



BILL NO. 168

Government Bill

*1st Session, 59th General Assembly
Nova Scotia
54 Elizabeth II, 2005*

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

CHAPTER 26
ACTS OF 2005

**AS ASSENTED TO BY THE ADMINISTRATOR OF THE PROVINCE
MAY 19, 2005**

The Honourable Kerry Morash
Minister of Environment and Labour

*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 and Chapter 39 of the Acts of 2002, is further amended by

(a) adding immediately after clause (ra) the following clause:

(rb) “investment fund” means a mutual fund or a non-redeemable investment fund;

(b) striking out clause (z) and substituting the following clause:

(z) “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 under Section 30A or in accordance with the regulations,

but does not include an issuer, or class of issuers, that is designated under Section 30A not to be a mutual fund;

and

(c) adding immediately after clause (aa) the following clauses:

(aaa) “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 a mutual fund or a non-redeemable 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 a mutual fund or a non-redeemable investment fund,

and

(C) that is not a mutual fund,

or

(ii) an issuer that is designated as a non-redeemable investment fund under Section 30A or in accordance with the regulations,

but does not include an issuer, or class of issuers, that is designated under Section 30A not to be a non-redeemable investment fund;

(aab) “Nova Scotia securities laws” means this Act, the regulations, any decisions made by the Commission or the Director and any extra-provincial securities laws adopted or incorporated under Section 149D;

2 Chapter 418 is further amended by adding immediately after Section 30 the following Section:

30A (1) The Commission may, if the Commission considers that it would not be prejudicial to the public interest to do so, make an order designating

(a) a good, article, service, right or interest, or a class of those, as a commodity;

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

(c) a person or company as an insider;

(d) an issuer or a class of issuers to be, or not to be, a mutual fund;

(e) an issuer or a class of issuers to be, or not to be, a non-redeemable investment fund; and

(f) an issuer or a class of issuers to be, or not to be, a reporting issuer.

(2) An order made under subsection (1) may be made by the Commission on its own motion or on the application of an interested person or company.

3 Chapter 418 is further amended by adding immediately after Section 149 the following Sections:

149A (1) In this Section and in Sections 149B to 150,

(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 under the extra-provincial securities laws under which that commission operates;

(b) “extra-provincial securities commission” means a securities commission established under the laws of another province of Canada and includes any other securities authority, administrator or regulator operated by or that forms a part of the government of another province of Canada;

(c) “extra-provincial securities laws” means the laws of another province of Canada that, with respect to that province, deals with the reg-

ulation of securities markets and the trading in securities and exchange contracts in that province;

(d) “foreign securities laws” means the laws of a non-Canadian jurisdiction that, with respect to that jurisdiction, deals with the regulation of securities markets and the trading in securities and exchange contracts in that jurisdiction;

(e) “Nova Scotia 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 under Nova Scotia securities laws.

(2) A reference to an extra-provincial securities commission includes, unless otherwise provided,

(a) its delegate; and

(b) any person who, in respect of that extra-provincial securities commission, performs functions that are substantially similar to those functions carried out by the Director under this Act.

149B (1) In accordance with Section 150 and subject to subsection (2), the Commission, for the purpose of Sections 149B to 149K, may

(a) delegate any Nova Scotia authority to an extra-provincial securities commission; and

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

(2) The Commission shall 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 under Sections 3 to 26, Section 30A, subsection (4) of Section 30, Sections 149B to 149K, Section 150 or Section 150A.

149C (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 Nova Scotia authority under the Nova Scotia securities laws.

(2) Subject to any restrictions or conditions imposed by the Commission with respect to a delegation of Nova Scotia authority to an extra-provincial securities commission, nothing in Sections 149B to 149K is to be construed as prohibiting the extra-provincial securities commission from sub-delegating that Nova Scotia authority in the manner and to the extent that the extra-provincial securities commission can delegate its authority under the extra-provincial securities laws under which it operates.

149D (1) In accordance with Section 150, the Commission may adopt or incorporate as Nova Scotia securities laws all or any provisions of any extra-provincial securities laws to be applied to

(a) persons or companies whose primary jurisdiction is that extra-provincial jurisdiction; or

(b) securities or trades both in the Province and that extra-provincial jurisdiction.

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

149E In accordance with Section 150, 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 Nova Scotia 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.

149F In accordance with Section 150, 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 Nova Scotia 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.

149G (1) In accordance with Section 150, 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 adopted under subsection (1) is enforceable in the Province in the same manner and to the same extent as a decision of the Commission.

149H (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 referred to in subsection (2) and includes any member, officer, employee, appointee or agent of that commission,

(ii) any person referred to in clause (b) of subsection (2),

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

(2) This Section applies only with respect to a Nova Scotia authority that

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

(b) is being, or intended to be, exercised by a person where that Nova Scotia authority has been subdelegated to that person by an extra-provincial securities commission and includes a subdelegate of that per-

son but does not include an exchange, a quotation and trade reporting system or a self-regulatory organization recognized or authorized by that extra-provincial securities commission; or

(c) is being, or 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 Nova Scotia authority has been subdelegated to it by an extra-provincial securities commission.

