c 86 The Securities Amendment Act, 1979
CHAPTER 86

An Act to amend
The Securities Act, 1978

Assented to November 30th, 1979

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subparagraph ii of paragraph 24 of subsection 1 of section 1 of The Securities Act, 1978, being chapter 47, is repealed and the following substituted therefor:

   ii. an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

2. Section 2 of the said Act is amended by adding thereto the following subsection:

   (4) The Commission may hold hearings in or outside Ontario in conjunction with any other body empowered by statute to administer or regulate trading in securities and may consult with that other body during the course of a hearing.

3. Paragraph 2 of subsection 1 of section 34 of the said Act is repealed and the following substituted therefor:

   2. An isolated trade by or on behalf of an issuer in a specific security of its own issue, for the issuer's account, or by or on behalf of an owner in a specific security, for the owner's account, where the trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities.

4. —(1) Subsection 1 of section 57 of the said Act is amended by inserting after "5" in the first line "of this section and subsection 2 of section 62".
(2) Subsection 2 of the said section 57 is amended by inserting after "3" in the first line "of this section and subsection 2 of section 62".

5. Subsection 1 of section 58 of the said Act is amended by adding at the commencement thereof "Subject to subsection 2 of section 62".

6. Subsection 1 of section 60 of the said Act is amended by inserting after "2" in the first line "of this section and subsection 4 of section 62".

7. Section 62 of the said Act is repealed and the following substituted therefor:

62.—(1) A person or company may, if permitted by the regulations, file a short form of preliminary prospectus and a short form of prospectus in the prescribed form under section 52, or a short form of pro forma prospectus and a short form of prospectus in the prescribed form under section 61, and any such prospectus that complies with the regulations applicable thereto shall, for the purposes of section 55, be considered to provide sufficient disclosure of all material facts relating to the securities issued or proposed to be distributed under the prospectus.

(2) A short form prospectus may contain one or more forms of certificate to be signed as alternatives to the forms of certificate set out in subsections 1 and 2 of section 57 and subsection 1 of section 58 and, where any such certificate in a short form prospectus is used in accordance with the regulations, it is not necessary to use the alternative certificate required by subsections 1 and 2 of section 57 and subsection 1 of section 58, as the case may be.

(3) A person or company may, if permitted by the regulations, file a summary statement as a separate document in the prescribed form together with a prospectus filed under section 52 or 61.

(4) Where a summary statement is filed with a prospectus, the Director shall not issue a receipt for the prospectus if it appears to him that the summary statement does not comply with the regulations applicable thereto.

(5) A summary statement filed with a prospectus for which a receipt has been issued may be sent or delivered by a dealer to a purchaser of securities instead of a prospectus as required in section 70, and, where a dealer so elects, the provisions of sections 70 and 130 with respect to a prospectus apply with necessary modifications to a summary statement.

(6) Every summary statement sent or delivered to a purchaser shall contain a statement informing the purchaser that a copy of
the prospectus which was filed with the summary statement will be provided to the purchaser on request, and each person or company who signs or causes to be signed, as the case may be, the certificate contained in the prospectus shall ensure compliance with any such request.

(7) Where, during the distribution or distribution to the public of a security under a prospectus, an order is made to cease trading in the security, or the receipt issued by the Director for the prospectus is revoked or the prospectus lapses or the use of a prospectus is otherwise prohibited by the Act, the regulations or by a decision of the Commission or an order of a court, a summary statement filed with the prospectus shall cease to have force and effect for the purposes of section 70 unless the Director otherwise orders.

(8) Nothing in this section shall be construed to provide relief from liability arising under section 126 where a misrepresentation is contained in a prescribed short form prospectus and, for the purposes of section 126, where a misrepresentation is contained in a summary statement filed with a prospectus, the misrepresentation shall be deemed to be contained in the prospectus.

8. Subsection 3 of section 69 of the said Act is amended by striking out “and upon every dealer who has notified the Commission of his intention to engage in the distribution of the securities” in the third and fourth lines.

9.—(1) Clause b of subsection 1 of section 71 of the said Act is repealed and the following substituted therefor:

(b) the trade is an isolated trade by or on behalf of an issuer in a specific security of its own issue, for the issuer’s account, where the trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities.

