

Amendments to The Securities Act, 1988

[Bill 19](#) will come into force on July 1, 2007, except for some provisions that are set out in this notice. Bill 19 was introduced as *The Securities Amendment Act, 2006 (No. 2)*, but was passed as *The Securities Amendment Act, 2007*.

Summary

Bill 19 reflects the following initiatives:

- [Harmonizing of Saskatchewan securities laws with those of other jurisdictions](#). Many provisions are amended to harmonize the provisions with those in other jurisdictions.
- [Passport regulatory system](#). Bill 19 refines provisions in Part XIX.1 that contains refinements to provisions that permit the Commission to participate in a “one decision” passport system of securities regulation.
- [Civil liability of secondary market disclosure](#). New Part XVIII.1 contains provisions that make reporting issuers civilly liable to investors in the secondary market for misrepresentations in their continuous disclosure information.
- [Financial compensation](#). New section 135.2 gives the Commission the power, as part of its jurisdiction at a hearing, to order that a person or company who has contravened Saskatchewan securities laws, repay financial losses to investors of up to \$100,000 for each investor.
- [Mineral lease brokers](#). The provisions in Part XX, that require mineral lease brokers to be registered, are repealed.
- [Enforcement and compliance](#). Some enforcement and administrative provisions have been amended and updated to make them consistent with similar provisions in other jurisdictions.
- [Adoption of national instruments](#). Bill 19 includes the repeal of provisions in the Act relating to registration, prospectuses, insider reporting and take-over and issuer bids. These provisions will be replaced by national instruments that will contain uniform provisions in the area.
- [Housekeeping amendments](#). Bill 19 also contains a number of housekeeping amendments.

Coming into force

The provisions of Bill 19 will into force on July 1, 2007, except for:

- section 135.2 related to financial compensation orders,
- provisions related to civil liability for secondary market disclosure which are expected to come into force on January 1, 2008, and
- provisions are related to the implementation of proposed national instruments.

Harmonization amendments

The following amendments will facilitate harmonization of requirements and processes with those in other Canadian jurisdictions:

- amendments in subsection 2(1) to adopt uniform definitions of “control person”, “decision”, “director”, “futures contract”, “insider”, “material change”, “mutual fund”, “officer”, “reporting issuer” and “underwriter”
- new definitions in subsection 2(1) of “economic interest”, “related financial instrument” and “self-regulatory organization”
- repeal of the definition of “senior officer” in subsection 2(1)
- amendment to subsection 2(3) which relates to when an issuer is deemed to be controlled by another person or company
- amendments to subsection 2(11) to replace “senior officer” with “officer, and “board of directors” with “directors”. Similar amendments are made to sections 48, 113 and 133.
- amendments to section 28 which relates to granting registrations
- amendments to section 29 which relates to voluntary surrender of registration
- repeal section 30 which relates to further applications for registration
- amendments to section 50 relating to representation of registration
- repeal of section 51 relating to a unregistered person holding out that they are registered
- amendments to section 52 that prohibits representing that the Commission or Director has passed on the merits of a registrant, securities offering and other specified things
- repealing of section 81 regarding certificates of status, and adding new section 80.21 that permits the Commission to publish a list of defaulting reporting issuers
- new section 84.1 that requires reporting issuers to comply with continuous disclosure requirements specified in the regulations
- repeal of section 122 that permits the Commission to grant exemptions from sections 120 and 121. Section 122 is redundant given the general exemption power in section 160.
- adding new section 125 that creates a harmonized standard of care for investment fund managers
- new section 128.1 that exempts an investment fund manager from the conflict provisions in Part XVII of the Act if the transaction has been approved by an independent committee established under National Instrument 81-107 *Independent Review Committee for Investment Funds*
- amendments to subsection 154(1) to add to or change regulation-making heads of authority
- new subsection 158(2.1) giving the Commission and Director to impose conditions on their decisions.

