

BILL NO. 67

(as passed, with amendments and corrections)



*2nd Session, 63rd General Assembly
Nova Scotia
67 Elizabeth II, 2018*

Government Bill

Securities Act (amended)

CHAPTER 42 OF THE ACTS OF 2018

The Honourable Karen Casey
Minister responsible for the Securities Act

[First Reading](#): September 27, 2018 (LINK TO BILL AS INTRODUCED)

Second Reading: September 28, 2018

[Third Reading](#): October 9, 2018 (WITH COMMITTEE AMENDMENTS)

Royal Assent: October 11, 2018

An Act to Amend Chapter 418 of the Revised Statutes, 1989, the Securities Act

Be it enacted by the Governor and Assembly as follows:

1 (1) Subsection 2(1) of Chapter 418 of the Revised Statutes, 1989, the Securities Act, as amended by Chapter 15 of the Acts of 1990, Chapter 32 of the Acts of 1996, Chapter 41 of the Acts of 2001, Chapter 39 of the Acts of 2002, Chapters 26 and 27 of the Acts of 2005, Chapter 46 of the Acts of 2006, Chapter 32 of the Acts of 2008, Chapter 73 of the Acts of 2010, Chapter 34 of the Acts of 2012 and Chapter 28 of the Acts of 2014, is further amended by adding immediately after clause (aj) the following clause:

(aja) "recognized self-regulatory organization" means a self-regulatory organization recognized by the Commission pursuant to Section 30.

(2) Subsection 2(2) of Chapter 418 is repealed and the following subsection substituted:

(2) A person or company is deemed to be an affiliate of another person or company if one of them is a subsidiary of the other or if both are subsidiaries of the same person or company or if each of them is controlled by the same person or company.

2 Subsection 22(2) of Chapter 418 is amended by striking out "19" in the third line of the endorsement and substituting "20".

3 Chapter 418 is further amended by adding immediately after Section 22 the following Section:

22A (1) Any decision or order made by a recognized self-regulatory organization may be made a rule or order of the Supreme Court of Nova Scotia, and shall be enforced in like manner as any rule, order, decree or judgment of that Court.

(2) To make a decision or order of a recognized self-regulatory organization a rule or order of the Supreme Court, the recognized self-regulatory organization may make a certified copy of the decision or order upon which shall be endorsed:

Make the within a rule or order of the

Supreme Court of Nova Scotia.

Dated this day of,

20....

.....

Officer, [Self-regulatory Organization]

(3) The endorsement shall be signed by an officer of the recognized self-regulatory organization.

(4) The recognized self-regulatory organization shall forward the certified copy so endorsed to a prothonotary of the Supreme Court, who shall upon receipt thereof enter the same as of record, and it shall thereupon become and be an order of the Court and enforceable as any rule, order, decree or judgment thereof.

(5) Where a decision or order of a recognized self-regulatory organization has been made a rule or order of the Supreme Court, any decision or order of the recognized self-regulatory organization rescinding or varying the same shall be deemed to rescind or vary the rule or order, and may in like manner be made a rule or order of the Court.

4 Section 30 of Chapter 418, as enacted by Chapter 15 of the Acts of 1990 and amended by Chapter 46 of the Acts of 2006, Chapter 32 of the Acts of 2008, Chapter 73 of the Acts of 2010 and Chapter 28 of the Acts of 2014, is further amended by adding immediately after subsection (6) the following subsections:

(7) Where a recognized self-regulatory organization is empowered under the by-laws or rules of the self-regulatory organization to conduct investigations,

(a) the self-regulatory organization, or a person appointed by the self-regulatory organization to conduct the investigation, has the same power as is vested in the Supreme Court of Nova Scotia for the trial of civil actions to

(i) summon and enforce the attendance of a person,

(ii) compel a person to testify on oath or otherwise, and

(iii) summon and compel a person or company to produce documents, records, securities, derivatives, contracts and things; and

(b) the failure or refusal of a person to attend or to answer questions or of a person or company to produce such documents, records, securities, derivatives, contracts and things as are in the person's or company's custody or possession, or the failure of a person or company to comply with an order made by the self-regulatory organization under subsection (10) makes the person or company liable to be committed for contempt by a judge of the Court as if in breach of an order or judgment of that Court.

