

Bill No. 24 of 1955

A BILL FOR THE PREVENTION OF FRAUD IN
CONNECTION WITH THE SALE OF SECURITIES

NOTE

This Bill enacts a new Act to be known as "*The Securities Act, 1955*". It repeals and replaces the present Act relating to the securities business.

The Bill provides for the establishment of a three-man securities commission with such expert employees as that body may require to carry out its duties.

The Bill follows in principle the *Securities Act* now in force in Ontario and Saskatchewan. It sets out the requirement for filing of prospectuses and registration of brokers and security issuers and, in general, goes into greater detail than the present Act on all matters relating to the trading of securities, registration, types of securities and duties of the administrative body regulating the trading in securities.

This Bill comes into force upon Proclamation.

J. W. RYAN,
Acting Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 24 of 1955

An Act for the Prevention of Fraud in Connection with the Sale of Securities

(Assented to , 1955)

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

1. This Act may be cited as "*The Securities Act, 1955*". Short title

Interpretation

2. In this Act

- | | |
|--|--------------------------------|
| (a) "broker" means any person or company who trades in securities in the capacity of an agent and is recognized by the commission as a broker; | Interpre-
ation
"broker" |
| (b) "broker-dealer" means | "broker-
dealer" |
| (i) any person or company who is a member of a broker-dealers' association recognized by the commission, and | |
| (ii) any other person or company who is recognized by the commission as a broker-dealer and who engages either for the whole or part of his or its time in the business of trading in securities in the capacity of an agent or principal; | |
| (c) "commission" means the Alberta Securities Commission; | "commis-
sion" |
| (d) "company" means any incorporated corporation, incorporated association, incorporated syndicate or other incorporated organization; | "company" |
| (e) "industrial company" means a company other than a company recognized by the commission as a mining company or investment company; | "industrial
company" |
| (f) "investment company" | "investment
company" |
| (i) means a company, other than a company recognized by the commission as a mining company or an industrial company, whose principal business is the acquisition of or the investment in the securities of other companies whether for the purpose of acquiring control or management of such companies or for the purpose of deriving revenue from such securities, and | |

- (ii) includes a company that issues investment certificates, investment contracts, savings certificates, savings contracts or securities of a like nature;
- "investment counsel"
- (g) "investment counsel" means a person or company who engages in or holds himself or itself out as engaging in the business of advising others as to the advisability of investing in or purchasing or selling specific securities and who is primarily engaged in giving continuous advice as to the investment of funds on the basis of the individual needs of each client;
- "investment dealer"
- (h) "investment dealer" means
 - (i) any person or company who is a member, branch office member or associate member of The Alberta District of the Investment Dealers' Association of Canada, and
 - (ii) any other person or company who is recognized by the commission as an investment dealer and who engages either for the whole or part of his or its time in the business of trading in securities in the capacity of an agent or principal;
- "mining company"
- (i) "mining company" means a company, other than a company recognized by the commission as an industrial company or an investment company, that engages either directly or indirectly in any mode or method of working whereby the ground, soil or earth or any rock, stone or quartz will be disturbed, removed, drilled, washed, sifted, roasted, smelted, refined, crushed or dealt with for the purpose of winning, obtaining or proving the presence of any mineral or minerals, including, in addition to any other minerals, any metal, coal, natural gas, oil and salt, or of any mineral-bearing substance, mineral deposit, ore body, stratum, soil, rock, bed of earth, clay, sand, gravel or cement;
- "official"
- (j) "official" means president, vice-president, secretary, treasurer or manager;
- "person"
- (k) "person" means an individual, partnership, unincorporated association, unincorporated organization, and syndicate other than an incorporated syndicate;
- "primary distribution to the public"
- (l) "primary distribution to the public" used in relation to securities means
 - (i) trades that are made for the purpose of distributing to the public securities issued by a company and not previously distributed,
 - (ii) trades in previously distributed securities for the purpose of redistributing such securities to the public where the securities form all or a part of or are derived from the holdings of any person or company or any combination of persons or companies holding a sufficient quantity of such securities or of the securities from

which such securities have been derived to affect materially the control of the company that is the issuer of the securities,

whether such trades are made directly to the public or through an underwriter, optionee, sub-underwriter, sub-optionee or otherwise and includes any transaction involving a purchase and resale, or a repurchase and resale, in the course of or incidental to such distribution or redistribution to the public but does not include either a trade through a person or company who is registered for trading in securities under this Act and who is not engaged in such distribution or redistribution to the public but is acting as the agent of the purchaser or a sale by a person or company not engaged in such distribution or redistribution to the public;

- (m) "register" means register under this Act; "register"
- (n) "registrar" means the registrar of the commission appointed under this Act; "registrar"
- (o) "regulations" means regulations made under this Act; "regulations"
- (p) "salesman" means an individual registered as a salesman under this Act; "salesman"
- (q) "securities adviser" means a person or company who engages in or holds himself or itself out as engaging in the business of advising others, either directly or through publications or writings, as to the advisability of investing in or purchasing or selling specific securities; "securities adviser"
- (r) "security" includes "security"
 - (i) any document, instrument or writing commonly known as a security,
 - (ii) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,
 - (iii) any document constituting evidence of an interest in an association of legatees or heirs,
 - (iv) any document constituting evidence of an interest in any option given upon a security,
 - (v) any document designated as a security by the regulations, and
 - (vi) without in any way restricting the generality of anything hereinbefore contained,
 - (A) any bond, debenture, share, stock, note, unit, unit certificate, certificate of share or interest, pre-organization certificate or subscription,
 - (B) any certificate of share or interest in a trust estate or association, profit sharing agreement or certificate,

- (C) any certificate of interest in an oil, gas or mining lease,
 - (D) any certificate of interest in any patent or patent right, claim or royalty,
 - (E) any voting trust certificate, collateral trust certificate,
 - (F) any income or annuity contract not issued by an insurance company, and
 - (G) any bankers' share, trustees' share, investment contract, investment participating bond, or investment trust debenture, bond, debenture, share stock, note, unit, or certificate bond upon any security,
- whether any of the foregoing relate to a person, proposed company or company, as the case may be;

"security issuer"

- (s) "security issuer" means a company that engages in the primary distribution to the public of securities of its own issue;

"trade" or "trading"

- (t) "trade" or "trading" includes
 - (i) any solicitation for or obtaining of a subscription to, disposition of or trade in or option upon a security for valuable consideration whether the terms of payment be upon margin, instalment or otherwise,
 - (ii) any attempt to deal in, sell or dispose of a security or an interest in or option upon a security for valuable consideration whether the terms of payment be upon margin, instalment or otherwise,
 - (iii) any participation as a floor trader in any transaction in a security upon the floor of any stock exchange,
 - (iv) any receipt by a person or company registered for trading in securities under this Act of an order to buy or sell a security, whether the order is received over the telephone or in person,
 - (v) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing, and
 - (vi) any other act, advertisement, conduct or negotiation designated by the regulations as "trade" or "trading".

Division of Act

3. For convenience of reference only, this Act is divided into the following Parts:

<i>Part</i>	<i>Section</i>
I ALBERTA SECURITY COMMISSION....	4- 7
II REGISTRATION	8- 21
Exemption from Registration	19- 21

<i>Part</i>	<i>Section</i>
III FORFEITURE OF BOND	22- 26
IV INVESTIGATION AND ACTION BY COMMISSION	27- 33
V APPEALS	34- 41
VI AUDITS	42- 43
VII PROSPECTING SYNDICATES AND SECURITIES ISSUED BY A PERSON	44
VIII TRADING IN SECURITIES OF A MINING COMPANY	45- 52
IX TRADING IN SECURITIES OF AN INDUSTRIAL COMPANY	53- 60
X TRADING IN SECURITIES OF AN INVESTMENT COMPANY	61- 67
XI GENERAL PROVISIONS RELATING TO MINING, INDUSTRIAL AND IN- VESTMENT COMPANIES	68- 76
XII PROVISIONS RELATING TO TRAD- ING IN SECURITIES GENERALLY ..	77- 91
XIII MINIMUM SUBSCRIPTION	92- 96
XIV OFFENCES AND PENALTIES	97- 99
XV GENERAL PROVISIONS	100-113

PART I

ALBERTA SECURITIES COMMISSION

Establish-
ment of com-
mission

4. (1) There shall be a commission to be called the Alberta Securities Commission which shall be composed of not more than three members who shall be appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council shall designate one of the members to be chairman of the commission and another to be vice-chairman.

(3) Two members of the commission constitute a quorum.

Acts of
chairman or
vice-chair-
man subject
to review

5. The chairman or, in his absence, the vice-chairman may exercise and shall perform the powers and duties vested in or imposed upon the commission by this Act or the regulations, but every direction, decision, order or ruling of the chairman or the vice-chairman is subject to review by the commission, and the commission may confirm or revoke any such direction, decision, order or ruling or make such alteration therein or addition thereto as the commission deems proper.

Registrar

6. (1) The Lieutenant Governor in Council shall appoint a registrar of the commission.

(2) The registrar may be appointed from the members of the commission.

(3) The registrar or in the case of his absence or inability to act, the vice-chairman shall perform the duties imposed upon the registrar by this Act and the regulations.

Remunera-
tion of
members

7. (1) The Lieutenant Governor in Council may fix the remuneration of the members of the commission and of the registrar.

(2) Subject to *The Public Service Act, 1954*, the Lieutenant Governor in Council may appoint such officers, clerks and servants as are necessary for the administration of this Act, and may fix their remuneration.

PART II

REGISTRATION

Registration
for trading
in securities

8. (1) No person or company shall

- (a) trade in any security unless he or it is registered as a broker, investment dealer, broker-dealer, security issuer or as a salesman of a registered broker, investment dealer, broker-dealer or security issuer,
- (b) act as a partner or officer of or on behalf of any person or company in connection with a trade in any security by that person or company unless he or it is registered for trading in securities under this Act,
- (c) act as a salesman of or on behalf of any person or company in connection with a trade in any security by that person or company unless he is registered as a salesman of that person or company and the person or company is registered as a broker, investment dealer, broker-dealer or security issuer, or
- (d) act as investment counsel or securities adviser unless he or it is registered as an investment counsel or securities adviser,

and the registration has been made in accordance with the provisions of this Act and the regulations and the person or company has received written notice of his or its registration from the registrar.

Separate
registration

(2) Where a person or company is registered as a broker, investment dealer, broker-dealer, investment counsel or securities adviser, every partner of that person or the president, vice-president and secretary-treasurer of that company, may act as a broker, investment dealer, broker-dealer, investment counsel or securities adviser, as the case may be, without separate registration.

(3) Where a company is registered as a security issuer, the president, vice-president and secretary-treasurer of the company may act on its behalf in connection with a trade in a security by that company without separate registration, but shall not be paid or receive any commission for such services.

(4) No individual who becomes a partner or officer of a person or company after the person or company has been registered shall trade in securities until that person or company has received from the registrar written permission for the partner or officer so to trade. Approval of new partners or officers

(5) The termination of the employment of a salesman with a person or company registered for trading in securities under this Act operates as a suspension of the registration of the salesman until notice in writing has been received by the registrar from a person or company registered for trading in securities under this Act of the employment of the salesman and the employment has been approved by the commission. Termination of employment of salesman

9. (1) The commission shall grant registration or renewal of registration to an applicant where in the opinion of the commission the applicant is suitable for registration and the proposed registration is not objectionable. Registration

(2) The commission may attach to a registration or renewal of registration such terms, conditions, or restrictions as may be deemed necessary.

10. The commission shall suspend or cancel any registration where in its opinion such action is in the public interest. Suspension or cancellation of registration

11. Notwithstanding any ruling of the commission a further application for registration may be made upon new or other matter or when it is clear that material circumstances have changed, but no further application for registration shall be made within six months of that ruling unless leave is first obtained from the commission. Further applications

12. (1) Every application shall be made in writing upon a form prescribed by the regulations and provided by the commission, and shall be accompanied by such fee as may be prescribed by the regulations. Fees upon application

(2) Every applicant shall state in the application an address for service in Alberta. Address for service

(3) All notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid post to the latest address for service so stated.

13. (1) The registrar may, and when so directed by the commission shall, require any applicant or any registered person or company within a specified time to deliver a bond by a guarantee company approved by the commission in such form as the regulations prescribe and in such amount as the commission requires. Bond

(2) The registrar may, and when so directed by the commission shall, require a new bond of the kind mentioned in subsection (1) to be filed within a specified time. New bond

Further information

14. The registrar may, and when so directed by the commission shall,

- (a) require any further information or material to be submitted by any applicant or any registered person or company within a specified time, and
- (b) require verification by affidavit or otherwise of any information or material then or previously submitted or require the applicant or the registered person or any partner, officer, director or employee of the registered person or company to submit to examination under oath.

Appointment of experts

15. (1) The commission may appoint one or more experts to assist the commission in such manner as it deems expedient.

(2) The commission may submit for examination any agreement, prospectus, financial statement, report or other document to one or more experts appointed under subsection (1).

(3) The commission has the same power to summon and enforce the attendance of witnesses or persons before the expert and to compel them to produce documents, records and things as is vested in the commission by subsection (3) of section 27.

(4) Subsections (3), (4), (6) and (7) of section 27 apply *mutatis mutandis* to an examination by the expert under this section.

Remuneration of expert

(5) An expert appointed under subsection (1) shall be paid such amounts for services and expenses as the Lieutenant Governor in Council may determine.

Residence

16. (1) Where a person, company or partnership makes application for registration, the registration may, in the absolute discretion of the commission, be refused unless

- (a) in the case of a person making application,
 - (i) he has at least one year immediately prior to the date of application been residing in Alberta with the intention of making his permanent home in Alberta, or
 - (ii) at the time of application he is registered in a capacity corresponding to that of broker, investment dealer, broker-dealer, security issuer, investment counsel, securities adviser or salesman under the security laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application,
 and is otherwise suitable for registration,
- (b) in the case of a company or partnership making application every officer and director, or every member, as the case may be,

- (i) has for at least one year immediately prior to the date of application for registration been residing in Alberta with the intention of making his permanent home in Alberta, or
 - (ii) is registered in a capacity corresponding to that of a broker, investment dealer, broker-dealer, security issuer, investment counsel, securities adviser or salesman under the security laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application,
- and is otherwise suitable for registration.

