

Chapter 9

Legislation

9.1.1 Excerpt from Bill 18 - Proposed Amendments to the Securities Act

EXCERPT FROM BILL 18

SCHEDULE 20 SECURITIES ACT

Explanatory Notes:

The *Securities Act* is amended as follows:

Governance:

Under a new Part XXI.1 of the Act, reporting issuers are required to comply with such requirements respecting governance as may be prescribed by regulation or by rules of the Commission. This obligation is set out in the new section 121.3 of the Act. Related amendments are made to subsection 143 (1) of the Act.

Under the new Part, investment funds may be required to establish and maintain a body for the purposes of overseeing activities of the investment fund and the investment fund manager, reviewing or approving prescribed matters affecting the investment fund and disclosing information to security holders, the investment fund manager and the Commission. This requirement may be imposed by regulation or by rules of the Commission. This obligation is set out in the new section 121.4 of the Act. Related amendments are made to subsection 143 (1) of the Act. Under the new section 121.1 of the Act, a prohibition under Part XXI of the Act (Insider Trading and Self-Dealing) does not apply to a transaction approved by this body, if the regulations or rules provide for this approval.

Clearing agencies:

Currently, section 21.2 of the Act provides for the recognition of a clearing agency by the Commission. The new subsection 21.2(0.1) of the Act prohibits a person or company from carrying on business in Ontario as a clearing agency unless the person or company is a recognized clearing agency. Under the new subsection 21.2 (3) of the Act, the Commission is authorized to make specified types of decisions with respect to a recognized clearing agency, if the Commission considers it to be in the public interest to do so. A related amendment is made to section 21.8 of the Act, concerning the appointment of an auditor for a recognized clearing agency.

Proxy solicitation requirements:

An amendment to section 84 of the Act provides that such activities as may be prescribed by regulation or by rules of the Commission are excluded from the definition of "solicit" and "solicitation". Under subsection 86 (2) as amended, regulations or rules may specify circumstances in which persons or companies are exempt from the requirement to send an information circular to security holders whose proxies are being solicited. Related amendments are made to subsection 143 (1) of the Act.

Authority to make enforcement orders:

Currently, subsection 127 (1) of the Act authorizes the Commission to make specified types of enforcement orders if the Commission is of the opinion that the order is in the public interest. An amendment to that subsection authorizes the Commission to make the additional types of enforcement orders described in the amendment.

Other matters:

The new section 3.10 of the Act empowers a standing or select committee of the Assembly to review the Commission's annual report and to report the committee's opinions and recommendations to the Assembly. A technical amendment is made to subsection 143 (6) of the Act concerning regulations and rules.

**SCHEDULE 20
SECURITIES ACT**

1. Section 3.10 of the Securities Act is amended by adding the following subsection:

Review by standing or select committee

(3) After the annual report is laid before the Assembly, a standing or select committee of the Assembly shall be empowered to review the report and to report the committee's opinions and recommendations to the Assembly.

2. (1) Section 21.2 of the Act is amended by adding the following subsection:

Clearing agencies

Prohibition

(0.1) No person or company shall carry on business in Ontario as a clearing agency unless the person or company is recognized by the Commission under this section as a clearing agency.

(2) Subsection 21.2 (3) of the Act is repealed and the following substituted:

Commission's powers

(3) The Commission may make decisions with respect to any of the following matters if the Commission is satisfied that it is in the public interest to do so:

1. Any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized clearing agency.
2. The manner in which a recognized clearing agency carries on its business.

3. Section 21.8 of the Act is amended by adding the following subsection:

Recognized clearing agency auditor

(3) At the request of the Commission, a recognized clearing agency shall appoint an auditor for the clearing agency.

4. The definition of "solicit" and "solicitation" in section 84 of the Act is amended by striking out "or" at the end of clause (e), by adding "or" at the end of clause (f) and by adding the following clause:

(g) such other activities as may be prescribed in the regulations.

