SECURITIES REGULATION
IN
SASKATCHEWAN

Saskatchewan Financial Services Commission
Securities Division
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I. INTRODUCTION

This paper provides an overview of securities regulation in Saskatchewan under the *Securities Act, 1988* S.S. 1988, C. s-42.2 (the "*Act*") and related regulatory instruments. It outlines the general structure of the *Act*, and identifies its operative provisions. The length of this paper doesn't allow a detailed discussion of the provisions of Saskatchewan securities laws. For more a detailed analysis consult reference works on securities law. All references to sections are to *The Securities Act, 1988* unless otherwise indicated. The *Act* and all of the other regulatory instruments in force are on the Saskatchewan Financial Services Commission's website at www.sfsc.gov.sk.ca/ssc/rules.shtml

II. HISTORY OF SECURITIES REGULATION

The *Act* was proclaimed in force in the Province of Saskatchewan on November 7, 1988. It is the result of 150 years of evolution of securities regulation.

The key Act of modern regulation is the *English Joint Stock Companies Act* of 1844 that required the filing of a prospectus containing pertinent information about an issuer raising funds from the public. This "full, true and plain disclosure" requirement is still the basis of all securities legislation.

Beginning in the early 1900's securities offerings, in addition to being reviewed for full, true and plain disclosure, were also subjected to merit review. In 1911 legislation was passed by the state of Kansas to deal with slick urban promoters who were selling a piece of the blue sky to Kansas farmers. The legislation, later referred to as "blue sky" regulation, required issuers and other sellers of securities to obtain a license. To acquire a license the issuer had to file information about its finances. If satisfied that the issuer was sound, and that the offering was not "unfair, unjust, inequitable or oppressive to any class of contributors", the regulator would grant a license.

Blue sky regulation was subsequently adopted by most states in the United States. In Canada the first legislation was passed by Manitoba in 1912 followed by Saskatchewan when the *Sale of Shares Act* was passed in 1914. This legislation embodied the principles of full, true and plain disclosure together with merit review of the basic business of the issuer, and the integrity of its promoters.

The stock market crash of 1929 spawned the next stage of securities legislation. Until that time securities regulation in the United States was at the state level. However, the federal government took jurisdiction in the early 1930's when it passed security fraud prevention legislation requiring the registration of individuals selling the securities, and adopting the full disclosure approach without merit review. Today in the United States federal regulation is carried out by the Securities and Exchange Commission that does no review of the fairness of the investment. The states continue to do both blue sky and disclosure reviews.

In Canada the securities industry is regulated by the provinces and territories. All jurisdictions currently regulate on both merit and full disclosure principles.

The next major development in securities law was the *Ontario Securities Act* of 1966. This legislation was a reaction to the Kimber Report of 1965 that recommended changes to securities legislation to prevent problems like the Windfall Oil and Mines Ltd. and the Atlantic Acceptance Ltd. Scandals from happening again. The Windfall scandal involved improper disclosure of mineral drilling results that caused large fluctuations in the price of Windfall's shares on the Toronto Stock Exchange, and large profits for the promoters of the company. The Atlantic Acceptance scandal involved Atlantic's borrowing money in the money market from large institutional investors using statutory exemptions. The money raised was lent out in a credit financing business that later collapsed amid allegations of fraud and mismanagement.

The provinces west of Ontario followed almost immediately with uniform legislation that practically duplicated the Ontario legislation. Saskatchewan adopted *The Securities Act, 1967* (the "1967 Act"), the immediate predecessor to the present Act. These provinces became known as the Uniform Act provinces. Uniform Act legislation introduced, for the first time, rules

setting out the procedure on take-over bids, requirements that issuers raising public funds make continuous disclosure about their affairs, and the prohibition against insiders making profits on securities transactions using undisclosed information about an issuer.

In 1978 the Province of Ontario initiated another round of major changes to securities legislation. It introduced what is called the "closed system" which will be discussed later in this paper. The present *Act* reflects the changes made a decade before in Ontario, and Saskatchewan law is now substantially uniform with the legislation in other jurisdictions in Canada.

III. THE SASKATCHEWAN FINANCIAL SERVICES COMMISSION

The *Securities Act, 1988* is administered by the Saskatchewan Financial Services Commission (the "SFSC" or the "Commission"). The SFSC was established on February 1, 2003 under *The Saskatchewan Financial Services Act* by amalgamating the Saskatchewan Securities Commission, the Financial Institutions Section of the Consumer Protection Branch and the Pension Benefits Branch. In addition to regulating the securities industry, the SFSC also regulates the credit union system, insurance, pensions and trust and loan companies. The SFSC is composed of a full time Chairman and six part-time members appointed by Cabinet. The Chairman acts as Chief Executive Officer. The SFSC makes Commission regulations, establishes policy, grants orders and rulings under the *Act*, functions as a quasi-judicial tribunal in conducting hearings under the *Act* and acts as an appeal body from decisions of the staff.

Staff in the SFSC's Securities Division carry out the day-to-day regulatory functions under the *Act*.

IV. CANADIAN SECURITIES ADMINISTRATORS

The Commission works with other provincial securities regulators through the Canadian Securities Administrators (the "CSA") to increase efficiency in securities regulation in Canada. The CSA has established a national securities regulatory system that operates using a combination of formal and informal agreements among securities regulators. The CSA

Secretariat co-ordinates CSA activities and maintains the CSA Web site at www.securities-administrators.ca

Securities regulators through the CSA have combined their resources to develop systems to facilitate supervision of markets in Canada and enhance efficiency for business and markets in three major ways:

(a) harmonized securities laws,

(b) a passport system where a decision from a principal regulator on an application or filing is effective in all jurisdictions, and

(c) electronic filing systems.

A. NATIONAL INSTRUMENTS AND POLICIES

Staff of the commissions work together using their collective experience to develop national instruments and national policies that deal with regulatory issues. These national instruments reflect regional diversity and result in a national application of rules with uniformity and certainty. The securities regulators with rule-making power adopt these national instruments as rules or regulations; those without rule-making power adopt them as policies. The SFSC adopts national instruments as Commission regulations.

National instruments contain mandatory provisions that must be complied with. They often have companion policies that give background information to the National Instrument and provide interpretive advice. National Instrument 14-101 *Definitions* contains definitions of terms that are commonly used in national instruments.

National policies outline how securities regulators interpret provisions of securities legislation, how they might exercise their discretion and the practices and procedures they follow.

CSA staff notices set out information of a procedural or administrative nature. They also set out how staff might exercise their discretion on various matters.

The Commission adopts local instruments and local policies, and staff issue local notices. The provisions of these instruments apply only in Saskatchewan. Local Instrument 14-501

Definitions contains definitions of terms that are used in local instruments.

Saskatchewan Staff Notice 11-701 *Commission Regulatory Instruments* gives more information about the different kinds of regulatory instruments. Saskatchewan Staff Notice 11-702 *Number System for National and Local Regulatory Instruments* describes the numbering system for them.

B. PASSPORT SYSTEM

The CSA instituted the passport system for prospectus qualification and applications for exemptive relief in all jurisdictions, except in Ontario, in March 2008. National Instrument 11-102 *Passport System* implements a system that simplifies processes for both market participants and regulators. Where a proposed activity would require action by several securities regulators, such as issuing a receipt for a prospectus, registering a person or company, or granting an order for exemptive relief, this system allows the market participant to deal with only one regulator. All the participating regulators may rely on the review and recommendations performed by the staff of the regulator designated to be the principal regulator. A single order, registration or receipt is issued by the principal regulator on behalf of all participating jurisdictions.

