



# **BILL NO. 32**

*Government Bill*

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*4th Session, 61st General Assembly  
Nova Scotia  
61 Elizabeth II, 2012*

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## **An Act to Amend Chapter 418 of the Revised Statutes, 1989, the Securities Act**

CHAPTER 34  
ACTS OF 2012

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR  
MAY 17, 2012**

The Honourable Graham Steele  
*Minister responsible for the Securities Act*

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*Halifax, Nova Scotia  
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 418  
of the Revised Statutes, 1989,  
the Securities Act**

Be it enacted by the Governor and Assembly as follows:

**1 Subsection 2(1) of Chapter 418 of the Revised Statutes, 1989, the *Securities Act*, as amended by Chapter 15 of the Acts of 1990, Chapter 32 of the Acts of 1996, Chapter 41 of the Acts of 2001, Chapter 39 of the Acts of 2002, Chapters 26 and 27 of the Acts of 2005, Chapter 46 of the Acts of 2006, Chapter 32 of the Acts of 2008 and Chapter 73 of the Acts of 2010, is further amended by**

**(a) striking out clause (d) and substituting the following clause:**

(d) “Chair” means the Chair of the Commission;

**(b) striking out clauses (hc) and (hd) and substituting the following clauses:**

(hc) “credit rating” means

(i) an assessment of the creditworthiness of an issuer, as an entity or with respect to specific securities or a specific pool of securities or assets, that is publicly disclosed or distributed by subscription, or

(ii) a rating or class of ratings designated as a credit rating by an order made under Section 30A,

but does not include a rating or class of ratings designated not to be a credit rating by an order made under Section 30A;

(hd) “credit rating organization” means

(i) any person or company that issues credit ratings, or

(ii) a person or company or class of persons or companies designated as a credit rating organization by an order made under Section 30A,

but does not include a person or company or class of persons or companies designated not to be a credit rating organization by an order made under Section 30A;

**(c) striking out clause (ab) and substituting the following clause:**

(ab) “offering memorandum” means

(i) a document, together with any amendments to that document, purporting to describe the business and affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser to assist the prospective purchaser to make an investment decision in respect of securities being sold in a distribution to which Section 58 would apply but for the availability of one or more of the exemptions contained in Nova Scotia securities laws, but does not include

(A) a document setting out current information about an issuer for the benefit of a prospective purchaser familiar with the issuer through prior investment or business contacts, or

(B) a document or class of documents designated not to be an offering memorandum by an order made under Section 30A, or

(ii) a document or class of documents designated as an offering memorandum by an order made under Section 30A;

**(d) adding immediately after subclause (ao)(ii) the following subclause:**

(iii) that is designated as a reporting issuer by an order made under Section 30A,

**(e) striking out the semicolon at the end of subclause (ao)(vi) and substituting a comma; and**

**(f) adding “and includes a class of issuers designated as reporting issuers by an order made under Section 30A, but does not include an issuer or class of issuers designated not to be a reporting issuer by an order made under that Section;” immediately after subclause (vi) in clause (ao).**

**2 Subsection 4(2) of Chapter 418 is amended by**

**(a) striking out “Chairman” in the second line and substituting “Chair”; and**

**(b) striking out “Vice-chairman” in the last line and substituting “Vice-chair”.**

**3 Subsection 7(1) of Chapter 418, as amended by Chapter 15 of the Acts of 1990, is further amended by striking out “Chairman” in the first line and substituting “Chair”.**

**4 Subsection 9(1) of Chapter 418 is amended by striking out “Chairman” in the third and in the sixth lines and substituting in each case “Chair”.**

**5 Section 10 of Chapter 418 is amended by striking out “Chairman” in the second line and substituting “Chair”.**

**6 (1) Subsection 15(1) of Chapter 418 is amended by striking out “Chairman” in the first line and substituting “Chair”.**