(2) For the purposes of this section a person shall not be deemed to cease to reside in Alberta by reason only of his absence from Alberta as a member of Her Majesty's armed forces. Service in the forces

17. (1) Every registration and renewal of registration lapses on the thirty-first day of December in each year. Termination and renewal of registration

(2) On or before the first day of December in each year, every registered person or company shall make application for renewal of registration and give full particulars of any change in the facts set forth in his or its latest application form on record, and enclose the prescribed fee.

18. (1) Every registered broker, investment dealer and broker-dealer shall, within five days, notify the registrar in writing Change in registration

- (a) of any change in the address for service,
- (b) of any change in the officers or members in the case of a company or partnership, and
- (c) of the commencement and termination of employment of every salesman.

(2) Every registered security issuer shall, within five days, notify the registrar in writing Security issuer

- (a) of any change in the address for service,
- (b) of any change in the officials, and
- (c) of the commencement and termination of employment of every salesman.

(3) Every registered investment counsel and securities adviser shall, within five days, notify the registrar in writing Investment counsel, securities adviser

- (a) of any change in the address for service, and
- (b) of any change in the officers or members in the case of a company or partnership.

(4) Every registered salesman shall, within five days, notify the registrar in writing Salesman

- (a) of any change in his address for service, and
- (b) of every commencement and termination of his employment by a person or company registered for trading in securities under this Act.

Exemption from Registration

Exemption
from regis-
tration as
investment
counsel or
securities
adviser

19. Registration as an investment counsel or securities adviser is not required to be obtained

- (a) by a bank to which the *Bank Act* (Canada) applies or the Industrial Development Bank incorporated under the *Industrial Development Bank Act* (Canada), or a trust company registered under *The Trust Companies Act*, or an insurance company licensed under *The Alberta Insurance Act*, or any officer or employee, in the performance of his duties as such, of Her Majesty in right of Canada or any province or territory of Canada, or of any municipal corporation or public board or commission in Canada,
- (b) by a lawyer, accountant, engineer or teacher whose performance of such services is solely incidental to the practice of his profession,
- (c) by a person or company registered for trading in securities under this Act, or any partner, officer or employee thereof, whose performance of such services is solely incidental to the conduct of the business as such, and who receives no special compensation therefor other than compensation paid or given by a mining, industrial or investment company in respect of any services performed for that company,
- (d) by a publisher of any *bona fide*
 - (i) newspaper,
 - (ii) news magazine, or
 - (iii) business or financial publication that has a general and regular paid circulation and is distributed only to subscribers thereto for value or to purchasers thereof,

who gives advice as an investment counsel or securities adviser only through such publication and has no interest either directly or indirectly in any of the securities upon which the advice is given and receives no commissions or other consideration for giving the advice and who gives the advice as solely incidental to the conduct of his business as a publisher, or
- (e) by such other persons or companies not within the intent of this section as may be designated by the regulations.

Exemption
from regis-
tration re
certain
trades

20. (1) Subject to the regulations, registration is not required in respect of

- (a) a trade in a security taking place at a judicial, executor's, administrator's, guardian's or committee's sale, or at a sale by an authorized trustee or assignee, an interim or official receiver or a custodian under the *Bankruptcy Act* (Canada), a receiver under *The Judicature Act* or a liquidator under *The Companies Act* or the *Winding-up Act* (Canada),

- (b) an isolated trade in a specific security by or on behalf of the owner, for the owner's account, where such trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person whose usual business is trading in securities,
 - (c) a trade where one of the parties
 - (i) is a bank to which the *Bank Act* (Canada) applies, or the Industrial Development Bank incorporated under the *Industrial Bank Act* (Canada), or a trust company registered under *The Trust Companies Act*, or an insurance company licensed under *The Alberta Insurance Act*, or
 - (ii) is an officer or employee, in the performance of his duties as such, of Her Majesty in right of Canada or of any province or territory of Canada, or of any municipal corporation or public board or commission in Canada,
 - (d) a trade by or for the account of a pledgee or mortgagee for the purpose of liquidating a *bona fide* debt by selling or offering for sale or delivering in good faith in the ordinary course of business a security pledged in good faith as security for the debt,
 - (e) a trade in a security that may occasionally be transacted by employees of a person or company registered for trading in securities under this Act where the employees do not usually sell securities to the public and have been temporarily designated by the registrar as "non-trading" employees, either individually or as a class,
 - (f) a trade between a person or company and an underwriter, optionee, sub-underwriter or sub-optionee in securities issued by that person or company and trades in such securities between or among underwriters, optionees, sub-underwriters and sub-optionees,
 - (g) a trade in a security by a person or company acting solely through an agent who is a person or company registered for trading in securities under this Act, or
 - (h) trades in respect of which registration is specifically exempted by the regulations.
- (2) Subject to the regulations, registration is not required to trade in
- (a) securities that are of its own issue and are distributed or issued by a company to the holders of its securities as a stock dividend or other distribution out of earnings or surplus, or securities, whether of its own issue or not, that are distributed or issued by a company to the holders of its securities as incidental to a *bona fide* reorganization or wind-

Exemption
from regis-
tration re
certain
securities

ing up of the company or distribution of its assets for the purpose of winding up its affairs, or the sale by a company to the holders of its securities of additional securities of its own issue, if no commission or other remuneration is paid or given to others in respect of such distribution, issuance or sale, except for ministerial or professional services or services performed by a person or company registered for trading in securities under this Act in connection with a *bona fide* reorganization of the company,

- (b) securities of a company that are exchanged by or on account of that company with another company, or the holders of the securities of the other company, in connection with a consolidation, amalgamation, merger or reorganization of either company,
- (c) securities of or guaranteed by any Government in the British Commonwealth of Nations or any colony or dependency thereof or of, or guaranteed by, the Government of any foreign country or state forming a portion of any foreign country,
- (d) securities in which trust funds may lawfully be invested in Alberta,
- (e) securities secured by mortgage upon real estate or tangible personal property where all of the securities are sold at the one time,
- (f) negotiable promissory notes or commercial paper maturing not more than a year from the date of issue,
- (g) securities evidencing indebtedness due under any contract made pursuant to the provisions of any statute of any province of Canada providing for the acquisition of personal property under conditional sale contracts,
- (h) securities issued by a person or company organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for pecuniary profit where no part of the net earnings thereof enure to the benefit of any security holder,
- (i) securities issued by corporations operated on a co-operative basis and incorporated or registered under the provisions of *The Co-operative Associations Act, 1946*, or *The Alberta Co-operative Rural Credit Act*,
- (j) shares of a credit union within the meaning of *The Credit Union Act*,
- (k) securities traded by a company with its employees where they are not induced to trade by expectation of employment or continued employment,
- (l) securities of a private company issued by the private company where the securities are not offered for sale to the public,

- (m) securities issued and sold by a prospector for the purpose of financing a prospecting expedition,
 - (n) securities issued by a prospecting syndicate where the securities are sold by the prospector or one of the prospectors who staked the claims that belong to or are the subject of a declaration of trust in favour of the prospecting syndicate within the meaning of Part VII, if a prospecting syndicate agreement relating to the prospecting syndicate has been accepted for filing thereunder and if the prospector delivers a copy of the prospecting syndicate agreement to the person purchasing the security before accepting payment therefor,
 - (o) securities of a prospecting syndicate within the meaning of Part VII, issued by the prospecting syndicate where a prospecting syndicate agreement relating to the prospecting syndicate has been accepted for filing under that Part and where the securities are not offered for sale to the public and are sold to not more than twenty persons or companies,
 - (p) securities in respect of which registration is specifically exempted by the regulations.
- (3) Where a person or company has been guilty of acts or conduct that, in the opinion of the commission, would warrant the commission refusing to grant registration to him or it under this Act, the commission may rule that subsections (1) and (2) do not apply to him or it.

21. (1) A person is not required to obtain registration by reason only of trades made by him as a floor trader upon the floor of a stock exchange.

Floor
traders

(2) The registrar may designate as "non-trading" any employee or class of employees of a person or company registered for trading in securities under this Act who do not usually sell securities to the public, but the designation shall be temporary only and may be cancelled as to any employee or class of employees where the registrar is satisfied that any such employee or member of any such class of employees should be required to apply for registration as a salesman.

Non-trading
employees

PART III

FORFEITURE OF BOND

22. (1) Any bond mentioned in section 13 is forfeited and the amount thereof becomes due and owing, by the person or company bound thereby, as a debt to Her Majesty in right of Alberta

Forfeiture
of bond

- (a) when any person or company, or any officer or partner thereof, in respect of whose conduct the bond is conditioned has been convicted of

- (i) an offence under this Act or the regulations,
- (ii) an offence involving fraud or theft or conspiracy to commit an offence involving fraud or theft under the *Criminal Code*, or
- (iii) an offence in connection with a transaction relating to securities under the *Criminal Code*,
- (b) when judgment based on a finding of fraud has been given against any registered person or company, or any officer or partner thereof, in respect of whose conduct the bond is conditioned, or
- (c) when proceedings by or in respect of any registered person or company, or any officer or partner thereof, in respect of whose conduct the bond is conditioned, have been taken under the *Bankruptcy Act* (Canada) or by way of winding up and a receiving order under the *Bankruptcy Act* (Canada) or a winding-up order has been made,

and such conviction, judgment or order has become final by reason of lapse of time or of having been confirmed by the highest court to which an appeal may be taken.

Notice of
cancellation
of bond

(2) A bond may be cancelled by any person bound thereunder by giving to the registrar at least three months' notice in writing of intention to cancel and, subject to subsection (3), it shall be deemed to be cancelled on the date stated in the notice, which date shall be not less than three months after the receipt of the notice by the registrar.

Term of
bond

(3) For the purposes of every act and omission occurring during the period of registration or the period prior to cancellation under subsection (2), every bond continues in force and the collateral security, if any, shall remain on deposit for a period of two years after the lapse or cancellation of the registration to which it relates, or the cancellation of the bond, whichever occurs first.

Sale of
collateral
security

23. Where a bond secured by the deposit of collateral security with the Provincial Treasurer is forfeited under section 22, the Lieutenant Governor in Council may direct the Provincial Treasurer to sell the collateral security at the current market price.

Appointment
of receiver,
custodian,
etc.

24. Where Her Majesty becomes a creditor of any person or company in respect of a debt to the Crown arising from the provisions of section 22, the commission may take such proceedings as it deems fit under the *Bankruptcy Act* (Canada); *The Judicature Act*, *The Companies Act* or the *Winding-up Act* (Canada) for the appointment of an interim receiver, custodian, trustee, receiver or liquidator.

Assignment
of bond

25. The Lieutenant Governor in Council may direct the Provincial Treasurer

- (a) to assign any bond forfeited under section 22 and transfer the collateral security, if any,
- (b) to pay over any moneys recovered under such bond, or

(c) to pay over any moneys realized from the sale of the collateral security under section 23, to any person, or to the clerk of the Supreme Court of Alberta in trust for such persons and companies as may become judgment creditors of the person or company bonded or to any trustee, custodian, interim receiver, receiver or liquidator of such person or company.

26. Where

- (a) a bond has been forfeited under section 22 by reason of a conviction or judgment under clause (a) or (b) of section 22, and
 - (b) the commission has not
 - (i) within two years of the conviction or judgment having become final, or
 - (ii) within two years of the registered person or company in respect of whom the bond was furnished, having ceased to carry on business as such,
- whichever occurs first, received notice in writing of any claim against the proceeds of the bond or of such portion thereof as remains in the possession of the Provincial Treasurer,

the Lieutenant Governor in Council may direct the Provincial Treasurer to pay such proceeds or portion thereof to that person or company or to any person who upon forfeiture of the bond made any payments thereunder, after first deducting the amount of any expenses that have been incurred in connection with any investigation or other matter relating to that person or company.

Powers
where
no claim
filed

PART IV

INVESTIGATION AND ACTION BY COMMISSION

27. (1) Where upon a statement made under oath it appears probable to the commission that any person or company has committed

Order to
investigate

- (a) any criminal, fraudulent, wrongful or improper act,
- (b) any offence against this Act or the regulations,
- (c) any act that might be unfair, oppressive, injurious, inequitable or improper to or discriminate against any holder, prospective holder, purchaser or prospective purchaser of any shares or other securities of the person or company, or to or against any creditor, prospective creditor of that person or company, or other person or company, otherwise beneficially interested in that person or company,
- (d) any act whereby any unfair advantage might be secured by any person or company over any other person or company, or

- (e) any fraud upon the Government of Alberta or any department of the Government of Alberta, or any municipality,

the commission may by order appoint any person to make such investigation as it deems expedient for the due administration of this Act and in the order shall determine and prescribe the scope of the investigation.

