (b); and**
- (b) by adding the following after clause (b):**

“(b.1) an auditor oversight organization that has been recognized pursuant to section 21.3 or a director, officer, employee or agent of a recognized auditor oversight organization; or”.

Section 154 amended

28 Subsection 154(1) is amended:

(a) in subclause (c)(i) by adding “and other registrants” after “prospective customers and clients”;

(b) in clause (f) by adding “other registrants,” after “prospective customers and clients.”;

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

“(k) prescribing requirements with respect to recognized entities and designated entities including:

- (i) the recognition of an entity;
- (ii) the designation of an entity;
- (iii) entities that may be designated;
- (iv) the variation, suspension or revocation of a recognition or designation;
- (v) the conditions or standards of conduct that recognized entities and designated entities must meet;

“(k.1) respecting any matter necessary or advisable for regulating credit rating organizations, including prescribing requirements with respect to a credit rating organization or a class of credit rating organizations designated pursuant to this Act”;

(d) in subclause (o)(xvi) by adding “and delivered to purchasers and prospective purchasers of the securities distributed under the preliminary prospectus and prospectus” after “filed”; and

(e) by repealing clause (u.5) and substituting the following:

“(u.5) prescribing information, documents, records or other materials that are required to be filed or delivered, including requirements relating to the following:

- (i) the method by which they are to be filed or delivered;
- (ii) the timing of the filing or delivery;
- (iii) the costs related to the filing or delivery;
- (iv) when they are deemed to have been filed, delivered or received”.

Section 156 amended

29(1) Clause 156(1)(b) is amended by striking out “or certified”.

(2) Subsection 156(2) is repealed and the following substituted:

“(2) A notice sent by registered mail is deemed to have been served on the tenth business day after the date of its mailing unless the person to whom or company to which it was mailed establishes that, through no fault of the person or company, the person or company did not receive the notice or received it at a later date”.

(3) Subsection 156(3) is repealed.

Section 156.01 amended

30 Subsection 156.01(3) is repealed and the following substituted:

“(3) A document that is mailed is deemed to have been received by the person to whom or company to which it was sent on the tenth business day after mailing unless the person to whom or company to which the document was mailed establishes that, through no fault of his, her or its own, the person or company did not receive the document or received it at a later date”.

Coming into force

31 This Act comes into force on proclamation.