**(2) Subsection 15(2) of Chapter 418 is amended by striking out “Chairman” in the first line and substituting “Chair”.**

**(3) Subsection 15(3) of Chapter 418 is amended by striking out “Chairman” in the first line and substituting “Chair”.**

**(4) Subsection 15(4) of Chapter 418 is amended by striking out “Chairman” in the first line and substituting “Chair”.**

**(5) Subsection 15(5) of Chapter 418 is amended by**

**(a) striking out “Chairman” in the first, in the fourth and in the last lines and substituting in each case “Chair”;**

**(b) striking out “Chairman’s” in the second line and substituting “Chair’s”; and**

**(c) striking out “Vice-chairman” in the third and in the fourth lines and substituting in each case “Vice-chair”.**

**7 Section 16 of Chapter 418 is amended by**

**(a) striking out “Chairman” in the first, in the third and in the last lines and substituting in each case “Chair”;**

**(b) striking out “Chairman’s” in the second line and substituting “Chair’s”; and**

**(c) striking out “Vice-chairman” in the second and in the fourth and fifth lines and substituting in each case “Vice-chair”.**

**8 Subsection 18(1) of Chapter 418, as enacted by Chapter 15 of the Acts of 1990, is amended by striking out “Chairman” in the first line and substituting “Chair”.**

**9 (1) Subsection 22(2) of Chapter 418 is amended by striking out “Chairman” in the second last line and substituting “Chair”.**

**(2) Subsection 22(3) of Chapter 418 is amended by striking out “Chairman” in the last line and substituting “Chair”.**

**10 Subsection 26(1) of Chapter 418, as enacted by Chapter 15 of the Acts of 1990 and amended by Chapter 32 of the Acts of 1996, Chapter 46 of the Acts of 2006 and Chapter 32 of the Acts of 2008, is further amended by adding “30A,” immediately after “27,” in the third line.**

**11 Subsection 27(15) of Chapter 418, as enacted by Chapter 15 of the Acts of 1990 and amended by Chapter 32 of the Acts of 2008, is further amended by striking out “Chairman” each time it appears in the second line and substituting in each case “Chair”.**

**12 Subsection 30A(1) of Chapter 418, as enacted by Chapter 26 of the Acts of 2005 and amended by Chapter 46 of the Acts of 2006, is further amended by adding immediately after clause (ca) the following clauses:**

**(cb) a rating or a class of ratings to be, or not to be, a credit rating;**

**(cc) a person or company or a class of persons or companies to be, or not to be, a credit rating organization;**

**(cd) the minimum designated rating required from a credit rating organization;**

**(ce) a document or class of documents to be, or not to be, an offering memorandum;**

**13 Chapter 418 is further amended by adding immediately after Section 30E the following Section:**

30EA A credit rating organization may apply to the Commission to be designated by the Commission if the credit rating organization wants its credit ratings to satisfy

- (a) a requirement in Nova Scotia securities laws that a credit rating be given by a credit rating organization designated by the Commission; or
- (b) a condition for an exemption under Nova Scotia securities laws.

**14 Subsection 44(3) of Chapter 418 is repealed and the following subsection substituted:**

(3) Subject to the regulations, no person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any written or oral representation that the security will be listed on an exchange or quoted on a quotation and trade reporting system, or that application has been or will be made to list the security on an exchange or quote the security on a quotation and trade reporting system, unless

- (a) application has been made to list or quote the security and other securities issued by the same issuer are already listed on an exchange or quoted on a quotation and trade reporting system; or
- (b) the exchange or quotation and trade reporting system has granted approval to the listing or quoting of the security, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation.

**15 (1) Section 76 of Chapter 418 is amended by adding immediately after subsection (1) the following subsection:**

(1A) Subsection (1) does not apply to the dealer in respect of a purchase and sale of an investment fund security offered in a distribution described in that subsection if the regulations prescribe a disclosure document that is required in respect of the purchase and sale and the time and manner in which the disclosure document is to be sent or delivered to a purchaser.

