

**2004**

**CHAPTER 28**

An Act to amend *The Securities Act, 1988*

(Assented to June 10, 2004)

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, 2004*.

**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)** Clause 2(1)(t) is amended by striking out “written or printed”.

**(2)** Subclause 2(1)(ff)(ii) is amended:

**(a)** by adding “or” after paragraph (B); and

**(b)** by adding the following paragraph after paragraph (B):

“(C) in reliance on an exemption that is adopted or incorporated in the regulations and that directs the use of an offering memorandum”.

**(3)** Subclause 2(1)(qq)(i) is repealed and the following substituted:

“(i) that has:

(A) filed a prospectus pursuant to this Act; and

(B) obtained a receipt for the prospectus;

“(i.1) that has:

(A) filed a securities exchange take-over bid circular pursuant to this Act for the acquisition of securities of a reporting issuer; and

(B) taken up and paid for securities subject to the bid in accordance with the circular mentioned in paragraph (A)”.

**Section 6 amended**

**4(1)** Clause 6(3)(b) is amended by striking out “sections 10 and 12 to 16” and substituting “section 10”.

**(2)** The following subsections are added after subsection 6(3):

“(4) The Director may assign to an employee of the Commission the powers and duties vested in or imposed on the Director by this Act.

“(5) The Director or the Commission may impose any terms, conditions or restrictions on an assignment pursuant to subsection (4), and no person who is the subject of an assignment shall fail to comply with any terms, conditions or restrictions imposed on that assignment”.

**New section 33.1****5 The following section is added after section 33:****“Duty of registrant to deal honestly, fairly and in good faith**

**33.1** Every registrant, and every non-registered director, officer, partner and employee of a registrant, shall deal honestly, fairly and in good faith with their clients”.

**Section 39 amended****6(1) Clause 39(1)(p) is repealed and the following substituted:**

“(p) a trade in a security of an issuer in connection with an amalgamation, a merger, a reorganization, an arrangement or a statutory procedure”.

**(2) Subclause 39(1)(ff)(iii) is repealed and the following substituted:**

“(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, distributions out of earnings or surplus, income or any other distributions be applied to the purchase of securities from the issuer”.

**(3) Subsection 39(4) is repealed.****New section 44.1****7 The following section is added after section 44:****“Unfair practice prohibited**

**44.1(1)** In this section, ‘unfair practice’ includes:

- (a) putting unreasonable pressure on a person to purchase, hold, or sell a security;
- (b) taking advantage of a person’s:
  - (i) inability or incapacity to reasonably protect their own interests because of physical or mental infirmity, ignorance, illiteracy or age; or
  - (ii) inability to understand the character, nature or the language of any matter relating to a decision to purchase, hold or sell a security; and
- (c) imposing terms, conditions, restrictions or limitations with respect to transactions that are harsh or oppressive.

(2) No person or company shall engage in an unfair practice with the intention of advising or effecting the purchase or sale of a security”.

**New section 55.1****8 Section 55.1 is repealed and the following substituted:****“Fraudulent and misleading transactions prohibited**

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

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

**Section 81 amended****9(1) Clause 81(1)(i) is repealed and the following substituted:**

“(i) the trade is in a security of an issuer in connection with an amalgamation, a merger, a reorganization, an arrangement or a statutory procedure”.

**(2) Subclause 81(1)(cc)(iii) is repealed and the following substituted:**

“(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, distributions out of earnings or surplus, income or any other distributions be applied to the purchase of securities from the issuer”.

**Sections 82.1, 84, 86 to 91 repealed****10 Sections 82.1, 84 and 86 to 91 are repealed.****Section 92 amended**

**11 Clause 92(b) is amended by striking out** “and has fewer than 15 security holders whose latest address, as shown on its books, is in Saskatchewan”.

**Sections 93 to 95 and 97 repealed****12 Sections 93 to 95 and 97 are repealed.****Section 134 amended****13 Subsection 134(2) is repealed.****Section 134.1 amended****14 Subsection 134.1(1) is repealed and the following substituted:**

“(1) The Director may, without a hearing, make an order pursuant to subsection (2) if 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;

(b) to file a record or any information that is required to be filed pursuant to a decision of the Commission or the Director, or an undertaking given to the Commission or the Director;

(c) to file a record or any information mentioned in clause (a) or (b) that is, in the opinion of the Director, adequate, complete or satisfactory”.

**Section 154 amended****15(1) Clause 154(1)(ee) is repealed and the following substituted:**

“(ee) respecting the designation or recognition of any person, company or jurisdiction considered advisable for the purposes of this Act, including recognizing exchanges, self-regulatory organizations and clearing agencies;

“(ee.1) prescribing minimum requirements respecting the governance of reporting issuers including, without limitation:

(i) requiring directors and officers of reporting issuers to act honestly and in good faith with a view to the best interests of the reporting issuer;

(ii) requiring directors and officers to exercise the skill and judgment that a reasonably prudent person would exercise in comparable circumstances;

(iii) respecting the composition of directors of a reporting issuer and any committees of the directors and the qualifications and requirements concerning directors, officers and committee members, including any matters respecting their independence, required courses they must successfully complete and their expertise;

(iv) respecting the mandate, responsibilities and functioning of the directors of a reporting issuer;

(v) requiring reporting issuers to appoint audit committees and other committees of directors;

(vi) requiring reporting issuers to adopt a code of business conduct and ethics and governance guidelines for directors, officers, employees and persons that perform similar functions or that are in a special relationship with the reporting issuer; and

(vii) respecting procedures to regulate conflicts of interest between the interests of a reporting issuer and those of a director or officer or a person performing similar functions on behalf of a reporting issuer;

“(ee.2) requiring reporting issuers to devise and maintain a system of internal controls related to the effectiveness and efficiency of their operations, including financial reporting and asset control sufficient to reasonably ensure that:

(i) transactions are executed in accordance with management’s general or specific authorization;

(ii) transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles or any other criteria applicable to those statements;

(iii) transactions are recorded as necessary to maintain accountability for assets;

(iv) access to assets is permitted only in accordance with management’s general or specific authorization; and

(v) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

“(ee.3) requiring reporting issuers to devise and maintain disclosure controls and procedures sufficient to reasonably ensure that:

(i) information required to be disclosed pursuant to Saskatchewan securities laws is recorded, processed, summarized and reported, within the periods specified pursuant to those securities laws; and

(ii) information required to be disclosed pursuant to Saskatchewan securities laws is accumulated and communicated to the reporting issuer’s management, including its chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure;

“(ee.4) requiring the chief executive officers and chief financial officers of reporting issuers, or persons performing similar functions, to provide a certification that addresses the reporting issuer’s internal controls, including certifications that address:

- (i) the establishment and maintenance of internal controls;
- (ii) the design of internal controls; and
- (iii) the evaluation of the effectiveness of internal controls;

“(ee.5) requiring the chief executive officers and chief financial officers of reporting issuers, or persons performing similar functions, to provide a certification that addresses the reporting issuer’s disclosure controls and procedures, including certifications that address:

- (i) the establishment and maintenance of disclosure controls and procedures;
- (ii) the design of disclosure controls and procedures; and
- (iii) the evaluation of the effectiveness of disclosure controls and procedures”.

**(2) Clause 154(1)(ff) is repealed and the following substituted:**

“(ff) prescribing all taxes, fees and other charges payable to the Commission, including charges respecting filings, applications for registration or exemptions, audits and investigations made by the Commission and hearings before the Commission or the Director”.

**Section 158 amended**

**16 The following subsection is added after subsection 158(3):**

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

**Coming into force**

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