(8) Where a recognized self-regulatory organization is empowered under the by-laws or rules of the self-regulatory organization to conduct hearings, the following applies for the purpose of a hearing:

(a) a person conducting a hearing has the same power as is vested in the Supreme Court of Nova Scotia for the trial of civil actions to

(i) summon and enforce the attendance of witnesses,

(ii) compel witnesses to give evidence on oath or otherwise, and

(iii) compel witnesses to produce documents, records, securities, derivatives, contracts and things;

(b) the failure or refusal of a person summoned as a witness under clause (a) to attend a hearing, to answer questions or to produce documents, records, securities, derivatives, contracts and things that are in that person's custody or possession makes that person, on application to the Court by the person conducting the hearing, liable to be committed for contempt by the Court in the same manner as if that person were in breach of an order or judgment of that court;

(c) a person conducting a hearing may take evidence under oath;

(d) a person conducting a hearing or a person authorized by a person conducting a hearing may administer oaths for the purpose of taking evidence;

(e) the self-regulatory organization may, on behalf of a person conducting a hearing,

(i) summon and enforce the attendance of witnesses, and

(ii) make applications to the Court under clause (b).

(9) A person or company giving evidence at an investigation pursuant to subsection (7) and a witness for a hearing pursuant to subsection (8) may be represented by counsel.

(10) A recognized self-regulatory organization may, by order, prohibit a person or company from communicating information related to an investigation or a hearing to anyone except the person's or company's counsel.

5 Chapter 418 is further amended by adding immediately after Section 30L the following Sections:

30M (1) In Sections 30N to 30R,

(a) "benchmark" means a price, estimate, rate, index or value that is

(i) determined from time to time by reference to an assessment of one or more underlying interests,

(ii) made available to the public, either free of charge or on payment, and

(iii) used for reference for any purpose, including

(A) determining the interest payable, or other sums that are due, under a contract, derivative, instrument or security,

(B) determining the value of a contract, derivative, instrument or security or the price at which it may be traded,

(C) measuring the performance of a contract, derivative, investment fund, instrument or security, and

(D) any other use by an investment fund;

- (b) "benchmark administrator" means a person or company that administers a benchmark;
- (c) "benchmark contributor" means a person or company that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark, including a person or company subject to a decision under Section 30O;
- (d) "benchmark user" means a person or company that, in relation to a contract, derivative, investment fund, instrument or security, uses a benchmark;
- (e) "designated benchmark" means a benchmark that is designated by the Commission under subsection (1) of Section 30N;
- (f) "designated benchmark administrator" means a benchmark administrator who is designated by the Commission under subsection (1) of Section 30N with respect to a designated benchmark.

30N (1) A benchmark administrator, or the Director, may apply to the Commission to request the designation of a benchmark or a benchmark administrator.

- (2) Where the Director applies for a designation, the Commission shall give the affected benchmark or benchmark administrator the opportunity to be heard before making a decision under subsection (3).
- (3) After receiving an application pursuant to subsection (1), the Commission may, where it considers it in the public interest to do so, designate the benchmark as a designated benchmark or designate the benchmark administrator as a designated benchmark administrator of a designated benchmark, as appropriate.
- (4) A designation under subsection (3) may be made subject to any terms and conditions the Commission considers advisable.
- (5) The Commission may, where it considers it in the public interest to do so, cancel the designation of a designated benchmark or a designated benchmark administrator or impose or change the terms and conditions of the designation.
- (6) The Commission may not refuse to designate a benchmark or benchmark administrator, cancel the designation of a designated benchmark or designated benchmark administrator, or impose or change the terms and conditions to which a designation is subject, without giving the benchmark administrator an opportunity to be heard.
- (7) The Commission may, where it considers it in the public interest to do so, assign a designated benchmark to a prescribed category or categories of designated benchmarks.

30O (1) The Commission may, in response to an application by the Director, require a person or company to provide information to a designated benchmark administrator in relation to the designated benchmark if the Commission considers it in the public interest to do so.

(2) The Commission shall give the affected person or company and benchmark administrator the opportunity to be heard before making an order under subsection (1).

(3) An order under subsection (1) may be made subject to any terms and conditions the Commission considers advisable.

(4) Subject to subsection (5), the Commission may, where it considers it in the public interest to do so, cancel or change an order made under subsection (1) or impose or change the terms and conditions of the order.

