

Chapter 1

AN ACT TO AMEND THE SECURITIES ACT

(Assented to March 28, 2003)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. The *Securities Act* is amended by this Act.

2. Section 1 is amended by repealing the definitions of "broker", "investment counsel", "official", "salesperson", "securities advisor" and "security-issuer" and substituting the following definitions in alphabetical order:

"adviser" means a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities; (*conseiller*)

"dealer" means a person or company who trades in securities in the capacity of principal or agent; (*courtier*)

"officer" means the chairperson or any vice-chairperson of a board of directors, the president, any vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer and the general manager of a company, and any other individual designated as an officer of a company by by-law or similar authority, or any individual acting in a similar capacity on behalf of an issuer or registrant; (*dirigeant*)

"regulations" includes any code of rules or standards adopted under section 54.1; (*règlement*)

3. The following is added after section 1:

Purposes of Act

1.1. The purposes of this Act are to provide protection to investors and to foster fair and efficient capital markets in which investors can have confidence.

4. Section 2 is amended by

- (a) **striking out "sections 4 to 18" in that portion preceding paragraph (a) and substituting "sections 4 to 17";**
- (b) **striking out "broker" in the English version of paragraph (b) and substituting "dealer"; and**
- (c) **repealing paragraph (l).**

5. Sections 3 and 4 are repealed and the following substituted:

Appointment of Registrar and Deputy Registrars

3. The Minister may appoint a Registrar of Securities and one or more Deputy Registrars of Securities to carry out the duties and exercise the powers of the Registrar under this Act.

Prohibition

4. (1) Subject to subsection (5), no person or company shall
- (a) trade in a security unless the person or company is registered as a dealer, or in the case of an individual, is registered to act on behalf of a dealer, and is acting on behalf of the dealer; or
 - (b) act as an adviser unless the person or company is registered as an adviser, or in the case of an individual, is registered to provide advice on behalf of a registered adviser and is acting on behalf of the adviser.

Employment of person terminated

(2) The termination of an individual's employment with a registered dealer or adviser automatically suspends the registration of the individual until he or she is again registered on behalf of a registered dealer or adviser.

Cancellation of registration

(3) If the suspension of a registration under subsection (2) continues for a period of one year, the Registrar may cancel the registration subject to the terms and conditions he or she considers appropriate.

Surrender of registration

(4) The Registrar may accept, subject to the terms or conditions he or she considers appropriate, the voluntary surrender of the registration of a registrant where the Registrar is satisfied that

- (a) the financial obligations of the registrant to his, her or its clients have been discharged; and
- (b) the surrender of the registration would not be prejudicial to the public interest.

Exemption from registration

(5) If the Registrar considers that it would not be prejudicial to the public interest, the Registrar may order, subject to the terms and conditions that he or she considers appropriate, that a person or company, or a class of persons or companies, is exempt from the requirement to register under subsection (1).

6. (1) Subsection 5(1) is repealed and the following substituted:

Application

5. (1) An application for registration or for reinstatement of a registration that has been suspended or cancelled under this Act must
- (a) be made in accordance with the regulations; and

- (b) provide an address in Nunavut for service on the applicant.

(2) Paragraph 5(2)(c) is amended by striking out "official" and by substituting "officer".

7. Section 6 is repealed and the following substituted:

Suitability for registration

6. (1) The Registrar shall register an applicant or reinstate a registration if, in his or her opinion, the applicant is suitable for registration and the proposed registration or reinstatement is not objectionable.

Restrictions on registration

(2) The Registrar may, in his or her discretion, restrict a registration by doing all or any of the following:

- (a) imposing terms and conditions on the registration;
- (b) restricting the duration of the registration;
- (c) restricting the registration to trades in certain securities or in a certain class of securities;
- (d) restricting the registrant to giving advice concerning certain securities or trades or concerning a class of securities or trades;
- (e) establishing such categories of registration as the Registrar considers appropriate and the terms and conditions that apply to all registrants within a category.

Compliance with restrictions

(3) A registrant shall comply with any restrictions imposed under subsection (2).

Amendment

(4) The registrar may, on the application of a registrant, amend a registration if he or she considers the proposed amendment to be appropriate.

Transfer

(5) The registrar may, on the application of a registrant, transfer a registration if he or she considers the proposed transfer to be appropriate.

8. Section 7 is repealed and the following substituted:

Permanent registration

7. (1) Except as otherwise provided in the Act and regulations, a registration that is granted or reinstated under section 6 on or after the day on which this section comes into force or that is in effect on that day does not expire, provided that the prescribed fee is paid each year.

Suspension of registration

(2) If the prescribed fee referred to in subsection (1) is not paid by the date specified in the regulations, the registration of the person or company is automatically suspended until the Registrar reinstates or cancels the registration.

9. Subsection 8(2) is repealed and the following substituted:

Continuing restriction

(2) A registration may be made subject to a term, condition or restriction that continues in effect notwithstanding the cancellation, suspension or expiration of the registration.

