

1967 Bill 2

Fifth Session, 15th Legislature, 15 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 2

**An Act respecting Securities and the Prevention of
Fraud in Connection with the Sale of Securities**

First Reading

Second Reading

Third Reading

BILL 2

1967

An Act respecting Securities and the Prevention of Fraud
in Connection with the Sale of Securities

(Assented to _____, 1967)

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, 1967*.
2. (1) In this Act,
 1. "associate", where used to indicate a relationship with any person or company, means
 - (i) any company of which such person or company beneficially owns, directly or indirectly, equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the company for the time being outstanding,
 - (ii) any trust or estate in which such person or company has a substantial beneficial interest or as to which such person or company serves as trustee or in a similar capacity, or
 - (iii) any relative or spouse of such person or any relative of such spouse who, in any such case, has the same home as such person;
 2. "broker" means any person or company trading in securities in the capacity of an agent that is a member of a stock exchange in Alberta recognized by the Commission, or any person or company trading in securities in the capacity of an agent that is recognized by the Commission as a broker;
 3. "broker-dealer" means any person or company that is recognized by the Commission as a broker-dealer that 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;
 4. "Commission" means the Alberta Securities Commission;
 5. "company" means any incorporated corporation, incorporated association or other incorporated organization;
 6. "Director" means the Director or any Deputy Director of the Commission;

Explanatory Notes

General. This Bill repeals and replaces The Securities Act, 1955, Statutes of Alberta, 1955, chapter 64. The Bill follows closely the Securities Act, 1966, of Ontario which in turn was enacted following the submission of the report of a special committee to the Attorney General of Ontario. The report (known as the "Kimber Report") was the result of an extensive study of the whole field of securities. A recent federal-provincial conference on securities legislation and financial disclosure agreed in general to the principle that the provinces should, if possible, adopt legislation similar to Ontario's so as to bring about a substantial measure of uniformity in securities legislation across Canada. A considerable part of the Bill retains provisions which were common to The Securities Act, 1955, of Alberta and the previous Ontario Securities Act.

Among the more significant new features of the Bill are the following:

1. The Commission may be enlarged from the present maximum three to as many as five members.

2. There will now be a Director of Securities, who will assume most of the administrative functions presently performed by the Chairman of the Commission. His decisions will be subject to review by the full Commission and to appeal to the Appellate Division of the Supreme Court.

3. Before any decision is made which would adversely affect the registration of an applicant or registrant he has the right to a hearing before the Director. Where the granting of a hearing with respect to a suspension or cancellation might be against public interest, an order may be made but the person or company affected will have a right to a hearing and review within 15 days thereafter.

4. Standards of financial reporting in prospectuses: These have generally been improved and greater responsibility has been placed upon the auditor for financial statements in seeing that they are presented fairly and are not misleading.

5. Preliminary prospectuses under Part 7. This procedure was developed and sanctioned in the United States. It permits a company to test the market before an offering is made and it also gives the public an opportunity to study the advisability of a future investment before the offering is made. It will be permissible to distribute a preliminary prospectus, advertising material, etc. between the time of filing of a preliminary prospectus and the time of filing of the final prospectus: see sections 35 to 40.

6. Part 9: Take-over Bids. This Part will regulate the terms and conditions of take-over bids made to shareholders resident in Alberta and will also require that the bid be accompanied by specified information for the shareholders' use. This will give the shareholder the time and information necessary to judge the proposal on its merits. The need for legislation in this area and that in Part 12 as to Financial Disclosure, was advocated by the Royal Commission on Banking and Finance (The "Porter Commission").

7. "equity share" means any share of any class of shares of a company carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing;
8. "form of proxy" means a written or printed form that, upon completion and execution by or on behalf of a shareholder, becomes a proxy;
9. "individual" means a natural person, but does not include a trustee, partnership, unincorporated association, unincorporated organization, unincorporated syndicate, executor, administrator or other legal personal representative;
10. "investment counsel" means any person or company that 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 that is primarily engaged in giving continuous advice as to the investment of funds on the basis of the individual needs of each client;
11. "investment dealer" means any person or company that is a member, branch office member or associate member of the Alberta District of the Investment Dealers' Association of Canada;
12. "Minister" means the Attorney General or such other member of the Executive Council to whom the administration of this Act may be assigned;
13. "officer" means the chairman or any vice-chairman of the board of directors, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer or general manager of a company, or any other person designated an officer of a company by by-law or similar authority;
14. "official" means the president, vice-president, secretary, treasurer or general manager of a company;
15. "person" means an individual, partnership, unincorporated association, unincorporated organization, syndicate, trustee, executor, administrator or other legal personal representative;
16. "primary distribution to the public", used in relation to trading in securities, means
 - (i) trades that are made for the purpose of distributing to the public securities issued by a company and not previously distributed, or
 - (ii) trades in previously issued securities for the purpose of distributing such securities to the public where the securities form all or a part of or are derived from the holdings of any

7. Part 10: Proxies and Proxy Solicitation. This Part will apply to extra-provincial companies issuing equity shares in Alberta or having their shares listed on the Calgary Stock Exchange. The Part will make solicitation of proxies mandatory in the case of shareholders resident in Alberta and requires the solicitation to be accompanied by specified information to enable the shareholder to better inform himself as to what business will be dealt with at the shareholders' meeting and the voting powers he should give to his proxy. There are also requirements as to the form of proxies to be used which will allow the shareholder signing it to have more control as to the powers given to the proxy, which will in turn give him more direct participation in the affairs of the company.

8. Part 11: Insider Trading. This Part will require directors, senior officers and other "insiders" to report their shareholdings to the Commission. These reports will be open to the public for inspection. It also makes insiders liable to a corporation for any profits made privately by them in trading shares of that corporation by reason of confidential information available to them and not to others. This Part applies only to extra-provincial companies that issue equity shares in Alberta or have their shares listed on the Calgary Stock Exchange.

9. Part 12: Financial Disclosure. This Part will now require filing with the Commission of detailed financial statements as to the affairs and condition of extra-provincial corporations that issue equity shares in Alberta or have their shares listed on the Calgary Stock Exchange. The information will be public and will afford a greater opportunity to the securities industry and the general public to evaluate the worth of shares.

Where an explanatory note refers to a section of the present Act, the reference is to a provision in the present Act that is retained in the Bill but not found in the Ontario Act.

2. Interpretation. Subsections (2) to (7) are new.

- person, company or any combination of persons or companies holding a substantial number of any of the securities of a company, whether such trades are made directly to the public or indirectly to the public through an underwriter or otherwise, and includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to such distribution;
17. "private company" means a company in whose instrument of incorporation,
- (i) the right to transfer its shares is restricted,
 - (ii) the number of its shareholders, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the company, were, while in that employment, and have continued after the termination of that employment to be, shareholders of the company, is limited to not more than 50, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder, and
 - (iii) any invitation to the public to subscribe for its securities is prohibited;
18. "promoter" means
- (i) a person or company that, acting alone or in conjunction with one or more other persons, companies or a combination thereof, directly or indirectly takes the initiative in founding, organizing or substantially reorganizing the business or enterprise of a person or company, or
 - (ii) a person or company that, in connection with the founding, organizing or substantial reorganizing of the business or enterprise of a person or company, directly or indirectly receives in consideration of services or property, or both services and property, 10 per cent or more of any class of securities of the person or company or 10 per cent or more of the proceeds from the sale of any class of securities of a particular issue; provided that a person or company who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this definition if such person or company does not otherwise take part in founding, organizing or substantially reorganizing the business or enterprise;
19. "proxy" means a completed and executed form of proxy by means of which a shareholder has ap-

pointed a person as his nominee to attend and act for him and on his behalf at a meeting of shareholders;

20. "public company" means a company that is not a private company;
21. "register" means register under this Act, and "registered" has a corresponding meaning;
22. "registrant" means a person or company registered or required to be registered under this Act;
23. "Registrar" means the Registrar of the Commission;
24. "regulations" means the regulations made under this Act;
25. "salesman" means an individual registered as a salesman under this Act;
26. "securities adviser" means any person or company that 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;
27. "security" includes
 - (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 option, subscription or other interest in or to a security,
 - (v) any bond, debenture, share, stock, note, unit, unit certificate, participation certificate, certificate of share or interest, pre-organization certificate or subscription,
 - (vi) any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company,
 - (vii) any certificate of share or interest in a trust, estate or association,
 - (viii) any profit-sharing agreement or certificate,
 - (ix) any certificate of interest in, or other document constituting evidence of,
 - (A) any lease, reservation or permit of rights to any mineral or minerals, or

- (B) a certificate of record of a mineral claim,
or
 - (C) any other instrument granting the right to prospect for, explore for or recover a mineral or minerals,
 - (D) petroleum, natural gas or other mineral royalties, or
 - (E) any fractional undivided interest or other interest in any thing mentioned in paragraphs (A) to (D),
 - (x) any document constituting evidence of a fractional undivided interest in any leasehold or real property, where the interest is part of a common enterprise for profit,
 - (xi) any royalty voting trust certificate or other voting trust certificate or any collateral trust certificate,
 - (xii) any income or annuity contract not issued by an insurance company or an issuer within the meaning of *The Investment Contracts Act*, and
 - (xiii) any investment contract, other than an investment contract within the meaning of *The Investment Contracts Act*,
whether any of the foregoing relate to a person, proposed company or company, as the case may be;
28. "security issuer" means a person or company that engages in the primary distribution to the public of securities of its own issue;
29. "senior officer" means
- (i) the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a company or any other individual who performs functions for the company similar to those normally performed by an individual occupying any such office, and
 - (ii) each of the five highest paid employees of a company, including any individual referred to in subclause (i);
30. "sub-broker-dealer" means an individual who, being retired from active business or as incidental to his principal occupation and as correspondent of any investment dealer or broker-dealer or both, trades in securities for a part of his time in the capacity of an agent or principal;
31. "trade" or "trading" includes
- (i) any sale or disposition of or other dealing in or any solicitation in respect of a security for valuable consideration, whether the terms of

- payment be on margin, instalment or otherwise, or any attempt to do one of the foregoing,
- (ii) any participation as a floor trader in any transaction in a security upon the floor of any stock exchange,
 - (iii) any receipt by a person or company registered for trading in securities under this Act of an order to buy or sell a security, and
 - (iv) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;
32. "underwriter" means a person or company who, as principal, purchases securities from a person or company with a view to, or who as agent for a person or company offers for sale or sells securities in connection with, a primary distribution to the public of such securities, and includes a person or company who has a direct or indirect participation in any such distribution, but does not include a person or company whose interest in the transaction is limited to receiving the usual and customary distributors' or sellers' commission payable by an underwriter.
- (2) A company shall be deemed to be an affiliate of another company if one of them is the subsidiary of the other or if both are subsidiaries of the same company or if each of them is controlled by the same person or company.
 - (3) A company shall be deemed to be controlled by another person or company or by two or more companies if
 - (a) equity shares of the first-mentioned company carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of such other person or company or by or for the benefit of such other companies, and
 - (b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned company.
 - (4) A company shall be deemed to be a subsidiary of another company if
 - (a) it is controlled by
 - (i) that other, or
 - (ii) that other and one or more companies each of which is controlled by that other, or
 - (iii) two or more companies each of which is controlled by that other, or
 - (b) it is a subsidiary of a company that is that other's subsidiary.