Scope of
investigation

(2) For the purposes of an investigation ordered under subsection (1) the person appointed to make the investigation may investigate, inquire into and examine

- (a) the affairs of the person or company in respect of whom the investigation is being made and into any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with that person or company and into any property, assets or things owned, acquired or alienated in whole or in part by that person or company or by any person or company acting on behalf of or as agent for that person or company, and
- (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to, or in connection with any such person or company and into the relationship that might at any time exist or have existed between that person or company and any other person or company by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

Summoning
witnesses

(3) For the purposes of subsections (1) and (2) the person making the investigation has the same power to summon and enforce the attendance of witnesses or persons and compel them to give evidence on oath or otherwise, and to produce documents, records and things as is vested in the Supreme Court of Alberta or a judge thereof for the trial of civil actions, but

- (a) the provisions of rules of court or of law relating to the service of subpoenas upon and to the payment of conduct money or witness fees to witnesses do not apply,
- (b) no person is entitled in respect of any document, record or thing asked for, given or produced, to claim any privilege on the ground that he might be criminated or exposed to a penalty or to civil litigation thereby,
- (c) no person shall refuse to answer any question upon any ground of privilege, but a solicitor shall not be required to disclose any communications between himself and his client, and

- (d) no provision of *The Alberta Evidence Act* exempts any bank or any officer or employee thereof from the operations of this section.
- (4) Where an investigation is ordered under this section the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the person or company whose affairs are being investigated. Seizure of property
- (5) Where an investigation is ordered under this section the commission may appoint an accountant or other expert to examine documents, records, properties and matters of the person or company whose affairs are being investigated. Accountants, other experts
- (6) Where an investigation is ordered under this section
- (a) the failure without reasonable excuse of any person or company to furnish information required by the person making the investigation,
 - (b) the failure without reasonable excuse of any person summoned for examination under subsection (3) to appear or his refusal to give evidence, or to answer any question, or
 - (c) the failure without reasonable excuse or refusal of any person or company to produce any thing where the evidence, answer or production would be required in an action,
- constitutes an offence. Failure to furnish information or appear
- (7) Where an investigation is ordered under this section
- (a) the failure without reasonable excuse of any person or company to furnish information required by the person making the investigation,
 - (b) the failure without reasonable excuse of any person summoned for examination under subsection (3) to appear or his refusal to give evidence, or to answer any question, or
 - (c) the failure without reasonable excuse or refusal of any person or company to produce any thing where the evidence, answer or production would be required in an action,
- is also *prima facie* evidence upon which
- (d) the Attorney General, or his representative, may base an affirmative finding concerning any fraudulent act to which he may deem it relevant,
 - (e) the Supreme Court of Alberta, or a judge thereof, may grant an interim or permanent injunction, or
 - (f) a justice may base a conviction for an offence against this Act or the regulations.
- (8) Every person appointed under subsection (1) or subsection (5) shall report the result of his investigation or examination to the commission. Report of investigation
- 28.** Where upon the report of an investigation made under section 27 it appears to the commission that any person or company may have committed any act or offence or Report to Attorney General

fraud mentioned in subsection (1) of section 27, the commission shall send a full and complete report of the investigation, including the report made to it, any transcript of evidence and any material in the possession of the commission relating thereto, to the Attorney General.

Investigation
under order
of Attorney
General

29. Notwithstanding section 27, the Attorney General may by order appoint any person to make an investigation into any matter relating to a trade in securities, in which case the person so appointed has, for the purposes of the investigation, the same authority, powers, rights and privileges as a person appointed under section 27, and section 27 applies *mutatis mutandis* to the investigation.

Evidence
not to be
disclosed

30. A person shall not, without the consent of the commission, disclose any information or evidence obtained or the name of any witness or person examined or sought to be examined under section 27 or section 29.

Report of
result of
investigation

31. (1) Where an investigation has been made under section 27 the commission may, and where an investigation has been made under section 29 the person making the investigation shall, report the result thereof including the evidence, findings, comments and recommendations, to the Attorney General.

(2) The Attorney General may cause the report to be published in whole or in part in such manner as he deems proper.

Order to
hold funds

32. (1) The commission

(a) where it is about to investigate or during or after the investigation of any person or company under section 27 or section 29,

(b) where it is about to make or has made a direction, decision, order or ruling suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities, or

(c) where

(i) criminal proceedings, or

(ii) proceedings in respect of a violation of this Act or the regulations,

that, in the opinion of the commission, are connected with or arise out of any security or any trade therein or out of any business conducted by a person or company, are about to be or have been instituted against that person or company,

may, in writing or by telegram, direct any person or company having on deposit or under control or for safe-keeping any funds or securities of the person or company referred to in clauses (a), (b) or (c), to hold such funds or securities or direct the person or company referred to in clauses (a), (b) or (c) to refrain from withdrawing any such funds or securities from any other person or company having any of them on deposit, under control or for safe-

keeping or to hold all funds or securities of clients or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Companies Act* or the *Winding-up Act* (Canada), or until the commission in writing revokes the direction or consents to release any particular fund or security from the direction.

(2) Notwithstanding subsection (1)

- (a) no direction given under subsection (1) applies to funds or securities in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states, and
- (b) in the case of a bank, loan or trust company the direction only applies to the offices, branches or agencies thereof named in the direction.

(3) Any person or company in receipt of a direction given under subsection (1), if in doubt as to the application of the direction to any funds or security, or in case of a claim being made thereto by any person or company not named in the direction, may apply to the Supreme Court of Alberta or a judge thereof who may direct the disposition of such funds or security and may make such order as to costs as seems just.

Application
for direc-
tion

(4) In any of the circumstances mentioned in clauses (a), (b) or (c) of subsection (1), the commission may in writing or by telegram notify any registrar of land titles or the mining recorder that proceedings that might affect land or mining claims belonging to the person or company referred to in the notice are being or are about to be taken.

Notice to
registrars
and mining
recorders

(5) The notice given under subsection (4) shall be registered against the lands or mining claims mentioned in the notice and has the same effect as the registration of a certificate of *lis pendens*, except that the commission may in writing revoke or modify the notice.

33. (1) The commission

- (a) where it is about to investigate or during or after the investigation of any person or company under section 27 or section 29,
- (b) where it is about to make or has made a direction, decision, order or ruling suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities, or
- (c) where
 - (i) criminal proceedings, or
 - (ii) proceedings in respect of a violation of this Act or the regulations,
 that, in the opinion of the commission, are connected with or arise out of any security or any trade therein or out of any business conducted by a person or company, are about to be or have been instituted against that person or company,

Application
for appoint-
ment of
receiver,
trustee and
manager

may by originating notice apply to a judge of the Supreme Court of Alberta for the appointment of a receiver, trustee and manager of the property of such person or company.

(2) Where, upon an application made under subsection (1), the court is satisfied that the appointment of a receiver, trustee and manager of the property of any person or company is in the best interests of the creditors of that person or company or of persons or companies any of whose property is in the possession or under the control of that person or company, the court may appoint a receiver, trustee and manager of the property of that person or company.

Ex parte
application

(3) Upon an *ex parte* application made by the commission under this section the court may make an order under subsection (2) appointing a receiver, trustee and manager for a period not exceeding eight days.

Powers of
receiver,
trustee and
manager

(4) When a receiver, trustee and manager of the property of any person or company is appointed under this section,

- (a) he is the receiver, trustee and manager of all the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and
- (b) he has authority, if so directed by the court, to wind up or manage the business and affairs of the person or company and has all the powers necessary or incidental thereto.

Enforce-
ment of
order

(5) An order made under this section may be enforced in the same manner as any other order or judgment of the Supreme Court of Alberta and may be varied or discharged upon an application made by notice.

Rules of
practice
to apply

(6) Upon an application made under this section the rules of practice of the Supreme Court of Alberta apply.

PART V

APPEALS

Notice of
direction,
decision, etc.

34. A notice of every direction, decision, order or ruling of the commission

- (a) granting or refusing to grant registration to or renewing, refusing to renew, suspending, cancelling or changing the registration of any person or company, or
 - (b) regarding trading or the right to trade in securities or any conditions or restrictions relating thereto,
- shall be served upon the applicant or the person or company whose registration is thereby affected and upon such other person or company as in the opinion of the commission is primarily affected by the direction, decision, order or ruling, at the address appearing in the application or upon the records of the commission.

35. Any person or company upon whom a notice is served under section 34 or any other person or company who is primarily affected by any such direction, decision, order or ruling may, by notice in writing served upon the registrar within thirty days after the mailing of the notice, request a hearing and review by the commission of the direction, decision, order or ruling. Review by
commission

36. Where a hearing and review is requested under section 35 the registrar shall serve a notice in writing of the time, place and date thereof to the person or company requesting the hearing and review and to such other person or company as in the opinion of the commission is primarily affected by the hearing. Notice of
hearing

37. Upon the review the commission may hear any evidence that is in the opinion of the commission relevant to the review and that is submitted to it by the person or company requesting the review or by any other person or company. Evidence

38. Upon a review the commission is not bound by legal or technical rules of evidence.

39. Upon a review the commission may by order confirm or revoke the direction, decision, order or ruling under review or may make such alteration therein or addition thereto as a majority of the members of the commission deem proper, and the adjudication of the commission is final. Power on
review

40. A notice of the order made upon every review shall be served forthwith upon the person or company requesting the review and to such other person or company as in the opinion of the commission is primarily affected by such order. Notice of
order on
review

41. An order of the commission under section 39 is final and there is no appeal therefrom but notwithstanding the order the commission has power to make any further direction, decision, order or ruling upon new matter or if there is a material change in the circumstances, and every further direction, decision, order or ruling is subject to sections 34 to 40. Order of
court re
appeal final

PART VI

AUDITS

42. Every registered broker, investment dealer and broker-dealer Annual
financial
statement

(a) shall keep such books and records as are necessary for the proper recording of his or its business transactions and financial affairs,

- (b) shall file with the commission annually and at such other time or times as the commission may require a financial statement that is satisfactory to the commission as to his or its financial position, certified by the broker, investment dealer or broker dealer, or an officer or partner thereof, and reported upon by the auditors of the broker, investment dealer or broker-dealer, and
- (c) shall file with the commission such other information as the commission may require in such form as it may prescribe.

Audit by
commission

43. (1) Notwithstanding anything in section 42, the commission or any person to whom as its representative it may in writing delegate such authority may at any time

- (a) make an examination of the financial affairs of any person or company registered under this Act or any person or company whose securities have been the subject of a filing with the commission, and
- (b) prepare a balance sheet as of the date of the examination and such other statements and reports as may be required by the commission.

Access to
books,
securities,
etc.

(2) The commission or any person making an examination under this section shall have free access to all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person or company whose financial affairs are being examined and no person or company shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination.

Fees

(3) The commission may charge such fees as may be prescribed by the regulations for any examination made under this section.

PART VII

PROSPECTING SYNDICATES AND SECURITIES ISSUED BY A PERSON

Agreements

44. (1) Upon the acceptance for filing of a prospecting syndicate agreement by the commission, the liability of the members of the syndicate or parties to the agreement is limited to the extent provided by the terms of the agreement

- (a) when the sole purpose of the syndicate is the financing of prospecting expeditions, preliminary mining development or the acquisition of mining properties, or any combination thereof,
- (b) when the agreement clearly sets out
 - (i) the purpose of the syndicate,
 - (ii) the particulars of any transaction effected or in contemplation involving the issue of units for a consideration other than cash,

- (iii) the maximum amount that may be charged or taken by any person as commission upon the sale of units in the syndicate but the maximum amount shall not exceed twenty-five per cent of the sale price,
 - (iv) the maximum number of units in the syndicate that may be issued in consideration of the transfer to the syndicate of mining properties, but the maximum number shall not exceed thirty-three and one-third per cent of the total number of units of the syndicate,
 - (v) the location of the head office of the syndicate and that the head office will at all times be maintained in Alberta and that the commission and the unit holders of the syndicate will be notified immediately of any change in the location of the head office,
 - (vi) that any person holding mining properties for the syndicate will execute a declaration of trust in favour of the syndicate with respect to such mining properties,
 - (vii) that after the sale for cash of any issued units of the syndicate, no mining properties will be acquired by the syndicate other than by staking unless such acquisition is approved by a vote of at least two-thirds of the units of the syndicate that have been sold for cash,
 - (viii) that the administrative expenditures of the syndicate, including, in addition to any other items, salaries, office expenses, advertising and commissions paid by the syndicate with respect to the sale of its units, will be limited to one-third of the total amount received by the treasury of the syndicate from the sale of its units,
 - (ix) that a statement of the receipts and disbursements of the syndicate will be furnished to the commission and to each unit holder annually,
 - (x) that ninety per cent of the vendor units of the syndicate will be escrowed units that may be released upon the consent of the commission and that any release of such units will not be in excess of one vendor unit for each unit of the syndicate sold for cash,
 - (xi) that no securities other than those of the syndicate's own issue, or no mining properties owned by the syndicate or held in trust for the syndicate will be disposed of unless the disposal is approved by a vote of at least two-thirds of the issued units of the syndicate other than escrowed units,
- and
- (c) when the agreement limits the capital of the syndicate to a sum not exceeding thirty-five thousand dollars.

Filing of
syndicate
agreement

(2) The commission may in its discretion accept for filing any agreement submitted for filing under this section and shall not be required to determine whether the agreement is in conformity with clauses (a), (b) and (c) of subsection (1).

(3) Where a prospecting syndicate agreement is accepted for filing under this section, the requirements of *The Partnership Act* as to filing do not apply thereto.

Securities
issued by
syndicate

(4) No person or company registered for trading in securities under this Act shall trade in a security issued by a prospecting syndicate either as agent for the prospecting syndicate or as principal.

Securities
issued by
person

(5) No person or company registered for trading in securities under this Act shall trade in a security issued by a person other than a prospecting syndicate, either as agent for that person or as principal

(a) unless written permission, upon such terms as the commission may require, has been obtained from the commission, and

(b) unless information satisfactory to the commission and relating to that person and that security has been accepted for filing by the commission.

PART VIII

TRADING IN SECURITIES OF A MINING COMPANY

Securities
issued by
mining
company

45. (1) No person or company shall trade in any security issued by a mining company either on his or its own account or on behalf of any other person or company where the trade would be in the course of a primary distribution to the public of the security until there has been filed with the commission a prospectus, and a receipt therefor obtained from the registrar.

(2) The prospectus required under subsection (1) shall be dated and signed by every person who is, at the time of filing, a director or promoter of the mining company issuing the security or an underwriter or optionee of the security and shall contain a full, true and plain disclosure relating to the security issued.