The passport system is based on the provisions of the Act in Part XIX.1 "Interjuridictional Cooperation".

The mechanics of the operation of passport system between the jurisdictions that have adopted National Instrument 11-102 and the province of Ontario are set out in:

(a) National Policy 11-202 Process *for Prospectus Reviews in Multiple Jurisdictions*, and
(b) National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*

C. ELECTRONIC FILING SYSTEMS

The CSA has developed systems using information technology that provide convenient forms of filing required disclosure documents and applications for regulatory approval. SEDAR (System for Electronic Document Analysis and Retrieval) allows public companies to file disclosure documents with commissions, and for the public to access those documents electronically through a central database at SEDAR.com

Insiders can file their reports over the internet through SEDI (System for Electronic Disclosure by Insiders) and the public can access them at SEDI.com

The National Registration Database (NRD) is a system that allows individuals to apply for registration using electronic forms over the internet. An internet search of basic information about registrants on the NRD is expected to be operational in fall 2009.

V. PRINCIPLES OF REGULATION UNDER THE *SECURITIES ACT, 1988*

The *Act* is consumer protection legislation aimed at protecting the investing public. The mandate to protect investors' interests by regulating the securities industry and the capital markets must be balanced against the business community's requirement to raise capital efficiently. Stringent and time consuming rules enacted in the name of protecting investors could unnecessarily stifle capital raising initiatives. On the other hand, the system of control must be sufficiently strong to encourage public confidence, for the investment industry will only flourish in such an environment.

The *Act* embodies four main principles of securities regulation that have evolved over the years:

(a) *Only honest and knowledgeable persons should be able to sell securities.* Section 27 requires that all persons in the business of trading or giving advice about securities or exchange contracts be registered.

(b) *When securities are first offered to the public, potential investors should be provided with and be able to rely on truthful, complete and understandable selling documents*. Section 58 requires the filing of a prospectus with full, true and plain disclosure of all material facts about a company about to make a distribution of securities.

(c) *All buyers and sellers should have equal access to information about companies whose shares are trading in the secondary market and an equal opportunity to be well informed.* The *Act* and related national instruments set out the requirements for the filing of financial information on a regular basis, plus special filing requirements for material changes, take-over bids, proxy solicitations and insider trading.

(d) *Persons taking undue advantage of purchasers should be held to account.* The *Act* gives the Commission enforcement powers and creates civil liability for issuers and other specified persons for misrepresentations in offering documents.

The *Act* therefore hinges on two key sections: section 27 which requires registration of anyone in the business of trading in or giving advice about securities or exchange contracts and section 58 which requires the filing of a prospectus before securities are sold.

Most of the *Act* relates to "trading" in securities. The definition of "trade" in section 2(1)(vv) is any transfer, sale or disposition of a security for a valuable consideration, but does not include a purchase of a security. The *Act* therefore regulates the sale, not the purchase, of securities.

VI. PROSPECTUS REQUIREMENTS AND REVIEW

Section 58, one of the key sections of the *Act*, provides that no person or company shall trade in a security where the trade would be a distribution unless both a preliminary prospectus and prospectus have been filed with the Commission and receipts issued. Section 58 has wide application because of the broad definition given to the terms used:

(a) "Distribution" as defined by section 2(1)(r) covers sales by promoters, control persons, incorporators and the like, and is not limited to distribution of new shares to the public;

(b) "Person" as defined by section 2(1)(hh) includes individuals, partnerships and unincorporated associations;

(c) "Company"is defined by section 2(1)(h) includes corporations, incorporated associations, and other incorporated organizations;

(d) "Trade" as defined by section 2(1)(vv) is any sale or transfer of a security for valuable consideration, and includes any act, advertisement, solicitation, directly or indirectly in

furtherance of a trade;

(e) "Security" as defined by section 2(1)(ss) covers a wide category of legal interests and includes investment contracts, futures contracts and options. The judicial interpretation of this term by courts in both the United States and Canada has been very broad. This means that a great many legal instruments and interests could come within the definition of security.

A. FORM OF PROSPECTUS

A prospectus is a legal document by which securities are offered for sale. Section 61 of the *Act* provides that a prospectus must contain full, true and plain disclosure of all material facts relating to the securities issued. Its purpose is to provide prospective investors with sufficient information to enable them to make an informed decision about whether or not to purchase any of the securities offered. National Instrument 41-101 *General Prospectus Requirements* specifies the form and content of prospectuses for issuers including investment funds. National Instrument 41-101 does not apply to mutual funds, which are subject to National Instrument 81-101 *Mutual Fund Prospectus Disclosure.*

While National Instrument 41-101 sets out the basic requirements for prospectuses, the following national instruments create alternate prospectus disclosure systems:

(a) National Instrument 44-101 *Short Form Prospectus* allows reporting issuers with a large market capitalization that have filed an Annual Information Form to use an abbreviated form of prospectus streamlining the process and shortening the time frame to make a public offering of securities.

(b) National Instrument 44-102 *Shelf Distributions* makes available, for issuers qualified to use the short form prospectus system, an even more streamlined offering process. A company can file a short form prospectus that describes generally various types of securities that the company might sell during a two-year period. Then, when it decides to make an actual offering, it simply supplements that "base shelf" prospectus with a much shorter document describing the particular offering. The offering can proceed immediately without further regulatory prospectus review or screening.

(c) National Instrument 44-103 *Post-Receipt Pricing* provides a mechanism for prospectus offerings in which the actual offering price is decided only at the end of the selling process. The "PREP prospectus" can omit the price. Once the price is determined, it is provided in a supplement to the PREP prospectus.

(d) National Instrument 71-101 *Multijurisdictional Disclosure System* sets up a system under which issuers based in the United States can prepare prospectus, continuous disclosure and

take-over bid material in accordance with SEC rules, and file it with Canadian securities regulators without complying with Canadian requirements. Canadian regulators will rely on review of the documents by the SEC, and will not do their own review. The SEC has adopted rules which give qualifying Canadian issuers to reciprocal treatment in the U.S.

B. REVIEW OF PROSPECTUS

Once a prospectus is filed, the Director must promptly issue a preliminary receipt pursuant to section 60. If the prospectus does not substantially comply with the *Act* and regulations the Director may refuse to issue a preliminary receipt under section 76. Commission staff do review of the prospectus to ensure that it meets the form and content requirements of the *Act* and regulations, and also to ensure that it meets the merit requirements as set out in section 70.

C. APPLICATION OF SECTION 70 - MERIT REVIEW

Section 70 requires Commission staff to do a merit or "blue sky" review of prospectuses, and specifies that a prospectus receipt cannot issue if the Director is of the opinion that it is not in the public interest to do so. Section 70(2) sets out a detailed list of the circumstances in which the Director must not issue a prospectus receipt. Matters that the Director must consider under section 70(2) include:

(a) whether an unconscionable consideration is paid for promotional purposes or acquisition of property. Saskatchewan Policy Statement 43-601 *Unconscionable Consideration* sets out the factors that the Director will consider in determining whether an unconscionable consideration is being paid to promoters;

(b) whether enough money is being raised from the sale of securities to accomplish the business purpose stated in the prospectus;

(c) whether there is any evidence to believe, because of the past conduct of the issuer, or an officer or other person associated with the issuer that the business of the issuer will not be conducted with integrity and in the best interests of securities holders; and

(d) whether an escrow or pooling agreement been put in place. National Policy Statement 46-201 *Escrow for Initial Public Offerings* sets out the circumstances in which an escrow agreement is required, and the terms of that escrow agreement.