(3) No action or other proceeding for damages may be instituted against the Commission or a securities regulatory authority for

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

(i) any Nova Scotia authority, or

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

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

(i) any Nova Scotia authority, or

(ii) a delegation, or the acceptance of a delegation, of any Nova Scotia authority.

149I (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 referred to in clause (b) of subsection (2),

(ii) any exchange, quotation and trade reporting system or self-regulatory organization referred to in clause (c) of subsection (2).

(2) This Section applies only with respect to an extra-provincial authority that

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

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

(c) is being, or 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 for damages may be instituted against the Commission or a securities regulatory authority for

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

(i) any extra-provincial authority, or

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

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

(i) any extra-provincial authority, or

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

149J (1) In this Section, “extra-provincial decision” means a decision of an extra-provincial securities commission made under a Nova Scotia 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 Supreme Court of Nova Scotia.

(3) An appeal under this Section shall be commenced by a notice of appeal filed with the Supreme Court of Nova Scotia within thirty days from the day 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 Supreme Court of Nova Scotia in respect of an appeal under this Section shall, with any necessary modification that the Court considers appropriate, be the same as on an application to the Court in an action.

(5) The Supreme Court of Nova Scotia may, with respect to an appeal under this Section,

(a) make any order or direction that it 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;

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

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

(7) A copy of the notice of appeal and supporting documents shall, within the thirty day period referred to in subsection (3), be served on

(a) the respondent; and

(b) the secretary to the Commission.

(8) Notwithstanding that the Commission is not a respondent to an appeal under this Section, the Commission is entitled to be represented at the appeal and to make representations in respect of any matter before the Supreme Court of Nova Scotia that is related to the appeal.

(9) Notwithstanding that an appeal is commenced under this Section, the extra-provincial decision being appealed takes effect immediately, unless the extra-provincial securities commission, the Commission or the Supreme Court of Nova Scotia 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 under this Section.

149K (1) In this Section, “delegated authority” means any extra-provincial authority that is delegated to and accepted by the Commission under Section 149B.

(2) A person or company that is directly affected by

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

(b) a decision of an extra-provincial securities commission that is adopted by the Commission under Section 149G,

may appeal that decision to the Supreme Court of Nova Scotia.

(3) Subsections (2) to (6) of Section 26 apply to an appeal made under this Section.

(4) A person or company that has a right to appeal a decision under this Section may, subject to any direction of the Supreme Court of Nova Scotia, 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 referred to in subsection (2) is being appealed to a court in another jurisdiction, the Supreme Court of Nova Scotia may stay an appeal under this Section pending the determination of the appeal in the other jurisdiction.

4 Section 150 of Chapter 418, an 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 and Chapter 39 of the Acts of 2002, is further amended by

(a) adding immediately after clause (e) the following clause:

(ea) designating issuers or a class of issuers as a reporting issuer;

(b) adding immediately after clause (h) the following clauses:

(ha) respecting the delegation of any Nova Scotia authority to an extra-provincial securities commission;

(hb) respecting the acceptance by the Commission of any delegation of an extra-provincial authority from an extra-provincial securities commission;

(hc) respecting any amendments to, or the revocation of any delegation or acceptance of a delegation referred to in clause (ha) or (hb);

(hd) respecting the adoption or incorporation of extra-provincial securities laws under Section 149D, including the administration of those laws once adopted or incorporated.

(he) respecting the administration of exemptions from Nova Scotia securities laws under Sections 149E and 149F;

(hf) respecting the adoption of decisions of extra-provincial securities commissions under Section 149G, including the administration of those decisions once adopted;

(hg) respecting the administration of extra-provincial securities laws arising from or as a result of any matters described in clauses (ha) to (hf);

and

(c) adding immediately after clause (bad) the following clauses:

(bae) governing mutual funds, non-redeemable investment funds and private investment funds and the advertising, distribution and trading of the securities of those funds and, without limiting the generality of the foregoing,

(i) designating issuers or a class or classes of issuers as mutual funds,

(ii) designating issuers or a class or classes of issuers as non-redeemable investment funds,

(iii) designating funds or a class or classes of funds as private investment funds;

(baf) requiring evaluations of reporting issuers' internal control over financial reporting and requiring reporting issuers to obtain audits of their internal control over financial reporting, including their management's evaluation;

(bag) exempting a class of persons, companies, trades or securities from one or more of the provisions of Nova Scotia securities laws;

(bah) prescribing circumstances or conditions for the purpose of an exemption under clause (bag) and, without limiting the generality of the foregoing,

(i) prescribing conditions relating to compliance with the securities laws of another jurisdiction, or compliance with the by-laws, rules, regulations, policies, procedures, interpretations and practices of a recognized exchange, a recognized self-regulatory organization, a recognized clearing agency or a recognized quotation and trade reporting system,

(ii) prescribing conditions that refer to

(A) a person or company or a class of persons or companies,

(B) a law or by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized exchange, or

(C) a jurisdiction of another securities regulatory authority;

5 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