(5) A company shall be deemed to be another's holding company or parent company if that other is its subsidiary.

(6) A person shall be deemed to own beneficially securities beneficially owned by a company controlled by him or by an affiliate of such company.

(7) A company shall be deemed to own beneficially securities beneficially owned by its affiliates.

PART 1

THE COMMISSION

3. (1) The Commission, which shall be responsible for the administration of this Act, shall be composed of a chairman and not more than four other members, one of whom shall be designated as vice-chairman.

(2) The members of the Commission shall be appointed by the Lieutenant Governor in Council.

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

4. (1) The chairman, who shall be the chief executive officer of the Commission, shall devote his full time to the work of the Commission, and the other members shall devote such time as may be necessary for the due performance of their duties as members of the Commission.

(2) The Director or any deputy director may exercise the powers and shall perform the duties vested in or imposed upon him by this Act, and he may exercise the powers and shall perform the duties vested in or imposed upon the Commission by this Act or the regulations that are assigned to him by the Commission except those referred to in sections 21 to 28, and, subject to the direction of the Commission, he shall be the chief administrative officer of the Commission.

5. At a hearing required or permitted under this Act to be held before the Commission or the Director, the following rules apply:

1. In addition to any other person or company to whom notice is required to be given, notice in writing of the time, place and purpose of the hearing shall be given to any person or company that, in the opinion of the Commission or the Director, is primarily affected by such hearing, and any such notice is sufficient if sent to such person or company by pre-paid mail at the last address of such person or company appearing on the records of the Commission or, if not so appearing, to such address as is directed by the Commission or the Director.

3. Appointment of members to the Commission.. The present Commission is composed of three members.

4. Functions of chairman, Director and members.

5. Rules as to hearings. New.

2. At the hearing, the person presiding has, for the purpose of such hearing, the same authority, powers, rights and privileges as a person appointed to make an investigation under section 21.
3. At the hearing, the person presiding shall receive such evidence as is submitted by a person or company to whom notice has been given or by any other person or company that is relevant to the hearing, but the person presiding is not bound by the legal or technical rules of evidence.
4. At the hearing or hearing and review by the Commission, all oral evidence received shall be taken down in writing and together with such documentary evidence and things as are received in evidence by the Commission shall form the record.
5. Where the direction, decision, order or ruling made after a hearing adversely affects the right of a person or company to trade in securities, the person presiding at such hearing shall, at the request of such person or company, issue written reasons for the direction, decision, order or ruling.
6. Notice of every direction, decision, order or ruling, together with a copy of the written reasons therefor, if any, shall be given upon the issuance thereof to a person or company to whom notice of the hearing was given and to a person or company that, in the opinion of the person who presided at the hearing, is primarily affected thereby, and any such notice is sufficient if sent to such person or company by prepaid mail at the last address of such person or company appearing on the records of the Commission or, if not so appearing, to such address as is directed by the Commission or the Director.
7. A person or company attending or submitting evidence at a hearing pursuant to clause 1 may be represented by counsel.

PART 2

REGISTRATION

6. (1) No person or company shall
 - (a) notwithstanding clause (d), trade in a security unless such person or company is registered as a broker, investment dealer, broker-dealer, sub-broker-dealer or 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 a person or company in connection with a trade in a

6. Persons and companies required to register for trading in securities.

security by such person or company unless such person or company is registered for trading in securities,

- (c) act as a salesman of or on behalf of a person or company in connection with a trade in a security by such person or company unless he is registered as a salesman of such person or company and such person or company is registered as a broker, investment dealer, broker-dealer or security issuer,
- (d) act as an underwriter unless such person or company is registered as an underwriter, broker-dealer or investment dealer or is a bank to which the *Bank Act* (Canada) applies,
- (e) act as investment counsel or securities adviser unless such person or company is registered as an investment counsel or securities adviser, or
- (f) advise others by means of a publication or writing as to the advisability of investing in or purchasing or selling a security specified therein unless such person or company is registered or is exempted from registration,

and such registration has been made in accordance with this Act and the regulations and such person or company has received written notice of such registration from the Registrar and, where such registration is subject to terms and conditions, the person or company complies with such terms and conditions.

(2) Where a person or company is registered as a broker, investment dealer, broker-dealer, underwriter, investment counsel or securities adviser, every partner or officer of such person or company may act as a broker, investment dealer, broker-dealer, underwriter, investment counsel or securities adviser, as the case may be, on behalf of such person or company without separate registration, and, where a company is registered as a security issuer, the officials thereof who are designated by the Director as trading officials may act on its behalf in connection with a trade in a security by such company without separate registration.

(3) No individual who becomes a partner or officer of a person or company after such person or company has been registered shall trade in securities until such person or company has received from the Registrar written permission for such partner or officer so to trade.

(4) The termination of the employment of a salesman with a person or company registered for trading in securities shall operate as a withdrawal of the registration of the salesman until notice in writing has been received by the Registrar from another person or company registered for trading in securities of the employment of the salesman by such other person or company and the employment has been approved by the Director.

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

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

(2) The Director shall not refuse to grant or refuse to renew registration without giving the applicant an opportunity to be heard.

(3) The Director may in his discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trades in certain securities or a certain class of securities.

(4) The Director may, and when so directed by the Commission shall,

(a) require any applicant or registrant to deliver a bond to the Commission within a specified time, or

(b) require a registrant who had previously delivered a bond to deliver a new bond to the Commission,

and the bond or new bond shall be in the form prescribed in the regulations and shall be approved by the Director as to amount and otherwise.

8. The Director, after giving the registrant an opportunity to be heard, shall suspend or cancel any registration where in his opinion such action is in the public interest, but, where the granting of an opportunity to be heard would in his opinion be prejudicial to the public interest, he may suspend any registration without giving the registrant an opportunity to be heard, in which case he shall forthwith notify the registrant of the suspension and of a hearing and review to be held before the Commission within 15 days of the date of the suspension, which hearing and review shall be deemed to be a hearing and review under section 28.

9. A further application for registration may be made upon new or other material or where it is clear that material circumstances have changed.

10. An application for registration 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.

7. Refusal of and restrictions on registration. Subsection (3) is new. Subsection (4) is the present section 13 revised.

8. Suspension or cancellation of registration.

9. Further application for registration.

10. Application for registration.

11. Every applicant shall state in the application an address for service in Alberta and, except as otherwise provided in this Act, all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated.

12. The Director may require any further information or material to be submitted by an applicant or a registrant within a specified time and may require verification by affidavit or otherwise of any information or material then or previously submitted or may require the applicant or the registrant or any partner, officer, director or employee of the applicant or of the registrant to submit to examination under oath by a person designated by the Director.

13. (1) The Commission may appoint one or more experts to assist the Commission in such manner as it may deem expedient.

(2) The Commission may submit any agreement, prospectus, financial statement, report or other document to one or more experts appointed under subsection (1) for examination, and the Commission has the like power to summon and enforce the attendance of witnesses before the expert and to compel them to produce documents, records and things as is vested in the Commission, and subsections (3) and (4) of section 21 apply *mutatis mutandis*.

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

14. (1) Without limiting the generality of subsection (1) of section 7, the Director may refuse registration to any person where he is satisfied, on the basis of the statements in the application and from any other sources of information, that the applicant

- (a) has not been a resident of Canada for at least one year immediately prior to the date the application is made, or
- (b) is not a resident of Alberta at the date the application is made, or
- (c) does not intend to make his permanent home in Alberta if the application is granted,

unless at the date the application is made that person is registered in a capacity corresponding to that of a broker, investment dealer, underwriter, broker-dealer, sub-broker-dealer, security issuer, investment counsel, securities adviser or salesman under the securities laws of the province or territory in Canada in which he last resided or is then residing and has been so registered for a period of not less than one year immediately preceding the date the application is made and is, in the opinion of the Director, otherwise suitable for registration.

11. Address for service.

12. Further information or material to be submitted.

13. Appointment and functions of experts.

14. Refusal of registration of non-resident.

(2) Without limiting the generality of subsection (1) of section 7, the Director may refuse registration to a company or partnership where he is satisfied, on the basis of the statements in the application and from any other source of information available to him, that one or more of its officers or directors or one or more of the partners

- (a) has not been a resident of Canada for at least one year immediately prior to the date the application is made, or
- (b) is not a resident of Alberta at the date the application is made, or
- (c) does not intend to make his permanent home in Alberta if the application is granted,

unless at the date the application is made that person or each of those persons, as the case may be, is registered in a capacity corresponding to that of a broker, investment dealer, underwriter, broker-dealer, sub-broker-dealer, security issuer, investment counsel, securities adviser or salesman under the laws of the province or territory in Canada in which he last resided or is then residing and has been so registered for a period of not less than one year immediately preceding the date the application is made and, in the opinion of the Director, would be otherwise suitable for registration if he were himself an applicant for registration.

(3) For the purposes of this section, a person shall not be deemed to cease to reside in Canada or Alberta, as the case may be, by reason only of absence

- (a) as a member of the Canadian Forces, or
- (b) while attending a university, college, school, institute or other educational institution.

15. (1) Every registered broker, investment dealer and broker-dealer shall, within five days of the event, notify the Registrar in writing of

- (a) any change in address for service or any business address,
- (b) any change in the officers, directors or shareholders of a company or partners of a partnership,
- (c) the commencement and termination of employment of every salesman and, in the case of termination of employment, the reason therefor,
- (d) the opening or closing of any branch office and, in the case of the opening of any branch office, the name and address of the person in charge thereof, and
- (e) any change in the name or address of the person in charge of any branch office.

(2) Every registered security issuer shall, within five days of the event, notify the Registrar in writing of

15. When Registrar to be notified of changes.

- (a) any change in address for service or any business address,
 - (b) any change in its officials, and
 - (c) the commencement and termination of employment of every salesman and, in the case of termination of employment, the reason therefor.
- (3) Every registered investment counsel, securities adviser and underwriter shall, within five days of the event, notify the Registrar in writing of
- (a) any change in address for service or any business address, and
 - (b) any change in the officers, directors or shareholders of a company or partners of a partnership.
- (4) Every registered salesman shall, within five days of the event, notify the Registrar in writing of
- (a) any change in his address for service or in his business address, and
 - (b) every commencement and termination of his employment by a registrant.
- (5) Every registered sub-broker-dealer shall, within five days of the event, notify the Registrar in writing of any change in his address for service or in his business address.
- (6) Notwithstanding subsections (1) and (3), the Director may grant an exemption, upon such terms and conditions as he sees fit, from the requirement to notify the Registrar of any changes in shareholders if the registrant is a public company.

16. The Director shall cause all cash, cheques, money orders and postal notes to be deposited with the Provincial Treasurer for payment into the General Revenue Fund.

17. Where an application for a registration is refused, a registration is cancelled or a receipt for a prospectus is not obtained, the Director may refund the fee or such part thereof as he deems fair and reasonable.