D. NATIONAL AND LOCAL INSTRUMENTS

The Commission's Web site sets out a list of the other national and local instruments that relate to distribution of securities under a prospectus. The most important ones are:

(a) National Instrument 43-101 *Standards of Disclosure for Mineral Projects* regulates all disclosure that an issuer makes concerning mineral projects that is reasonably likely to be made available to the public.

(b) National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* sets out the accounting principles and auditing standards that must be used by reporting issuers in preparing any financial information contained in prospectuses.

E. THE REVIEW PROCESS

Commission staff are available for consultation in the preparation of a prospectus, and can provide precedents of prospectuses used in similar offerings in the past. If an offering is unusual or unduly complicated, it is recommended that Commission staff be consulted during the preparation of a prospectus to avoid major changes and delays during the review process.

The initial review of the preliminary prospectus is generally completed within ten business days from the date of the preliminary receipt. Commission staff prepare and send a detailed comments letter. The onus is on the issuer and its solicitor to deal with and resolve the comments made by Commission staff.

Resolution of the comments can generally be resolved by discussion and negotiation with Commission staff. If the issuer is a Saskatchewan based company raising funds in several jurisdictions, the Commission will be the principal regulator under National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions.* It will do a detailed review of the prospectus for other participating jurisdictions, and will issue a receipt for the prospectus that will be effective in all jurisdictions in which the prospectus was filed.

National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* requires issuers to file their prospectuses and supporting documents on SEDAR.

F. MARKETING SECURITIES UNDER A PROSPECTUS

Once a receipt for a preliminary prospectus has been issued, the provisions of Part XII - "Distribution Generally", apply. Section 73 specifies that during the waiting period, that is the interval between the issuance of the preliminary prospectus receipt and the final receipt, the issuer is restricted to distributing the preliminary prospectus, "tombstone" ads (ads setting out the basic details about the offering) and soliciting expressions of interest from prospective purchasers. Generally, only limited marketing is allowed during the waiting period while the prospectus is being reviewed, and no purchase contracts can be completed until the prospectus is finalized.

After the receipt for the final prospectus has been issued, section 77 limits the material that can be used in marketing to essentially the same material that is used in the waiting period. The rationale behind these provisions is that the prospectus should be the only selling document as only it has been reviewed for full, true and plain disclosure and gives rise to legal liability.

Part 13 of National Instrument 41-101 *General Prospectus Requirements* sets out requirements relating to advertising and marketing of a securities in a prospectus distribution. Part 6 of the Companion Policy to National Instrument 41-101 provides additional guidance.

National Policy 47-201 *Trading in Securities on the Internet* sets out the views of the CSA on a number of matters relating to the use of the internet and other electronic means of communication in connection with trades and distributions of securities.

VII. MUTUAL FUNDS

A mutual fund is an issuer of a security that entitles the holder to receive on demand, or within a specified period after demand, a proportionate interest in the net assets of the fund. While the provisions of the *Act* generally apply to mutual funds, there are a series of national instruments that prescribe specific requirements that govern mutual funds:

(a) National Instrument 81-101 *Mutual Fund Disclosure* implements a regulatory regime governing the disclosure provided by mutual funds in satisfaction of the prospectus requirements of securities legislation. National Instrument 81-101 requires the

preparation and filing of a simplified prospectus and annual information form.

(b) National Instrument 81-102 *Mutual Funds* prescribes rules that govern the operation of mutual funds including investment restrictions, conflicts of interest, custodianship of assets, processes for sales and redemptions, and calculating net asset values.

(c) National Instrument 81-104 *Commodity Pools* sets out the rules that govern the operation of commodity pools. The rules allow them to invest in commodities and use derivatives in ways not permitted for conventional mutual funds.

(d) National Instrument 81-105 *Mutual Fund Sales Practices* imposes restrictions on certain sales and business practices followed by managers and principal distributors of publicly offered mutual funds, and registered dealers and their sales representatives who sell them.

(e) National Instrument 81-106 *Investment Fund Continuous Disclosure* sets out continuous disclosure obligations for investment funds, including mutual funds.

(f) National Instrument 81-107 *Independent Review Committee for Investment Funds* requires investment funds to have an independent review committee that decide matters relating to conflicts of interest that the fund manager refers to them.

VIII. CONTINUOUS DISCLOSURE

A. REPORTING ISSUER

When a company files a prospectus it becomes a “reporting issuer” or, as more commonly known, a “public company”. Section 2(1)(qq) defines the term “reporting issuer” and sets out the circumstances in which a company becomes a reporting issuer. The filing of a prospectus is the main one. A reporting issuer is subject to the “continuous disclosure” provisions in National Instrument 51-102 *Continuous Disclosure Requirements*. National Instrument 81-106 *Investment Fund Continuous Disclosure* sets out the continuous disclosure requirements for investment funds. An investment fund is a mutual fund or a non-redeemable investment fund. Section 92 of the *Act* sets out the circumstances in which the Commission may order that a reporting issuer cease to be a reporting issuer.

B. POLICY REASONS FOR CONTINUOUS DISCLOSURE REQUIREMENTS

The continuous disclosure provisions are intended to enable the public to have ongoing information about public companies. They were first introduced in the 1967 *Act*. Before that

there was a high standard of information given to investors at the time a company issued new securities by means of a prospectus. The only subsequent information required to be given was to shareholders only, as required by the *Companies Act*. This information was annual financial statements and the proxy information for shareholders' meetings.

Further developments originating in the United States required that certain information be publicly filed and available to everyone. This included reports of securities trading by officers, directors and major shareholders, quarterly financial statements and more elaborate proxy material.

All of the present requirements are aimed at providing sufficient, equal and timely information to both buyers and sellers in the secondary market. The secondary market is where people buy and sell shares already issued by a company either on a stock exchange or through brokers. The theory is that everyone should be able to buy and sell in the secondary market using the same information and that they should have this information as soon as possible.

National Instrument 13-101 *SEDAR* requires reporting issuers to file their continuous disclosure material electronically on SEDAR where it is available to the public at www.SEDAR.com

National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* sets out the accounting principles and auditing standards that must be used by reporting issuers in preparing any financial information required under National Instrument 51-102 *Continuous Disclosure Requirements.*

C. NATIONAL INSTRUMENT 51-102 CONTINUOUS DISCLOSURE REQUIREMENTS

1. Financial Statements - Part 4

Part 4 of National Instrument 51-102 *Continuous Disclosure Requirements* deals with a reporting issuer’s reporting of its financial information at regular intervals. Key provisions of National Instrument 51-102 are:

(a) *Annual audited financial statements* - Sections 4.1 and 4.2 require comparative annual audited financial statements to be prepared and filed within 90 days after the issuer’s financial year end. Venture issuers, those whose securities are not listed on the Toronto Stock Exchange or a marketplace outside of Canada, have 120 days in which to file.

(b) *Interim financial statements* - Section 4.3 requires reporting issuers to prepare interim quarterly financial statements. The financial statements must disclose whether or not an auditor has reviewed them, and they must be approved by the issuer's board of directors.

Section 4.4 requires the interim financial statements to be filed within 45 days of the end of the interim period (60 days for venture issuers).

(c) *Delivery of financial statements* - Section 4.6 requires a reporting issuer to annually send a request form to security holders indicating that they may request the financial statements and other material. The issuer must send this material to any security holder who returns the card and requests the information. Otherwise, there is no requirement to deliver financial statements to security holders.