(5) The Commission may not cancel or change an order made under subsection (1) or impose or change the terms and conditions of the order made under subsection (3) without giving the person or company and the benchmark administrator an opportunity to be heard.

30P (1) A benchmark administrator shall comply with such requirements as may be prescribed by the regulations, including requirements,

(a) relating to benchmarks, benchmark administrators, benchmark contributors and benchmark users; and

(b) relating to the establishment, publication and enforcement of a code of conduct by a benchmark administrator.

(2) A benchmark contributor shall comply with such requirements as may be prescribed by the regulations, including requirements relating to benchmarks, benchmark administrators, benchmark contributors and benchmark users.

(3) Benchmark administrators, benchmark contributors and their respective directors, officers and employees, and any of their service providers or security holders that are in a prescribed class, shall comply with

(a) a code of conduct established by a benchmark administrator in accordance with the regulations;

(b) requirements established by the regulations relating to the prohibitions against and procedures regarding conflicts of interest involving them; and

(c) requirements established by the regulations relating to prohibition or restriction of any matter or conduct involving a benchmark.

(4) A benchmark user shall comply with such requirements as may be prescribed by the regulations, including requirements

(a) relating to benchmarks, benchmark administrators, benchmark contributors and benchmark users;

(b) prohibiting the use of a non-designated benchmark; and

(c) disclosure and other requirements relating to the use of a benchmark.

30Q (1) A person or company shall not, directly or indirectly, engage or participate in the provision of information to another person or company for the purpose of determining a benchmark if the person or company knows or reasonably ought to know that the information, at the time and in the circumstances in which it is provided, is false or misleading.

(2) A person or company shall not, directly or indirectly, attempt to engage or participate in the conduct described in subsection (1).

30R (1) A person or company shall not, directly or indirectly, engage or participate in conduct relating to a benchmark that improperly influences the determination of the benchmark or produces or contributes to the production of a false or misleading determination of the benchmark.

(2) A person or company shall not, directly or indirectly, attempt to engage or participate in the conduct described in subsection (1).

6 Subsection 77(3) of Chapter 418, as enacted by Chapter 15 of the Acts of 1990 and amended by Chapter 51 of the Acts of 2015, is further amended by

(a) striking out "Two copies" in the first line and substituting "A copy"; and

(b) adding ", either in paper or electronic form" immediately after "Director" in the seventh and eighth lines.

7 Section 130 of Chapter 418 is repealed.

8 Subsection 133(1D) of Chapter 418, as enacted by Chapter 46 of the Acts of 2006, is amended by striking out "sure" in the second line and substituting "such".

9 (1) Section 149 of Chapter 418, as amended by Chapter 15 of the Acts of 1990, is further amended by adding immediately after subsection (1) the following subsection:

(1A) No action or other proceeding for damages may be instituted against a recognized self-regulatory organization or a director, officer, employee or agent of a recognized self-regulatory organization for

(a) any act done in good faith in the performance or intended performance of any duty;

(b) in the exercise or the intended exercise of any power pursuant to an order recognizing the self-regulatory organization under subsection (1) of Section 30, or under this Act or a regulation; or

(c) for any neglect or default in the performance or exercise in good faith of such duty of power.

(2) Section 149 of Chapter 418, as amended by Chapter 15 of the Acts of 1990, is further amended by adding immediately after subsection (4), the following subsection:

(5) Notwithstanding any other enactment or law, no member, employee, officer, servant or agent of the Commission may be required in any civil proceeding, except a proceeding under this Act or a judicial review relating to a proceeding

under this Act, to give testimony or to produce any book, record, document or thing respecting information obtained in the discharge of their duties under this Act.