(3) The prospectus required under subsection (1) shall also set forth:

(a) the full name of the company and the address of the head office;

(b) the laws under which the company was incorporated and state whether incorporated by certificate of incorporation, letters patent or otherwise and the date thereof, and if supplementary letters patent or a similar authority for variation of the letters patent or otherwise has been issued, shall so state and give the date thereof;

- (c) the officers, directors and promoters and shall give in each case the name in full, present occupation and home address in full;
- (d) the name and address of the auditors;
- (e) the name and address of every registry and transfer agency;
- (f) the particulars of the share capital authorized, issued and paid up, the number and classes of shares and the par value thereof, or if without par value shall so state;
- (g) the particulars in respect of any bonds or debentures outstanding or proposed to be issued;
- (h) the number of shares or other securities held in escrow, the name of the trustee and a summary of the provisions of the escrow agreement including the proposed plan of release from escrow;
- (i) the shares sold for cash to date tabulated under each class of shares showing
 - (i) the number of shares sold, separately listed as to price,
 - (ii) the total cash received for the shares sold, and
 - (iii) the commissions paid on the sale of the shares;
- (j) the particulars of securities sold for cash to date, other than shares, as follows:
 - (i) the securities sold,
 - (ii) the total cash received for the securities sold, and
 - (iii) the commissions paid on the sale of the securities;
- (k) the numbers of shares issued or to be issued or cash paid or to be paid to any promoter and shall give his name and address and show the consideration for the payment;
- (l) particulars as follows:
 - (i) the official designation and location of all properties and show whether owned, leased or held under option or intended to be acquired by the company and give all material facts relating to leases or options,
 - (ii) the names and addresses of all vendors of property purchased or intended to be purchased by the company, and show the consideration paid or intended to be paid to each vendor, and the property acquired from each, and
 - (iii) the names and addresses in full of every person or company who has received or is to receive from any vendor a greater than five per cent interest in the shares or other consideration received or to be received by the vendor;
- (m) the particulars relating to all properties as follows:

- (i) the means of access thereto,
 - (ii) the character, extent and condition of any underground exploration and development and any underground plant and equipment, and if none shall so state,
 - (iii) the character, extent and condition of any surface exploration and development and any surface plant and equipment, and if none shall so state,
 - (iv) the known history of the property, and
 - (v) a description of any work done and improvements made by the present management, and if none shall so state;
- (n) the particulars of the securities, if any, covered by option agreements or underwriting agreements outstanding or proposed to be given and particulars of sub-option agreements or sub-underwriting agreements outstanding or proposed to be given and particulars of any assignments or proposed assignments of any such agreements and the price or prices at which and the date or dates by which the option agreements or underwriting agreements must be exercised, and shall show the name of the optionee and, where the optionee is a company, syndicate or partnership, the names of all persons having more than five per cent interest therein, and the name and address of the person for or on whose behalf the option agreement or underwriting agreement has been entered into;
- (o) the details of future development and exploration plans of the management and shall show how it is proposed to expend the proceeds from current sales of securities;
- (p) where a company has not been incorporated for more than one year prior to the date of the statement, the amount or estimated amount of preliminary expenses, with administrative and development expenses shown separately, including the amount already expended and the estimated future expenditures in each case;
- (q) the amount and general description of any indebtedness that is to be created or assumed and that is not shown in a balance sheet filed with the commission, and also shall show particulars of the security, if any, given or to be given for such indebtedness;
- (r) particulars as follows:
- (i) the principal business in which each director or officer has been engaged during the past three years and the length of time, position held and name of company or firm,
 - (ii) the nature and extent of the interest, direct or indirect, that any director or officer of the

company, whether personally or as a partner in a firm, has ever had in any property acquired or to be acquired by the company, and

- (iii) the aggregate remuneration paid by the company during its last financial year, and estimated to be paid or payable during the current financial year to directors and, separately stated, to officers;
- (s) the particulars of dividends, if any, paid during the last five years;
- (t) the names and addresses of the persons who, by reason of beneficial ownership of securities of the company or any agreement in writing, are in a position or are entitled to elect or cause to be elected a majority of the directors of the company;
- (u) the amount fixed by the commission as the minimum subscription on which the company may proceed to expend money to carry out its objects, but the information required by this clause need not be given if a certificate authorizing the company to expend moneys received from the sale of securities has been obtained from the commission or if the company is an extra-provincial company;
- (v) in the case of companies other than extra-provincial companies, a certification in one of the following forms:

“This company is not authorized to expend moneys received from the sale of securities unless the minimum subscription set forth in this prospectus is subscribed. All moneys received by the company in respect of the minimum subscription, less any amount permitted to be paid as commission on the sale of securities, will be held in trust by the company to be repaid if the minimum subscription is not subscribed.”

or

“A certificate authorizing the company to expend moneys received from the sale of securities was issued to the company by the commission on the day of 19 .

(The date must be stated)”,

which shall be signed by the directors and promoters of the company,

- (w) any other material facts not disclosed in the foregoing;
- (x) a certification in the following form:

“The foregoing constitutes full, true and plain disclosure of all material facts in respect of the offering of securities referred to above as required by section 45 of *The Securities Act, 1955*, and there is no further material information applicable other than in the financial statements or reports where required.”,

which shall be signed by the directors and promoters of the company; and

(y) a certification in the following form:

"To the best of my knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts in respect of the offering of securities referred to above as required by section 45 of *The Securities Act, 1955*, and there is no further material information applicable other than in the financial statements or reports where required. In respect of matters which are not within my knowledge I have relied upon the accuracy and adequacy of the foregoing.",

which shall be signed by the underwriters and optionees.

Report on
mining
companies

46. (1) A full and up to date report on the property of the mining company and the development thereof shall accompany the prospectus required under section 45.

(2) The report shall be made by a person who in the opinion of the commission is a qualified mining engineer, geologist or prospector, shall be certified by the mining engineer, geologist or prospector and shall set forth

- (a) his address and occupation,
- (b) his qualifications,
- (c) any interest that he may have either directly or indirectly or that he may expect to receive either directly or indirectly in the property or securities,
- (d) whether or not the report is based on personal examination,
- (e) the date of any such examination, and
- (f) where not personally examined, the source of the information contained in the report.

Notice of
primary
distribution

47. No person or company shall engage in the primary distribution to the public of a security mentioned in section 45 until the person or company has notified the commission in writing of his or its intention to engage in such primary distribution to the public.

Signing of
prospectus

48. Any director, promoter, underwriter or optionee may sign a prospectus required under section 45 by his agent thereunto in writing lawfully authorized and where the commission is satisfied upon evidence presented to it that any director is for adequate cause not available to sign any such prospectus the commission may dispense with the requirement for his signature.

Responsi-
bility of
underwriters
and
optionees

49. Every underwriter and optionee is entitled to rely upon the accuracy and adequacy of the disclosure made in any prospectus filed under section 45 except as regards any matters that are within the knowledge of the underwriter or optionee.

50. (1) Financial statements of a mining company in a form acceptable to the commission or, if the company has any subsidiaries and unless the commission otherwise directs, consolidated financial statements of the company and all its subsidiaries in a form acceptable to the commission, as at the end of the last completed financial year of the company or as at a date not more than one hundred and twenty days before the date of the prospectus under section 45, whichever is the later date, or as at such other date as the commission may approve, shall accompany the prospectus required under section 45. Report by
auditors

(2) The financial statements or consolidated financial statements, as the case may be, shall contain

(a) a balance sheet

- (i) on which the shares of capital stock, issued in payment of properties, claims or leases and the values at which such shares were issued shall be shown separately from the shares issued for cash or other consideration,
- (ii) which shall be supported by analyses of deferred charges where such deferred charges are significant,
- (iii) which shall be approved by two directors of the company, and
- (iv) which shall be accompanied by a report of the auditors of the company, who shall be persons acceptable to the commission, containing a reasonably comprehensive statement as to the examination made and stating whether, in their opinion, the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the affairs of the company or of the company and its subsidiaries, as the case may be, and as shown by the books of the company or of the company and such of its subsidiaries as are consolidated in the balance sheet,

and

- (b) if profits have been earned or losses sustained, a statement with respect to net profits and the nature and source thereof, or net losses, as the case may be,
 - (i) in respect of the last three completed financial years, year by year, and any part of a subsequent financial year that is included in the balance sheet, and for such additional periods, not exceeding seven years, as the commission may require where, in the opinion of the commission, such further disclosure is desirable, or
 - (ii) if the company has been carrying on business for less than three years, then for such time as the company has been carrying on business, which shall be accompanied by a report of the auditors of the company stating whether, in their

opinion, the statement fairly represents the earnings for the periods.

(3) Where before the date of the prospectus under section 45 a mining company that has been carrying on business for less than three years acquired either directly or by ownership or otherwise control of a business that has been carried on for a period longer than the business of the mining company, the requirements of clause (b) of subsection (2) apply as if the company had been carrying on business for the same period as the business of which it has acquired control.

(4) If the proceeds or any part of the proceeds of the securities offered in the prospectus required under section 45 are or is to be applied directly or indirectly in the purchase of a business, the requirements of clause (b) of subsection (2) apply to the net profits or net losses, as the case may be, of both the company and the business.

Corrections

51. Where, during the period of primary distribution to the public, there occurs in any material fact contained in any prospectus, financial statement or report accepted for filing under this Part a change of such nature as to render the prospectus, financial statement or report misleading, an amended prospectus, financial statement or report shall be filed within twenty days from the date the change occurs but, subject to any direction of the commission, the amended prospectus shall be required to be signed only by the signatories to the original prospectus and where any change in directors, promoters, underwriters or optionees has occurred since the filing of the original prospectus the decision of the commission as to who must sign the amended prospectus or as to any like matter is final.

New prospectus

52. Where primary distribution to the public of a security mentioned in section 45 is still in progress twelve months from the date of the last prospectus accepted for filing under section 45, a new prospectus as required under section 45 together with the report required under section 46 and the financial statements required under section 50 shall be filed with the commission within twenty days from the expiration of such twelve-month period.

PART IX

TRADING IN SECURITIES OF AN INDUSTRIAL COMPANY

Securities issued by industrial company

53. (1) No person or company shall trade in any security issued by an industrial company either on his or its own account or on behalf of any other person or company where such trade would be in the course of a primary

distribution to the public of such security until there has been filed with the commission a prospectus, and a receipt therefor obtained from the registrar.

(2) The prospectus required under subsection (1) shall be dated and signed by every person who is, at the time of filing, a director or promoter of the industrial company issuing the security or an underwriter or optionee of such security, and shall contain a full, true and plain disclosure relating to the security issued.

(3) The prospectus required under subsection (1) shall set forth:

- (a) the full name of the company and the address of the head office;
- (b) the laws under which the company was incorporated and state whether incorporated by certificate of incorporation, letters patent or otherwise and the date thereof, and if supplementary letters patent or a similar authority for variation of the letters patent or otherwise has been issued, shall so state and show the date thereof;
- (c) the general nature of the business actually transacted or to be transacted;
- (d) the officers and directors and shall give in each case the name in full, present occupation and home address in full;
- (e) the name and address of the auditors;
- (f) the name and address of every registry and transfer agency;
- (g) the particulars of the share capital authorized, issued and paid up, the number and classes of shares and the par value thereof, or if without par value shall so state;
- (h) where shares are offered, a description of respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits or capital of each class of shares, including redemption rights, and rights on liquidation or distribution of capital assets, but it is not necessary to set out such description in respect of any class of shares that will be wholly redeemed or cancelled prior to, contemporaneously with or out of the proceeds of the issue of the shares offered nor any provisions that relate to any shares and that will have ceased to be effective prior to or contemporaneously with the issue of the shares offered;
- (i) the particulars in respect of
 - (i) any bonds or debentures outstanding or proposed to be issued, and
 - (ii) any other securities issued or proposed to be issued,
 that if issued, will rank ahead of or *pari passu* with the securities offered;

- be defrayed in whole or in part out of the proceeds of the issue,
- (ii) any preliminary expenses payable by the company,
- (iii) any commission payable by the company to any person in consideration of his agreeing to subscribe for or procuring or agreeing to procure subscriptions for any shares in the company,
- (iv) the repayment of any moneys borrowed by the company in respect of the foregoing matters, and
- (v) the repayment of bank loans, if any;
- (p) the particulars showing
 - (i) the date of and the parties to the agreement, if any, with an underwriter in respect of the securities offered, and
 - (ii) the remuneration of or price payable by the underwriter for the securities offered;
- (q) any provisions of the by-laws as to the remuneration of the directors;
- (r) when the financial year of the company ended at least three months before the offer of securities, the aggregate remuneration paid by the company during its last financial year
 - (i) to directors of the company, and
 - (ii) separately stated, to officers of the company, who individually have received remuneration in excess of ten thousand dollars per annum;
- (s) the aggregate remuneration estimated to be paid or payable by the company during its current financial year
 - (i) to directors of the company, and
 - (ii) separately stated, to officers of the company, who individually are entitled or may be entitled to receive remuneration in excess of ten thousand dollars per annum during the current financial year, but if the aggregate remuneration is not capable of approximate estimation then the basis of determining the remuneration to be paid by the company during its current financial year shall be shown;
- (t) the amount, if any, paid within the two preceding years or payable as a commission by the company
 - for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in or obligations of the company, or the rate of any such commission;
- (u) in the case of a company that has not been carrying on business for more than one year the amount or estimated amount of the preliminary expenses;
- (v) the particulars of any property purchased or acquired by the company, or proposed to be purchased or acquired,

- (j) the amount and general description of any substantial indebtedness that is to be created or assumed and that is not shown in the balance sheet filed with the commission and shall set forth also particulars of the security, if any, given or to be given for such indebtedness;
- (k) the particulars of the securities, if any, covered by options outstanding or proposed to be given by the company and the price or prices at which and the date or dates by which the options must be exercised, and shall show the name of the original grantee of the option and when the original grantee is a company, syndicate or partnership, the names of all persons having more than five per cent interest therein, but where options are evidenced by instruments in bearer or transferable form capable of being freely bought and sold, then to the extent that the options have been or are to be made available to a class of holders of securities of the company, or have been or are to be offered in the course of a primary distribution to the public it is not necessary to disclose the names of the grantees except where the grantee is an underwriter;
- (l) the number of securities of each class offered, which in the case of obligations shall bear an appropriate and correct descriptive title, and the issue price and the terms thereof and, in the case of a second or subsequent offer of securities, the amount offered for subscription on each previous offer within the two preceding years and the amount actually issued and the amount paid up thereon, and shall specify the amounts received in cash or other consideration respectively and the commission, if any, paid or payable;
- (m) the estimated net proceeds to be derived from the securities offered on the basis of the securities being fully taken up and paid for;
- (n) the specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the securities offered are to supply funds and, if the funds are to be raised in part from other sources, the amount thereof and the sources thereof shall be stated, and particulars of any provision made for the holding in trust of the proceeds of the issue of the securities offered pending or subject to the fulfilment of any conditions;
- (o) where shares are offered by the company or an underwriter, the minimum amount, if any, that in the opinion of the directors must be raised by the issue of those shares in order to provide the sums, or if any part thereof is to be defrayed in any other manner the balance of the sum, required to be provided for the following matters:
 - (i) the purchase price of any property purchased or to be purchased if the purchase price is to