(d) Change of financial year end and change of auditor – Section 4.8 contains rules for a reporting issuer changing its financial year end. Section 4.11 states requirements for an issuer to change its auditor.

2. Management's Discussion and Analysis – Part 5

Section 5.1 of National Instrument 51-102 requires a reporting issuer to file Management Discussion and Analysis ("MD&A") relating to its annual and interim financial statements in accordance with Form 51-102F1. MD&A is a narrative explanation through the eyes of management of how the issuer performed during the period covered by the company's financial statements, and the company's financial condition and future prospects.

3. Annual Information Forms – Part 6

Section 6.1 of National Instrument 51-102 requires reporting issuers that are not venture issuers to file an Annual Information Form (an "AIF") within 90 days of their financial yearend. An AIF is a disclosure document intended to provide material information about the company and its business. The AIF describes the company, its operating and prospects, risk and other external factors that may affect the company.

4. Material Change Reports – Part 7

Section 7.1 of National Instrument 51-102 provides that if a material change occurs in the affairs of a reporting issuer, the issuer must immediately file a new release and, within 10 days, file a Material Report in Form 51-102F3.

A “material change” is defined as a change in the business, operations or capital of a reporting issuer that would reasonably be expected to have a significant effect on the market price or value of the issuer’s securities.

National Policy 51-201 *Disclosure Standards* provides guidelines for complying with the material change reporting requirement and provides guidance on the legislative provisions that prohibit selective disclosure. Section 85 prohibits anyone in a special relationship with a reporting issuer with knowledge of an undisclosed material change about the issuer from trading in the issuer’s securities. NP 51-201 gives examples of information that is likely to be material, and sets out “best disclosure practices”.

5. Business Acquisition Reports – Part 8

Section 8.2 of National Instrument 51-102 requires a reporting issuer to file a business acquisition report within 75 days of completing a significant acquisition. Section 8.3 sets out what a significant acquisition is.

6. Mandatory Proxy Solicitation and Information Circulars - Part 9

“Proxy” is a common term ascribed to a written instrument by which a security holder gives their right to vote at a meeting to another person. Section 9(1) of National Instrument 51-102 requires the management of a reporting issuer to solicit proxies at the same time that they give notice of a meeting. Section 9(2) provides that an information circular must accompany proxy solicitations. An information circular must be in Form 51-102F5, and generally sets out information about the directors nominated for election, executive compensation, principal holders of voting securities, and securities to be issued under executive compensation plans.

These provisions are designed to ensure that security holders are given an opportunity to exercise their right to vote at shareholders' meetings, and that they have sufficient information to be able to vote in an informed way.

D. DELIVERY OF CONTINUOUS DISCLOSURE INFORMATION

National Instrument 54-101 *Shareholder Communication* sets up a procedure that must be followed to ensure that shareholders who hold their shares through market intermediaries receive this information.

National Policy 11-201 *Delivery of Documents by Electronic Means* states the views of the Canadian Securities Authorities on how obligations to deliver documents under securities legislation can be satisfied by electronic means.

E. CONTINUOUS DISCLOSURE FOR MINING AND OIL AND GAS ISSUERS

Mining companies and oil and gas companies are subject to additional disclosure requirements in additional to the standard continuous disclosure requirements that apply to all issuers.

National Instrument 43-101 *Standards of Disclosure for Mineral Projects* is a rule that governs how issuers disclose scientific and technical information about their mineral projects to the public. It covers oral statements as well as written documents and websites. It requires that all disclosure be based on advice by a "qualified person" (a term defined in National Instrument 43-101) and in some circumstances that the person be independent of the issuer and the property. National Instrument 43-101 also requires issuers to file technical reports at certain times and there is a prescribed format for the technical report. Issuers are required to make disclosure of reserves and resources using definitions approved by the Canadian Institute of Mining, Metallurgy and Petroleum.

National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* establishes a regime of continuous disclosure for reporting issuers engaged in exploring for, developing or producing oil or gas. It supplements disclosure requirements that apply to reporting issuers generally. National Instrument 51-101 reflects the view of the CSA that information about oil and gas reserves and activities may be as important as financial statement disclosure for investors making an investment decision concerning securities of an upstream oil and gas issuer. It requires annual reporting of independently-verified estimates of reserves volumes and related cash flow ("future net revenue") and other information about a reporting issuer's oil and gas

activities and adherence to professional- and industry-developed evaluation standards and terminology.

F. REVIEW OF CONTINUOUS DISCLOSURE INFORMATION

Section 20.1 of the *Act* gives the Director the power to conduct a review of disclosure by a reporting issuer or an investment fund. Issuers and investment funds must provide to the Director information and documents reasonably relevant to the review.

The staff of the Canadian Securities Administrators have established a program of harmonized continuous disclosure review with a view to improving the completeness, quality and timeliness of continuous disclosure by reporting issuers in Canada. Under the program, staff of the participating jurisdictions generally follow principles of mutual reliance whereby issuers will deal only with staff of a principal regulator. Staff of the non-principal regulators will rely on the staff of the principal regulator on matters related to continuous disclosure reviews. The CSA publishes annual notices of the results of these continuous disclosure reviews.

IX. INSIDER TRADING

Insider trading first became subject to regulation in 1966 with the introduction of the new *Securities Act* in Ontario. These changes were adopted in Saskatchewan with the introduction of the 1967 *Act*. The new legislation implemented the recommendations of the Kimber Report which urged a “free and open market with prices based on the fullest knowledge of all relevant facts among trades”.

The two reforms introduced were:

(a) the institution of compulsory reporting by insiders of every trade made by them in the securities of a company of which they were insiders; and

(b) the imposition of liability on insiders and certain persons or companies connected with them who use confidential information.

The insider trading provisions in the *Act* are as follows:

(a) Section 2(1)(w) defines "insider" to include:

    (i) a director or officer of the issuer and its affiliates and subsidiaries; and
    (ii) any person or company that owns or controls 10% of the voting shares of the issuer.

(b) Section 85 prohibits the use of undisclosed information by "persons or companies in a special relationship with a reporting issuer" ("special relationship persons"). This term has a special meaning under section 85 and includes a wider category of persons and companies than those within the definition of insider. Section 131 makes contravention of section 85 an offence and prescribes significant penalties.

(c) Section 116 requires an insider of a reporting issuer to file reports of his trades in the securities of that reporting issuer.

(d) Section 116.1 sets out the early warning requirement. Anyone who acquires beneficial ownership of prescribed percentage of the outstanding securities of a prescribed class or type must make prescribed disclosure.

(e) Section 142 imposes civil liability on a special relationship person who either buys or sells securities using undisclosed material information or passes such information on to someone else who uses it. Liability attaches to the person who bought or sold the securities of the reporting issuer, and damages are generally the difference between the trade price and the average market price in the 20 days following disclosure of the material information.

National Instrument 55-102 *System for Electronic Disclosure for Insiders* ("SEDI") provides that insiders of these SEDI issuers must file their insider reports in electronic format through SEDI. SEDI is an electronic filing system that facilitates filing and public dissemination of insider reports in electronic format through an internet Web site www.SEDI.ca National Instrument 55-102 defines SEDI issuers to mean reporting issuers, other than mutual funds, that are required to file disclosure documents in electronic format through SEDAR.

The following national instruments also apply to insider trading:

(a) National Instrument 55-101 *Exemption from Insider Trading* provides certain exemptions from the obligation to file insider reports under Canadian securities legislation.