10. Subsection 9(1) is repealed and the following substituted:

Refusal of registration

9. (1) The Registrar may refuse an application for registration or for the amendment, transfer or reinstatement of a registration.

11. (1) Subsection 10(1) is repealed and the following substituted:

Suspension or cancellation of registration

10. (1) The Registrar may, no less than 30 days after notice has been sent to a registrant, suspend or cancel a registration if the registrant has failed to comply with the terms, conditions or restrictions attaching to the registration.

(2) Subsection 10(2) is amended by striking out "shall suspend or cancel" and by substituting "shall, without delay, suspend or cancel".

12. Section 11 is amended

- (a) by adding "or registrant" after "applicant" wherever it appears; and**
- (b) by striking out "his or her application" in the English version and substituting "the application".**

13. Section 12 is repealed and the following substituted:

Mandatory public notice

12. (1) In the case of a cancellation under subsection 10(2), the Registrar shall give notice of the cancellation to the public by advertisement or by any other means he or she considers appropriate.

Optional public notice

(2) In the case of a refusal, suspension or cancellation under any provision other than subsection 10(2), the Registrar may give notice to the public or to any individual by the means and at the time he or she considers appropriate.

14. Section 14 is repealed and the following substituted:

Bond

14. The Registrar may require an applicant or registrant to file, without delay, a bond by a surety company or other bond approved by the Registrar in any form and amount that may be prescribed or that is acceptable to the registrar, and subject to any prescribed conditions.

15. The English version of paragraph 15(1)(a) is amended by striking out "official" wherever it appears and substituting "officer".

16. Section 16 is amended by striking out "or the *Canada Business Corporations Act*" and by substituting ", the *Canada Business Corporations Act* or the *Business Corporations Act*".

17. Subsection 21(2) is repealed and the following substituted:

Evidence

(2) Notwithstanding Part I of the *Access to Information and Protection of Privacy Act*, no person shall disclose, except to his or her counsel or agent referred to in subsection 19(4), information or evidence obtained or the name of a witness examined or brought to be examined during an investigation, without the consent of the Commissioner or the Registrar.

18. (1) Paragraph 22(1)(a) is repealed and the following substituted:

- (a) a registered dealer or adviser or an individual registered to act on behalf of the dealer or adviser or a person or company implicated in the same matter, from trading in securities absolutely or for the period that seems just; or

(2) Subsection 22(2) is amended by striking out "broker, security-issuer or salesperson" and by substituting "dealer, adviser or individual".

19. (1) Subsection 27(1) is amended by striking out "province or the Yukon Territory" and by substituting "province, Northwest Territories or the Yukon Territory".

(2) Subparagraph 27(2)(a)(i) is repealed and the following substituted:

- (i) a form of prospectus and any amendments to the prospectus that are in accordance with the regulations or, in circumstances not provided for in the regulations, the law of a jurisdiction, or

(3) Paragraphs 27(4)(a) and (b) are repealed and the following substituted:

- (a) filed with the Registrar in accordance with the regulations; or
- (b) in circumstances not provided for in the regulations, filed with the Registrar and prepared in accordance with the laws of a jurisdiction.

20. Paragraphs 28(1)(b) and (c) are repealed and the following substituted:

- (b) a copy of the most recent financial statements of the issuer prepared and filed with the Registrar in accordance with the regulations; and
- (c) such other information as is required by the regulations.

21. The English version of each of subsection 31(1) and paragraph 31(2)(a) is amended by striking out "broker" wherever it occurs and substituting "dealer".

22. Section 32 is amended by

- (a) **striking out "broker" wherever it occurs in the English version and substituting "dealer"; and**
- (b) **repealing paragraph (g) and substituting the following:**
- (g) the name of the individual acting on behalf of the dealer in respect of the transaction.

23. Section 35 is repealed.

24. Paragraphs 36(a) and (b) are repealed and the following substituted:

- (a) the financial standing, fitness or conduct of a dealer, adviser or other person; or
- (b) the merits of a security offered for sale by a dealer, adviser or other person.

25. Section 39 is repealed and the following substituted:

Audit

39. Every person or company that applies for registration as a dealer or adviser must employ an independent accountant satisfactory to the Registrar to audit in each year the assets and liabilities of the person or company and to prepare a balance sheet showing the position of the business and affairs of the person or company.

26. (1) That portion of section 40 preceding paragraph (a) is amended by striking out "broker or security-issuer" and substituting "dealer or adviser".

(2) Paragraph 40(b) is amended by striking out "notwithstanding section 39,".

27. Subparagraph 41(1)(a)(i) is amended by striking out "broker or security-issuer" and substituting "dealer or adviser".

28. Section 44 is repealed and the following substituted:

Information held in confidence

44. (1) The Registrar and every person employed in the office of the Registrar shall hold in confidence all information contained in internal reports and records of the Registrar if the Registrar is of the opinion that holding the information in confidence is

- (a) in the public interest; and
- (b) necessary for the purposes of this Act referred to in section 1.1.

