

Chapter 9

Legislation

9.1.1 Bill 162, Budget Measures Act, 2009

BILL 162, BUDGET MEASURES ACT, 2009

Schedules 6 and 26 of the *Budget Measures Act, 2009* (Bill 162) contain amendments to the *Securities Act* and the *Commodity Futures Act*. Bill 162 received Royal Assent on June 5, 2009. These Schedules may be viewed on the Ontario Legislative Assembly's website at www.ontla.on.ca. In addition, consolidated versions of the *Securities Act* and the *Commodity Futures Act* are expected to be available shortly on the Ontario e-laws site at www.e-laws.gov.on.ca.

The Explanatory Notes in Bill 162 for these Schedules provide detail as to their content. The Explanatory Notes are reproduced in Part A, below. Most of the measures of Bill 162 become effective on proclamation. Information on the coming-into-force of measures in Bill 162 is provided in Part B below.

PART A: EXPLANATORY NOTES

SCHEDULE 6 COMMODITY FUTURES ACT

A new section 2.2 is added to the *Commodity Futures Act* specifying the authority of the Province and the Ontario Securities Commission to take immediate action in extraordinary circumstances to protect the public interest. Criteria are set out for determining whether extraordinary circumstances exist. In such circumstances, the Commission is authorized to make specified orders that expire in 10 days or less. With the approval of the Minister of Finance, the Commission is authorized to make regulations that are revoked in 30 days or less, but that can be extended for further 30-day periods. The Lieutenant Governor in Council is also authorized to make regulations.

A technical amendment is made to subsection 65 (1) of the Act, which governs the authority of the Ontario Securities Commission to make rules. Paragraph 7 of that subsection is re-enacted to replace references to "market participants" with a more detailed description of persons and companies that are subject to the rules made under the paragraph.

SCHEDULE 26 SECURITIES ACT

Proposed amendments to the *Securities Act* specify the authority of the Province and the Ontario Securities Commission in extraordinary circumstances; revise the registration requirements for dealers, advisers and others; revise the exemptions from the registration requirements; revise the prospectus exemptions under the Act; and make technical and other changes to the Act.

Authority in extraordinary circumstances

A new section 2.2 is added to the Act specifying the authority of the Province and the Ontario Securities Commission to take immediate action in extraordinary circumstances to protect the public interest. Criteria are set out for determining whether extraordinary circumstances exist. In such circumstances, the Commission is authorized to make cease trade orders that expire in 10 days or less. With the approval of the Minister of Finance, the Commission is authorized to make regulations that are revoked in 30 days or less, but that can be extended for further 30-day periods. The Lieutenant Governor in Council is also authorized to make regulations.

Registration requirements

Part XI of the Act, which governs registration under the Act of dealers, advisers and certain other persons and companies, is re-enacted. Some of the highlights of the amendments to the registration requirements are:

1. The registration requirements no longer apply to every person or company that trades a security. Under section 25 of the Act, registration is required only for those who engage in or hold themselves out as engaging in the business of trading in securities. Investment fund managers must be registered.

2. Individuals appointed as chief compliance officers or ultimate designated persons by registered dealers, registered advisers or registered investment fund managers must be registered.
3. The registration requirement is extended to every representative who is authorized to trade securities on behalf of a registered dealer or who is authorized to provide advice on behalf of a registered adviser with respect to investing in, buying or selling securities, whether or not the representative is employed by the registered dealer or registered adviser.
4. Categories of registration are set out in section 26 of the Act, and additional categories and subcategories may be prescribed by the regulations. Subsection 26 (2) of the Act creates two new dealer registration categories of restricted dealer and exempt market dealer. The permitted activities for each registration category may be prescribed by the regulations.
5. The registration process is governed by sections 27 to 31 of the Act. Provision is made for the revocation, suspension or surrender of a registration. Certain duties of registrants are set out in section 32 of the Act.

Registration exemptions

Part XII of the Act, which governs exemptions from the requirement to be registered under the Act, is re-enacted. Some of the highlights of the amendments to the registration exemptions are:

1. Section 34 of the Act exempts an adviser from the registration requirements under the Act if the adviser provides only general investment advice in the form of publications or other media without any representation that the advice is tailored to the needs of anyone who receives it.
2. A number of dealer registration exemptions are repealed that relate to trades that are not conducted in the course of engaging in the business of trading in securities.
3. Section 35 of the Act provides a dealer registration exemption for trades in debt securities issued or guaranteed by governments in Canada. Exemptions are provided for transactions that are governed by other statutory schemes.
4. Section 35.1 of the Act provides a registration exemption for federal and Ontario financial institutions in specified circumstances.
5. Other registration exemptions may be established by regulation.

Amendments that relate to the re-enactment of Parts XI and XII of the Act are made to sections 36, 37, 44, 74, 119, 134, 135, 136 and 143 of the Act. Sections 39, 40, 41, 45 and 118 of the Act are repealed.