(b) National Instrument 55-103 *Insider Reporting for Certain Derivative Transactions (Equity Monetization)* ensures that insider derivative-based transactions which have a similar effect in economic terms to insider trading activities are fully transparent to the market. It requires that where an insider enters into a transaction which satisfies one or more of the policy rationale for insider reporting, the insider is required to file an insider report, even though the

transaction may, for technical reasons, fall outside of the existing rules governing insider reporting.

X. CORPORATE GOVERNANCE

The Commission along with other regulators in the CSA have adopted several instruments that go beyond the disclosure requirements that generally apply to reporting issuers and impose new requirements that relate to corporate governance. These requirements are the Canadian response to the *Sarbannes-Oxley Act* that was passed in July, 2001 by the U.S. government in response to corporate scandals such as Enron.

A. NATIONAL INSTRUMENT 52-108 *AUDITOR OVERSIGHT*

National Instrument 52-108 *Auditor Oversight* requires that when a reporting issuer files its financial statements accompanied by an auditor's report, the auditor's report must be signed by a public accounting firm that is a participant in the Canadian Public Accountability Board (the "CPAB") Oversight Program (the "CPAB Oversight Program") for public accounting firms that audit reporting issuers and in compliance with any restrictions or sanctions imposed by the CPAB.

The CPAB was established in July 2002 to promote high quality external audits of reporting issuers. It registers and inspects public accounting firms that prepare auditors' reports with respect to the financial statements of reporting issuers.

B. MULTILATERAL INSTRUMENT 52-109 *CERTIFICATION OF DISCLOSURE*

The purpose of National Instrument 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings* is to improve the quality and reliability of reporting issuers' annual and interim disclosure. National Instrument 52-109 require an issuer's chief executive officer (CEO) and chief financial officer (CFO), or persons performing similar functions to a CEO or CFO (certifying officers), to personally certify that, among other things:

(a) the issuer's annual filings and interim filings do not contain any misrepresentations;

(b) the financial statements and other financial information in the annual filings and interim filings fairly present the financial condition, results of operations and cash flows of the issuer;
they have designed disclosure controls and procedures (DC&P) and internal control over financial reporting (ICFR),or caused them to be designed under their supervision;

(c) they have caused the issuer to disclose in its Management Discussion & Analysis (MD&A) any change in the issuer's ICFR that has materially affected the issuer's ICFR; and

(d) on an annual basis they have evaluated the effectiveness of the issuer's DC&P and ICFR and caused the issuer to disclose their conclusions about the effectiveness of DC&P and ICFR in the issuer's MD&A.

C. NATIONAL INSTRUMENT 52-110 *AUDIT COMMITTEES*

National Instrument 52-110 *Audit Committees* requires that every reporting issuer have an audit committee to which the issuer's external auditor must directly report. Every audit committee must be responsible for:

(a) overseeing the work of the external auditor engaged for the purpose of preparing or issuing an audit report or related work;

(b) pre-approving all non-audit services to be provided to the issuer or its subsidiary entities by the issuer's external auditor; and

(c) reviewing the issuer's financial statements, MD&A, and annual and interim earnings press releases before they are publicly disclosed by the issuer.

Every audit committee must have a minimum of three members, and each member must be financially literate and independent. There are less rigorous requirements for venture issuers. A venture issuer is an issuer that does not have its securities listed on the Toronto Stock Exchange, a U.S. marketplace, or an exchange outside of Canada and the U.S.

D. CORPORATE GOVERNANCE GUIDELINES

National Policy 58-201 *Corporate Governance Guidelines* provides guidance to all reporting issuers on corporate governance practices. The guidelines are not prescriptive, and are intended to aid issuers in developing their own corporate governance practices. National Instrument 58-101 *Disclosure of Corporate Governance Practices* applies to all reporting issuers except investment funds, foreign issuers and others. National Instrument 58-101 requires issuers to

disclose their corporate governance practices under specific topics, including independent directors, code of business conduct, compensation, and board committees.

XI. TAKE-OVER BIDS AND ISSUER BIDS

Like many of the provisions relating to continuous disclosure, regulation of take-over bids and issuer bids was first introduced with the *Securities Act* in Ontario in 1966 to give effect recommendations in the Kimber Report. These changes were adopted in Saskatchewan in the 1967 *Securities Act*. The rules are to assure that security holders of the target company were all treated equally, that they receive adequate relevant information, and a reasonable time to assess the information.

There are a few basic requirements in Part XVI of the Act:

(a) Section 98 defines terms including:

  (i) "take-over bid" means an offer to acquire a security that is made by a person or company other than the issuer of that security, and is within a prescribed class;

  (ii) "issuer bid" means an offer to acquire or redeem a security that is made by the issuer of the security, and is within a prescribed class.

(b) Section 99 states that a person or company shall not make a take-over bid or issuer bid except in accordance with Part XVI of the *Act* or the regulations. The regulations in this case are National Instrument 62-104 *Take-over Bids and Issuer Bids*.

(c) Section 100 requires that if a take-over bid has been made, the directors of the issuer whose securities are subject to the bid shall:

  (i) Determine whether to recommend acceptance or rejection of the bid or to make no recommendation at all; and

  (ii) Make the recommendation or a statement that they are not making a recommendation in the manner prescribed in the regulations.

(d) Section 101 gives the Commission has power to issue certain orders where it appears that someone is not complying with the take-over and issuer bid requirements. The Commission may also vary the rules and grant exemptions from the requirements.

(e) Section 102 gives the Court of Queen's Bench power to make certain orders where the Court is satisfied that someone is not complying with the rules.

National Instrument 62-104 *Take-over Bids and Issuer Bids* sets out the detailed requirements for take-over bids and issuer bids. The general rules reflected in National Instrument 62-104 are:

(a) Take-over bids and issuer bids must made to all security holders for identical consideration. (section 2.8)

(b) Offerees have 35 days from the date of the bid in which to decide whether to take up the offer. (section 2.28)

(c) Every take-over bid and issuer bid must be accompanied by a circular containing detailed information about the bid. (section 2.10)

(d) Bids may generally be commenced by delivering the bid to securities holders. Take-over bids may also be commenced by placing an advertisement in a daily newspaper of general circulation. (section 2.19)

(e) There are restrictions on acquisitions of securities of the target company during a take-over bid. (sections 2.2, 2.3 and 2.4)

(f) Anyone who acquires securities over a 10% threshold must file a report and issue a press release. This is commonly referred to as the “early warning rule” and is intended to prevent creeping take-overs. (section 5.2)

(g) There are exemptions from the take-over bid and issuer bid requirements. (Part 4)

National Policy 62-201 *Bids Made Only in Certain Jurisdictions* was implemented to ensure that take-over bids are made to all Canadian shareholders. The policy provides that, unless a bid is made to all shareholders in Canada, the Commission in the province where the bid originates will issue a cease trading order. National Policy 62-202 *Take-over Bids – Defensive Tactics* sets out when defensive tactics by the board of directors of a target company might come under the scrutiny of securities regulators.

National Instrument 62-103 *Early Warning System and Related Take-over and Insider Reporting Issues* provides exemptions from the early warning requirements, the insider reporting

requirement, and related provision to certain institutional investors that have a "passive intent" with respect to their ownership or control of securities of reporting issuers.

XII. REGISTRATION

Section 27 is the basic registration requirement. It provides that no one can engage in the business of trading in securities or exchange contracts, or engage in the business of giving advice respecting securities or exchange contracts unless they are registered as a dealer or adviser or as an representative of a dealer or adviser. An exchange contract is a futures contract or an option that trades on an exchange under standardized terms and conditions.