Passport regulatory system

The bill includes amendments to Part XIX.1 “Interjurisdictional Compliance”. Part XIX.1 came into force on June 1, 2006, and contains provisions that permit the Commission to participate in a “one decision” passport system of securities regulation. . The current amendments refine the passport provisions to include the ability of the Commission to incorporate decisions of another regulator by operation of law. The amendments also include provisions that implement a “modified discretion” mechanism that would permit the Commission to make a decision solely based on a similar decision by another securities commission. The amendments are:

- amended definition of “decision” in subsection 2(1)

amended definition of “Saskatchewan securities laws” in subsection 2(1)

- new definition of “securities regulatory authority” in subsection 2(1)
- amendments to the definitions in section 147.1
- new section 147.2 relating to delegation and acceptance of authority from an extra provincial securities commission
- new section 147.4 relating to adoption and incorporation of extra-provincial securities laws
- new section 147.41 relating to exemptions from compliance with Saskatchewan securities laws
- section 147.42 relating to compliance with foreign securities laws is repealed
- new section 147.5 relating to adoption of decisions of extra provincial securities commissions

Civil Liability for Secondary Market Disclosure

New Part XVIII.1 – Civil Liability for Secondary Market Disclosure contains provisions that make reporting issuers civilly liable to investors and the secondary market for misrepresentations in their continuous disclosure, subject to reasonable limitations. Part XVIII.1 is expected to come into force in Saskatchewan on January 1, 2008. Amendments to *The Securities Regulations* are required to set out new definitions of the following terms that are used in Part XVIII.1:

- market capitalization,
- principal market, and
- trading price.

The new provisions are uniform with provisions in the *Securities Act* (Ontario) that came into force on January 1, 2006 except for provisions relating to limitation periods and costs.

In addition there are the following related amendments:

- a new definition of “forward looking information” in subsection 2(1)
- new section 139.1 that provides a defense in an action under sections 137, 138, 138.1 and 139 for a misrepresentation in forward looking information if certain conditions are met.

Financial Compensation Orders

New section 135.2 gives the Commission the power, as part of its jurisdiction at a hearing, to order that a person or company who has contravened Saskatchewan securities laws, repay financial losses to investors of up to \$100,000 to each investor. The provisions are based on those that have been in force in Manitoba since 2003. [Staff Notice 11-704 Claims for Financial Compensation](#) sets out more information.

Subsection 135.2(7) will not be proclaimed in force. Subsection (7) provides that the Commission shall

not make an order if the claimant has commenced an action or proceeding for compensation for the same loss. It has been determined that claimants should not be confined to only making a claim for financial compensation to the Commission. They should continue to have the right to pursue their claims in the courts because:

- the Commission may find that there has been no contravention of Saskatchewan securities laws, and can therefore not make a compensation order. The claimant should be entitled to pursue their claim in the courts based on the common law.
- they should be entitled to pursue a claim for losses over \$100,000.

Mineral Lease Brokers

The provisions in Part XX, which required mineral lease brokers to be registered, is repealed. Mineral lease brokers are agents who acquire oil and gas interests. Saskatchewan is the only jurisdiction that regulates mineral lease brokers under securities legislation. There have been no enforcement issues related to the activities of mineral lease brokers. Owners of mineral interests are more knowledgeable and have better access to information than when the provisions first came into force. The public interest no longer requires that mineral lease brokers be regulated.

Enforcement

A number of enforcement and administrative provisions have been amended and updated to make them consistent with similar provisions in other jurisdictions. Those provisions are as follows:

- section 12 is amended by:
 - adding new subsection (4.1) to make it clear that documents and records can be examined even if they are not in the possession of the person or company that is being investigated;
 - amending subsection (9) to expand the scope of search warrants to cover “building, receptacle or place”, not just “place”. Amended subsection (9) parallels equivalent provisions in the *Criminal Code*.
- new section 20.1 is added to give the Commission the express power to conduct continuous disclosure reviews
- subsection 21 is amended by adding new subsection (5.1) giving self-regulatory organizations the power to commence proceedings against former members and their representatives for up to two years after the member ceased to be a member or the individual cease to be a representative of the member. Subsection 21(5.1) will not be proclaimed in force. Instead a harmonized provision will be developed in cooperation with securities regulators in other jurisdictions.
- subsection 44(3.1) (prohibiting misrepresentations) is repealed, and replaced with new section 55.11
- the following new sections are added, based on equivalent provisions in other jurisdictions:
 - section 55.1 prohibiting fraud and market manipulations
 - section 55.11 prohibiting misleading and untrue statements
 - section 55.12 prohibiting front running
 - section 55.13 prohibiting making false or misleading statements in evidence or records