(2) Subclause i of clause b of subsection 7 of the said section 71 is amended by striking out “proposed trade” in the fifth line and inserting in lieu thereof “first trade made to carry out the distribution”.

10. Subsection 1 of section 73 of the said Act is repealed and the following substituted therefor:

(1) The Commission may, upon the application of an interested person or company, rule that any trade, intended trade, security, person or company is not subject to section 24 or 52 where it is
satisfied that to do so would not be prejudicial to the public interest, and may impose such terms and conditions as are considered necessary.

11. Section 76 of the said Act is repealed and the following substituted therefor:

76.—(1) Every reporting issuer that is not a mutual fund shall file within sixty days of the date to which it is made up an interim financial statement,

(a) where the reporting issuer has not completed its first financial year, for the periods commencing with the beginning of that year and ending nine, six and three months respectively before the date on which that year ends, but no interim financial statement is required to be filed for any period that is less than three months in length;

(b) where the reporting issuer has completed its first financial year, to the end of each of the three-month, six-month and nine-month periods of the current financial year that commenced immediately following the last financial year, including a comparative statement to the end of each of the corresponding periods in the last financial year,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles.

(2) Every mutual fund in Ontario shall file within sixty days of the date to which it is made up an interim financial statement,

(a) where the reporting issuer has not completed its first financial year, for the period commencing with the beginning of that year and ending six months before the date on which that year ends but, if the first financial year is less than six months in length, no interim financial statement is required to be filed;

(b) where the reporting issuer has completed its first financial year, for the six-month period of the current financial year that commenced immediately following the last financial year,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles.

12.—(1) Subsection 2 of section 88 of the said Act is amended by striking out “Subject to section 91” in the first line and inserting in lieu thereof “Subject to subsection 1 of section 91”.

s. 76, re-enacted

Interim financial statements

s. 88 (2), amended
(2) Clause d of subsection 2 of the said section 88 is repealed and the following substituted therefor:

\[(d)\] it involves the acquisition of not more than 5 per cent of the voting securities of the offeree company but the aggregate number of voting securities acquired by the offeror, his associates or affiliates within any period of twelve consecutive months in reliance on the exemption provided by this clause shall not, when aggregated with acquisitions made under clause a during the same twelve-month period, exceed 5 per cent of the outstanding voting securities of the offeree company at the beginning of the period, and this clause does not apply to any purchase of voting securities in which there is a published market if that purchase is effected above the market price at the date of purchase plus reasonable brokerage fees or other commission; or

(3) Clause a of subsection 3 of the said section 88 is repealed and the following substituted therefor:

\[(a)\] the securities are purchased, redeemed or otherwise acquired in accordance with terms and conditions attaching thereto that permit the purchase, redemption or acquisition of the securities by the issuer without the prior agreement of the owners of the securities, or the securities are acquired to meet sinking fund requirements or are acquired from an employee of the issuer or an employee of an affiliate.

13.—(1) Paragraph 10 of subsection 1 of section 89 of the said Act is amended by adding at the end thereof “but those securities shall be counted in the determination of whether a condition as to the minimum number of securities the offeror is bound or willing to take up has been fulfilled”.

(2) Paragraph 12 of subsection 1 of the said section 89 is amended by striking out “to withdraw the offer if” in the second line and inserting in lieu thereof “not to take up and pay for securities deposited if”.

(3) Clause b of paragraph 12 of subsection 1 of the said section 89 is amended by striking out “or” in the fifth line and inserting in lieu thereof “and” and by striking out “that” in the seventh line.

(4) Paragraph 13 of subsection 1 of the said section 89 is amended by striking out “making” in the fourth line and inserting in lieu thereof “date”.

s. 88 (2) (d), re-enacted

s. 88 (3) (a), re-enacted

s. 89 (1), par. 10, amended

s. 89 (1), par. 12, amended

s. 89 (1), par. 12 (b), amended

s. 89 (1), par. 13, amended
14. Section 90 of the said Act is amended by adding thereto the following subsection:

(1a) For purposes of subsection 1, a change that is not within the control of the offeror or of an affiliate of the offeror shall not be considered to be significant unless it is a material change affecting the affairs of the issuer of securities being offered in exchange for securities of the offeree company and, while an offer is outstanding, the exercise of a right contained in a take-over bid or an issuer bid to modify the terms of the offer or to waive a condition of the offer shall be considered to be a variation which changes the terms of the take-over bid or the issuer bid.