**(2) Subsection 76(2) is amended by**

- (a) adding “(a)” immediately after “of” in the eighth line;
- (b) striking out the period at the end of the last line and substituting “; or”; and
- (c) adding immediately after clause (a) the following clause:
  - (b) the prescribed disclosure document referred to in subsection (1A).

**(3) Subsections 76(4) and (5) of Chapter 418 are repealed and the following subsections substituted:**

(4) For the purpose of this Section, where the latest prospectus, any amendment to the prospectus or the prescribed disclosure document referred to in subsection (1A) is sent by prepaid mail, it is conclusively deemed to have been received in the ordinary course of mail by the person or company to whom it was addressed.

(5) The receipt of the latest prospectus, any amendment to the prospectus or the prescribed disclosure document referred to in subsection (1A) by a dealer who is acting as agent of or who thereafter commences to act as agent of the purchaser with respect to the purchase of a security to which subsection (1) or (1A) applies is, for the purpose of this Section, receipt by the purchaser as of the date on which the agent received such latest prospectus, amendment to the prospectus or prescribed disclosure document, as the case may be.

**16 Subsection 82(5) of Chapter 418 is repealed and the following subsection substituted:**

(5) In this Section,

(a) “person or company in a special relationship with a reporting issuer” means

(i) a person or company that is an insider, affiliate or associate of

(A) the reporting issuer,

(B) a person or company that is proposing to make a take-over bid, as defined in Section 95, for the securities of the reporting issuer, or

(C) a person or company that is proposing to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with the reporting issuer or to acquire a substantial portion of its property,

(ii) a person or company that is engaging in or proposes to engage in any business or professional activity with or on behalf of the reporting issuer or with or on behalf of a person or company described in paragraph (B) or (C) of subclause (i),

(iii) a person who is a director, officer or employee of the reporting issuer or of a person or company described in paragraph (B) or (C) of subclause (i) or subclause (ii),

(iv) a person or company that learned of the material fact or material change with respect to the reporting issuer while the person or company was a person or company described in subclause (i), (ii) or (iii), or

(v) a person or company that learns of a material fact or material change with respect to the issuer from any other person or company described in this clause, including a person or company described in this

subclause, and knows or ought reasonably to have known that the other person or company is a person or company in such a relationship;

- (b) “reporting issuer” means
  - (i) a reporting issuer, or
  - (ii) any other issuer with a real and substantial connection to the Province and whose securities are publicly traded.

**17 Section 93 of Chapter 418 is amended by striking out “chairman” in the first line and substituting “chair”.**

**18 (1) Subsection 134(1) of Chapter 418, as enacted by Chapter 15 of the Acts of 1990 and amended by Chapter 27 of the Acts of 2005, Chapter 46 of the Acts of 2006 and Chapter 73 of the Acts of 2010, is further amended by**

- (a) **adding immediately after clause (b) the following clause:**
  - (ba) that the acquisition of any securities by a particular person or company is prohibited permanently or for the period specified in the order;

**and**

- (b) **adding immediately after clause (d) the following clause:**
  - (da) where a person or company has not complied with Nova Scotia securities laws, that the person or company disgorge to the Commission any amounts obtained as a result of the non-compliance;

**(2) Subsection 134(1A) of Chapter 418, as enacted by Chapter 46 of the Acts of 2006 and amended by Chapter 32 of the Acts of 2008, is further amended by**

- (a) **adding “, self-regulatory organization” immediately after “commission” in the first and second lines of clause (c); and**
- (b) **adding “, self-regulatory organization” immediately after “commission” in the first line of clause (d).**

**(3) Subsection 134(2) of Chapter 418, as enacted by Chapter 15 of the Acts of 1990, is amended by adding “clause (da) or” immediately after “to” the second time it appears in the third line.**

**19 Section 138 of Chapter 418, as enacted by Chapter 39 of the Acts of 2002, is amended by adding immediately after subsection (13) the following subsection:**

(14) This Section applies only with respect to an offering memorandum that has been furnished to a prospective purchaser in connection with a distribution of a security under an exemption from Section 58 that is specified in the regulations for the purpose of this Section.