The registration provisions of the *Act* are intended to ensure that only honest and knowledgeable persons are entitled to sell securities

The following instruments prescribe requirements for registrants:

(a) National Instrument 31-102 *National Registration Database* requires that certain registration information, including applications for registration by individuals, be submitted to regulators electronically through the National Registration Database.

(b) National Instrument 31-103 *Registration Requirements and* Exemptions sets out detailed requirements for registrants.

(c) National Instrument 33-109 *Registration Information* prescribes requirements regarding initial submissions of registration information and updating that information.

(d) National Instrument 81-105 *Mutual Fund Sales Practices* imposes restrictions on certain sales and business practices followed by managers and principal distributors of publicly offered mutual funds, and registered dealers and their sales representatives who sell them.

XIII. SELF REGULATORY ORGANIZATIONS AND EXCHANGES

Self-regulatory organizations play an important role in securities regulation in Canada.

A. INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

The Investment Industry Regulatory Organization of Canada (IIROC) is the national self-regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. IIROC was created in 2008 through the consolidation of the Investment Dealers Association of Canada and Market Regulation Services Inc. IIROC sets and enforces rules regarding the proficiency, business and financial conduct of dealer firms and their registered employees. It also sets and enforces market integrity rules regarding trading activity on Canadian equity marketplaces.

The Commission recognized IIROC as a self-regulatory organization under General Ruling/Order 11-911 *Recognition of the Investment Industry Regulatory Organization of Canada* on June 1, 2008. Section 9.1 of National Instrument 31-103 *Registration Requirements and Exemptions* requires investment dealers to be members of IIROC.

B. MUTUAL FUND DEALERS ASSOCIATION

The Mutual Fund Dealers Association of Canada (MFDA) is a self-regulatory organization that regulates the activities of mutual fund dealers in Canada. The Commission recognized the MFDA as a self-regulatory organization under General Ruling/Order 11-903 *Recognition of the Mutual Fund Dealers Association of Canada* on February 13, 2001. Section 9.2 of National Instrument 31-103 *Registration Requirements and Exemptions* requires mutual fund dealers to be members of the MFDA. Like IIROC, the MFDA has rules that specify capital and other business practices for its members firms. It inspects the operations of its members and has processes for investigating complaints and taking disciplinary action where necessary.

C. INVESTOR PROTECTION FUNDS

The Canadian Investor Protection Fund (CIPF) covers losses of securities, cash balances and certain other property within defined limits that result from the insolvency of investment dealers which are members of IIROC. Participation in the CIPF is a condition of membership of IIROC.

The MFDA Investors Protection Corporation is sponsored by the Mutual Fund Dealers Association of Canada. Its purpose is also to ensure, within defined limits, that

client assets are protected if a mutual fund dealer becomes insolvent.

D. EXCHANGES

An exchange is a marketplace that brings together buyers and sellers of securities where prices are established according to the laws of supply and demand. The main exchanges operating in Canada are:

(a) the Toronto Stock Exchange TSX) trades all senior Canadian equities;

(b) the Montreal Exchange (ME is the exclusive exchange for financial futures and options in Canada; and

(c) the TSX Venture Exchange (TSX Venture Exchange) is the national market for junior equities.

In recent years alternative trading systems (ATS) have begun to operate in Canada. ATSs are privately-owned computerized exchange networks that match orders for securities outside of recognized exchange facilities.

These exchanges and ATSs are recognized and operate under National Instrument 21-101 *Marketplace Operation.* National Instrument 21-101 contains provisions that regulate all securities marketplaces operating in Canada including exchanges, quotation and trade reporting systems and alternate trading systems.

National Instrument 23-101 *Trading Rules* sets out common trading rules that apply to all trading in securities whether on a marketplace or not.

National Instrument 24-101 *Institutional Trade Matching and Settlement* provides a general framework in provincial securities regulation for ensuring more efficient and timely settlement processing of trades, particularly institutional trades.

XIV. EXEMPTIONS

A. THE CLOSED SYSTEM

The *Act* creates the “closed system” which was first adopted by legislation in Ontario in 1978. Under the 1967 *Act* a prospectus was required only where there was a “primary distribution to the public”. Under the present *Act* the concept of “public” and “non-public” has been eliminated, and a prospectus is now required whenever there is a distribution as defined in section 2(1)(r). A distribution is generally a sale of securities issued from treasury or the sale of previously issued securities by control persons, promoters, incorporators or underwriters. Because a prospectus is required for almost all transactions it was necessary to greatly expand the types of exemptions available. Until September 2005 these exemptions were contained in the securities legislation of the Canadian provinces and territories. On September 14, 2005 all jurisdictions, including Saskatchewan implemented National Instrument 45-106 *Prospectus and Registration Exemptions*. National Instrument 45-106 consolidated and harmonized most of the prospectus and registration exemptions contained in provincial securities legislation. Saskatchewan has repealed all of the prospectus and registration exemptions from the *Act*.

Those distribution securities under an exemption should be aware that:

(a) They must strictly comply with the terms of each exemption;

(b) There are reporting requirements for many of the exemptions. These are set out in section 6.1

Saskatchewan Staff Notice 45-703 *Monitoring the Use of the Exemptions Under National Instrument 45-106 Prospectus and Registration Exemptions* describes how Commission staff will monitor the use of certain capital raising exemptions under National Instrument 45-106 to ensure that issuers are complying with the conditions that attach to the exemptions.

The offering memorandum exemption in section 2.9 of National Instrument 45-106 permits an issuer to raise sell securities to any person provided the issuer gives the person an offering memorandum containing specified disclosure, and the person signs a clear risk statement.

Purchasers who do not meet a prescribed income and asset test may invest up to $10,000 in an offering under this exemption.

Saskatchewan Staff Notice 45-704 *Review of Offering Memoranda Filed Under NI 45-106 Prospectus and Registration Exemptions* sets out the deficiencies found on staff's review of offering memoranda filed under National Instrument 45-106. It provides guidance on preparing offering memoranda in good form, and sets out the consequences that may flow if offering memoranda are deficient. Saskatchewan Staff Notice 45-706 *Voluntary Pre-Offering Review of Offering Memoranda under NI 45-106* informs issuers that they may pre-file a draft offering memorandum under NI 45-106 on a voluntary basis before it is used. Staff will review the draft offering memorandum and provide comments.

The paper posted on the Commission's Web site "How to Raise Capital Using Exemptions" describes the capital raising exemptions in sections 2.1 to 2.10 of National Instrument 45-106.

B. FIRST TRADE RULES

The main element of the closed system is the first trade rules under National Instrument 45-102 *Resale of Securities*. National Instrument 45-102 provides that for some exemptions in National Instrument 45-106, the "first trade", the next trade after exempt trade, is also a distribution that requires a prospectus. This is unless another exemption can be found, or unless the first trade rules in National Instrument 45-102 are complied with. The first trade rules are the conditions that must be met before the shares acquired under an exemption are freely tradeable. The important one are:

(a) the company must be a reporting issuer for four months;

(b) in some cases the security must be held by the first purchaser for a period of at least four months; and

(c) the securities must bear a notation indicating the period during which the sale of the securities is restricted.

There are ways to sell securities acquired under an exemption other than complying with the first trade rules. They are:

(a) file a prospectus;

(b) use another statutory exemption; or

(c) obtain a discretionary ruling from the Commission pursuant to section 83.