- (i) the purchase price of which is to be defrayed in whole or in part out of the proceeds of the issue or has been paid within the last two preceding years or is to be paid in whole or in part in securities of the company, or
- (ii) the purchase or acquisition of which has not been completed at the date of the statement, and shall set forth the nature of the title or interest therein acquired or to be acquired by the company, but this clause does not apply to transactions entered into in the ordinary course of operations or on the general credit of the company;
- (w) the names and addresses of the vendors of any property under clause (v) and the amount, specifying separately the amount, if any, for goodwill, paid or payable in cash or securities of the company to the vendors for the property and where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor, but
 - (i) where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors, and
 - (ii) where the property consists of securities of any other company purchased or acquired or proposed to be purchased or acquired by the company on substantially similar terms from more than twenty-five separate vendors it is sufficient to state the nature and terms of the transaction with particulars of the name and address of each person who is the vendor of securities aggregating more than ten per cent of the total amount of the securities so purchased or acquired or proposed to be purchased or acquired;
- (x) the number and amount of securities that, within the two preceding years, have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash and in the latter case the extent to which they are so paid up, and in either case the consideration for which those securities have been issued or are proposed or intended to be issued;
- (y) where obligations are offered, particulars of the security, if any, that has been or will be created for such obligations, and shall specify the property, if any, comprised or to be comprised in the security and the nature of the title to the property, and, if more than twenty-five per cent in value of the property consists or is to consist of shares or obligations, shall show particulars of the rights, if any, of the company to substitute other shares or obligations;
- (z) the particulars of any services that are rendered or to be rendered to the company and to be paid for by the company wholly or partly out of the proceeds

of the securities offered or that have been paid for within the last two preceding years or are to be paid for by securities of the company exclusive of commissions disclosed under clause (o), amount included under clause (t) and amount included under clause (x),

- (a1) the amount paid within the two preceding years or intended to be paid to any promoter and shall give his name and address and the consideration for such payment;
- (b1) the dates of and the parties to and the general nature of every material contract entered into within the two preceding years, and a reasonable time and place at which any such material contract or a copy thereof may be inspected, but this requirement does not apply to a contract entered into in the ordinary course of business carried on or intended to be carried on by the company;
- (c1) full particulars of the nature and extent of the interest, if any, of every director in the promotion of the company or in any property acquired by the company within the preceding two years or proposed to be acquired by the company or, where the interest of such director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or securities or otherwise by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company, but this clause does not apply in the case of a statement issued more than one year after the date at which the company commenced business, except as to the particulars relating to property proposed to be acquired by the company;
- (d1) in the case of a company that has been carrying on business for less than three years, the length of time during which the business of the company has been carried on, and, if the company has acquired or proposes to acquire, either by direct acquisition or indirectly by ownership of shares or otherwise, a business that has been carried on for less than three years, also the length of time during which such business has been carried on,
- (e1) where shares are offered, the names and addresses of the persons, if known, who, by reason of beneficial ownership of securities of the company or any agreement in writing, are in a position to, or are entitled to, elect or cause to be elected a majority of the directors of the company;
- (f1) where any securities of the company of the same class as those offered are held in escrow,
 - (i) particulars of the number and description of the securities held in escrow,

- (ii) the name of the depositary, and
- (iii) the date, if any, on which the securities are to be released from escrow or the conditions, if any, governing the release of the securities from escrow;
- (g1) where shares are offered, particulars of dividends, if any, paid during the five years preceding the date of the statement;
- (h1) the amount fixed by the commission as the minimum subscription on which the company may proceed to expend money to carry out its objects, but the information required by this clause need not be given if a certificate authorizing the company to expend moneys received from the sale of securities has been obtained from the commission or if the company is an extra-provincial company;
- (i1) in case of companies other than extra-provincial companies, a certification in one of the following forms:

"This company is not authorized to expend moneys received from the sale of securities unless the minimum subscription set forth in this prospectus is subscribed. All moneys received by the company in respect of the minimum subscription, less any amount permitted to be paid as commission on the sale of securities, will be held in trust by the company to be repaid if the minimum subscription is not subscribed."

or

"A certificate authorizing the company to expend moneys received from the sale of securities was issued to the company by the commission on the
day of 19 .

(The date must be stated)",

which shall be signed by the directors and promoters of the company;

- (j1) any other material facts not disclosed in the foregoing;
- (k1) a certification in the following form:
"The foregoing constitutes full, true and plain disclosure of all material facts in respect of the offering of securities referred to above as required by Part IX of *The Securities Act, 1955*, and there is no further material information applicable other than in the financial statements or reports where required.",
which shall be signed by the directors and promoters of the company; and
- (l1) a certification in the following form:
"To the best of my knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts in respect of the offering of securities referred to above as required

by Part IX of *The Securities Act, 1955*, and there is no further material information applicable other than in the financial statements or reports where required. In respect of matters which are not within my knowledge I have relied upon the accuracy and adequacy of the foregoing.", which shall be signed by the underwriters and optionees.

54. No person or company shall engage in the primary distribution to the public of a security mentioned in section 53 until such person or company has notified the commission in writing of his or its intention to engage in such primary distribution to the public.

Notice of
primary
distribution

55. Any director, promoter, underwriter or optionee may sign a prospectus required under section 53 by his agent thereunto in writing lawfully authorized and where the commission is satisfied upon evidence presented to it that any director is for adequate cause not available to sign any such prospectus the commission may dispense with the requirement for his signature.

Signing of
prospectus

56. Every underwriter and optionee is entitled to rely upon the accuracy and adequacy of the disclosure made in any prospectus filed under section 53 except as regards any matters that are within the knowledge of the underwriter or optionee.

Responsi-
bility of
underwriter,
optionee

57. (1) Financial statements of an industrial company in a form acceptable to the commission or, if the company has any subsidiaries and unless the commission otherwise directs, consolidated financial statements of the company and all its subsidiaries in a form acceptable to the commission, as at the end of the last completed financial year of the company or as at a date not more than one hundred and twenty days prior to the date of the prospectus under section 53, whichever is the later date, or as at such other date as the commission may approve, shall accompany the prospectus required under section 53.

Report by
auditors

(2) The financial statements or consolidated financial statements, as the case may be, shall contain

(a) a balance sheet which shall be

- (i) approved by two directors of the company, and
- (ii) accompanied by a report of the auditors of the company, who shall be persons acceptable to the commission, containing a reasonably comprehensive statement as to the examination made and stating whether, in their opinion, the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the affairs of the company or of the company and its subsidiaries, as the case may be,

and as shown by the books of the company or of the company and such of its subsidiaries as are consolidated in the balance sheet,

and

- (b) a statement with respect to net profits and the nature and source thereof, or net losses, as the case may be,
 - (i) in respect of the last three completed financial years, year by year, and any part of a subsequent financial year that is included in the balance sheet, and for such additional periods, but not exceeding seven years, as the commission may require, where, in the opinion of the commission, such further disclosure is desirable, or
 - (ii) if the company has been carrying on business for less than three years, then for such time as the company has been carrying on business, which shall be accompanied by a report of the auditors of the company stating whether, in their opinion, the statement fairly presents the earnings for the periods.

(3) Where, before the date of the prospectus under section 53, an industrial company that has been carrying on business for less than three years acquired, either directly or by ownership of shares or otherwise, control of a business that has been carried on for a period longer than the business of the industrial company, the requirements of clause (b) of subsection (2) apply as if the company had been carrying on business for the same period as the business of which it has acquired control.

(4) If the proceeds or any part of the proceeds of the securities offered in the prospectus required under section 53 are or is to be applied directly or indirectly in the purchase of a business, the requirements of clause (b) of subsection (2) apply to the net profits or net losses, as the case may be, of both the company and the business.

Pro forma
balance
sheet

58. A *pro forma* balance sheet of an industrial company in a form acceptable to the commission, or if the company has any subsidiaries and unless the commission otherwise directs, a *pro forma* consolidated balance sheet of the company and all its subsidiaries in a form acceptable to the commission

- (a) approved by two directors of the company and reported upon by the auditors of the company, as at the same date as the financial statements required under section 57 or, if no financial statements are required under section 57, as at a date acceptable to the commission, and
- (b) purporting to give effect to the sale, issue or redemption of securities issued or to be issued by the company,

may, where the commission so requires or permits, accompany the prospectus required under section 53 or the finan-

cial statements required under section 57, as the case may be, if the preface to the *pro forma* balance sheet gives a plain and full disclosure of the assumptions upon which the *pro forma* balance sheet is based.

59. Where, during the period of primary distribution to the public, there occurs in any material contained in any prospectus, financial statement or report accepted for filing under this Part, a change of such a nature as to render the prospectus, financial statement or report misleading, an amended prospectus, financial statement or report shall be filed within twenty days from the date the change occurs but, subject to any direction of the commission, the amended prospectus shall be required to be signed only by the signatories to the original prospectus and where any change in directors, promoters, underwriters or optionees has occurred since the filing of the original prospectus the decision of the commission as to who must sign the amended prospectus or as to any like matter is final. Corrections

60. Where primary distribution to the public of a security mentioned in section 53 is still in progress twelve months from the date of the last prospectus accepted for filing under section 53, a new prospectus as required under section 53 together with the financial statements required under section 57 shall be filed with the commission within twenty days from the expiration of such twelve-month period. New prospectus

PART X

TRADING IN SECURITIES OF AN INVESTMENT COMPANY

61. (1) No person or company shall trade in any security issued by an investment company either on his or its own account or on behalf of any other person or company where such trade would be in the course of a primary distribution to the public of such security until there has been filed with the commission a prospectus, and a receipt therefor obtained from the registrar. Securities issued by investment company

(2) The prospectus required under subsection (1) shall be dated and signed by every person who is, at the time of filing, a director or promoter of the investment company issuing the security or an underwriter or optionee of such security, and shall contain a full, true and plain disclosure relating to the security issued.

(3) The prospectus required under subsection (1) shall set forth:

- (a) the full name of the company and the address of the head office;
- (b) the laws under which the company was incorporated and state whether incorporated by certificate of incorporation, letters patent or otherwise and the

date thereof, and if supplementary letters patent or a similar authority for variation of the letters patent or otherwise has been issued, shall so state and show the date thereof;

- (c) the general nature of the business actually transacted or to be transacted and shall give full particulars of investment powers and duties;
- (d) the officers and directors and shall give in each case the name in full, present occupation and home address in full;
- (e) the names and home addresses in full of the persons constituting any investment advisory committee or similar body together with a concise statement of powers and duties, and shall give the business experience of such persons for the preceding five years, and where such persons are officers or directors of other companies, shall so state and give the names of such companies;
- (f) the name and address of the auditors;
- (g) the name and address of every registry and transfer agency;
- (h) the particulars of the share capital authorized, issued and paid up, the number and classes of shares and the par value thereof, or if without par value shall so state;
- (i) where shares are offered, a description of respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits or capital of each class of shares, including redemption rights, and rights on liquidation or distribution of capital assets, but it is not necessary to set out such description in respect of any class of shares that will be wholly redeemed or cancelled prior to, contemporaneously with or out of the proceeds of the issue of the shares offered nor any provisions that relate to any shares and will have ceased to be effective prior to or contemporaneously with the issue of the shares offered;
- (j) the particulars in respect of
 - (i) any bonds, or debentures outstanding or proposed to be issued, and
 - (ii) any other securities issued or proposed to be issued,
 that if issued will rank ahead of or *pari passu* with the securities offered;
- (k) the names and addresses in full of any trustees and the particulars of any trustee agreements where assets are held to protect the liability to the public in respect of securities sold to the public and if this clause is not applicable shall so state;
- (l) the amount and general description of any substantial indebtedness that is to be created or assumed,

and that is not shown in the balance sheet filed with the commission and shall set forth also particulars of the security, if any, given or to be given for such indebtedness;

- (m) the particulars of the securities, if any, covered by options outstanding or proposed to be given by the company and the price or prices at which and the date or dates by which the options must be exercised, and shall show the name of the original grantee of the option and when the original grantee is a company, syndicate or partnership, the names of all persons having more than five per cent interest therein, but where options are evidenced by instruments in bearer or transferable form capable of being freely bought and sold, then to the extent that the options have been or are to be made available to a class of holders of securities of the company, or have been or are to be offered in the course of a primary distribution to the public it is not necessary to disclose the names of the grantees except where the grantee is an underwriter;
- (n) a brief description of the method by which the securities offered will be sold to the public;
- (o) the number of securities of each class offered, which in the case of obligations shall bear an appropriate and correct descriptive title, and the issue price and the terms thereof and in the case of a second or subsequent offer of securities the amount offered for subscription on each previous offer within the two preceding years and the amount actually issued and the amount paid up thereon, and shall specify the amounts received in cash or other consideration respectively and the commission, if any, paid or payable;
- (p) the estimated net proceeds to be derived from the securities offered on the basis of such securities being fully taken up and paid for;
- (q) the specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the securities offered are to supply funds and if the funds are to be raised in part from other sources the amount thereof and the sources thereof shall be stated, and particulars of any provision made for the holding in trust of the proceeds of the issue of the securities offered pending or subject to the fulfilment of any conditions;
- (r) where shares are offered by the company or an underwriter, the minimum amount, if any, that in the opinion of the directors must be raised by the issue of those shares in order to provide the sums, or if any part thereof is to be defrayed in any other manner the balance of the sum, required to be provided for the following matters:

- (i) the purchase price of any property purchased or to be purchased if the purchase price is to be defrayed in whole or in part out of the proceeds of the issue,
- (ii) any preliminary expenses payable by the company,
- (iii) any commission payable by the company to any person in consideration of his agreeing to subscribe for or procuring or agreeing to procure subscriptions for any shares in the company,
- (iv) the repayment of any moneys borrowed by the company in respect of the foregoing matters, and
- (v) the repayment of bank loans, if any;
- (s) the particulars showing
 - (i) the date of and the parties to the agreement, if any, with an underwriter in respect of the securities offered, and
 - (ii) the remuneration of or price payable by the underwriter for the securities offered;
- (t) any provisions of the by-laws as to the remuneration of the directors and of the persons constituting the investment advisory committee or similar body, if any;
- (u) when the financial year of the company ended at least three months before the offer of securities, the aggregate remuneration paid by the company during its last financial year
 - (i) to directors of the company, and
 - (ii) separately stated, to officers of the company, who individually have received remuneration in excess of ten thousand dollars per annum;
- (v) the aggregate remuneration estimated to be paid or payable by the company during its current financial year
 - (i) to directors of the company, and
 - (ii) separately stated, to officers of the company, who individually are entitled or may be entitled to receive remuneration in excess of ten thousand dollars per annum during the current financial year, but if the aggregate remuneration is not capable of approximate estimation then the basis of determining the remuneration to be paid by the company during its current financial year shall be shown;
- (w) the amount, if any, paid within the two preceding years or payable as a commission by the company for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any securities of the company, or the rate of any such commission;

- (x) in the case of a company that has not been carrying on business for more than one year the amount or estimated amount of the preliminary expenses;
- (y) the particulars of any property purchased or acquired by the company, or proposed to be purchased or acquired,
 - (i) the purchase price of which is to be defrayed in whole or in part out of the proceeds of the issue or has been paid within the last two preceding years or is to be paid in whole or in part in securities of the company, or
 - (ii) the purchase or acquisition of which has not been completed at the date of the statement, and shall set forth the nature of the title or interest therein acquired or to be acquired by the company, but this clause does not apply to transactions entered into in the ordinary course of operations or on the general credit of the company;
- (z) the names and addresses of the vendors of any property under clause (y) and the amount, specifying separately the amount, if any, for goodwill, paid or payable in cash or securities of the company to the vendors for the property and where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor, but
 - (i) where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors, and
 - (ii) where the property consists of securities of any other company purchased or acquired or proposed to be purchased or acquired by the company on substantially similar terms from more than twenty-five separate vendors it is sufficient to state the nature and terms of the transaction with particulars of the name and address of each person who is the vendor of securities aggregating more than ten per cent of the total amount of the securities so purchased or acquired or proposed to be purchased or acquired;
- (a1) the number and amount of securities that, within the two preceding years, have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash and in the latter case the extent to which they are so paid up, and in either case the consideration for which those securities have been issued or are proposed or intended to be issued;
- (b1) where obligations are offered, particulars of the security, if any, that has been or will be created for such obligations, and shall specify the property, if any, comprised or to be comprised in the security and the nature of the title to the property and, if more than twenty-five per cent in value of the

property consists or is to consist of shares or obligations, shall show particulars of the rights, if any, of the company to substitute other shares or obligations;

- (c1) the particulars of any services that are rendered or to be rendered to the company and to be paid for by the company wholly or partly out of the proceeds of the securities offered or that have been paid for within the last two preceding years, or are to be paid for, by securities of the company exclusive of commissions disclosed under clause (r), amount included under clause (w) and amount included under clause (a1) ;
- (d1) the amount paid within the two preceding years or intended to be paid to any promoter and shall give his name and address and the consideration for such payment;
- (e1) the dates of and the parties to and the general nature of every material contract entered into within the two preceding years, and a reasonable time and place at which any such material contract or a copy thereof may be inspected, but this requirement does not apply to a contract entered into in the ordinary course of business carried on or intended to be carried on by the company;
- (f1) full particulars of the nature and extent of the interest, if any, of every director in the promotion of the company, or in any property acquired by the company within the preceding two years or proposed to be acquired by the company or, where the interest of such director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or securities or otherwise by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company, but this clause does not apply in the case of a statement issued more than one year after the date at which the company commenced business, except as to the particulars relating to property proposed to be acquired by the company;
- (g1) in the case of a company that has been carrying on business for less than three years, the length of time during which the business of the company has been carried on, and, if the company has acquired or proposes to acquire, either by direct acquisition or indirectly by ownership of shares or otherwise, a business that has been carried on for less than three years, also the length of time during which such business has been carried on;
- (h1) where shares are offered, the names and addresses of the persons, if known, who, by reason of beneficial

ownership of securities of the company or any agreement in writing, are in a position to, or are entitled to, elect or cause to be elected a majority of the directors of the company;

- (i1) the particulars of dividends, if any, paid during the five years preceding the date of the statement;
- (j1) the amount fixed by the commission as the minimum subscription on which the company may proceed to expend money to carry out its objects, but the information required by this clause need not be given if a certificate authorizing the company to expend moneys received from the sale of securities has been obtained from the commission or if the company is an extra-provincial company;
- (k1) in the case of companies other than extra-provincial companies, a certification in one of the following forms:

“This company is not authorized to expend moneys received from the sale of securities unless the minimum subscription set forth in this prospectus is subscribed. All moneys received by the company in respect of the minimum subscription, less any amount permitted to be paid as commission on the sale of securities, will be held in trust by the company to be repaid if the minimum subscription is not subscribed.”

or

“A certificate authorizing the company to expend moneys received from the sale of securities was issued to the company by the commission on the
day of 19 .

(The date must be stated.)”,

which shall be signed by the directors and promoters of the company;

- (l1) any other material facts not disclosed in the foregoing;
- (m1) a certification in the following form:
“The foregoing constitutes full, true and plain disclosure of all material facts in respect of the offering of securities referred to above as required by Part X of *The Securities Act, 1955*, and there is no further material information applicable other than in the financial statements or reports where required.”,
which shall be signed by the directors and promoters of the company, and

- (n1) a certification in the following form:
“To the best of my knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts in respect of the offering of securities referred to above as required by Part X of *The Securities Act, 1955*, and there is no further material information applicable other

than in the financial statements or reports where required. In respect of matters which are not within my knowledge I have relied upon the accuracy and adequacy of the foregoing.", which shall be signed by the underwriters and optionees.

Notice of
primary
distribution

62. No person or company shall engage in the primary distribution to the public of a security mentioned in section 61 until such person or company has notified the commission in writing of his or its intention to engage in such primary distribution to the public.

Signing of
prospectus

63. Any director, promoter, underwriter or optionee may sign a prospectus required under section 61 by his agent thereunto in writing lawfully authorized and where the commission is satisfied upon evidence presented to it that any director is for adequate cause not available to sign any such prospectus the commission may dispense with the requirement for his signature.

Responsi-
bility of
underwriter,
optionee

64. Every underwriter and optionee is entitled to rely upon the accuracy and adequacy of the disclosure made in any prospectus filed under section 61 except as regards any matters that are within the knowledge of the underwriter or optionee.

Report by
auditors

65. (1) Financial statements of an investment company in a form acceptable to the commission or, if the company has any subsidiaries and unless the commission otherwise directs, consolidated financial statements of the company and all its subsidiaries in a form acceptable to the commission, as at the end of the last completed financial year of the company or as at a date not more than one hundred and twenty days prior to the date of the prospectus under section 61, whichever is the later date, or as at such other date as the commission may approve, shall accompany the prospectus required under section 61.

(2) The financial statements or consolidated financial statements, as the case may be, shall contain

(a) a balance sheet which shall be

- (i) approved by two directors of the company, and
- (ii) accompanied by a report of the auditors of the company, who shall be persons acceptable to the commission, containing a reasonably comprehensive statement as to the examination made and state whether, in their opinion, the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the affairs of the company or of the company and its subsidiaries, as the case may be, and as shown by the books of the company or of the company and such of its subsidiaries as are consolidated in the balance sheet,

- (b) a statement with respect to the portfolio of investments of the company or the company and all its subsidiaries, as the case may be, as at the date of the balance sheet,
 - (i) which shall be drawn up so as to distinguish separately at least the following classes of investments, and show as to each class, the aggregate value at which such investments are carried on the books of the company or the company and all its subsidiaries, as the case may be, with the basis thereof and the aggregate market value, where market values are obtainable,
 - (A) direct and guaranteed securities of the Government of Canada,
 - (B) direct and guaranteed securities of the Government of any province in Canada,
 - (C) securities of any municipal corporation in Canada,
 - (D) securities of or guaranteed by any Government in the British Commonwealth of Nations or any colony or dependency thereof,
 - (E) securities of or guaranteed by the Government of any foreign country or state forming a portion of any foreign country,
 - (F) mortgages and agreements for sale, and
 - (G) other securities, listing each issue separately, and show for each issue, where applicable, the quantity held, principal amount, maturity date, interest or dividend rate, cost, the valuation on the books with the basis thereof and the market value where the market value is obtainable,

but one group of investments not exceeding ten per cent of the aggregate value at which all investments in the portfolio are carried on the books of the company or the company and all its subsidiaries, as the case may be, may be listed in one amount as miscellaneous securities, and
 - (ii) which shall be reported upon by the auditors of the company, who shall state whether, in their opinion, the statement fairly presents the information it purports to show,
- (c) a statement with respect to net profits and the nature and source thereof, or net losses, as the case may be,
 - (i) in respect of the last three completed financial years, year by year, and any part of a subsequent financial year that is included in the balance sheet, and for such additional periods,

but not exceeding seven years, as the commission may require, where, in the opinion of the commission, such further disclosure is desirable,

or

- (ii) if the company has been carrying on business for less than three years, then for such time as the company has been carrying on business, which shall be accompanied by a report of the auditors of the company stating whether, in their opinion, the statement fairly presents the earnings for the periods,
- (d) statements of surplus and profit and loss of the company or of the company and all its subsidiaries, as the case may be, pertaining to the last completed financial year and any part of a financial year included in the balance sheet, and
- (e) in the case of an investment company that issues investment certificates, investment contracts, savings certificates, savings contracts, or securities of a similar type, a report by the auditors of the company with respect to the adequacy of the recorded liabilities of the company to the holders of such securities.

(3) Where, before the date of the prospectus under section 61, an investment company that has been carrying on business for less than three years acquired, either directly or by ownership of shares or otherwise, control of a business that has been carried on for a period longer than the business of the investment company, the requirements of clause (c) of subsection (2) apply as if the company had been carrying on business for the same period as the business of which it has acquired control.

(4) If the proceeds or any part of the proceeds of the securities offered in the prospectus required under section 61 are or is to be applied directly or indirectly in the purchase of a business, the requirements of clause (c) of subsection (2) apply to the net profit or net losses, as the case may be, of both the company and the business.

Corrections

66. Where, during the period of primary distribution to the public, there occurs in any material fact contained in any prospectus, financial statement or report accepted for filing under this Part, a change of such a nature as to render the prospectus, financial statement or report misleading, an amended prospectus, financial statement or report shall be filed within twenty days from the date the change occurs but, subject to any direction of the commission, the amended prospectus shall be required to be signed only by the signatories to the original prospectus and where any change in directors, promoters, underwriters or optionees has occurred since the filing of the original prospectus the decision of the commission as to who must sign the amended prospectus or as to any like matter is final.

67. Where primary distribution to the public of a security mentioned in section 61 is still in progress twelve months from the date of the last prospectus accepted for filing under section 61, a new prospectus as required under section 61 together with the financial statements required under section 65 shall be filed with the commission within twenty days from the expiration of such twelve-month period.

New
prospectus

PART XI

GENERAL PROVISIONS RELATING TO MINING, INDUSTRIAL AND INVESTMENT COMPANIES

68. Parts VIII, IX and X do not apply to trades mentioned in clause (c) or (f) of subsection (1) of section 20 nor to securities that are

Exemptions

- (a) mentioned in subsection (2) of section 20,
- (b) traded or sold to the public except in the primary distribution thereof to the public,
- (c) traded from one person or company registered for trading in securities under this Act to another person or company registered for trading in securities under this Act where the purchasing person or company is acting as principal, or
- (d) exempted by the regulations.

69. (1) Where doubt exists whether any trade proposed or intended to be made in a security would be in the primary distribution to the public of the security, the commission may, upon the application of any of the parties thereto, determine whether the proposed or intended trade would be in the course of the primary distribution to the public of the security and rule accordingly, and such ruling is final and there is no appeal therefrom.

Doubt as to
nature of
trade

(2) Where doubt exists whether a primary distribution to the public of any security

Doubt as to
primary
distribution

- (a) has been concluded, or
- (b) is currently in progress,

the commission may determine the question and rule accordingly, and such ruling is final and there is no appeal therefrom.

70. (1) Where a person or company proposing to make a primary distribution to the public of previously distributed securities of any company is unable to obtain information or material that is necessary for the purpose of complying with Part VIII, IX or X, as the case may be, from the company

Information
re previously
distributed
securities

that is the issuer of such securities, the commission, upon such terms and subject to such conditions as it deems proper, may order the company that is the issuer of such securities to furnish to the person or company that proposes to make the distribution, such information and material as the commission deems necessary for the purposes of the distribution and all such information and material may be used for the purpose of complying with this Act by the person or company to whom it is furnished.

(2) Where a person or company proposing to make a primary distribution to the public of previously distributed securities of any company is unable to obtain any or all of the signatures to the prospectus as required under section 45, section 53 or section 61, as the case may be, or otherwise to comply with Part VIII, IX or X, as the case may be, the commission, upon being satisfied that all reasonable efforts have been made to comply with Part VIII, IX or X, as the case may be, and that no person is likely to be prejudicially affected by the failure to comply, may make such order, upon such terms and subject to such conditions as it deems proper and may waive any of the provisions of Part VIII, IX or X, as it deems advisable.

