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3rd SESSION, 65th GENERAL ASSEMBLY
Province of Prince Edward Island
67 ELIZABETH II, 2018

(Bill No. 47)

An Act to Amend the Securities Act

Hon. Jordan K. M. Brown
Minister of Justice and Public Safety and Attorney General

GOVERNMENT BILL

Carol Mayne
Acting Queen's Printer
Charlottetown, Prince Edward Island

**For House
Use Only**

**Prince Edward Island
Legislative Assembly**

ASSEMBLY / SESSION / YEAR
65th General / 3rd / 2018

AMENDMENTS

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TITLE: An Act to Amend the Securities Act

#	SECTION	AMENDMENT	DATE

<p>NOTED:</p> <p>_____</p> <p style="text-align: center;">COMMITTEE CLERK</p>	<p>CERTIFIED CORRECT:</p> <p>_____</p> <p style="text-align: center;">CHAIR, IN COMMITTEE</p>
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AN ACT TO AMEND THE SECURITIES ACT

BILL NO. 47

2018

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

- 1. Subsection 1(1) of the *Securities Act* R.S.P.E.I. 1988, Cap. S-3.1, is amended by the addition of the following after clause (vv):**

(vv.1) “**recognized self-regulatory organization**” means a self-regulatory organization recognized by the Superintendent under Part 7;

- 2. (1) Subsection 60(3) of the Act is repealed.**

- (2) Subsection 60(4) of the Act is amended by the deletion of the words “The Superintendent” and the substitution of the words “Subject to section 60.1, the Superintendent”.**

- 3. The Act is amended by the addition of the following after section 60:**

60.1 Interpretation

- (1) In this section,

- (a) a reference to an “extra-provincial securities regulatory authority” does not include a self-regulatory organization, exchange, clearing agency, quotation and trade reporting system, auditor oversight body or credit rating organization;
- (b) “securities regulatory authority outside of Canada” means the body or authority, including a securities commission, a self-regulatory organization, an exchange or another person empowered by the laws of a jurisdiction outside of Canada to regulate trading in securities or to administer or enforce laws respecting trading in securities in that jurisdiction.

Grounds for order

- (2) Notwithstanding subsection 60(4), the Superintendent may, with or without giving an opportunity to be heard, make an order under clauses 60(1)(a) to (l) in respect of a person who
- (a) has been convicted in Canada or elsewhere of an offence

- (i) arising from a transaction, business or course of conduct related to securities, or
- (ii) under laws respecting trading in securities;
- (b) has been found by a court in Canada or elsewhere to have contravened laws respecting trading in securities;
- (c) is subject to an order imposing sanctions, conditions, restrictions or requirements made by
 - (i) a securities regulatory authority outside of Canada,
 - (ii) a recognized self-regulatory organization in Canada, or
 - (iii) an exchange in Canada; or
- (d) has agreed to be subject to sanctions, conditions, restrictions or requirements with
 - (i) a securities regulatory authority outside of Canada,
 - (ii) a recognized self-regulatory organization in Canada, or
 - (iii) an exchange in Canada.

Deemed order

- (3) For the purposes of Prince Edward Island securities laws, an order made by an extra-provincial securities regulatory authority imposing sanctions, conditions, restrictions or requirements on a person is deemed to be made without notice to that person and without a hearing, as if it were made by the Superintendent, with any modifications that the circumstances require.

Deemed agreement

- (4) For the purposes of Prince Edward Island securities laws, where a person is subject to sanctions, conditions, restrictions or requirements pursuant to an agreement with an extra-provincial securities regulatory authority, those sanctions, conditions, restrictions or requirements are deemed to apply to that person without notice to that person and without a hearing, as if the agreement were made by the Superintendent, with any modifications that the circumstances require.

Requirement for finding or admission

- (5) An order referred to in subsection (3), or an agreement referred to in subsection (4), as the case may be, shall have arisen as a result of a finding or admission of a contravention of a law respecting the trading in securities, or conduct contrary to the public interest, in order to satisfy the requirements of subsection (3) or (4), as the case may be.

Copy of order

- (6) Where an order is made by the Superintendent under subsection (2), the Superintendent shall send a copy of the order to the person against whom the order was made.

Circumstances affecting applicability of order

- (7) Subsections (3) and (4) do not apply to
 - (a) a requirement in an order or agreement made by or entered into with an extra-provincial securities regulatory authority to pay costs, administrative penalties or any other amount;
 - (b) an order or agreement made by or entered into with an extra-provincial securities regulatory authority arising solely as a result of reciprocal enforcement steps taken by that authority with respect to an order by or agreement with another securities regulatory authority in Canada; or

- (c) an order or agreement made by or entered into with an extra-provincial securities regulatory authority that has been rescinded or overturned in accordance with applicable laws.

Applicability of varied or amended order

- (8) Where an order or agreement made by or entered into with an extra-provincial securities regulatory authority has been varied or amended in accordance with applicable laws, subsections (3) and (4) apply to the order or agreement as varied or amended.