Exemption from Registration

- 18.** Registration as an investment counsel or securities adviser is not required to be obtained by
- (a) 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, 1967*, or an insurance company licensed under *The Alberta Insurance Act*,
 - (b) a lawyer, accountant, engineer or teacher whose performance of such services is solely incidental to the practice of his profession,

16. Director to make deposits.

17. Refunds re registration.

18. Persons exempt from registration.

- (c) 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 his or its business as such,
- (d) a publisher of any *bona fide* newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives advice as a 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 commission 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) such other persons or companies as are designated by the regulations.

19. (1) Subject to the regulations, registration is not required in respect of the following trades:

1. a trade in a security by an executor, administrator, guardian or committee or by an authorized trustee or assignee, an interim or official receiver or a custodian under the *Bankruptcy Act* (Canada), or by a receiver under *The Judicature Act* or by a liquidator under *The Companies Act* or the *Winding-up Act* (Canada), or at a judicial sale;
2. 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 or company whose usual business is trading in securities;
3. a trade where one of the parties is a bank to which the *Bank Act* (Canada) applies, or the Industrial Development Bank incorporated under the *Industrial Development Bank Act* (Canada), a trust company registered under *The Trust Companies Act, 1967*, or an insurance company licensed under *The Alberta Insurance Act*, or 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, or any other trade where the purchaser or proposed purchaser is a person, other than an individual, or a company recognized by the Commission as an exempt purchaser;
4. a trade by or for the account of a pledgee, mortgagee or other encumbrancee for the purpose of

19. Trades and securities exempt from registration. Subsection (8) is the present section 21a.

liquidating a *bona fide* debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as security for the debt;

5. 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 designated by the Director as "non-trading" employees, either individually or as a class;
6. a trade between a person or company and an underwriter acting as purchaser, and trades between or among underwriters;
7. 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;
8. either
 - (i) a trade in a security of its own issue that is distributed or issued by a company to holders of its securities as a stock dividend or other distribution out of earnings or surplus,
 - (ii) a trade in a security whether of its own issue or not that is distributed or issued by a company to holders of its securities as incidental to a *bona fide* re-organization or winding-up of such company or distribution of its assets for the purpose of winding-up its affairs, or
 - (iii) the sale by a company of its securities pursuant to the exercise of a right, transferable or otherwise, granted by the company to holders of its securities to purchase additional securities of its own issue if the company has given the Commission written notice stating the date, amount, nature and conditions of the proposed sale, including the approximate net proceeds to be derived by the company on the basis of such additional securities being fully taken up and paid for, and either,
 - (A) the Commission has not informed the company in writing within 10 days of the giving of such notice that it objects to the sale, or
 - (B) information satisfactory to the Commission relating to the securities has been delivered to and accepted by the Commission,provided that, with respect to any trade referred to in subclause (i) or (ii), no commission or other remuneration is paid or given to others in respect of such distribution or issuance except for ministerial or professional services or for services

performed by a person or company registered for trading in securities under this Act;

9. a trade in a security of a company that is exchanged by or for the account of such company with another company or the holders of the securities of such other company in connection with a consolidation, amalgamation, merger or re-organization of either company or in connection with a take-over bid as defined in Part 9;
10. a trade by a company of securities of its own issue with its employees or the employees of an affiliate who are not induced to trade by expectation of employment or continued employment;
11. a trade in respect of which the regulations provide that registration is not required.

(2) Subject to the regulations, registration is not required to trade in the following securities:

1. bonds, debentures or other evidences of indebtedness
 - (i) of or guaranteed by the government of Canada or any province of Canada or by the government of the United Kingdom or any foreign country or any political division thereof,
 - (ii) of any municipal corporation in Canada, including debentures issued for public, separate, high or vocational school purposes, or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of any province of Canada on property in such province and collectible by or through the municipality in which such property is situated,
 - (iii) of or guaranteed by a bank to which the *Bank Act* (Canada) applies, a trust company registered under *The Trust Companies Act, 1967*, or an insurance company licensed under *The Alberta Insurance Act*, or
 - (iv) of or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods Agreements Act* (Canada), if the bonds, debentures or evidences of indebtedness are payable in the currency of Canada or the United States of America;
2. investment certificates as defined in *The Trust Companies Act, 1967* and issued by a trust company registered under that Act;

3. negotiable promissory notes or commercial paper maturing not more than one year from the date of issue, provided that each such note or commercial paper traded to an individual has a denomination or principal amount of not less than \$50,000;
4. mortgages or other encumbrances upon real or personal property, other than mortgages or other encumbrances contained in or secured by a bond, debenture or similar obligation or in a trust deed or other instrument to secure bonds or debentures or similar obligations, if such mortgages or other encumbrances are not offered for sale to the public except by a person or company registered under *The Real Estate Agents' Licensing Act*;
5. securities evidencing indebtedness due under any conditional sales contract or other title retention contract providing for the acquisition of personal property if such securities are not offered for sale to the public;
6. securities issued by a person or company organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit, where no part of the net earnings of such person or company enure to the benefit of any security holder;
7. securities issued by an association as defined in *The Co-operative Associations Act*;
8. shares of a credit union within the meaning of *The Credit Union Act*;
9. securities of a private company issued by the private company if the securities are not offered for sale to the public;
10. securities issued and sold by a prospector for the purpose of financing a prospecting expedition;
11. securities issued by a prospecting syndicate where such 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 6, provided that a prospecting syndicate agreement relating to the prospecting syndicate has been filed and a receipt therefor issued by the Registrar, and provided that the prospector delivers a copy of the prospecting syndicate agreement to the person or company purchasing the security before accepting payment therefor;
12. securities of a prospecting syndicate within the meaning of Part 6, issued by the prospecting syndicate, where a prospecting syndicate agreement relating to the prospecting syndicate has been filed

and a receipt therefor issued by the Registrar if such securities are not offered for sale to the public and are sold to not more than 50 persons or companies;

13. securities in respect of which the regulations provide that registration is not required.

(3) Subject to the regulations, registration is not required in respect of a trade where the purchaser is

(a) a person other than an individual, or

(b) a company,

that purchases for investment only and not with a view to resale or distribution, if the trade is in a security which has an aggregate acquisition cost of not less than \$97,000.

(4) For the purpose of subsection (3), a direct solicitation of or negotiation with a person or company with a view to effecting a sale is not a trade within the meaning of clause 31 of subsection (1) of section 2.

(5) Notwithstanding subsections (1), (2) and (3), the Commission may, where in its opinion such action is in the public interest

(a) order that subsection (1) or (3) shall not, with respect to such of the trades referred to in that subsection as are specified in the order, apply to the person or company named in the order,

(b) order that subsection (2) shall not, with respect to such of the securities referred to in that subsection as are specified in the order, apply to the person or company named in the order.

(6) No order shall be made under subsection (5) without a hearing, unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall expire 15 days from the date of the making thereof.

(7) Notice of a temporary order made under subsection (6) shall be given forthwith together with the notice of hearing required by clause 1 of section 5 to every person or company that in the opinion of the Commission is primarily affected thereby.

(8) Notwithstanding clause 6 of subsection (2), no person or company shall raise funds through the sale of or subscription to membership in any organization if the proceeds are to be used for the purpose of establishing, building, leasing, purchasing or otherwise acquiring club buildings or recreational facilities, unless the person or company has obtained the written consent of the Director.

20. (1) The Commission may, where in its opinion such action is not prejudicial to the public interest, order, sub-

20. Exemption by Commission.

ject to such terms and conditions as it may impose, that sections 6 and 35 do not apply to any trade, security, person or company, as the case may be, named in the order.

(2) A notice of each order made under subsection (1) and a summary of the facts relating thereto shall be published by the Commission as soon as practicable after such order is made in *The Alberta Gazette*.

(3) *The Regulations Act* does not apply to an order under this section.

PART 3

INVESTIGATION AND ACTION BY COMMISSION

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

(a) contravened any of the provisions of this Act or the regulations, or

(b) committed an offence under the *Criminal Code* in connection with a trade in securities,

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.

(2) The Commission may, with the consent of the Minister, by order appoint any person to make such investigation as it deems expedient for the due administration of this Act or into any matter relating to a trade in securities, and in such order shall determine and prescribe the scope of the investigation.

(3) For the purposes of any investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine

(a) the affairs of the person or company in respect of which the investigation is being made and 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 such person or company and any property, assets or things owned, acquired or alienated in whole or in part by such person or company or by any person or company acting on behalf of or as agent for such 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

21. Investigation on order of Commission.

such person or company and the relationship that may at any time exist or have existed between such 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.

(4) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in his custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court, provided that no provision of *The Alberta Evidence Act* exempts any bank or any officer or employee thereof from the operation of this section.

(5) A person giving evidence at an investigation under this section may be represented by counsel.

(6) 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.

(7) Where any documents, records, securities or other property are seized under subsection (6), such documents, records, securities or other property will be made available for inspection and copying by the person or company from whom seized at a mutually convenient time and place.

(8) 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.

(9) Every person appointed under subsection (1), (2) or (8) shall report the result of his investigation or examination to the Commission.

22. Where upon the report of an investigation made under section 21 it appears to the Commission that any person or company may have

- (a) contravened any of the provisions of this Act or the regulations, or
- (b) committed an offence under the *Criminal Code* in connection with a transaction relating to securities

22. Report of investigation to Minister.

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 Minister.

23. Notwithstanding section 21, the Minister may by order appoint any person to make such investigation as he deems expedient for the due administration of this Act or into any matter relating to a trade in securities, in which case the person so appointed, for the purposes of the investigation, has the same authority, powers, rights and privileges as a person appointed under section 21.

24. No person, without the consent of the Commission, shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under section 21 or 23.

25. Where an investigation has been made under section 21, the Commission may, and, where an investigation has been made under section 23, the person making the investigation shall, report the result thereof, including the evidence, findings, comments and recommendations, to the Minister, and the Minister may cause the report to be published in whole or in part in such manner as he deems proper.

26. (1) The Commission may,

- (a) where it is about to order an investigation under section 21 or during or after an investigation under section 21 or 23,
- (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 criminal proceeding or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company, 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 such person or company,

in writing or by telegram direct any person or company having on deposit or under control or for safekeeping any funds or securities of the person or company referred to in clause (a), (b) or (c) to hold such funds or securities or direct the person or company referred to in clause (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 safekeeping or to hold all funds or securities of clients or others in his posses-

23. Investigation under order of Minister.

24. Evidence not to be disclosed.

25. Publication of report to Minister.

26. Order to hold or refrain from dealing with funds.

ship 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, provided that no such direction 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 in the case of a bank, loan or trust company the direction applies only to the offices, branches or agencies thereof named in the direction.

(2) 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 the case of a claim being made thereto by any person or company not named in the direction, may apply to a judge of the Supreme Court who may direct the disposition of such funds or security and may make such order as to costs as seems just.