The general principle behind the resale rules in National Instrument 45-102 is that everyone should have equal opportunity to access information about a company. Companies, insiders of the company, and control persons generally have more information about that company than the general public. When an offering is made under an exemption without a prospectus, the hold periods are intended to allow dissemination of information about the company. This should put purchasers in the general public on an equal footing with the company and its insiders. The hold periods imposed by the closed system also ensure that exemptions cannot be used to avoid using a prospectus for offerings that should be made using a prospectus.

XV. DISCRETIONARY EXEMPTIONS

The Commission has the power under section 83 of the *Act* to grant discretionary exemptions from both the prospectus and registration requirements. It also has the general power to waive any provision of the *Act* or regulations pursuant to section 160. Saskatchewan Policy Statement 12-601 *Applications to the Saskatchewan Securities Commission* sets out in detail how to make an exemption application.

The application itself is a formal document and must be verified by the applicant. Representations made in the application are relied on by the Commission in granting the ruling, and care should be taken that information is accurate and complete. Making a misrepresentation in any written material filed with the Commission is prohibited under section 55.13 of the *Act.*

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* sets out the procedure for making an exemption application in more than one jurisdiction.

A. FACTORS CONSIDERED BY THE COMMISSION

Before granting a discretionary exemption, the Commission must be satisfied that it is not prejudicial to the public interest to do so. It will consider whether there are factors in place for public protection, which make the prospectus and registration requirements unnecessary.

Rulings are often granted where a transaction is very close to an existing statutory exemption, technically does not fall within it for one reason or the other, but the policy considerations behind the exemption are still met. Exemptions are also granted where there is an uncertainty in the application of the *Act.*

The Commission will grant exemptions where there are special relationships between the parties involved in the transaction, and the purchasers, through this special relationship, have knowledge both about the enterprise and the promoter. The purchasers therefore should not require the disclosure normally made in a prospectus and the protection afforded by registration. Exemptions are also granted where purchasers are knowledgeable, can fend for themselves and don't require the protection of the *Act*.

In general terms, the Commission is open minded as to the kind of situations in which it will grant exemptions, as long as it is satisfied that the results will be that there is the same level of public protection as would be provided if the prospectus and registration requirements applied.

The Commission rarely grants an unconditional exemption and usually adds in the requirements that flow from the provision to which the exemption relates as conditions to the ruling. For example, it will often impose the first trade rules that would have applied if the trade had taken place under a statutory exemption. Continuous disclosure requirements are often imposed as well.

B. GENERAL RULINGS/ORDERS (“GROs”)

The Commission has granted a number of general rulings pursuant to section 83 and orders pursuant to section 160 that are of general application and do not specifically relate to one person or company. For example General Ruling/Order 45-913 *Exemptions for Capital Accumulations* Plans grants exemptions to permit trades in securities of a mutual fund to a capital accumulation plan or to a member of a capital accumulation plan on certain conditions.

The Commission’s Web site sets out all of the GROs.

XVI. GENERAL REQUIREMENTS FOR TRADING IN SECURIITES

Part IX *Trading in Securities and Exchange Contracts* sets out requirements and prohibitions that relate to trading in securities generally. The important provisions are:

(a) Section 44 prohibits the making of certain representations with the intention of effecting a trade including that the purchase price will be refunded, that the security may have a certain future value, or that a security will be listed on an exchange.

(b) Section 44.1 prohibits engaging in an unfair practice with the intention of effecting the purchase or sale of a security. "Unfair practice" is defined to mean putting unreasonable pressure on a person to buy or sell a security, taking advantage of someone with a disability or incapacity or imposing conditions on a transaction that are harsh and oppressive.

(c) Section 55.1 prohibits a person from engaging in an act in relation to securities that could result in a misleading appearance of market activity or defrauds anyone.

(d) Section 55.12 prohibits "front-running" which is buying or selling a security with knowledge that someone is about to make a trade that would be reasonably expected to significantly affect the market price of the security. This usually applies to trades by portfolio managers.

(e) Section 55.13 prohibits the making of false or misleading statements in documents filed with the Commission or in evidence given to the Commission.

(f) Section 55.14 prohibits the failure to comply with a decision of the Commission or Director;

(g) Section 55.15 prohibits the failure to comply with an undertaking given to the Commission or Director.

XVII. ENFORCEMENT

The *Act* gives the Commission a wide range of powers that it can use to regulate persons and companies participating in the securities industry. The Commission's aim is to deter people from breaking the rules and to maintain confidence in the capital markets of Saskatchewan.

A. OFFENSES

Section 131 is the general offence provision of the *Act*. Subsection 131(2) provides that a person or company may be guilty of a summary conviction offense for contravention of Saskatchewan securities laws. Clause 2(1)(rr.1) defines Saskatchewan securities laws as the *Act*, the regulations, a decision or order of the Commission or Director, and any extra-provincial securities laws adopted under section 147.4 of the *Act*. The penalties on conviction are significant - a fine of up to $5,000,000 or imprisonment for up to five years or both.

Pursuant to section 131(3) directors and officers of a company who authorize, permit or acquiesce in the commission of an offense under subsection 131(2) may be found guilty of the offence whether or not the company was convicted.

B. INVESTIGATIVE POWERS

Under section 12 the Commission may appoint an investigator in specified circumstances. The person appointed has wide powers beyond those enjoyed by other peace officers, including the power to summons and compel witnesses to testify.

The Commission may also appoint a person to examine the books and records of either a registrant or a reporting issuer under section 20 of the *Act*.

C. ENFORCEMENT ORDERS

Section 134 gives the Commission the power to make a number of orders where the Commission considers that such orders are necessary to protect the public interest.

1. Order Denying Use of Exemptions

Under section 134(1)(a) the Commission has the power to order that any or all of the exemptions in Saskatchewan securities law (most are in National Instrument 45-106) do not apply to a person or company. Since the use of an exemption is necessary for any trade unless one is registered and a prospectus receipt has issued, the use of this power has a significant impact. A

person subject to an order removing all registration and prospectus exemptions cannot trade in securities in Saskatchewan.

2. Cease Trading Orders

Under section 134(1)(b) and (d) the Commission may order that trading in any security or exchange contract cease or that certain persons or companies cease trading in securities or exchange contracts.

The Commission will issue a cease trading order in a wide range of situations, but the main one is to stop trades in securities that are being carried out in contravention of the *Act*. Once an order is issued, staff post the order on the Commission's Web site and distribute a news release.

3. Other Enforcement Orders

The Commission also has the power to make these orders:

(a) under clause 134(1)(f) - an order that a person or company cease contravening or comply with the *Act,* regulations or other Commission or self-regulatory requirements;

(b) under clause 134(1)(h) - an order that a person or company resign as director or officer of a registrant or issuer, or that they are prohibited from so acting;

(c) under clause 134(1)(h.1) – an order that a person or company be prohibited from becoming or acting as a registrant, an investment fund manager or a promoter;

(d) under sections 134(1)(i) and (j) - an order that a registrant be reprimanded or that their registration be suspended, restricted or terminated.

Under section 134(3) the Commission must have a hearing before it makes any of the orders under subsection 134(1). However, the Commission does have the power to issue 15-day temporary orders where it feels the length of time necessary for a hearing would be prejudicial to the public interest.

4. Reciprocal Orders

Under subsection 134(1.1) the Commission may make any of the orders in subsection 134(1) against a person or company where the person or company:

(a) has been convicted of a securities related offense;

(b) has been found by a court or tribunal in other jurisdiction to have contravened securities laws;

(c) is subject to an order of a securities regulatory authority in another jurisdiction that imposes sanctions or restrictions; or

(d) has agreed with a securities regulatory authority in another jurisdiction to be subject to sanctions or restrictions.