Application for declaration

- (9) On the application of a person directly affected by the sanctions, conditions, restrictions or requirements imposed by or agreed to with an extra-provincial securities regulatory authority, the Superintendent may, after giving the person an opportunity to be heard, make a declaration clarifying the application of subsection (3) or (4), as the case may be, to that person, and that declaration is binding on that person and the Superintendent.

4. The Act is amended by the addition of the following after section 77:

77.1 Powers for purposes of investigations

Where a recognized self-regulatory organization is empowered under the bylaws or rules of the recognized self-regulatory organization to conduct investigations, the following applies for the purposes of those investigations:

- (a) a person appointed to conduct an investigation has the same power as is vested in the Supreme Court for the trial of civil actions
 - (i) to summon and enforce the attendance of witnesses,
 - (ii) to compel witnesses to give evidence under oath or otherwise, and
 - (iii) to compel witnesses to produce records, property and things;
- (b) the failure or refusal of a person summoned as a witness under clause (a) to attend at the required location and time, to answer questions or to produce records, property or things that are in that person's custody or possession, or under the person's direct or indirect control, makes that person, on application to the Supreme Court of the person appointed to conduct the investigation, liable to be committed for contempt by the court;
- (c) a person appointed to conduct an investigation may take evidence under oath;
- (d) a person appointed to conduct an investigation or a person authorized by a person conducting an investigation may administer oaths for the purpose of taking evidence;
- (e) notwithstanding the *Evidence Act*, a bank or any officer or employee of the bank is not exempt from the operation of this section;
- (f) a person giving evidence at an investigation may be represented by legal counsel.

5. The Act is amended by the addition of the following after section 142:

142.1 Immunity for self-regulatory organizations

No action or other proceeding for damages may be instituted against a recognized self-regulatory organization, or its directors, officers, employees or agents, in respect of a function, duty or power that has been authorized under Part 7, for

- (a) any act done in good faith
 - (i) in the performance or intended performance of the duty, or

- (ii) in the exercise or intended exercise of the power or function; or
- (b) any neglect or default in the performance or exercise in good faith of the function, duty or power.

6. The Act is amended by the addition of the following after section 159:

159.1 Compliance with order

- (1) No person shall fail to comply with an order that is made or deemed to have been made, or an agreement that is deemed to have been made, under section 60.1, including a declaration made by the Superintendent under subsection 60.1(9).

Defence

- (2) Without limiting the availability of any other defence, a person is not guilty of an offence under subsection (1) if the person did not know, and despite the exercise of reasonable diligence would not have known, that the act or course of conduct which that person engaged in caused the person to fail to comply with section 60.1.



EXPLANATORY NOTES

SECTION 1 amends subsection 1(1) of the *Securities Act* R.S.P.E.I. 1988, Cap. S-3.1, by adding a new clause (vv.1) to define the term “recognized self-regulatory organization”, which is used in the following amendments.

SECTION 2 amends the Act by repealing subsection 60(3) and amending subsection 60(4) to make it subject to the new section 60.1 that is added by section 3, below.

SECTION 3 amends the Act by adding a new section 60.1 that allows the terms of certain orders made by and agreements entered into with an extra-provincial securities regulatory authority in Canada to have effect in this province as if issued by or entered into with the Superintendent, and provides a simplified process by which the Superintendent may issue an order to give effect to other kinds of orders and agreements made by or entered into with a securities regulatory authority, including a securities regulatory authority outside Canada. Subsection 60.1(1) provides a definition and interpretation for the purposes of the new section. Subsection 60.1(2) authorizes the Superintendent to make an order under clauses 60(1)(a) to (l) in the specified circumstances. Subsections 60.1(3) and (4) provide that an order made by or an agreement made with an extra-provincial securities regulatory authority by a person is deemed to apply as if the order or agreement were made by or with the Superintendent. Subsections 60.1(5) to (9) specify conditions and circumstances that apply to the order or agreement.

SECTION 4 amends the Act by adding a new section 77.1 that clarifies the investigatory powers of a recognized self-regulatory organization.

SECTION 5 amends the Act by adding a new section 142.1 that provides protection from liability for a self-regulatory organization and its directors, officers, employees and agents, for an act done or omitted, in good faith, including any neglect or default in the performance or exercise of the function, duty or power, in respect of a function, duty or power authorized under Part 7.

SECTION 6 amends the Act by adding a new section 159.1 that requires compliance with an order made or deemed to have been made, or an agreement deemed to have been made, under the new section 60.1. The section also provides a defence for a person who did not know, and despite the exercise of reasonable diligence would not have known, that the person’s act or course of conduct would cause the person to fail to comply with section 60.1.

(Bill No. 47)

An Act to Amend the Securities Act

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	November 15, 2018
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

Honourable Antoinette Perry, Lieutenant Governor

Honourable Francis (Buck) Watts, Speaker

Charles H. MacKay, Clerk

Hon. Jordan K. M. Brown
Minister of Justice and Public Safety and Attorney General

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