(3) In any of the circumstances mentioned in clause (a), (b) or (c) of subsection (1), the Commission may in writing or by telegram notify any registrar of deeds, master of titles or mining recorder that proceedings are being or are about to be taken that may affect land or mining claims belonging to the person or company referred to in the notice, which notice shall be registered or recorded against the lands or claims mentioned therein and has the same effect as the registration or recording of a certificate of *lis pendens* or a caution, provided that the Commission may in writing revoke or modify the notice.

27. (1) The Commission may,

- (a) where it is about to order an investigation under section 21 or during or after an investigation under section 21 or 23,
- (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 criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company 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 such person or company,

apply to a judge of the Supreme Court for the appointment of a receiver or a receiver and manager or a trustee of the property of such person or company.

27. Application for appointment of receiver, receiver and manager, or trustee.

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

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

(4) A receiver or a receiver and manager or a trustee of the property of any person or company appointed under this section shall be the receiver or the receiver and manager or the trustee 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 the receiver or the receiver and manager or the trustee shall have authority, if so directed by the judge, to wind-up or manage the business and affairs of the person or company and all powers necessary or incidental thereto.

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

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

PART 4
APPEALS

28. (1) Any person or company primarily affected by a direction, decision, order or ruling of the Director may, by notice in writing sent by registered mail to the Registrar within 30 days after the mailing of the notice of the direction, decision, order or ruling, request and be entitled to a hearing and review thereof by the Commission.

(2) Upon a hearing and review, the Commission may by order confirm the direction, decision, order or ruling under review or make such other direction, decision, order or ruling as the Commission deems proper.

29. (1) Any person or company primarily affected by a direction, decision, order or ruling of the Commission, other than a ruling under section 59, may appeal to the Appellate Division.

(2) Every appeal shall be by notice of motion sent by registered mail to the Registrar within 30 days after the

28. Review by Commission.

29. Appeal to the Appellate Division.

mailing of the notice of the order, and the practice and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court in an action.

(3) The Registrar shall certify to the Clerk of the Supreme Court

- (a) the direction, decision, order or ruling that has been reviewed by the Commission,
- (b) the order of the Commission, together with any statement of reasons therefor,
- (c) the record of the review, and
- (d) all written submissions to the Commission or other material that are relevant to the appeal.

(4) The Minister may appoint counsel to assist the Appellate Division upon the hearing of any appeal under this section.

(5) Where an appeal is taken under this section, the Appellate Division may by its order direct the Commission to make such direction, decision, order or ruling or to do such other act as the Commission is authorized and empowered to do under this Act or the regulations and as the Court deems proper, having regard to the material and submissions before it and to this Act and the regulations, and the Commission shall make such direction, decision, order or ruling or do such act accordingly.

(6) Notwithstanding an order of the Appellate Division, the Commission has power to make any further direction, decision, order or ruling upon new material or where there is a material change in the circumstances, and every such direction, decision, order or ruling is subject to this section.

PART 5

AUDITS

30. Every stock exchange in Alberta recognized by the Commission and the Alberta District of the Investment Dealers' Association of Canada shall

- (a) select a panel of auditors each of whom shall have practised as such in Alberta for not fewer than five years and shall be known as a panel auditor or members' auditor, and
- (b) employ an exchange auditor, district association auditor or association auditor, as the case may be, whose appointment is subject to the approval of the Commission, and the appointee shall be an auditor who has practised as such in Alberta for not fewer than 10 years.

30. Selection of auditors by stock exchange and I.D.A.C.

31. (1) Every stock exchange in Alberta recognized by the Commission and the Alberta District of the Investment Dealers' Association of Canada shall cause each member of such class or classes of their members as the Commission may designate in writing to appoint an auditor from the panel of auditors selected under section 30, and such auditor shall make the examination of the financial affairs of such member as called for by the by-laws, rules or regulations applicable to members of such class or classes and shall report thereon to the exchange auditor, district association auditor or association auditor, as the case may be.

(2) The by-laws, rules and regulations of every stock exchange in Alberta, recognized by the Commission, the rules and regulations of the Alberta District of the Investment Dealers' Association of Canada in respect of the practice and procedure of the examinations under subsection (1) and the actual conduct of the examinations shall be satisfactory to the Commission.

32. Every registrant whose financial affairs are not subject to examination under section 31 shall keep such books and records as are necessary for the proper recording of his business transactions and financial affairs and shall file with the Commission annually and at such other time or times as the Commission may require a financial statement satisfactory to the Commission as to his financial position, certified by such registrant or an officer or partner of such registrant and reported upon by the auditors of such registrant, and such other information as the Commission may require in such form as it may prescribe.

33. (1) Notwithstanding anything in sections 30, 31 and 32 the Commission or any person to whom as its representative it may in writing delegate such authority may at any time make an examination of the financial affairs of a registrant or of any person or company whose securities have been the subject of a filing with the Commission, and prepare a balance sheet as of the date of such examination and such other statements and reports as may be required by the Commission.

(2) The Commission or any person making an examination under this section is entitled to 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.

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

31. Audits and auditing by-laws of stock exchanges and I.D.A.C.

32. Filing of annual financial statement by registrant not subject to audit under section 31.

33. Commission may make examination of financial affairs of a registrant or company whose securities have been subject to a filing.

PART 6

PROSPECTING SYNDICATES AND COMMERCIAL SYNDICATES

34. (1) Upon the filing of a prospecting syndicate agreement and the issuance of a receipt therefor by the Registrar, 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) where 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) where 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, not exceeding 25 per cent of the sale price, that may be charged or taken by a person or company as commission upon the sale of units in the syndicate,
 - (iv) the maximum number of units in the syndicate, not exceeding $33\frac{1}{3}$ per cent of the total number of units of the syndicate, that may be issued in consideration of the transfer to the syndicate of mining properties,
 - (v) the location of the principal office of the syndicate and that the principal office shall at all times be maintained in Alberta and that the Registrar and the members of the syndicate shall be notified immediately of any change in the location of the principal office,
 - (vi) that a person or company holding mining properties for the syndicate shall 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 shall be acquired by the syndicate other than by staking unless such acquisition is approved by members of the syndicate holding at least two-thirds of the issued 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, shall be limited to one-third of the total amount received by the treasury of the syndicate from the sale of its units,

34. Prospecting syndicate agreements and commercial syndicate agreements. Subsections (5) to (14) relating to commercial syndicates are the equivalent of the present sections 44a and 44b.

- (ix) that a statement of the receipts and disbursements of the syndicate shall be furnished to the Registrar and to each member annually,
- (x) that 90 per cent of the vendor units of the syndicate shall be escrowed units and may be released upon the consent of the Director and that any release of such units shall not be in excess of one vendor unit for each unit of the syndicate sold for cash, and
- (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 shall be disposed of unless such disposal is approved by members of the syndicate holding at least two-thirds of the issued units of the syndicate other than escrowed units,

and

- (c) where the agreement limits the capital of the syndicate to a sum not exceeding \$50,000.

(2) The Director may in his discretion direct the Registrar to issue a receipt for any prospecting syndicate agreement filed under this section and is not required to determine whether it is in conformity with clauses (a), (b) and (c) of subsection (1).

(3) After a receipt is issued by the Registrar for a prospecting syndicate agreement, the requirements of *The Partnership Act* as to filing do not apply to the prospecting syndicate.

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

(5) In this subsection and subsections (6) to (14),

- (a) "commercial syndicate" means a combination of persons or companies or both persons and companies formed, with a common view to profit, for the promotion of any mercantile, mechanical or manufacturing enterprise or any enterprise for the development of property, but does not include a prospecting syndicate;
- (b) "commercial syndicate agreement" or "agreement" means the document wherein the terms and conditions of the association of the participants in the commercial syndicate are set out;
- (c) "unit" includes any document or writing by which participants are to evidence their acceptance of the terms and conditions for association and the extent of their participation therein, by whatever name the writing is called in the agreement.

(6) A commercial syndicate agreement may, in the absolute discretion of the Director, be accepted for filing by the Director if the agreement complies with the requirements of subsection (7).

(7) The agreement shall contain

- (a) the name under which the commercial syndicate will carry out its enterprise,
- (b) the general nature of the enterprise intended to be carried out,
- (c) the date on which the enterprise will be started,
- (d) the names and usual places of residence of the persons or companies interested in having the commercial syndicate established, and the participants in the agreement at the time of filing,
- (e) the amount of capital that the participants have contributed and the capital that will be sought from others who subsequently participate in the commercial syndicate,
- (f) the particulars of any transaction effected or in contemplation involving the participation of any persons or companies in the commercial syndicate for a consideration other than cash,
- (g) the maximum amount that may be charged or taken by any person or company as commission upon the sale of units of the commercial syndicate,
- (h) the maximum amount or number of units of the commercial syndicate, or the maximum participation therein, that may be issued or authorized in consideration of the transfer to the commercial syndicate of any property or right or interest in or in respect of any real property, or for any services, licences, franchises, inventions, patents or other things or rights to be used or acquired by the syndicate,
- (i) the location within Alberta of the head office of the commercial syndicate and an undertaking that the head office will at all times during the continuance of the agreement be maintained in Alberta and that any change in the address of the head office will be immediately notified to all participants in the syndicate and to the Registrar,
- (j) an undertaking that a person holding any real or personal property for the commercial syndicate will execute a declaration of trust in favour of the syndicate with respect to the property,
- (k) a condition that the administrative expenses of the commercial syndicate including in addition to any other items, salaries, office expenses, advertising and commissions paid or to be paid by the syndicate with respect to obtaining further participation therein, will be limited to such percentage of the

total amount received by the syndicate from all units sold therein for cash, as may be approved by the Director,

- (l) an undertaking that the statement of the receipts and disbursements of the commercial syndicate will be furnished to the Director on demand and to each participant annually,
- (m) an undertaking that 90 per cent of the units of the syndicate to be issued for properties or consideration other than cash will be held in escrow for release upon the consent of the Director, and that any release of units will not be in excess of the units sold for cash, and
- (n) an undertaking that no securities of the commercial syndicate other than those of its own issue and no properties, or other rights or things held by the syndicate or held in trust for the syndicate, will be disposed of or allowed to lapse unless the same is approved by two-thirds of the participants in the syndicate.

(8) When an agreement has been accepted by the Director for filing, the commercial syndicate may designate from time to time the persons therein who will sell units of the syndicate to the public, and shall inform the Director of the methods of selling that the syndicate proposes to adopt.

(9) Where an agreement is accepted for filing by the Director the persons or companies, not being parties to the setting up of the syndicate, who participate in the commercial syndicate by the purchase of units of the syndicate are not liable for the debts of the commercial syndicate except in respect of the amounts contributed by them to the capital thereof.

(10) The persons designated to sell units of the commercial syndicate shall obtain registration by the Director as securities salesmen for the syndicate's securities and are subject to such rules and regulations as the Commission may prescribe to control and regulate or prohibit the activities of salesmen of securities issued by commercial syndicates.

(11) Where a commercial syndicate agreement is accepted for filing by the Director under this section, the requirements of *The Partnership Act* as to filing and as to certificates do not apply to the commercial syndicate.

(12) Except a salesman of a commercial syndicate registered as such under section 6, and subject to subsection (13), no person registered for trading in securities under this Act shall trade in a security offered by a commercial syndicate, or other person, either as agent for the syndicate, or other person, or as principal.