Before making an order against a person or company under subsection 134(1.1) the Commission must give them a right to be heard.

4. Other Enforcement Powers

a. Administrative penalty

Under section 135.1 the Commission may, after a hearing, order that a person or company pay an administrative penalty of up to $100,000 in specified circumstances.

b. Freeze order

Under section 135.4 the Commission can order that assets of any person or company be frozen in certain circumstances.

c. Application for receivership order

Under section 135.5 the Commission may apply to a Court of Queen's Bench judge for the appointment of a receiver or trustee of the property of a person or company in certain circumstances. The Commission would typically use this power to administer the assets of a registrant that has become insolvent. It would likely never be used to take over the business of an issuer.

d. Application for compliance or restraining orders

Section 133 allows the Commission to apply to a Queen's Bench judge to issue an order either directing any person or company to comply with the *Act* and regulations or decision of the Commission, or to direct that a person or company cease violating any such provision or decision. The order may issue against directors and senior officers of the person or company who have been responsible for not complying with or violating the provision or decision.

All of these powers are used to regulate participants in the market place. The Commission cannot enforce rights of investors against an issuer or its directors. Subject to the power to issue financial compensation orders under section 135.6, the Commission generally will not interfere in contractual or legal relationships between parties.

XVIII. CIVIL REMEDIES

Investors are given a number of civil remedies under the *Act* by which they can seek redress on their own behalf. These remedies must be enforced by individual investors, because with limited exceptions (derivative actions by the Commission under section 143 on behalf of an issuer against directors who have illegally used insider trading information) the Commission cannot take action on behalf security holders. In summary, the civil remedies are:

(a) *Right of withdrawal under sections 79 and 80.1.* A purchaser of securities under either a prospectus or an offering memorandum may withdraw from the transaction by giving written notice within two business days after receipt of the document. This provision gives the purchaser a cooling off period and some time to reflect on the purchase.

(b) *Prospectus misrepresentation under section 137.* The purchaser of securities offered under a prospectus has a right of action for damages or rescission against specified persons if the prospectus contains a misrepresentation at the time of the purchase. There are a number of defenses specified in section 137, and there is a limitation on the amount of damages that can be recovered.

Where there is a misrepresentation in the prospectus, section 137 of the Act gives anyone who has purchased a security in the offering the right to bring an action for damages against the issuer and its directors, each underwriter who signed the certificate, and anyone else who signed the prospectus. Under this statutory right of action they do not have to prove that they

relied on the misrepresentation.

(c) *Misrepresentation in offering memorandum under section 138.* The purchaser of securities pursuant to an offering memorandum has a similar right of action against a more limited group of persons. “Offering memoranda” is a term defined in section 2(1)(ff) as a document used in connection with certain specified exemptions or pursuant to a discretionary exemption order. These provisions first appeared in the present *Act,* and increase the protection given to purchasers of securities traded under exemptions. It moves them closer to the traditional protection afforded to purchasers under a prospectus.

(d) *Misrepresentation in advertising and sales literature under section 138.1.* The purchaser has a right of action for damages or rescission where advertising or sales literature used in connection with a securities offering contains a misrepresentation. This is another new provision and recognizes the key role that promotional material plays in marketing securities. It increases the responsibility of the seller and the issuer to ensure that such material is accurate and not misleading.

(e) *Verbal misrepresentation during the sale of a security under section 138.2.* The purchaser has a right of action for damages where an individual makes a verbal statement relating to a security to a prospective purchaser of that security that contains a misrepresentation.

(f) *Misrepresentations in take-over bid circulars, issuer bid circulars under section 139.* Offerees have civil remedies of rescission or damages where certain take-over bid and issuer bid documents contain misrepresentations.

(g) *Right of rescission for breaches of the Act under section 141(1).* A purchaser who buys securities pursuant to a trade by a vendor who is in contravention of the *Act*, the regulations or a decision of the Commission may elect to void the contract and recover all the money and consideration paid.

(h) *Rescission or damages for failure to deliver certain documents under section 141(2).* A purchaser has a right of action for rescission or damages against certain persons who fail to deliver a prospectus or offering memorandum as required by sections 79 and 80.1, or take-over bid or issuer bid documents as required under the provisions of National Instrument 62-104 Take-over Bids and Issuer Bids.

(i) *Damages for misrepresentations documents released and public oral statements under section 136.11.* There are four causes of action in section 136.11:

   (i) *Misrepresentations in documents released* - ss 136.11(1) - When a responsible issuer or someone acting on the issuer’s behalf releases a document that contains a misrepresentation.

   “Release” means to file with a securities commission or exchange or to otherwise make available to the public.

"Document" means any written communication that is required to be filed with the Commission, or if not required to be filed with the Commission, then is:

- filed with the Commission, or
- filed or required to be filed with a government agency under securities or corporate law or with any exchange under its rules, or
- any other communication which could reasonably be expected to affect the market price of a security of the responsible issuer.

"Responsible issuer" means a reporting issuer, or any other issuer with a connection to Saskatchewan, if the issuer's securities are publicly traded in that province.

(ii) *Misrepresentations in public oral statements* - ss 136.11(2) - When someone with authority to speak for a responsible issuer makes a public oral statement about the issuer that contains a misrepresentation. "Public oral statement" means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed.

(iii) *Misrepresentations in documents or public oral statements by influential persons* - ss 136.11(3). When an influential person or someone acting for an influential person releases a document or makes a public oral statement about the issuer which contains a misrepresentation.

"Influential person" means, in respect of a responsible issuer:

- a control person;
- a promoter;
- an insider, other than a director or senior officer of the responsible issuer, or
- an investment fund manager if the responsible issuer is an investment fund.

(iv) *Failure to make timely disclosure* - ss 136.11(4) - When a responsible issuer fails to make timely disclosure. "Failure to make timely disclosure" means a failure to disclose a material change as required under securities legislation.

A person or company has a right of action under section 136.11 if they bought or sold an issuer's security between the time:

- when a document or statement containing a misrepresentation was released or made, and when the misrepresentation was corrected, or
- when failure to make timely disclosure first occurred and when it was corrected

IX. FINANCIAL COMPENSATION ORDERS

The Saskatchewan Financial Services Commission (the "Commission") may make a financial compensation order in an amount of up to $100,000 pursuant to section 135.6 of the Act following a hearing if there is evidence at the hearing to show:

(a) a person or company has contravened Saskatchewan securities laws,

(b) the illegal activity has resulted in a financial loss to a claimant, and

(c) the amount of the financial loss.

In a financial compensation order the Commission orders the person or company that has contravened Saskatchewan securities laws to pay to a claimant the amount of money they have lost as a result of the illegal activity. The claimant is then able to enforce the order as if it were a judgment of the Court of Queen's Bench.

To be eligible, a claim must meet the following criteria:

(a) there must be evidence of financial loss by the claimant,

(b) it must be possible to quantify the amount of the financial loss, and

(c) the loss must have resulted from a person or company trading or advising in securities or exchange contracts in contravention of Saskatchewan securities laws.

The following claims are not eligible:

(a) losses that are caused by changes in the financial markets,

(b) losses that did not result from a person or company trading or advising in securities or exchange contracts in contravention of Saskatchewan securities laws,

(c) losses in excess of $100,000.

Claimants who have received a financial compensation order from the Commission can file their order as a judgment with the Court of Queen's Bench of Saskatchewan. They are responsible for taking to collect on the judgment.

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