Filing
prospectus,
statement
or report

71. The commission in its discretion may accept for filing any prospectus, financial statement or report or amended prospectus, financial statement or report submitted for filing under Part VIII, IX or X, as the case may be, and direct the registrar to issue a receipt therefor unless it appears to the commission

- (a) that the prospectus, or any financial statement or report that is required to accompany the prospectus
 - (i) fails to comply in any substantial respect with any of the requirements of Part VIII, IX or X, as the case may be,
 - (ii) contains any statement, promise or forecast that is misleading, false or deceptive, or
 - (iii) has the effect of concealing material facts,
- (b) that an unconscionable consideration has been paid or given or is intended to be paid or given
 - (i) for promotional purposes, or
 - (ii) for the acquisition of property,
- (c) that the proceeds from the sale of the securities that are to be paid into the treasury of the company,
 - together with other resources of the company, are insufficient to accomplish the objects indicated in the prospectus, or
- (d) that such escrow or pooling agreement as the commission deems necessary or advisable with respect to securities issued for a consideration other than cash has not been entered into.

Notice of
refusal to
file
prospectus

72. Where the commission decides not to accept for filing a prospectus submitted for filing under Part VIII, IX or X, as the case may be, it shall forthwith cause notice of such

decision to be served upon the person or company that has submitted the prospectus for filing.

73. (1) Where it appears to the commission subsequent to the filing of a prospectus or an amended prospectus under Part VIII, IX or X, as the case may be, and the issue of a receipt therefor that any of the circumstances set out in section 71 exist, the commission may order the cessation of all trading in the primary distribution to the public of the securities to which the prospectus relates. Order to
cease trading

(2) A notice of every order made under this section shall be served upon the person or company that filed the prospectus and upon every person or company that is registered for trading in securities under this Act and that has notified the commission of his or its intention to engage in the primary distribution to the public of the securities.

(3) Forthwith upon the receipt of the notice of an order made under this section

- (a) no further trades shall be made by any person or company in the primary distribution to the public of the securities named in the order, and
- (b) the prospectus or amended prospectus in question shall, for the purposes of this Act, be deemed not to be filed with the commission and any receipt received therefor shall be deemed to be revoked.

(4) Where a notice is sent by prepaid post under subsection (2), it shall be presumed to be received in the ordinary course of post by the person or company to whom it is addressed.

74. (1) Every person or company registered for trading in securities under this Act who, after having solicited a person for an order or subscription to purchase a security to which Part VIII, IX or X is applicable, receives from that person an order or subscription for that security, shall before entering into a contract for the sale of such security and before accepting payment or receiving any security under any such contract or in anticipation of making such a contract, deliver or cause to be delivered to such person a copy of the prospectus or amended prospectus, whichever is the last filed with the commission, together with, Delivery of
prospectus
to purchaser

- (a) when financial statements and reports are required to be filed, a copy of the last financial statements and reports accepted for filing by the commission, and
- (b) when a report on the property of the company and the development thereof is required to be filed, a fair and accurate summary of the report, with any corrections.

(2) Every person or company registered for trading in securities under this Act who receives from any person an order or subscription for a security to which Part VIII, IX

or X is applicable and who has not solicited such person to purchase that security shall, at any time not later than the delivery of the written confirmation of the sale of the security, deliver or cause to be delivered to such person a copy of the prospectus or amended prospectus, whichever is the last filed with the commission, together with,

- (a) when financial statements and reports are required to be filed, a copy of the last financial statements and reports accepted for filing by the commission, and
 - (b) when a report on the property of the company and the development thereof is required to be filed, a fair and accurate summary of the report, with any corrections.
- (3) This section does not apply to
- (a) a trade through a person or company registered for trading in securities under this Act who is not engaged in the primary distribution to the public of the security but is acting as the agent of the purchaser, or
 - (b) a sale by a person who is not engaged in the primary distribution to the public of the security.

Alternative
method
applicable
to securities
of mining
companies

75. (1) Notwithstanding section 74, every person or company to which that section applies and who delivers to any person a circular, pamphlet or letter soliciting him to purchase or offering to sell him a security to which Part VIII applies, may, with the first such circular, pamphlet or letter delivered to such person, deliver a copy of a concise statement of facts acceptable to the commission and taken from the prospectus, financial statements and reports required under Part VIII.

(2) The concise statement of facts shall contain a notice at the end thereof in easily legible letters, which shall not be smaller than the letters in the main portion thereof, that a copy of the prospectus will be sent on request.

(3) Every person or company that acts under subsection (1) and receives from a person to whom the concise statement of facts mentioned therein was delivered an order or subscription for a security to which Part VIII applies, shall, at any time not later than delivery of the written confirmation of the sale of the security, deliver to that person a copy of the prospectus or amended prospectus, whichever is the last filed with the commission, together with,

- (a) when financial statements and reports are required to be filed, a copy of the last financial statements and reports accepted for filing by the commission, and
- (b) when the report is required to be filed, a fair and accurate summary of the report on the property of the company and the development thereof, with any corrections.

76. Where section 74 has not been complied with, a person who has entered into a contract to which section 74 applies is entitled to a rescission of the contract Rescission of contract

(a) if written notice of exercising the right of rescission is served on the person or company registered for trading in securities under this Act

(i) within seven days of the date of delivery of a copy of the prospectus or amended prospectus, whichever is the last filed with the commission, together with a copy of the financial statements and reports and summary of report, where required, if the date of such delivery is within sixty days of the date of the delivery of the written confirmation of the sale of the security, or

(ii) within sixty days of the date of the delivery of the written confirmation of the sale of the security if at the time the notice of exercising the right of rescission is served, a copy of the prospectus or amended prospectus, whichever is the last filed with the commission, together with a copy of the financial statements and reports and summary of the report, where required, have not been delivered,

and

(b) if the purchaser is still the owner of the security.

(2) In an action for rescission to which this section applies, the onus of proving compliance with section 74 is upon the person or company registered for trading in securities under this Act.

(3) No action lies under this section after the expiration of a period of three months from the date of the service of notice under subsection (1).

PART XII

PROVISIONS RELATING TO TRADING IN SECURITIES GENERALLY

77. Where a term in a contract between a customer and a person or company registered for trading in securities under this Act who acts as an agent relates to any right of such person or company in respect of any security and the commission has, by notice in writing sent by registered post to such person or company, declared the right in respect of the security to be unreasonable, the term relating to such right in respect of the security is not binding upon the customer. Term of contract declared unreasonable

78. Every broker who has acted as agent for a customer in the purchase or sale of a security upon a stock exchange shall promptly send or deliver to the customer a written confirmation of the transaction, which shall set forth Confirmation to customers

- (a) the quantity and description of the security,
- (b) the consideration,
- (c) the name of the person or company from or to or through whom the security was bought or sold,
- (d) the day, and the name of the stock exchange, upon which the transaction took place, and
- (e) the commission charged in respect of the purchase or sale.

Confirmation
of unlisted
trades

79. Every person or company registered for trading in securities under this Act who has acted either as principal or agent in connection with any trade in a security other than a trade upon a stock exchange shall promptly send to each customer a written confirmation of the transaction, which shall set forth

- (a) the quantity and description of the security,
- (b) the consideration,
- (c) whether or not the person or company registered for trading in securities under this Act is acting as principal or agent,
- (d) the commission, if any, charged in respect of the purchase or sale,
- (e) the name of the salesman, if any, in the transaction, and
- (f) the day upon which the transaction took place.

Calling at
or telephon-
ing residence

80. (1) The commission, in its discretion may, by order, prohibit any person or company named in the order from

- (a) calling at any residence, or
- (b) telephoning from within Alberta to any residence within or outside Alberta,

for the purpose of trading in any security with any member of the public.

(2) Notice of an order under subsection (1) shall be given to the person or company named in the order by registered letter addressed to such person or company at his or its address as shown in the records of the registrar.

Exceptions

(3) An order made under subsection (1) does not apply

- (a) where a person calls at or telephones to the residence
 - (i) of a close personal friend, a business associate or a customer with whom or on whose behalf the person calling or telephoning has been in the habit of trading in securities, or
 - (ii) of a person who has requested in writing that information respecting a specific security be furnished him by the person so calling or telephoning, but in such case the person so calling or telephoning shall call or telephone only in reference to that security,

or

- (b) to a trade or trades in any securities in respect of which registration is not required under this Act.

(4) In this section "residence" includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto. "residence"

81. (1) No person or company shall, with the intention of effecting a trade in a security other than a security that carries a right of redemption or repurchase by the person or company issuing such security, make any representation, written or oral, that he or it or any person or company

Prohibition
of repre-
sentations

(a) will resell or repurchase, or

(b) will refund all or any of the purchase price of any such security in which he or it is trading.

(2) No person or company shall, with the intention of effecting a trade in a security, give any undertaking, written or oral, relating to the future value or price of the security. Promises

(3) Except with the written permission of the commission, no person or company shall, with the intention of effecting a trade in a security, make any representation, written or oral, that the security will be listed on any stock exchange or that application has or will be made to list the security upon any stock exchange. Representa-
tion re
listing on
stock
exchange

82. Where a person or company registered for trading in securities under this Act issues, publishes or sends, with the intention of effecting a sale in a security with any person other than a person registered for trading in securities under this Act, a circular, pamphlet, letter, telegram or advertisement, if that person or company proposes to act in such a trade as the principal, the person or company shall so state in the circular, pamphlet, letter, telegram or advertisement or otherwise in writing before entering into a contract for the sale or purchase of any such security and before accepting payment or receiving any security or other consideration under or in anticipation of any such contract. Notice where
acting as
principal

(2) Where a person or company registered for trading in securities under this Act makes, with the intention of effecting a trade in a security with any person other than a person registered for trading in securities under this Act, an oral offer or invitation for an offer to any person, if the person or company effects the trade as a principal, that person or company shall state in a written confirmation of the contract that he or it has acted as principal. Written
confirmation

(3) A statement made in compliance with this section that a person or company registered for trading in securities under this Act proposes to act or has acted as principal in connection with a trade in a security does not prevent that person or company from acting as agent in connection with a trade in such security. Acting as
agent

(4) This section does not apply to

- (a) trades mentioned in subsection (1) of section 20, or
- (b) securities described in subsection (2) of section 20.

Rescission
of contract

83. (1) Where subsection (1) of section 82 has not been complied with, a person who has entered into a contract to which subsection (1) of section 82 applies, is entitled to rescission of the contract if written notice of exercising the right of rescission is, within sixty days of the date of delivery of the security to or by such person, as the case may be, served on the person or company registered for trading in securities under this Act and, in the case of a purchase by such person, if he is still the owner of the security purchased by him.

(2) Where subsection (2) of section 82 has not been complied with, a person who has entered into a contract to which subsection (2) of section 82 applies is entitled to rescission of the contract if written notice of exercising the right of rescission is, within seven days of the date of the delivery of the written confirmation of the contract, served on the person or company registered for trading in securities under this Act and, in the case of a purchase by such person, he is still the owner of the security purchased by him.

(3) In an action for rescission to which this section applies, the onus of proving compliance with section 82 is upon the person or company registered for trading in securities under this Act.

(4) No action lies under this section after the expiration of a period of three months from the date of the service of notice under subsection (1) or subsection (2).

Financial
interest

84. Every registered investment counsel and securities adviser shall cause to be printed in a conspicuous position on every circular, pamphlet, advertisement, letter, telegram and other publication issued, published or sent by him or it, and in type not less legible than that used in the body of the circular, pamphlet, advertisement, letter or other publication, a full and complete statement of any financial or other interest that he or it may have either directly or indirectly in any securities referred to therein or in the sale or purchase thereof

- (a) including any ownership, beneficial or otherwise, that he or it may have in such securities or in any securities issued by the same company,
- (b) including any option that he or it may have in respect of such securities, and the terms thereof,
- (c) including any commission or other remuneration that he or it has received or may expect to receive from any person or company registered for trading in securities under this Act or otherwise in connection with any trade in such securities,
- (d) including any financial arrangement that he or it may have with any person or company registered for trading in securities under this Act relating to such securities, and
- (e) including any financial arrangement that he or it may have with any underwriter or other person who has any interest in the securities.

85. Every partnership or company registered for trading in securities under this Act shall, on all letterheads, circulars and other stationery containing the name of the partnership or company and any offer or solicitation respecting a trade in securities, publish the name of every person having either directly or indirectly an interest in the capital of the partnership or company to the extent of ten per cent or more.

Publication
of names

86. No person or company registered under this Act shall use on letterheads, forms, advertisements or signs, as correspondent or otherwise, the name of another person or company registered under this Act unless he or it is a partner, officer or agent of or is authorized so to do in writing by the other person or company registered under this Act.

Use of name

87. No person or company shall, by having printed in a circular, pamphlet, advertisement, letter, telegram or other stationery that he or it is registered under this Act, hold himself or itself out as being registered under this Act.

Registration
not to be
advertised

88. No person or company not registered under this Act shall either directly or indirectly hold himself or itself out as being registered under this Act.

Holding out
by unregis-
tered persons

89. No person or company shall make any written or oral representation that the commission has in any way passed upon the financial standing, fitness or conduct of any person or company registered under this Act or upon the merits of any security.

Approval of
commission

90. (1) Where a person or a member or employee of a partnership, or a director, officer or employee of a company, after he or the partnership or company has contracted as a person or company registered for trading in securities under this Act with any customer to buy and carry upon margin any securities of any person or company either in Canada or elsewhere, and while such contract continues, sells or causes to be sold securities of the same person or company for any account

Margin
contracts

(a) in which he,

(b) in which his firm or a partner thereof, or

(c) in which the company or a director thereof,

has a direct or indirect interest, if the effect of such sale would, otherwise than unintentionally, be to reduce the amount of such securities in the hands of the person or company registered for trading in securities under this Act or under his or its control in the ordinary course of business below the amount of such securities that he or it should be carrying for all customers, any such contract with a customer is at the option of the customer void, and the customer may recover from the person or company registered for trading in securities under this Act all moneys paid with interest thereon or securities deposited in respect thereof.

Exercise
of option

(2) The customer may exercise the option by a registered letter to that effect addressed to the person or company registered for trading in securities under this Act, at his or its address for service in Alberta.

Suspension
of trading

91. (1) The commission may by order direct any broker or salesman to cease and desist from trading in a security or a class of securities.