(13) A person or company registered for trading in securities under this Act, other than a salesman of a com-

mercial syndicate registered under subsection (10), may trade in a security issued by a person, other than a commercial syndicate, if

- (a) written permission, upon such terms as the Director may require, has been obtained from the Director, and
- (b) information satisfactory to the Director and relating to that person and the security has been accepted for filing by the Director.

(14) Notwithstanding section 6, the salesman of a commercial syndicate registered as such under subsection (10) may trade in the securities of the commercial syndicate subject to the rules and regulations of the Commission in that behalf and subject to any special conditions made by the Director upon the registration of the salesman.

PART 7

TRADING IN THE COURSE OF PRIMARY DISTRIBUTION TO THE PUBLIC

35. (1) No person or company shall trade in a security either on his own account or on behalf of any other person or company where such trade would be in the course of primary distribution to the public of such security until there have been filed with the Commission both a preliminary prospectus and a prospectus in respect of the offering of such security and receipts therefor obtained from the Registrar.

(2) The Registrar shall issue a receipt for the preliminary prospectus forthwith upon the filing thereof.

36. (1) In this section "waiting period" means the interval, which shall be at least 10 days, between the issuance by the Registrar of a receipt for a preliminary prospectus relating to the offering of a security and the issuance by him of a receipt for the prospectus.

(2) Notwithstanding section 35 but subject to Part 8, it is permissible during the waiting period

- (a) to distribute a notice, circular, advertisement or letter to or otherwise communicate with any person or company identifying the security proposed to be issued, stating the price thereof, if then determined, the name and address of a person or company from whom purchases of the security may be made and containing such further information as may be permitted or required by the regulations, if every such notice, circular, advertisement, letter or other communication states the name and address of a person or company from whom a preliminary prospectus may be obtained,

35. Prohibition as to trading in the course of a primary distribution to the public unless prospectus filed and receipt obtained. Part 7 is new and replaces all provisions in the present Act as to filing of prospectuses.

36. Distribution of notice, etc., during waiting period re preliminary prospectus.

- (b) to distribute a preliminary prospectus, and
- (c) to solicit expressions of interest from a prospective purchaser if, prior to such solicitation or forthwith after the prospective purchaser indicates an interest in purchasing the security, a copy of the preliminary prospectus is forwarded to him.

37. The underwriter or other person or company distributing a security in the course of primary distribution to the public shall maintain a record available for inspection by the Commission of the names and addresses of all persons and companies to whom a preliminary prospectus has been distributed.

38. (1) A preliminary prospectus shall contain the certificates required by sections 52 and 53 and shall, subject to subsection (2), comply as to form and content substantially with the requirements of this Act and the regulations respecting a prospectus, except that the report or reports of the auditor or accountant required by section 46 need not be included.

(2) A preliminary prospectus may exclude information with respect to the price to the underwriter and the offering price to the public and other matters dependent upon or relating to such prices.

39. A preliminary prospectus shall have printed in red ink on the outside front cover the following statement or such variation thereof as the Director may permit:

This is a preliminary prospectus relating to these securities, a copy of which has been filed with the Alberta Securities Commission but which has not yet become final for the purpose of a primary distribution to the public. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time a receipt is obtained from the Alberta Securities Commission for the final prospectus.

40. (1) Where it appears to the Director that a preliminary prospectus is defective in that it does not comply substantially as to form and content with the requirements of this Act and the regulations respecting a prospectus, he may, without giving notice, order that the trading permitted by subsection (2) of section 36 in the security to which the preliminary prospectus relates shall cease until a revised preliminary prospectus satisfactory to the Director is filed with the Commission and forwarded to each recipient of the defective preliminary prospectus according to the record maintained under section 37.

(2) Where a material adverse change occurs after the date of the preliminary prospectus and before the issuance

37. Record of distribution of preliminary prospectus.

38. Form and content of preliminary prospectus.

39. Form of cover page of preliminary prospectus.

40. Defective preliminary prospectus.

of a receipt for a prospectus that makes untrue or misleading any statement of a material fact contained in the preliminary prospectus, an amendment to the preliminary prospectus shall be filed with the Commission as soon as practicable, and in any event within 10 days from the date the change occurs.

(3) An amendment to a preliminary prospectus referred to in subsection (2) shall forthwith, after it has been filed with the Commission, be forwarded to each recipient of the preliminary prospectus according to the record maintained under section 37.

41. (1) A prospectus shall provide full, true and plain disclosure of all material facts relating to the security proposed to be issued.

(2) A prospectus shall comply as to form and content with the requirements of this Act and the regulations.

(3) There shall be filed with a prospectus such documents, reports and other material as are required by the regulations.

42. If a statement required to be contained in a prospectus would otherwise be misleading, the prospectus shall contain such additional information, whether or not expressly required to be contained in the prospectus, as may be necessary to make the required statement not misleading in the light of the circumstances in which it is made.

43. (1) A prospectus shall contain the following financial statements:

- (a) a statement of profit and loss of the company and, unless the Director otherwise permits, of all its subsidiaries, year by year for
 - (i) the last five completed financial years or such shorter period as the Director permits or requires, and
 - (ii) any part of a subsequent financial year to the date at which the balance sheet required by clause (d) is made up;
- (b) a statement of surplus year by year of the company and, unless the Director otherwise permits, of all its subsidiaries for the financial years and period covered by the statement of profit and loss referred to in clause (a);
- (c) in the case of a mining or industrial company that is in the promotional, exploratory or developmental stage, a statement of source and application of funds or a statement of cash receipts and disbursements of the company and, unless the Director otherwise permits, of all its subsidiaries for the financial years and period referred to in clause (a);

41. Form, content and supplemental material of prospectus.

42. Additional information.

43. Financial statements in prospectus.

(d) a balance sheet of the company and, unless the Director otherwise permits, of all its subsidiaries as at a date not more than 120 days prior to the date of the issuance of a receipt for the preliminary prospectus or the date of a new prospectus referred to in section 56, as the case may be, or as at such other date as the Director may permit or require.

(2) Where the financial statements required by subsection (1) relate to part of a financial year, the prospectus shall also contain a statement of profit and loss, a statement of surplus or, where clause (c) of subsection (1) is applicable, a statement of source and application of funds or a statement of cash receipts and disbursements, which need not be reported on by the auditor or accountant, for the comparable period in the preceding financial year.

(3) Where a statement of source and application of funds or a statement of cash receipts and disbursements is included in a prospectus, the statements of profit and loss and surplus may be omitted from the prospectus unless required to be included by the Director.

(4) The statements referred to in subsection (1) shall, unless the Director otherwise permits, be prepared on a consolidated basis.

44. The Director may permit or require a prospectus to contain as part of the financial statements a *pro forma* balance sheet of the company and, unless the Director otherwise permits, of all its subsidiaries as at the date at which the balance sheet required by clause (d) of subsection (1) of section 43 is made up, giving effect to the issue and sale or redemption or other retirement of securities issued or to be issued by the company and to such other transactions as the Director may permit or require.

45. (1) Where the proceeds of the securities offered by a prospectus are to be applied in whole or in part directly or indirectly, either by purchase of assets or shares, to finance the acquisition of a business, the Director may permit or require the prospectus to contain as part of the financial statements one or more of the following:

- (a) a *pro forma* statement combining the profits or losses year by year of the business covered by the statements referred to in clause (b) and subsection (4) with those of the company or companies covered by the statements of profit and loss required by clause (a) of subsection (1) and subsection (2) of section 43;
- (b) a statement of profit and loss year by year of the business;
- (c) a *pro forma* balance sheet combining the assets and liabilities of the business referred to in clause (d)

44. Pro forma balance sheet. New.

45. Statements where proceeds to be used in acquisition of a business.

and the assets and liabilities shown in the balance sheet of the company or companies referred to in clause (d) of subsection (1) of section 43 as at the date at which the last-mentioned balance sheet is made up;

- (d) a statement showing the assets and liabilities of the business as at a date not more than 120 days prior to the date of the issuance of a receipt for the preliminary prospectus or the date of a new prospectus referred to in section 56, as the case may be, or as at such other date as the Director may permit or require;
- (e) a statement of surplus year by year of the business;
- (f) where the business is of a mining or an industrial nature and is in the promotional, exploratory or developmental stage, a statement of source and application of funds or a statement of cash receipts and disbursements.

(2) The statements referred to in clauses (b), (e) and (f) of subsection (1) shall cover the following:

- (a) the last five completed financial years of the business or such shorter period as the Director permits or requires;
- (b) any part of a subsequent financial year to the date at which the balance sheet required by clause (d) of subsection (1) is made up.

(3) Where a statement of source and application of funds or a statement of cash receipts and disbursements of the business is included in a prospectus, the statements of profit and loss and surplus of the business may be omitted from the prospectus unless required to be included by the Director.

(4) Where the statement referred to in clause (b) of subsection (1) relates to part of a financial year, the prospectus shall also contain a statement of profit and loss, a statement of surplus or, where clause (f) of subsection (1) is applicable, a statement of source and application of funds or a statement of cash receipts and disbursements, which need not be reported on by the auditor or accountant, for the comparable period in the preceding financial year.

(5) The statements referred to in clauses (b), (d), (e) and (f) of subsection (1) and in subsection (4) shall, unless the Director otherwise permits, be prepared on a consolidated basis.

46. (1) A prospectus shall, except as otherwise provided in this Act, contain a report on the financial statements contained therein of a person acceptable to the Director who is the auditor of the company or of a subsidiary or is an accountant eligible for appointment as auditor of the company or of a subsidiary and, where financial statements of a

46. Prospectus to contain financial statements and report acceptable to Director.

business acquired or to be acquired are required or permitted, a report of a person acceptable to the Director who is the auditor of such business or is an accountant eligible for appointment as such auditor, which report shall be signed by the appropriate auditor or accountant and shall state whether in the opinion of such auditor or accountant the financial statements referred to therein present fairly the financial position of the company, the subsidiary or the business acquired or to be acquired, as the case may be, and the results of their respective operations for the years and periods under review in accordance with generally accepted accounting principles applied on a consistent basis.

(2) If the prospectus contains a statement of source and application of funds or a statement of cash receipts and disbursements, the appropriate auditor or accountant shall include in his report a statement whether in his opinion, in effect, the statement of source and application of funds or the statement of cash receipts and disbursements, as the case may be, presents fairly the information shown therein.

(3) The auditor or accountant shall make such examinations as will enable him to make the report required by subsections (1) and (2), and the report shall contain such comments or qualifications as he considers necessary

- (a) if the financial statements required by section 43 and clauses (b), (d), (e) and (f) of subsection (1) of section 45 are not in agreement with the accounting records of the company or business,
- (b) if he has not received all the information and explanations that he has required,
- (c) if proper accounting records have not been kept, so far as appears from his examination, or
- (d) if the financial statements required by sections 43, 44 and 45 are not prepared in accordance with the requirements of this Act and the regulations.