15. Section 99 of the said Act is amended by adding thereto the following clause:

(f) change the time periods set out in sections 89 and 90 in their application to take-over bids or issuer bids that are subject to corresponding requirements, but with different time periods, imposed under applicable legislation of Canada or of a province or territory of Canada, and such change shall apply to take-over bids or issuer bids that satisfy the criteria set out in the order of the Commission making the change.

16.—(1) Subsections 1 and 2 of section 131 of the said Act are repealed and the following substituted therefor:

Every person or company in a special relationship with a reporting issuer who sells the securities of the reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed and every person or company in a special relationship with a reporting issuer, where material fact or change undisclosed

Liability of person or company in special relationship with a reporting issuer where material fact or change undisclosed

(1) Every person or company in a special relationship with a reporting issuer who sells the securities of the reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed and every person or company in a special relationship with a reporting issuer who, directly or indirectly, other than in the necessary course of business, communicates knowledge of the material fact or material change to another person or company who thereafter sells securities of the reporting issuer is liable to compensate the purchaser of the securities for damages as a result of the trade unless,

(a) the person or company in the special relationship with the reporting issuer had reasonable grounds to believe that the material fact or material change had been generally disclosed;

(b) the material fact or material change was known or ought reasonably to have been known to the purchaser; or

(c) the person or company in the special relationship with the reporting issuer proves that he or it did not make use of knowledge of the material fact or material change in selling the securities or in communicating knowledge of the material fact or material change, as the case may be.
(2) Every person or company in a special relationship with a reporting issuer who purchases the securities of the reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed and every person or company in a special relationship with the reporting issuer who, directly or indirectly, and, other than in the necessary course of business, communicates knowledge of the material fact or material change to another person or company who thereafter purchases securities of the reporting issuer is liable to compensate the vendor of the securities for damages as a result of the trade unless,

(a) the person or company in the special relationship with the reporting issuer had reasonable grounds to believe that the material fact or material change had been generally disclosed;

(b) the material fact or material change was known or ought reasonably to have been known to the vendor; or

(c) the person or company in the special relationship with the reporting issuer proves that he or it did not make use of knowledge of the material fact or material change in purchasing the securities or in communicating knowledge of the material fact or material change, as the case may be.

(2) Subsections 4 and 5 of the said section 131 are repealed and the following substituted therefor:

(4) Every person or company in a special relationship with a reporting issuer who is an insider or an associate or affiliate of the reporting issuer and who,

(a) sells or purchases the securities of the reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed; or

(b) directly or indirectly communicates, other than in the necessary course of business, knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed to another person or company who thereafter sells or purchases securities of the reporting issuer,

is accountable to the reporting issuer for any benefit or advantage received or receivable by him or it as a result of the purchase, sale or communication, as the case may be, unless,
(c) the person or company in the special relationship with the reporting issuer had reasonable grounds to believe that the material fact or material change had been generally disclosed;

(d) the material fact or material change was known or ought reasonably to have been known to the purchaser or vendor of the securities, as the case may be;

(e) the person or company in the special relationship with the reporting issuer proves that he or it did not make use of knowledge of the material fact or material change in selling or purchasing the securities or in communicating knowledge of the material fact or material change, as the case may be.

(5) Where more than one person or company in a special relationship with a reporting issuer is liable under subsection 1 or 2 as to the same transaction or series of transactions, their liability is joint and several.

17.—(1) Paragraph 1 of section 139 of the said Act is repealed and the following substituted therefor:

1. prescribing categories for persons and companies and the manner of allocating persons and companies to categories, including permitting the Director to make such allocations, and prescribing the form and content of and governing the use of prospectuses, preliminary prospectuses, pro forma prospectuses, summary statements and statements of material facts to be filed by, and financial conditions applicable to, persons and companies in accordance with their categories.

(2) The said section 139 is amended by adding thereto the following paragraphs:

8a. governing the furnishing of information by a registrant or class of registrants to a person or company recognized by the Commission and governing the payment of fees with respect thereto;

27a. requiring any issuer or class of issuers to comply with Part XVII or any provision thereof.

18. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.