(2) Upon receipt of an order under subsection (1) the broker or salesman shall cease and desist from trading in the security or securities mentioned in the order, and failure to do so constitutes an offence.

PART XIII

MINIMUM SUBSCRIPTION

Fixing of
minimum
subscription

92. (1) The commission in its absolute discretion may fix an amount in cash as the minimum subscription upon which a security issuer may proceed to expend any moneys received from the sale of securities of its own issue.

(2) No security issuer shall expend any moneys received from the sale of securities of its own issue, other than any sums which may be allowed as commission for the sale of the securities, unless it has first obtained a certificate from the commission authorizing it to expend such moneys.

Determining
minimum
subscription

93. The minimum subscription

- (a) shall be the amount that the commission considers necessary in order that the security issuer may, with reasonable prospects of success, carry out the plan of operations or conduct the business described in the prospectus,
- (b) shall be calculated exclusively of any amount payable to the security issuer otherwise than in cash, and
- (c) shall be expended for the purposes set forth in the prospectus, unless the company by extra-ordinary resolution sanctions its expenditure for some other purpose authorized by the memorandum of the company.

Trust ac-
count for
minimum
subscription
funds

94. (1) All moneys paid to and received by the security issuer in respect of the minimum subscription shall be deposited as trust funds to its credit as trustee in a separate account in a branch or agency of a bank in the Province.

(2) The security issuer shall hold all such moneys in trust to be repaid in accordance with this Part if the minimum subscription is not subscribed.

(3) If moneys paid to and received by the security issuer in respect of the minimum subscription are not deposited and held as required by this section, subject to the payment of any commission allowed, the directors of the security issuer are jointly and severally liable to repay the money

with interest at the rate of six per cent per annum from the date when the money was paid to the security issuer by the subscriber.

(4) Notwithstanding subsection (3), if a director of the security issuer proves that the failure to deposit and hold the money as required by this section was not due to any misconduct or neglect on his part, that director shall not be held liable.

95. (1) If, after the expiration of ninety days after the acceptance by the commission of the prospectus, the minimum subscription has not been subscribed, all moneys paid to and received by the security issuer in respect of the minimum subscription shall be forthwith repaid without interest to the subscribers and no deductions, other than the permitted deduction for commission for the sale of the securities, shall be made. Repayment
of minimum
subscription

(2) If the moneys are not repaid as required by subsection (1) within one hundred and twenty days after the acceptance by the commission of the prospectus, the directors of the security issuer are jointly and severally liable to repay the moneys with interest at the rate of six per cent per annum from the expiration of the ninetieth day referred to in subsection (1).

(3) Notwithstanding subsection (2), if a director of the security issuer proves that the failure to repay the moneys as required by this section was not due to any misconduct or neglect on his part, that director shall not be held liable.

(4) The commission may, upon application thereto made either before or after the expiration of any period mentioned in this section, extend the period for such further time as appears to be desirable.

96. (1) Any condition requiring or purporting to bind an applicant for securities in contravention of this Part is void. Offences .

(2) A security issuer who fails to comply with or contravenes any provision of this Part is guilty of an offence.

(3) When fixing a minimum subscription upon which a security issuer may proceed to spend moneys received from the sale of securities, the commission may prescribe such other conditions, as precedent to the issue of a certificate authorizing the security issuer to expend the moneys so received, as the commission deems advisable.

PART XIV

OFFENCES AND PENALTIES

97. (1) Every person, including any officer, director, official or employee of a company, who is knowingly responsible for Penalties

- (a) any fictitious or pretended trade in any security,
- (b) any course of conduct or business that is calculated or put forward with intent to deceive the

public or the purchaser or the vendor of any security as to the nature of any transaction or as to the value of such security,

- (c) the making of any material false statement in any application, information, statement, material or evidence submitted or given under this Act or the regulations to the commission, its representative, the registrar or any person appointed to make an investigation or audit under this Act,
- (d) the furnishing of false information in any report, statement, return, balance sheet or other document required to be filed or furnished under this Act or the regulations,
- (e) the commission of any act or failure to perform any act where such commission or failure constitutes a violation of any provision of this Act or the regulations,
- (f) failure to observe or comply with any order, direction or other requirement made under this Act or the regulations, or
- (g) the gaining of, or attempting to gain, directly or indirectly through a trade in any security, a commission, fee or gross profit so large and exorbitant as to be unconscionable and unreasonable,

is guilty of an offence and liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term of not more than one year or to both.

Penalties
on companies

(2) Subsection (1) shall be deemed to apply *mutatis mutandis* to any company but the money penalty may be increased in the discretion of the magistrate to a sum not exceeding twenty-five thousand dollars.

Parties to
offences

- (3) Every person or company
 - (a) that actually commits an offence under this Act,
 - (b) that does or omits an act for the purpose of aiding another person or company in the commission of an offence under this Act,
 - (c) that abets another person or company in the commission of an offence under this Act, or
 - (d) that counsels or procures another person or company to commit an offence under this Act,

is a party to and guilty of an offence under this Act.

(4) Every person or company that counsels or procures another person or company to be a party to an offence under this Act of which that other person or company is afterwards guilty is a party to that offence, although it may be committed in a way different from that which was counselled or procured.

(5) Every person or company that counsels or procures another person or company to be a party to an offence under this Act is a party to every other offence under this Act that that other person or company commits in conse-

quence of such counselling or procuring and that the person or company counselling or procuring knew, or ought to have known, to be likely to be committed in consequence of the counselling or procuring.

98. (1) No proceedings under section 97 shall be instituted except with the consent of the Attorney General. Consent
before
action

(2) No proceedings under section 97 shall be commenced more than two years after the facts upon which the proceedings are based first came to the knowledge of the commission.

99. An information or complaint in respect of any contravention of this Act may be for one or more offences and no information, complaint, summons, warrant, conviction or other proceedings in any such prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. Information
re one or
more
offences

PART XV

GENERAL PROVISIONS

100. No person or company shall carry on business as a stock exchange without the consent in writing of the commission. Stock
exchanges

101. Every stock exchange in Alberta shall keep a record showing the time at which each transaction on such exchange took place and shall supply to any customer of any member of such exchange, upon production of a written confirmation of a transaction with such member, particulars of the time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation. Record

102. (1) Where a prospectus has been accepted for filing by the commission under this Act, every purchaser of the securities to which the prospectus relates shall be deemed to have relied upon the representations made in the prospectus whether the purchaser has received the prospectus or not. Liability for
untrue
statements
in prospectus

(2) Where any material false statement is contained in a prospectus accepted for filing by the commission under this Act

- (a) every person who is a director of the company issuing the securities at the time of the issue of the prospectus,
- (b) every person who, having authorized such naming of him, is named in the prospectus as a director of the company or as having agreed to become a director of the company either immediately or after an interval of time,
- (c) every promoter of the company, and
- (d) every person who has authorized the issue of the prospectus,

is liable to pay to all persons who have purchased the securities compensation for any loss or damage such persons may have sustained, unless it is proved

- (e) that having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that the prospectus was issued without his authority or consent, or
- (f) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued, or
- (g) that after the issue of the prospectus and before a sale of the securities, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of his withdrawal and of the reason therefor, or
- (h) that with respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable grounds to believe and did up to the time of the sale of the securities believe that the statement was true, or
- (i) that, with respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy or extract from the report or valuation, but the director, person named as director, promoter, or person who authorized the issue of the prospectus, is liable to pay compensation as aforesaid, if it is proved that he had no reasonable grounds to believe that the person making the statement, report or valuation was competent to make it, or
- (j) that, with respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

"prospectus"

(3) In this section "prospectus" includes every statement and report and summary of report required to be filed with the prospectus under this Act.

No action
against
persons
adminis-
tering Act

103. Except with the consent of the Attorney General no action whatever and no proceedings by way of injunction, mandamus, prohibition or other extraordinary remedy shall lie or be instituted against any person whether in his public or private capacity, or against any company in respect of any act or omission in connection with the administration or carrying out of the provisions of this Act or the regulations, where such a person is a member of the commission, a representative of the commission or the registrar, or where such person or company was proceed-

ing under the written or verbal direction or consent of any one of them or under an order of the Attorney General made under this Act.

104. No person or company has any rights or remedies and no proceedings shall lie or be brought against any person or company in respect of any act or omission of the last mentioned person or company, done or omitted in compliance or intended compliance Omissions

- (a) with any requirement, order or direction, under this Act,
 - (i) of the commission or any member thereof,
 - (ii) of the registrar,
 - (iii) of any person appointed by order of the Attorney General,
 - (iv) of the Attorney General,
 - (v) of any representative of the Attorney General, the commission, registrar or of any person appointed by the Attorney General,
- or
- (b) with this Act and the regulations.

105. (1) A judge of the Supreme Court of Alberta in exercising any of the powers conferred by this Act shall be deemed to act as a judge of such court and not as *persona designata*. Judge not
persona
designata

(2) The Attorney General shall in all proceedings under this Act or the regulations be deemed to be acting as the representative of Her Majesty in right of Alberta, and not as *persona designata*. Attorney
General
not *persona*
designata

(3) The provisions of *The Judicature Act* and the rules of court made thereunder so far as they are applicable to proceedings of a like nature, including those relating to appeals and to the enforcement of judgments and orders, apply to every proceeding before the Supreme Court of Alberta or a judge thereof under the provisions of this Act, except that service of notices and other legal process shall be in accordance with section 11 and except that costs may be awarded to but not against the Attorney General. Judicature
Act and
rules apply

106. The Lieutenant Governor in Council may make regulations Regulations

- (a) prescribing requirements respecting applicants for registration,
- (b) prescribing the classes of negotiable securities that may be accepted as collateral security for a bond,
- (c) regulating the listing and trading of securities and records relating thereto,
- (d) governing the furnishing of information by any person or company registered under this Act to the public in connection with securities or trades therein,

- (e) governing the keeping of accounts and records and the preparation and filing of financial statements of the affairs of security issuers,
- (f) designating any person or company or any class of persons or companies as a person, company or class which shall not be required to obtain registration as investment counsel or securities adviser,
- (g) prescribing the fees payable to the commission, including fees for filing, fees upon applications for registration, fees in respect of audits made by the commission and other fees in connection with the administration of this Act and the regulations,
- (h) prescribing the form, contents and other particulars relating to statements, agreements and other information required to be filed, furnished or delivered under this Act and the regulations,
- (i) prescribing the practice and procedure upon investigations under sections 27 and 29,
- (j) prescribing the forms for use under this Act and the regulations,
- (k) prescribing trades or securities, in addition to the trades and securities mentioned in section 20, in respect of which registration shall not be required,
- (l) prescribing trades or securities mentioned in section 20 in respect of which there shall cease to be exemption from registration,
- (m) prescribing trades or securities, in addition to the trades and securities mentioned in section 68, in respect of which Parts VIII, IX and X shall not apply,
- (n) prescribing terms and conditions which shall be contained in an escrow or pooling agreement with respect to securities issued for a consideration other than cash,
- (o) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act,

and upon the publication thereof in *The Alberta Gazette* all such regulations and any amendment, alteration or repeal thereof becomes effective in all respects as if enacted in this Act.

Certificate
as evidence

107. A statement as to

- (a) the registration or non-registration of any person or company,
- (b) the filing or non-filing of any document or material required or permitted to be filed with the commission, or
- (c) any other matter pertaining to such registration, non-registration, filing or non-filing or to any such person or company, document or material,

that purports to be certified by the commission or a member thereof or by the registrar is, without proof of the office or

signature of the person certifying, receivable in evidence so far as relevant, for all purposes in any action, proceeding or prosecution.

108. (1) Where a magistrate or justice of another province issues a warrant for the arrest of any person on a charge of violating any provision of this Act or any similar statute of that province, any magistrate or justice of Alberta within whose jurisdiction that person is or is suspected to be may, upon satisfactory proof of the handwriting of the magistrate or justice who issues the warrant, make an endorsement thereon in the form prescribed by the regulations.

Warrant
issued in
other
province

(2) A warrant endorsed under subsection (1) is sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all constables within the territorial jurisdiction of the magistrate or justice so endorsing the warrant to execute it within that jurisdiction and to take the person arrested thereunder either out of or anywhere in Alberta and to re-arrest such person anywhere in Alberta.

(3) Any police officer or constable of Alberta or of any other province of Canada who is passing through Alberta and having in his custody a person arrested in another province under a warrant endorsed pursuant to subsection (1) is entitled to hold, take and re-arrest the accused anywhere in Alberta under such warrant without proof of the warrant or the endorsement thereof.

Prisoner
in transit

109. (1) Where in consequence of an investigation under Part IV any person or company

Costs of
investigation

- (a) has been convicted of a criminal offence,
- (b) has been convicted of an offence against any provision of this Act or the regulations,
- (c) has been enjoined by the Supreme Court of Alberta or a judge thereof, otherwise than by an interim injunction, or
- (d) has been examined, and documents, records, properties or matters have been examined by an accountant or other expert appointed by the Attorney General,

the Attorney General may certify in writing as to the costs of the investigation and he is entitled to take such proceedings for the collection from such person or company of the sum set forth in the certificate as are available to a judgment creditor.

(2) The sum set forth in the certificate of the Attorney General is, until satisfied, a debt to Her Majesty in right of Alberta.

110. Every registration in force under *The Securities Act*, being chapter 243 of the Revised Statutes of Alberta,

Existing
registrations
continued

1942, when this Act comes into force continues in force, subject to the provisions of this Act, as a registration under this Act.

Repeal

111. *The Securities Act*, being chapter 243 of the Revised Statutes of Alberta, 1942, is hereby repealed.

Appropriation

112. The costs of administering this Act shall be paid out of the moneys appropriated by the Legislature for that purpose or, if there is no such appropriation, out of the General Revenue Fund.

Coming into force

113. This Act comes into force on a day to be fixed by Proclamation of the Lieutenant Governor in Council.

THIRD SESSION
TWELFTH LEGISLATURE
4 ELIZABETH II
1955

BILL

An Act for the Prevention of Fraud
in Connection with the Sale of
Securities

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MAYNARD