5. Subsection 86 (2) of the Act is amended by adding the following clause:

(a.1) any solicitation, otherwise than by or on behalf of the management of a reporting issuer, in such other circumstances as may be prescribed in the regulations;

6. Part XXI of the Act is amended by adding the following section:

Authorized exceptions to prohibitions

121.1 If the regulations so provide, a body established under subsection 121.4 (1) by an investment fund may approve a transaction that is prohibited under this Part and, in that case, the prohibition does not apply to the transaction.

7. The Act is amended by adding the following Part:

**PART XXI.1
GOVERNANCE AND OTHER REQUIREMENTS**

Definition

121.2 In this Part,

“prescribed” means prescribed in the regulations.

Governance of reporting issuers

121.3 For the purposes of this Act, a reporting issuer shall comply with such requirements as may be prescribed with respect to the governance of reporting issuers, including requirements relating to,

- (a) the composition of its board of directors and qualifications for membership on the board, including matters respecting the independence of members;
- (b) the establishment of specified types of committees of the board of directors, the mandate, functioning and responsibilities of each committee, the composition of each committee and the qualifications for membership on the committee, including matters respecting the independence of members;
- (c) the establishment and enforcement of a code of business conduct and ethics applicable to its directors, officers and employees and applicable to persons or companies that are in a special relationship with the reporting issuer, including the minimum requirements for such a code; and
- (d) procedures to regulate conflicts of interest between the interests of the reporting issuer and those of a director or officer of the issuer.

Oversight, etc., of investment funds

121.4 (1) If required to do so by the regulations, an investment fund shall establish and maintain a body for the purposes of overseeing activities of the investment fund and the investment fund manager, reviewing or approving prescribed matters affecting the investment fund, including transactions referred to in section 121.1, and disclosing information to security holders of the fund, to the investment fund manager and to the Commission.

Same

- (2) The body has such powers and duties as may be prescribed.

8. Subsection 127 (1) of the Act is amended by adding the following paragraphs:

- 2.1 An order that acquisition of any securities by a particular person or company is prohibited, permanently or for the period specified in the order.

.
- 8.1 An order that a person resign one or more positions that the person holds as a director or officer of a registrant.
- 8.2 An order that a person is prohibited from becoming or acting as a director or officer of a registrant.
- 8.3 An order that a person resign one or more positions that the person holds as a director or officer of an investment fund manager.
- 8.4 An order that a person is prohibited from becoming or acting as a director or officer of an investment fund manager.
- 8.5 An order that a person or company is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.

9. (1) Paragraph 26 of subsection 143 (1) of the Act is amended by adding at the end “prescribing activities for the purposes of clause (g) of the definition of “solicit” and “solicitation” in section 84 and prescribing circumstances for the purposes of clause 86 (2)(a.1)”.

(2) Subsection 143 (1) of the Act is amended by adding the following paragraphs:

- 56.1 Prescribing requirements with respect to the governance of reporting issuers for the purposes of section 121.3.

.
- 62. Requiring investment funds to establish and maintain a body for the purposes described in subsection 121.4 (1), prescribing its powers and duties and prescribing requirements relating to,
 - i. the mandate and functioning of the body,
 - ii. the composition of the body and qualifications for membership on the body, including matters respecting the independence of members, and the process for selecting the members,
 - iii. the standard of care that applies to members of the body when exercising their powers, performing their duties and carrying out their responsibilities,
 - iv. the disclosure of information to security holders of the investment fund, to the investment fund manager and to the Commission, and
 - v. matters affecting the investment fund that require review by the body or the approval of the body.

(3) Subsection 143 (6) of the Act is repealed and the following substituted:

Incorporation by reference

(6) A regulation or rule may incorporate by reference, and require compliance with, one or more provisions of an Act or regulation and all or part of any standard, procedure or guideline.

Commencement

10. (1) Subject to subsection (2), this Schedule comes into force on the day the Budget Measures Act, 2005 (No. 2) receives Royal Assent.

Same

(2) Section 2 comes into force on a day to be named by proclamation of the Lieutenant Governor.