**20 Subsections 141(1) and (2) of Chapter 418 are repealed and the following subsection substituted:**

(1) Each of the following has a right of action for rescission or damages against the dealer or offeror who failed to comply with the applicable requirement:

(a) a purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered in compliance with subsection (1) of Section 76;

(b) a purchaser of an investment fund security to whom a prescribed disclosure document referred to in subsection (1A) of Section 76 was required to be sent or delivered but was not sent or delivered in compliance with the regulations; and

(c) a security holder to whom a take-over bid and take-over bid circular or an issuer bid and issuer bid circular, or any notice of change or variation to any such bid or circular, was required to be sent or delivered but was not sent or delivered in compliance with this Act or the regulations.

**21 Subsection 142(7) of Chapter 418 is repealed and the following subsection substituted:**

(7) In this Section, “person or company in a special relationship with a reporting issuer” and “reporting issuer” have the same meaning as in subsection (5) of Section 82.

**22 Chapter 418 is further amended by adding immediately after Section 143 the following Section:**

144 (1) Where, contrary to Nova Scotia securities laws, a registered dealer fails to disclose to a person or company with whom the registered dealer effects a purchase or sale of a security that the registered dealer intended to act as principal in respect of the purchase or sale, the person or company may rescind the contract effecting the purchase or sale by mailing or delivering written notice of the rescission to the registered dealer within sixty days after the date of delivery of the security to or by the person or company, as the case may be.

(2) Where, contrary to Nova Scotia securities laws, a registered dealer fails to disclose to a person or company that the registered dealer has acted as principal in respect of a purchase or sale of a security, the person or company may rescind the contract effecting the purchase or sale by mailing or delivering written notice of the rescission to the registered dealer within seven days after the date of the delivery to the person or company of the written confirmation of the contract.

(3) For the purpose of subsection (2), a confirmation sent by ordinary letter mail is deemed to be delivered to the person or company to whom it was addressed in the ordinary course of mail.

(4) Subsections (1) and (2) do not allow the rescission of a contract effecting the purchase of a security by a person or company if the person or company no longer owns the security.

(5) In an action respecting a rescission to which subsection (1) or (2) applies, the onus of proving that a registered dealer disclosed that the registered dealer acted or intended to act as principal is on the registered dealer.

(6) No action respecting a rescission shall be commenced under this Section after the expiration of a period of ninety days from the date of mailing or delivering the notice pursuant to subsection (1) or (2).

**23 Section 150 of Chapter 418, as amended by Chapter 15 of the Acts of 1990, Chapter 32 of the Acts of 1996, Chapter 18 of the Acts of 2001, Chapter 41 of the Acts of 2001, Chapter 39 of the Acts of 2002, Chapter 26 of the Acts of 2005, Chapter 46 of the Acts of 2006, Chapter 32 of the Acts of 2008 and Chapter 73 of the Acts of 2010, is further amended by**

- (a) striking out “or” in the third line of clause (hf) and substituting “of”;**
- (b) striking out “or 70” in the second line of clause (dl) and substituting “, 70 or 76”; and**

**(c) adding immediately after clause (dl) the following clauses:**

(dla) prescribing the disclosure document that is required in respect of the purchase and sale of an investment fund security for the purpose of subsection (1A) of Section 76, requiring dealers to provide the disclosure document to purchasers and prescribing the time and manner for sending or delivering the disclosure document;

(dlb) regulating or prohibiting the use of a class of disclosure documents during a distribution;

**24** Clause 1(c) and Sections 15, 19 and 20 come into force on such day as the Governor in Council orders and declares by proclamation.

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