Exchange of information

(2) Notwithstanding subsection (1), and where the Registrar considers it necessary for the purposes of this Act referred to in section 1.1, the Registrar may provide information to and receive information from other securities or financial regulatory authorities, stock exchanges, self-regulatory bodies or organizations, law enforcement and other governmental or regulatory authorities and any information technology service provider approved by the Registrar to facilitate the exchange of information pursuant to this Act and the regulations, both in Canada and elsewhere.

Information provided in confidence

(3) Whenever the Registrar provides information to a third party under subsection (2), the registrar shall do so subject to conditions that the recipient will

- (a) not disclose the information to other parties without the consent of the Registrar; and
- (b) ensure that the information is protected from unauthorized access.

Information received in confidence

(4) Any information received by the Registrar under subsection (2) may be held in confidence if the Registrar is of the opinion that holding the information in confidence is

- (a) in the public interest; and
- (b) necessary for the purposes of this Act referred to in section 1.1.

Access to Information and Protection of Privacy Act

(5) This section applies notwithstanding Part I of the *Access to Information and Protection of Privacy Act*.

29. Section 45 is amended by striking out "considers advisable" and substituting "considers appropriate".

30. Section 46 is repealed and the following substituted:

Copies

46. (1) Where a notice or document is required under this Act to be filed with or sent to the Registrar, the Registrar may accept a photocopied or photographic copy of the notice or document.

Additional copies to Registrar

(2) A person or company must provide to the Registrar on request an additional copy in legible written form of any document previously filed with or sent to the Registrar under this Act or a regulation.

Electronic filing

46.1. (1) Notices and documents that are filed with, sent to or issued by the Registrar under this Act may, in the circumstances prescribed by the regulations, be filed, sent or issued in electronic or other form in any manner specified by the Registrar.

Time of receipt

(2) For the purposes of this Act, any notice that is filed, sent or issued in accordance with subsection (1) is deemed to have been received on the date and at the time provided by the regulations.

Inspection

46.2. (1) A person who has paid the prescribed fee is entitled during normal business hours to examine a document required by this Act or the regulations to be filed with or sent to the Registrar.

Copies

(2) The Registrar shall provide any person who has paid the prescribed fee with a copy or a certified copy of a document that has been filed with or sent to the Registrar under this Act or the regulations.

Confidential documents

(3) Notwithstanding subsections (1) and (2) and Part I of the *Access to Information and Protection of Privacy Act*, the Registrar may hold in confidence a document or a class of documents required to be filed with or sent to the Registrar under this Act if the Registrar is of the opinion that

- (a) the document or class of documents disclose financial or commercial information of a private nature, or personal information;
- (b) in the circumstances, the desirability of avoiding disclosure of the substance of the information or of its existence in the interests of any person or company affected outweighs the desirability of allowing public access to the information; and
- (c) holding the document or class of documents in confidence is necessary for the purposes of this Act referred to in section 1.1.

Records of Registrar

46.3. (1) The records of the Registrar may be in bound or loose-leaf form or in a photographic film form, or may be entered and recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in legible written form within a reasonable time.

Obligation to provide records

- (2) Where records are maintained by the Registrar other than in written form
- (a) the Registrar must provide any copy required to be provided under subsection 46.2(2) in legible written form; and
 - (b) a reproduction of the text of those records, if it is certified by the Registrar, is admissible in evidence to the same extent as the original written records would have been admissible.

Form of publication

46.4. Information or notices required by this Act to be published by the Registrar may be made available to the public or published in any form of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information or notice in intelligible form within a reasonable time.

31. The English version of subsection 49(3) is amended by striking out "official" and substituting "officer".

32. Section 54 is amended by

- (a) repealing paragraph (b) and substituting the following:**
 - (b) respecting fees for a registration, reinstatement, filing or examination or other service rendered under this Act, and respecting the terms of payment of such fees;
- (b) adding the following after paragraph (e):**
 - (e.1) respecting the manner in which an application for registration or reinstatement must be made under subsection 5(1);
 - (e.2) respecting the circumstances under which a registration expires or is suspended, and respecting the renewal or reinstatement of such a registration;
- (c) repealing paragraph (h.1) and substituting the following:**
 - (h.1) respecting the filing of documents referred to in subsection 27(4);
 - (h.2) respecting the filing of financial statements referred to in paragraph 28(1)(b);
 - (h.3) respecting the delivery of information to prospective purchasers under subsection 28(1);

- (h.4) respecting the rights and obligations of persons and companies affected by a takeover bid or issuer bid;
- (h.5) respecting the filing, sending or issuance of notices and documents in electronic or other form, including
 - (i) the notices and documents that may be filed, sent or issued in electronic or other form,
 - (ii) the persons or companies or classes of persons or companies who may file or send the notices and documents,
 - (iii) the application of a signature to the notices and documents in electronic or other form by a person referred to in subparagraph (ii), or their execution, adoption or authorization in a manner that is to have the same effect for the purposes of this Act as the signature of that person, and
 - (iv) the date and time when they are deemed to have been received;

33. This Act comes into force on assent.