



BILL NO. 117

Government Bill

*2nd Session, 60th General Assembly
Nova Scotia
57 Elizabeth II, 2008*

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

CHAPTER 32
ACTS OF 2008

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
MAY 27, 2008**

The Honourable Michael G. Baker, Q.C.
Minister responsible for the Securities Act

*Halifax, Nova Scotia
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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, Chapter 26 of the Acts of 2005, Chapter 27 of the Acts of 2005 and Chapter 46 of the Acts of 2006, is further amended by

(a) striking out clause (i) and substituting the following clause:

(i) “dealer” means a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in securities as principal or agent;

and

(b) striking out clauses (ae) and (ap).

2 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 and Chapter 46 of the Acts of 2006, is further amended by

(a) striking out “subsection (5) of Section 67, Section” in the third and fourth lines;

(b) striking out “110” in the fifth line and substituting “98”; and

(c) adding “within thirty days after the later of the making of the decision or the issuing of the reasons for the decision” immediately after “Appeal” in the last line.

3 (1) Subsection 27(15) of Chapter 418, as enacted by Chapter 15 of the Acts of 1990, is amended by striking out “provide the Commission” in the second line and substituting “, at the request of the Chairman, provide the Chairman”.

(2) Section 27 of Chapter 418, as enacted by Chapter 15 of the Acts of 1990 and amended by Chapter 32 of the Acts of 1996, Chapter 27 of the Acts of 2005 and Chapter 46 of the Acts of 2006, is further amended by adding immediately after subsection (15) the following subsection:

(15A)The report referred to in subsection (15) is privileged.

4 Chapter 418 is further amended by adding immediately after Section 29E the following Section:

29EA(1) The Commission, or any member, employee or agent of the Commission, may conduct a review of the disclosures that have been made or that ought to have been made by a reporting issuer or mutual fund in the Province on a basis to be determined at the discretion of the Commission or the Director.

(2) A reporting issuer or mutual fund in the Province that is subject to a review under this Section shall, at such time or times as the Commission or Director may require, deliver to the Commission or Director any information and documents relevant to the disclosures that have been made or that ought to have been made by the reporting issuer or mutual fund.

(3) Notwithstanding the *Freedom of Information and Protection of Privacy Act*, information and documents obtained pursuant to a review under this Section are exempt from disclosure under that Act if the Commission determines that the information and documents should be maintained in confidence.

(4) A reporting issuer or mutual fund in the Province, or any person or company acting on behalf of a reporting issuer or mutual fund in the Province, shall not make any representation, written or oral, that the Commission has in any way passed upon the merits of the disclosure record of the reporting issuer or mutual fund.

5 (1) Subsection 30(1) of Chapter 418, as enacted by Chapter 15 of the Acts of 1990 and amended by Chapter 46 of the Acts of 2006, is further amended by adding “if the Commission is satisfied that to do so would be in the public interest” immediately after “organization” in the last line.

(2) Section 30 of Chapter 418, as enacted by Chapter 15 of the Acts of 1990 and amended by Chapter 46 of the Acts of 2006, is further amended by adding immediately after subsection (1) the the following subsections:

(1A) A recognition under this Section shall be made in writing and shall be subject to such terms and conditions as the Commission may impose.

(1B) A recognized self-regulatory organization shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices.

(3) Subsection 30(2) of Chapter 418, as enacted by Chapter 15 of the Acts of 1990, is amended by adding “or accept the voluntary surrender of” immediately after “revoke” in the first line.

(4) Section 30 of Chapter 418, as enacted by Chapter 15 of the Acts of 1990 and amended by Chapter 46 of the Acts of 2006, is further amended by adding immediately after subsection (4) the following subsection:

(4A) The Commission or, with the approval of the Commission, the Director may, at any time, revoke, in whole or in part, a delegation of powers or duties made under subsection (4).

(5) Subsection 30(5) of Chapter 418, as enacted by Chapter 15 of the Acts of 1990, is amended by striking out “Any” in the first line and substituting “The Director or any”.

(6) Section 30 of Chapter 418, as enacted by Chapter 15 of the Acts of 1990 and amended by Chapter 46 of the Acts of 2006, is further amended by adding immediately after subsection (5) the following subsection:

(5A) Section 6 applies to the hearing and review of a decision, order or ruling under subsection (5) in the same manner as that Section applies to a hearing and review of a decision of the Director.

6 Section 31 of Chapter 418 is repealed and the following Section substituted:

31 (1) No person or company shall act as a dealer or act as an underwriter unless the person or company is registered as

(a) a dealer; or

(b) a representative of a registered dealer and is acting on behalf of the registered dealer.