- section 55.14 imposing a requirement to comply with decisions of the Commission or Director
- section 55.15 imposing a requirement to comply with undertakings to the Commission or Director
- adding new subsection (3.1) to section 85 prohibiting a person or company in a special relationship with a reporting issuer from recommending or encouraging someone else to purchase a security based on undisclosed material information
- section 131 is amended to harmonize it with offence provisions in other jurisdictions and increase maximum penalties from \$1 million to \$5 million and a term of imprisonment from 2 years to 5 years
- section 134(1) is amended to:
 - add new clause (d.1) allowing the Commission to order that a person or company be prohibited from acquiring securities
 - amend clause (h) to include “investment fund manager”
 - add new clause (h.1) allowing the Commission to order that a person or company be prohibited from acting as a registrant, an investment fund manager or a promoter
 - add new clause (i) allowing the Commission to order that registration or recognition be suspended or restricted
- add new subsection 131(5) allowing the Commission to make an enforcement order under section 134 based on an order made by a regulator or court in another jurisdiction.
- section 135.2 is amended to allow the Commission to make enforcement orders against a person or company notwithstanding that a registration is terminated or lapsed
- new section 135.7 is added prohibiting the destruction of evidence.

Adoption of new national instruments

The bill includes the repeal of provisions in the Act relating to registration, prospectuses, insider reporting and take-over and issuer bids. These provisions will be replaced by national instruments that will contain uniform provisions on the subject. Details are as follows:

National Instrument 31-103 Registration Requirements – expected to come into force in June 2008.
Sections 32 and 33 will be repealed

National Instrument 41-101 General Prospectus Requirements – expected to come into force in March 2008

- new section 60.1 will be added permitting the Director to issue receipts for prospectuses that are subject to conditions
- sections 62 to 69 will be repealed
- section 70 regarding grounds for refusing a prospectus receipt will be repealed and replaced with provisions that are uniform with other jurisdictions
- section 71 regarding lapse dates will be repealed

- section 74 and 75 regarding distribution of preliminary prospectuses and distribution lists will be repealed
- section 76 regarding defective preliminary prospectuses will be amended
- section 78 regarding orders to cease trading will be amended
- section 79 regarding obligations to deliver a prospectus will be repealed
- new section 79.1 regarding revocation of purchase of securities under a prospectus will be added
- section 80 regarding the obligation to deliver an amended prospectus will be repealed
- consequential amendments to sections 137, 138.1 and 141(2)(a)

National Instrument 62-104 Take-over Bids and Issuer Bids – expected to be in force March 2008. Part XVI “Take-over Bids and Issuer Bids” will be repealed and replaced with the following provisions:

- section 98 - definitions
- section 99 – making a bid
- section 110 – directors’ or director’s or officer’s recommendation
- section 101 – applications to the Commission
- section 102 – applications to the Court of Queen’s Bench

National Instrument 55-101 Insider Reports – expected to be in force in 2009

- the definitions in section 115 will be repealed
- section 116 will be repealed and replaced with new sections 116 and 116.1 regarding reports of insiders and early warnings
- sections 117 and 118 regarding reports of transfer by an insider and reports of transfer by agent will be repealed

Housekeeping amendments

The bill also contains a number of housekeeping amendments. The main ones are:

- new section 2.1 that deems certain persons and companies to be insiders of income trusts;
- amendments to section 11 regarding appeals from decisions of the Commission to the Court of Appeal.
- amendment to section 11.1 regarding the power of the Commission to designate certain persons or companies to be or not to be a reporting issuer, an insider, a mutual fund and the like
- new section 21.1 regarding delegation of functions by the Commission to a self-regulatory organization. It replaces current subsections 21(8), (9) and (10)
- sections 55 is amended to replace “mutual fund” with “investment fund”

Contact:

Barbara Shourounis
Director, Securities Division
(306) 787-5842
bshourounis@sfsc.gov.sk.ca