(4) The report required by subsection (1) shall not contain any qualification where it is reasonably practicable for the company, subsidiary or acquired business, as the case may be, to revise its presentation with respect to the matter that would otherwise be the subject of a qualification.

(5) The report required by subsection (1) need not relate to any date or period subsequent to the last completed financial year of the company or of a subsidiary and, where section 45 is applicable, to any date or period subsequent to the last completed financial year of the business acquired or to be acquired where such date is or such period ended, as the case may be, not more than 90 days before the date of the issuance of a receipt for the preliminary prospectus or such longer time as the Director may permit and not more than one year after the last completed financial year or such longer time as the Director may permit, provided that the prospectus contains a balance sheet of the company and,

unless the Director otherwise permits, of all its subsidiaries as at the end of the last financial year completed before the issuance of such receipt or as at the end of such other completed financial year as the Director may permit and, where section 45 is applicable, a balance sheet of the business acquired or to be acquired as at the end of its last financial year then completed or as at the end of such other completed financial year as the Director may permit.

(6) If, pursuant to subsection (5), a financial statement contained in a prospectus is not reported on by an auditor or accountant, there shall be filed with the Commission such advice from the auditor or accountant relating to such financial statement as may be required by the Commission.

47. Every statement of profit and loss, statement of surplus, balance sheet, statement of source and application of funds, statement of cash receipts and disbursements, *pro forma* statement of profit and loss and *pro forma* balance sheet contained in a prospectus shall be approved by the appropriate board of directors, which approval shall be evidenced by the signatures at the foot of every balance sheet and *pro forma* balance sheet of two directors duly authorized to signify each such approval.

48. It is not necessary to designate the statements referred to in this Part as the statement of profit and loss, statement of surplus, statement of source and application of funds, statement of cash receipts and disbursements and balance sheet.

49. The Director may direct that separate financial statements or certain of them with respect to a subsidiary of a company be included in a prospectus, whether or not the financial statements of such subsidiary are consolidated with the financial statements contained in the prospectus, and, in such event, this Part applies *mutatis mutandis* to such separate financial statements.

50. (1) If any solicitor, auditor, accountant, engineer, appraiser or any other person or company whose profession gives authority to a statement made by him is named as having prepared or certified any part of a prospectus or is named as having prepared or certified a report or valuation used in or in connection with a prospectus, the written consent of such person or company to the inclusion of such report or valuation shall be filed with the Commission not later than the time the prospectus is filed.

(2) The Director may dispense with the filing of a consent required by subsection (1) if, in his opinion, such filing is impracticable or involves undue hardship.

(3) The consent of the auditor or accountant referred to in subsection (1) shall refer to his report required by sec-

47. Statements in prospectus to be approved by board of directors.

48. Designation of statements, etc.

49. Separate financial statements of subsidiaries.

50. Consents of experts to be filed, and disclosure of interest.

tion 46, stating the date thereof and the dates of the financial statements on which the reports are made, and shall contain a statement that he has read the prospectus and that the information contained therein, which is derived from the financial statements contained in the prospectus or which is within his knowledge, is, in his opinion, presented fairly and is not misleading.

(4) If a solicitor, auditor, accountant, engineer, appraiser or other person or company referred to in subsection (1) has directly or indirectly received or expects to receive any interest, direct or indirect, in the property of the company or any affiliate, or beneficially owns, directly or indirectly, any securities of the company or any affiliate, such interest or ownership shall be disclosed in the prospectus.

(5) If a person or company referred to in subsection (1) is or is expected to be elected, appointed or employed as a director, officer or employee of the company or any affiliate, such fact shall be disclosed in the prospectus.

(6) Notwithstanding subsections (4) and (5), the Director may direct the Registrar not to issue a receipt for a prospectus if a person or company referred to in subsection (1) is not acceptable to him.

51. Where any change is proposed to be made in a preliminary prospectus or prospectus that in the opinion of the Director materially affects any consent required by section 50, the Director may require that a further consent be filed with the Commission before a receipt for the amended prospectus is issued.

52. (1) A prospectus shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer and, on behalf of the board of directors, by any two directors of the company, other than the foregoing, duly authorized to sign and by any person or company who is a promoter of the company:

The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part 7 of The Securities Act, 1967 and the regulations thereunder.

(2) Where the Director is satisfied upon evidence or submissions made to him that either or both of the chief executive officer or chief financial officer of the company is for adequate cause not available to sign a certificate in a prospectus, the Director may permit the certificate to be signed by any other responsible officer or officers of the company in lieu of either or both of the chief executive officer or chief financial officer.

(3) With the consent of the Director, a promoter need not sign a certificate in a prospectus.

51. Further consents under section 50 to proposed change in prospectus.

52. Certificate in prospectus by promoter, etc.

(4) The Director may, in his discretion, require any person or company who was a promoter of the company within the two preceding years to sign the certificate required by subsection (1), subject to such conditions as the Director may deem proper.

(5) With the consent of the Director, a promoter may sign a certificate in a prospectus by his agent duly authorized in writing.

53. (1) A prospectus shall contain a certificate in the following form, signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the person or company whose securities are being offered by the prospectus:

To the best of our knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part 7 of The Securities Act, 1967, and the regulations thereunder.

(2) With the consent of the Director, an underwriter may sign a certificate in a prospectus by his agent duly authorized in writing.

54. (1) No person or company shall engage in the primary distribution to the public of a security to which section 35 or 56 is applicable until such person or company has notified the Commission in writing of his intention to engage in such primary distribution.

(2) A person or company shall notify the Commission in writing when, in his opinion, he has ceased to engage in the primary distribution to the public of a security to which section 35 or 56 is applicable.

55. Where a material change occurs during the period of primary distribution to the public of a security that makes untrue or misleading any statement of a material fact contained in a prospectus filed under this Part in respect of which a receipt has been issued by the Registrar, an amendment to the prospectus shall be filed with the Commission as soon as practicable, and in any event within 10 days from the date the change occurs.

56. Where primary distribution to the public of the security is in progress 12 months from

(a) the date of the issuance of the receipt for the preliminary prospectus relating to such security, or

(b) the date of the last prospectus relating to such security filed under this section,

as the case may be, a new prospectus that complies with this Part shall be filed with the Commission and a receipt therefor obtained from the Registrar within 20 days from the

53. Certificate in prospectus by underwriter.

54. Notice to Commission of engagement and cessation of primary distribution.

55. Material change during primary distribution.

56. New prospectus to be filed after one year of primary distribution.

expiration of the applicable 12-month period or, subject to such terms and conditions as the Commission may require, within such greater number of days as it may permit.

57. From the date of the issuance by the Registrar of a receipt for a prospectus relating to a security, a person or company trading in the security in the course of primary distribution to the public, either on his own account or on behalf of any other person or company, may distribute the prospectus, any document filed with or referred to in the prospectus and any notice, circular, advertisement or letter of the nature described in clause (a) of subsection (2) of section 36, but shall not distribute any other printed or written material respecting the security that may be prohibited by the regulations.

58. (1) Section 35 does not apply to a trade where the purchaser or proposed purchaser is a person or company referred to in clause 3 of subsection (1) of section 19 or in subsection (3) of section 19 or to a trade referred to in clauses 6, 8, 9 and 10 of subsection (1) of section 19 or to trades from one person or company registered for trading in securities to another person or company registered for trading in securities where the purchasing person or company is acting as principal.

(2) Section 35 does not apply to securities

- (a) that are referred to in subsection (2) of section 19,
- (b) that are listed and posted for trading on any stock exchange recognized by the Commission where such securities are distributed to the public through the facilities of such stock exchange pursuant to the rules of such stock exchange and the requirements of the Commission, provided that a statement of material facts, which shall comply as to form and content with the regulations, is filed with and is acceptable to such stock exchange and the Commission,
- (c) that are listed and posted for trading on any stock exchange recognized by the Commission where such securities are distributed to the public within the meaning of subclause (ii) of clause 16 of subsection (1) of section 2 through the facilities of such stock exchange by way of isolated trades not made in the course of continued and successive transactions of a like nature, or
- (d) that are exempted by the regulations.

(3) Sections 63 and 64 apply *mutatis mutandis* to a distribution under clause (b) of subsection (2) as if section 35 or 56 was applicable thereto, and the statement of material facts referred to in clause (b) of subsection (2) shall be conclusively deemed to be a prospectus for the purposes of sections 63 and 64.

57. Limitation on materials that may be distributed during primary distribution.

58. Section 35 does not apply where trades are exempt from registration.

59. (1) Where doubt exists whether a trade proposed or intended to be made in a security would be in the course of primary distribution to the public of the security, the Commission may, on its own motion or upon the application of an interested party, determine whether the proposed or intended trade would be in the course of primary distribution to the public of the security and rule accordingly, and such ruling is final and there is no appeal therefrom.

(2) Where the Commission determines under subsection (1) that a proposed or intended trade would not be in the course of primary distribution to the public of the security, the Commission may rule that registration is not required in respect of such trade.

(3) Where doubt exists whether a primary distribution to the public of any security has been concluded or is currently in progress, the Commission may determine the question and rule accordingly, and such ruling is final and there is no appeal therefrom.

60. (1) Where a person or company proposing to make a primary distribution to the public of previously distributed securities of a company is unable to obtain from the company that is the issuer of such securities information or material that is necessary for the purpose of complying with this Part, the Director 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 Director deems necessary for the purposes of the distribution, upon such terms and subject to such conditions as he deems proper, and all such information and material may be used by the person or company to whom it is furnished for the purpose of complying with this Act.

(2) Where a person or company proposing to make a primary distribution to the public of previously distributed securities of a company is unable to obtain any or all of the signatures to the certificates required by subsection (1) of section 52 or subsection (1) of section 53, as the case may be, or otherwise to comply with this Part, the Director may, upon being satisfied that all reasonable efforts have been made to comply with this Part and that no person is likely to be prejudicially affected by such failure to comply, make such order waiving any of the provisions of this Part as he deems advisable, upon such terms and subject to such conditions as he deems proper.

61. (1) The Director may in his discretion direct the Registrar to issue a receipt for any prospectus filed under this Part, unless it appears to the Director that

(a) the prospectus or any document required to be filed therewith

59. Determination of what constitutes primary distribution.

60. Orders to furnish information necessary for primary distribution and waiving statutory requirements.

61. Issue of receipt for prospectus.

- (i) fails to comply in any substantial respect with any of the requirements of this Part or the regulations,
 - (ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive, or
 - (iii) conceals or omits to state any material facts necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made,
- (b) an unconscionable consideration has been paid or given or is intended to be paid or given for promotional purposes or for the acquisition of property,
 - (c) the proceeds from the sale of the securities to which the prospectus relates that are to be paid into the treasury of the company, together with other resources of the company, are insufficient to accomplish the purpose of the issue stated in the prospectus,
 - (d) such escrow or pooling agreement as the Director deems necessary or advisable with respect to securities issued for a consideration other than cash has not been entered into, or
 - (e) that such agreement as the Director deems necessary or advisable to accomplish the objects indicated in the prospectus for the holding in trust of the proceeds payable to the company from the sale of the securities pending the distribution of such securities has not been entered into.
- (2) The Director shall not make any determination under subsection (1) without making an order or ruling in writing and without giving the person or company who filed the prospectus a prior opportunity to be heard.