(2) No person or company shall act as an adviser unless the person or company is registered as

(a) an adviser; or

(b) a representative of a registered adviser and is acting on behalf of the registered adviser.

(3) No person or company shall act as an investment fund manager unless the person or company is

(a) registered as an investment fund manager; or

(b) acting on behalf of a registered investment fund manager.

(4) No person or company shall act as a registered representative, registered dealer, registered adviser or registered investment fund manager unless the registration of the person or company has been made in accordance with Nova Scotia securities laws.

7 (1) Subsection 32(1) of Chapter 418 is repealed and the following subsection substituted:

(1) Unless it appears to the Director that the applicant is not suitable for registration or re-instatement of registration or that the proposed registration, re-instatement of registration or amendment to registration is objectionable, the Director shall grant registration, re-instatement of registration or amendment to registration to an applicant.

(2) Subsection 32(3) of Chapter 418 is repealed and the following subsection substituted:

(3) The Director shall not refuse to grant, re-instate or amend a registration, or impose terms and conditions on a registration, without giving the applicant an opportunity to be heard.

8 Chapter 418 is further amended by adding immediately after Section 32 the following Section:

32A (1) The Director may suspend or terminate a registration, or impose terms and conditions on a registration, if it appears to the Director that the registrant is not suitable for its registration or the registration is otherwise objectionable.

(2) The Director shall not make a decision under subsection (1) without giving the registrant an opportunity to be heard.

9 Subsection 33(4) of Chapter 418 is repealed.

10 Section 36 of Chapter 418 is repealed and the following Section substituted:

36 Except as otherwise provided in this Act, all notices under this Act or the regulations are sufficiently served on a registrant for all purposes if delivered or sent by pre-paid mail to the latest address for service specified in the application of the registrant.

11 Chapter 418 is further amended by adding immediately after Section 39 the following Section:

39A (1) Every registered dealer and every registered adviser shall deal fairly, honestly and in good faith with its clients.

(2) Every registered representative of a registered dealer and every registered representative of a registered adviser shall deal fairly, honestly and in good faith with that person's clients.

(3) Every investment fund manager shall exercise

(a) the powers and discharge the duties of its office honestly, in good faith and in the best interests of the investment fund; and

(b) the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

12 Sections 42, 45 to 48 and 76A and subsections 77(4A) and 78(2) of Chapter 418 are repealed.

13 Section 79 of Chapter 418 is repealed and the following Section substituted:

79 The Commission may, upon the application of an interested person or company, grant an exemption from Section 31 or 58 where it is satisfied that to do so would not be prejudicial to the public interest and may impose such terms and conditions as are considered necessary.

14 Section 124 of Chapter 418 is repealed.

15 Subsection 133(2) of Chapter 418 is amended by striking out "(1)" in the third line and substituting "(1C)".

16 Subsection 134(1A) of Chapter 418, as enacted by Chapter 46 of the Acts of 2006, is amended by

- (a) striking out “or” at the end of clause (b);**
- (b) striking out the period at the end of clause (c) and substituting “; or”; and**
- (c) adding the following clause:**

(d) has agreed with a securities commission or other person or body empowered by statute to regulate trading in securities or to administer or enforce securities laws of another province or territory of Canada to be subject to sanctions, conditions, restrictions or requirements.

17 Chapter 418 is further amended by adding immediately after Section 135A the following Section:

135B Where the Commission, after a hearing and review of a decision, order or ruling of a self-regulatory organization, considers it to be in the public interest to make an order, the Commission may order the self-regulatory organization or the person or company which requested the hearing and review to pay the costs of or related to the hearing and review that are incurred by or on behalf of the Commission.

18 Subsection 146O(11) of Chapter 418, as enacted by Chapter 46 of the Acts of 2006, is amended by adding “of Section 4” immediately after “(1)” in the first line.

19 (1) Clause 149K(2)(b) of Chapter 418 is repealed.

(2) Section 149K of Chapter 418, as enacted by Chapter 26 of the Acts of 2005, is amended by striking out “Supreme Court of Nova Scotia” wherever it appears in that Section and substituting in each case “Nova Scotia Court of Appeal”.

20 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 and Chapter 46 of the Acts of 2006, is further amended by adding immediately after clause (bab) the following clause:

(bac) enabling a person or company that is required to be registered to appoint an individual to perform on its behalf a prescribed function or duty and prescribing that function or duty;

21 Clause 150A(2)(a) of Chapter 418, as enacted by Chapter 32 of the Acts of 1996, is amended by striking out “Governor in Council” in the first and second and in the last lines and substituting in each case “Minister”.

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