Prospectus exemptions

Part XVII of the Act, which governs exemptions from prospectus requirements, is amended. The amendments are related, in part, to the changes to the registration requirements. Some of the highlights of the amendments to the prospectus exemptions are:

1. A transitional amendment provides for the re-enactment of section 73 of the Act. It is consequential to the changes to the registration requirements. This transitional version of the section maintains certain current prospectus exemptions, including exemptions for distributions of debt securities issued or guaranteed by governments in Canada, and for distributions of debt securities issued or guaranteed by federal and Ontario financial institutions in specified circumstances. Exceptions are specified.
2. This transitional version of section 73 of the Act is repealed on a date to be named by proclamation and is replaced by sections 73 to 73.6 of the Act, governing prospectus exemptions.
3. Sections 73 to 73.5 of the Act continue the prospectus exemptions for distributions of debt securities issued or guaranteed by governments in Canada, and for distributions of debt securities issued or guaranteed by federal and Ontario financial institutions in specified circumstances. Provision is also made for prospectus exemptions for certain distributions to accredited investors, for distributions by private issuers in specified circumstances and for distributions of government incentive securities.
4. Other prospectus exemptions may be established by regulation.

5. Section 73.7 of the Act governs the circumstances in which the first trade in a security previously distributed under a prospectus exemption will not be treated as a distribution that is subject to the prospectus requirements. It also governs the circumstances in which a distribution of securities by a control person will not be treated as a distribution that is subject to the prospectus requirements.

Related amendments are made to section 143 of the Act concerning regulation-making authority.

Other amendments

The regulation-making authority in paragraph 5 of subsection 143 (1) of the Act currently provides for a rule that requires notice to be given to the Commission in specified circumstances when there is a proposed change in the beneficial ownership of, or control or direction over, the securities of a registrant and authorizes the Commission to make an order. The provision is re-enacted and notice must be given, in addition, when the change relates to the securities of a person or company of which the registrant is a subsidiary.

New regulation-making authority is set out in paragraph 8.1 of subsection 143 (1) of the Act enabling the Commission to make a rule exempting a person or company from any requirement under the Act or regulations that is comparable to a requirement imposed on the person or company by a self-regulatory organization.

PART B: COMING-INTO-FORCE OF MEASURES IN SCHEDULE 26

The table below shows those provisions of Schedule 26 of Bill 162 which came into force on June 5, 2009 (Royal Assent) and the coming-into-force dates to be proposed by Ministry of Finance (MoF) staff for the remaining provisions which take effect on proclamation. The table is subject to the acceptance of recommendations which the Commission understands will be made by MoF staff and to proclamation by the Lieutenant Governor. One of the key recommendations is that there will be two proclamations dates for the remaining provisions.

It is understood that the earlier of the two proclamation dates is likely to be recommended to be near the end of September 2009, in order to facilitate the implementation of new registration requirements in National Instrument 31-103 at the same time across Canada.

As described in greater detail in Chapter 6 of the May 22, 2009 Bulletin, the Commission has been advised that the later of the two proclamation dates for some of the new measures in Bill 162 is intended to allow additional time for consultation on the rule changes associated with the statutory measures.

Section of <i>Budget Measures Act, 2009</i> (Bill 162)	When section is in force:		
	June 5, 2009	First proclamation date**	Second proclamation date**
1(1) and (2), (4), (5), (7) and (8) [Definitions in the <i>Securities Act</i> (the OSA) of: “chief compliance officer” “dealer” “portfolio manager” “representative” “salesperson” “ultimate designated person”]		✓	
1(3) and (6) [OSA definitions of: “debt security” “security”]	✓		
2 [Extraordinary powers]	✓		
3 [Fee-making authority]	✓		
4 [OSA Part XI – Registration]		✓	
5 [OSA Part XII – Registration Exemptions]		✓	
6 [s.36 OSA – trade confirmation]		✓	
7 to 10 [s.37(4), 39, 40, 41, 44 and 45 of the OSA]		✓	
11 [Repeal of existing s.72 OSA and introduction of new definition of “prospectus requirement”.]		✓	
12(1) [Transitional version of section 73 of the OSA]		✓	[Note: The proposed OSA measure is to terminate on the later proclamation date pursuant to s.12(2) of Bill 162.]
12(2) [New legislative prospectus exemptions in s.73 to 73.6 of the OSA]			✓
13 [Resale restrictions]		✓	
14 to 19 [s. 74, 118, 119, 134, 135 and 136 of the OSA]		✓	
20(1) to (13), (16) and (18) [s.143 of the OSA, except paragraph 54 of s.143(1) and paragraph 143(2)(a.0.1)]		✓	
20(14) [paragraph 54 of s.143(1) of the OSA, now dealing with resale of securities]		✓	[Note: The proposed OSA measure is to terminate immediately pursuant to s.20(15) of Bill 162.]
20(15) [repeal of new paragraph 54 of s.143(1) of the OSA]		✓	
20(17) [proposed paragraph 143(2)(a.0.1) of the OSA]			✓

**Contingent on acceptance of recommendations of Ministry of Finance staff and on proclamation by the Lieutenant Governor in Council.