10 Section 150 of Chapter of 418, as amended by Chapter 15 of the Acts of 1990, Chapter 32 of the Acts of 1996, Chapters 18 and 41 of the Acts of 2001, Chapter 39 of the Acts of 2002, Chapter 26 of the Acts of 2005, Chapter 46 of the Acts of 2006, Chapter 32 of the Acts of 2008, Chapter 73 of the Acts of 2010, Chapter 34 of the Acts of 2012, Chapter 28 of the Acts of 2014, Chapter 51 of the Acts of 2015 and Chapter 16 of the Acts of 2016, is further amended by adding immediately after clause (v) the following clauses:

- (w) prescribing a category or categories of designated benchmarks for the purpose of subsection (7) of Section 30N;
- (x) prescribing classes of service providers or security holders for the purpose of Section 30P;
- (y) prescribing requirements relating to
 - (i) the designation of a benchmark or benchmark administrator under Section 30N,
 - (ii) the making of orders under Section 30O,
 - (iii) the disclosure or furnishing of information to the Commission, the public or any person or company by a benchmark administrator, a benchmark contributor or a benchmark user, including requirements for disclosure statements by a benchmark administrator in relation to a benchmark,
 - (iv) the quality, integrity and sufficiency of the data and the methodology used by a benchmark administrator to determine a benchmark, including requirements for a benchmark administrator to monitor benchmark contributors and data provided by benchmark contributors,
 - (v) the establishment, publication and enforcement by a benchmark administrator of codes of conduct applicable to benchmark administrators or benchmark contributors and their respective directors, officers, and employees, and any of their service providers or security holders that are in a class prescribed under clause (x), and the minimum requirements to be included in such a code of conduct,
 - (vi) contractual arrangements related to a benchmark to be entered into by a benchmark administrator or a benchmark contributor and the minimum requirements to be included in the contractual arrangements,
 - (vii) the use by a benchmark administrator and a benchmark contributor of service providers,
 - (viii) prohibitions against and procedures regarding conflicts of interest involving a benchmark and benchmark administrators, benchmark contributors and their respective directors, officers and employees, and any

of their service providers or security holders that are in a class prescribed under clause (x), including

(A) procedures to be followed to avoid conflicts of interest,

(B) procedures to be followed if conflicts of interest arise,

(C) requirements for separation of roles, functions and activities,
and

(D) restrictions on ownership of a benchmark or benchmark administrator,

(ix) prohibitions against the use of a benchmark that is not a designated benchmark by a benchmark user,

(x) disclosure and other requirements respecting the use of a benchmark by a benchmark administrator, benchmark contributor or benchmark user,

(xi) requiring information in relation to a benchmark to be provided for use by the benchmark administrator,

(xii) the maintenance of books and records necessary for the conduct of a benchmark administrator's business and the establishment and maintenance of a benchmark,

(xiii) the maintenance of books and records by a benchmark contributor relating to a benchmark,

(xiv) the appointment by benchmark administrators and benchmark contributors of one or more compliance officers and any minimum standards that must be met or qualifications a compliance officer must have,

(xv) the prohibition or restriction of any matter or conduct involving a benchmark by benchmark administrators, benchmark contributors and their respective directors, officers and employees, and any of their service providers or security holders that are in a class referred to in clause (x),

(xvi) the design, determination and dissemination of a benchmark,

(xvii) plans of a benchmark user where a benchmark changes or ceases to be provided and how these plans will be reflected in the contractual arrangements of the benchmark user,

(xviii) the governance, compliance, accountability, oversight, audit, internal controls, policies and procedures of a benchmark administrator or benchmark contributor with respect to a benchmark, and

(xix) the governance, compliance, accountability, oversight, audit, internal controls, policies and procedures of a benchmark administrator, benchmark contributor or benchmark user with respect to the use of a benchmark;

(z) regulating submissions of information for the purpose of determining a benchmark;

(aa) requiring benchmark administrators or benchmark contributors to

(i) establish plans in the event that a benchmark changes or ceases to be provided or is subject to data failures or business continuity issues, and

(ii) reflect the plans referred to in subclause (i) in the contractual arrangements of the benchmark administrator or benchmark contributor relating to the benchmark;

(ab) governing or restricting the payment of fees or other compensation to a benchmark administrator or benchmark contributor;

11 Section 150A of Chapter 418, as enacted by Chapter 32 of the Acts of 1996 and amended by Chapter 18 of the Acts of 2001, Chapter 46 of the Acts of 2006 and Chapter 32 of the Acts of 2008, is further amended by adding immediately after subsection (8) the following subsection:

(8A) The Community Economic-Development Corporations Regulations approved by order in council 2011-139, dated April 12, 2011, are deemed to be rules made pursuant to Section 150 and not to be regulations and remain in effect until amended or repealed by regulation or rule.

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