62. (1) Where it appears to the Commission, after the filing of a prospectus under this Part and the issuance of a receipt therefor, that any of the circumstances set out in section 61 exist, the Commission may order that all trading in the primary distribution to the public of the securities to which the prospectus relates shall cease.

(2) No order shall be made under subsection (1) without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall expire 15 days from the date of the making thereof.

(3) A notice of every order made under this section shall be served upon the company to whose securities the prospectus relates and upon every registrant who has notified the Commission of his intention to engage in the primary distribution to the public of the securities, and forthwith upon the receipt of the notice

62. Orders to cease trading in course of primary distribution.

- (a) no further trades shall be made in the course of primary distribution to the public of the securities named in the order by any person or company, and
- (b) any receipt issued by the Registrar for the prospectus is *ipso facto* revoked.

63. (1) A person or company not acting as agent of the purchaser who receives an order or subscription for a security offered in the course of primary distribution to the public to which section 35 or 56 is applicable shall, unless he has previously done so, send by prepaid mail or deliver to the purchaser the prospectus or amended prospectus, whichever is the last required to be filed with the Commission, either before entering into an agreement of purchase and sale resulting from the order or subscription or not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after entering into such agreement.

(2) An agreement of purchase and sale referred to in subsection (1) is not binding upon the purchaser if the person or company from whom the purchaser purchased the security receives written or telegraphic notice evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the prospectus or amended prospectus, whichever is the last required to be filed with the Commission.

(3) Subsection (2) does not apply if the purchaser is a registrant or if the purchaser sells or otherwise transfers beneficial ownership of the security referred to in subsection (2), otherwise than to secure indebtedness, before the expiration of the time referred to in subsection (2).

(4) For the purpose of this section, where a prospectus or amended prospectus is sent by prepaid mail, the prospectus or amended prospectus shall be deemed conclusively to be received in the ordinary course of mail by the person or company to whom it was addressed.

(5) The receipt of a prospectus or amended prospectus by a person or company who is acting as agent of or who thereafter commences to act as agent of the purchaser with respect to the purchase of a security referred to in subsection (1) shall, for the purpose of this section, be receipt by the purchaser as of the date on which the agent received such prospectus or amended prospectus.

(6) The receipt of the notice referred to in subsection (2) by a person or company who acted as agent of the vendor with respect to the sale of a security referred to in subsection (1) shall, for the purpose of this section, be receipt by the vendor as of the date on which the agent received such notice.

63. Right of purchaser to withdraw from purchase within two days of receipt of prospectus.

(7) For the purpose of this section, a person or company shall not be considered to be acting as agent of the purchaser unless the person or company is acting solely as the agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation from or on behalf of the vendor with respect to the purchase and sale.

(8) The onus of proving that the time for giving notice under subsection (2) has expired is upon the person or company from whom the purchaser agreed to purchase the security.

(9) Every prospectus shall contain a statement of the rights given to a purchaser by this section.

64. (1) A person or company that is a party to a contract as purchaser resulting from the offer of a security in the course of primary distribution to the public to which section 35 or 56 is applicable has a right to rescind the contract while still the owner of the security if the prospectus and any amended prospectus then filed with the Commission in compliance with section 55 received by the purchaser, as of the date of receipt, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made.

(2) No action shall be commenced under this section after the expiration of 90 days from the last to occur of the receipt of the prospectus or amended prospectus by the purchaser or the date of the contract referred to in subsection (1).

(3) Subsection (1) does not apply to an untrue statement of a material fact or an omission to state a material fact

- (a) if the untruth of such statement or the fact of such omission was unknown both to the person or company whose securities are being offered by the prospectus and to the underwriter referred to in subsection (1) of section 53 and, in the exercise of reasonable diligence, could not have been known to such person or company or to such underwriter,
- (b) if such statement or omission is disclosed in an amended prospectus filed in compliance with section 55 and such amended prospectus was received by the purchaser, or
- (c) if the purchaser knew of the untruth of the statement or knew of the omission at the time he purchased the security.

(4) For the purpose of this section, where a prospectus or amended prospectus is sent by prepaid mail, it shall be deemed to be received in the ordinary course of mail by the person or company to whom it was addressed.

64. Right of purchaser to rescind purchase within 90 days where prospectus contains untrue statements or omits a material statement.

(5) The receipt of a prospectus or amended prospectus by a person or company who is acting as agent of or who thereafter commences to act as agent of the purchaser with respect to the purchase of a security referred to in subsection (1) shall, for the purpose of this section, be receipt by the purchaser as of the date on which the agent received such prospectus or amended prospectus.

(6) For the purpose of this section, a person or company shall not be considered to be acting as agent of the purchaser unless the person or company is acting solely as the agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation from or on behalf of the vendor with respect to the purchase and sale.

(7) The cause of action conferred by this section is in addition to and without derogation from any other right the purchaser may have at law.

(8) Every prospectus shall contain a statement of the right of rescission provided by this section.

65. If any securities proposed to be distributed would, if distributed by a company, be in the course of primary distribution to the public, this Part and the regulations apply *mutatis mutandis* to the person, trust or other entity proposing to distribute the securities.

PART 8

TRADING IN SECURITIES GENERALLY

66. (1) Every person or company registered for trading in securities who has acted as principal or agent in connection with any trade in a security shall promptly send or deliver to the customer a written confirmation of the transaction, setting 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 is acting as principal or agent,
- (d) if acting as agent in a trade upon a stock exchange recognized by the Commission, the name of the person or company from or to or through whom the security was bought or sold,
- (e) the day and the name of the stock exchange, if any, upon which the transaction took place,
- (f) the commission, if any, charged in respect of the trade, and
- (g) the name of the salesman, if any, in the transaction.

65. Extended application of this Part.

66. Confirmation of trade.

(2) Clause (d) of subsection (1) need not be complied with if the written confirmation contains a statement that the name of the person or company from or to or through whom the security was bought or sold will be furnished to the customer upon request.

(3) Every person or company registered for trading in securities who has acted as agent in connection with any trade in a security shall promptly disclose to the Commission, upon request by the Commission, the name of the person or company from or to or through whom the security was bought or sold.

67. (1) The Director 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 that person or company at his or its address as shown in the records of the Registrar.

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

(a) where the person calls at or telephones to the residence 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

(b) to a trade in any security in respect of which registration is not required.

(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.

68. (1) No person or company, 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, shall make any representation, written or oral, that he or any person or company

(a) will resell or repurchase, or

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

(2) No person or company, in the course of negotiating, soliciting or effecting a trade in a security, shall make any written or oral representation to the effect that the value or price of the security will or is likely to increase in the future.

67. Calling at or telephoning residence.

68. Prohibitions re representations by seller.

(3) No person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or that application has been or will be made to list such security upon any stock exchange.

(4) This section does not apply to any representation referred to in subsection (1) made to a person, other than an individual, or to a company where the representation is contained in a written agreement signed by the person or company intending to effect a trade in a security and the security has an aggregate acquisition cost of more than \$50,000.

69. (1) Where a person or company registered for trading in securities, with the intention of effecting a trade in a security with any person or company other than a person or company registered for trading in securities, issues, publishes or sends a circular, pamphlet, letter, telegram or advertisement, and proposes to act in such trade as a principal, such 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.

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

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

(4) This section does not apply to trades referred to in subsection (1) of section 19 or to securities referred to in subsection (2) of section 19.

70. (1) If subsection (1) of section 69 applies to a contract and such subsection is not complied with, a person or company that has entered into such contract is entitled to rescission thereof by serving written notice of rescission on the person or company registered for trading in securities within 60 days of the date of the delivery of the security to or by such person or company, as the case may be, but, in

69. Notice required where registrant acting as principal.

70. Right of purchaser to rescission of purchase where section 69 is not complied with.

the case of a purchase by such person or company, only if he is still the owner of the security purchased.

(2) If subsection (2) of section 69 applies to a contract and such subsection is not complied with, a person or company that has entered into such contract is entitled to rescission thereof by serving written notice of rescission on the person or company registered for trading in securities within seven days of the date of the delivery of the written confirmation of the contract but, in the case of a purchase by such person or company, only if he is still the owner of the security purchased.

(3) In an action for rescission to which this section applies, the onus of proving compliance with section 69 is upon the person or company registered for trading in securities.

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

71. 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, 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 may have either directly or indirectly in any securities referred to therein or in the sale or purchase thereof, including

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

72. Every partnership or company registered for trading in securities shall publish the name of every person having an interest, either directly or indirectly, to the extent of not less than 5 per cent in the capital of the partnership or company, as the case may be, on all letterheads, circulars

71. Disclosure of financial interest by investment counsel and securities advisers.

72. Publication of names of persons interested in partnership or company registered under Act.

and other stationery or in a prospectus upon or in which the name of the partnership or company appears as underwriter and that contain any offer or solicitation respecting a trade in securities.

73. No registrant shall use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless he is a partner, officer or agent of or is authorized to do so in writing by the other registrant.

74. No person or company shall hold himself out as being a registrant by having printed in a circular, pamphlet, advertisement, letter, telegram or other stationery that he is a registrant.

75. No person or company who is not a registrant shall, either directly or indirectly, hold himself out as being a registrant.

76. No person or company shall make any representation, written or oral, that the Commission has in any way passed upon the financial standing, fitness or conduct of any registrant or upon the merits of any security.

77. (1) Where a person, or a partner 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 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 in which

(a) he,

(b) his firm or a partner thereof, or

(c) 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 or under his control in the ordinary course of business below the amount of such securities that he 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 all moneys paid with interest thereon or securities deposited in respect thereof.

(2) The customer may exercise such option by a notice to that effect sent by prepaid mail addressed to the person or company registered for trading in securities at his address for service in Alberta.

73. Use of name of another registrant.

74. Registration not to be advertised.

75. Holding out by unregistered persons.

76. Advertising Commission's approval.

77. Margin customers may void contract.

78. Any person or company who places an order for the sale of a security through an agent acting for him that is registered for trading in securities and,

- (a) at the time of placing the order, does not own the security, or
- (b) if acting as agent, knows his principal does not own the security

shall, at the time of placing the order to sell, declare to his agent that he or his principal, as the case may be, does not own the security.

79. (1) Subject to subsections (3) and (4), shares of a company that are registered in the name of a registrant or in the name of his nominee that are not beneficially owned by the registrant shall not be voted at any meeting of shareholders of the company unless the registrant forthwith after receipt of the material referred to in clause (a) sends or delivers to each person or company who is the beneficial owner of such shares, at no expense to such person or company,

- (a) a copy of the notice of the meeting, the financial statements, the information circular and any other material, other than the form of proxy, sent to shareholders by or on behalf of any person or company for use in connection with the meeting, and
- (b) a written request for voting instructions from the beneficial owner which states that, if voting instructions are not received at least 24 hours prior to the expiry of the time within which proxies may be deposited with the company as specified in the notice calling the meeting or otherwise or, if not so specified, 24 hours prior to the time fixed for holding the meeting, a proxy in respect of such shares may be given or the shares otherwise voted at the meeting at the discretion of the registrant.

(2) A registrant shall not vote or cause to be voted shares registered in his name or in the name of his nominee that he does not beneficially own if he does not know who is the beneficial owner of the shares.

(3) A company shall, at the request of a registrant, forthwith furnish to the registrant at the company's expense the requisite number of copies of the material referred to in clause (a) of subsection (1).

(4) A registrant shall vote or give a proxy requiring a nominee to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

(5) A registrant shall, if requested by a beneficial owner, give to the beneficial owner or his nominee a proxy enabling

78. Declaration as to short position. New.

79. When shares held in name of registrant for the beneficial owner are not to be voted. New.

the beneficial owner or his nominee to vote any shares referred to in subsection (1).

(6) The failure of a registrant to comply with this section does not affect the validity of any meeting of shareholders or any proceedings taken thereat.

(7) Nothing in this section gives a registrant the right to vote shares that he is otherwise prohibited from voting.

PART 9
TAKE-OVER BIDS

80. In this Part,

- (a) “directors’ circular” means the circular prescribed by Division 4 of this Part;
- (b) “exempt offer” means
 - (i) an offer to purchase shares by way of private agreement with individual shareholders and not made to shareholders generally,
 - (ii) an offer to purchase shares to be effected through the facilities of a stock exchange or in the over-the-counter market,
 - (iii) an offer to purchase shares in a private company, or in a public company that has fewer than 15 shareholders whose last address as shown on the books of the offeree company is in Alberta, two or more persons who are joint registered owners of one or more shares being counted as one shareholder, or
 - (iv) an offer exempted by order of a judge of the Supreme Court made pursuant to section 89;
- (c) “offeree” means a person or company to whom a take-over bid is made and whose last address as shown on the books of the offeree company is in Alberta;
- (d) “offeree company” means a company any shares of which are the subject of a take-over bid;
- (e) “offeror” means a person or company, other than an agent, who makes a take-over bid, and includes two or more persons or companies,
 - (i) whose take-over bids are made jointly or in concert, or
 - (ii) who intend to exercise jointly or in concert any voting rights attaching to the shares for which a take-over bid is made;
- (f) “offeror’s presently-owned shares” means equity shares of an offeree company beneficially owned, directly or indirectly, on the date of a take-over bid by the offeror or an associate of the offeror;

30. Definitions. This Part is new. See paragraph 6 in the general note at the beginning of the Bill.

- (g) “take-over bid” means an offer, other than an exempt offer, made to shareholders the last address of any of whom as shown on the books of the offeree company is in Alberta to purchase such number of equity shares of a company that, together with the offeror’s presently-owned shares, will in the aggregate exceed 20 per cent of the outstanding equity shares of the company;
- (h) “undisclosed principal” means any person or company on whose behalf a take-over bid is made whose identity is not disclosed in the take-over bid or in the take-over circular.

S1. The following provisions apply to every take-over bid:

- (a) the period of time within which shares may be deposited pursuant to a take-over bid shall not be less than 21 days from the date thereof;
- (b) any shares deposited pursuant to a take-over bid shall not be taken up and paid for by the offeror until the expiration of seven days from its date;
- (c) any shares deposited pursuant to a take-over bid may be withdrawn by or on behalf of an offeree at any time until the expiration of seven days from its date;
- (d) where a take-over bid is made for less than all the equity shares of a class owned by offerees, shares deposited pursuant thereto shall not be taken up and paid for by an offeror until the expiration of 21 days from its date;
- (e) where a take-over bid is made for less than all the equity shares of a class owned by offerees, the period of time within which shares may be deposited pursuant to the take-over bid, or any extension thereof, shall not exceed 35 days from the date of the take-over bid;
- (f) where a take-over bid is made for less than all the equity shares of a class owned by offerees, shares deposited pursuant to the take-over bid shall be taken up and paid for, if all the terms and conditions thereof not waived by the offeror have been complied with, within 14 days after the last day within which shares may be deposited pursuant thereto;
- (g) where a take-over bid is made for less than all the equity shares of a class owned by offerees and where a greater number of shares is deposited pursuant thereto than the offeror is bound or willing to take up and pay for, the shares taken up by the offeror shall be taken up as nearly as may be *pro rata*, disregarding fractions, according to the number of shares deposited by each offeree.

31. Rules applicable to take-over bids.

DIVISION 1

General Provisions

82. A take-over bid shall be sent by prepaid mail to the offerees and shall be deemed conclusively to have been dated as of the date on which it was so sent.

83. (1) Where the terms of a take-over bid are varied before the expiration thereof by increasing the consideration offered for the equity shares of an offeree company, the offeror shall pay such increased consideration to each offeree whose shares are taken up and paid for pursuant to the take-over bid whether or not such shares have been taken up by the offeror before the variation of the take-over bid.

(2) Where a take-over bid for all the equity shares of a class owned by offerees is converted, by amendment or otherwise, to a bid for less than all the equity shares of a class owned by offerees, the take-over bid shall be conclusively deemed to be for less than all the equity shares of a class owned by offerees.

84. Where a take-over bid provides that the consideration for the shares deposited pursuant thereto is to be paid in cash or partly in cash, the offeror shall make adequate arrangements to ensure that the required funds are available to effect payment in full for all shares owned by offerees that the offeror has offered to purchase pursuant to the take-over bid.

85. (1) A take-over bid circular shall form part of or accompany a take-over bid.

(2) Every take-over bid circular shall contain the information prescribed by Division 2 of this Part.

(3) Where a take-over bid provides that the consideration for the shares of the offeree company is to be, in whole or in part, securities of a company, the take-over bid circular shall contain the additional information prescribed by Division 3 of this Part.

86. (1) Where the directors of an offeree company recommend to offerees acceptance or rejection of a take-over bid made to such offerees, the directors shall send or cause to be sent to each offeree a directors' circular, which shall contain the information prescribed by Division 4 of this Part.

(2) A directors' circular shall form part of or accompany the communication of the directors and shall be sent to each offeree by prepaid mail at his last address as shown on the books of the company.

87. No report, opinion or statement of a solicitor, auditor, accountant, engineer, appraiser or any other person or

82. Take-over bid to be sent by mail.

83. Offeror to pay higher consideration where terms varied to increase the consideration before expiry date.

84. Where consideration is cash, offeror to have funds available to pay for all shares offered to it.

85. Circular required to accompany take-over bid.

86. Offeree company's directors' circular recommending acceptance or rejection of bid to be sent to shareholders.

87. Consent to use of experts' reports.

company whose profession gives authority to a statement made by him shall form part of or accompany a take-over bid or a directors' circular unless such person or company has consented in writing to the use of the report, opinion or statement.

88. (1) Where a take-over bid is made by or on behalf of a company, the contents of the take-over bid circular shall be approved and the delivery thereof authorized by the directors of the company.

(2) The contents of a directors' circular shall be approved and the delivery thereof authorized by the directors of the offeree company.

(3) Where a take-over bid is made by or on behalf of a company,

(a) the offeror shall file with the Commission a copy of the take-over bid and all supporting or supplementary material, if any, and

(b) every board of directors that distributes a directors' circular shall file with the Commission a copy of the directors' circular and all supporting or supplementary material, if any,

within five days after the date that copies thereof are first sent to offerees.

89. (1) Any person or company may apply to a judge of the Supreme Court designated by the Chief Justice of the Trial Division for an order declaring a take-over bid to be an exempt offer, and the judge may, upon such terms and conditions as he may impose, order the proposed offer to be exempt.

(2) The applicant shall give the Commission notice of any application under subsection (1), and the Commission has the right to appear and be heard thereon.

(3) An appeal lies to the Appellate Division from any order made under subsection (1).

DIVISION 2

Contents of Take-over Bid Circulars

90. A take-over bid circular shall contain the following information:

- (a) the number, without duplication, and designation of any securities of the offeree company beneficially owned, directly or indirectly,
- (i) by the offeror,
 - (ii) by an associate of the offeror,
 - (iii) by each director and each senior officer of the offeror and their associates, and

88. Approval of circulars by directors of offeror company.

89. Application to Court to declare bid to be an exempt offer.

90. Contents of take-over bid circulars.

- (iv) where known to the directors or senior officers of the offeror, by a person or company who beneficially owns, directly or indirectly, equity shares of the offeror carrying more than 10 per cent of the voting rights attached to all equity shares of the offeror for the time being outstanding,
or, if none are so owned, a statement to that effect;
- (b) where known to the directors or senior officers of the offeror, the number and designation of any equity shares of the offeree company traded by the persons or companies referred to in clause (a) during the six-month period preceding the date of the take-over bid, including the purchase or sale price and the date of each such transaction;
- (c) where the obligation of the offeror to take up and pay for shares under a take-over bid is conditional upon a minimum number of shares being deposited pursuant thereto, the particulars of such condition;
- (d) the particulars of the method and time of payment of the cash or other consideration to be paid for the shares of the offeree company;
- (e) a statement that any shares deposited pursuant to the take-over bid may be withdrawn by or on behalf of the offeree at any time until the expiration of seven days from its date;
- (f) where the shares in the offeree company sought to be acquired pursuant to the take-over bid are to be paid for in whole or in part in cash, details of the arrangements that have been made by the offeror to ensure that the required funds are available to take up and pay for the shares of the offeree company deposited pursuant to the take-over bid;
- (g) where reasonably ascertainable, a summary showing in reasonable detail the volume of trading and price range of the shares of the offeree company sought to be acquired pursuant to the take-over bid in the six-month period preceding the date of the take-over bid;
- (h) the particulars of any arrangement or agreement made or proposed to be made between the offeror and any of the directors or senior officers of the offeree company, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office or as to their remaining in or retiring from office, if the take-over bid is successful;
- (i) the particulars of any information known to the offeror that indicates any material change in the financial position or prospects of the offeree company since the date of the last published interim or annual financial statement of the offeree company.

91. Where a take-over bid is made by or on behalf of an undisclosed principal, the undisclosed principal shall be deemed to be the offeror for the purposes of compliance with this Division.

92. Where a take-over bid is made by or on behalf of a company, the take-over bid circular shall contain a statement that the contents thereof have been approved and the delivery thereof authorized by the directors of the offeror.

93. The consent of a person or company required by section 87 to the inclusion of his report, opinion or statement in a take-over bid or in the material accompanying the take-over bid shall be reproduced in the take-over bid circular.

DIVISION 3

Share Exchange Take-Over Bids

94. (1) A take-over bid circular required by subsection (3) of section 85 shall contain

- (a) the information prescribed by the appropriate form of prospectus set out in the regulations that provides the most significant information concerning the affairs of the company whose securities are being offered in exchange for the shares of the offeree company,
- (b) the financial statements of the company whose securities are offered in exchange for the shares of the offeree company,
- (c) the particulars of any information known to the offeror that indicates any material change in the financial position or prospects of the company whose securities are offered in exchange for the shares of the offeree company since the date of the last published interim or annual financial statement of such company.

(2) The financial statements referred to in clause (b) of subsection (1) shall comply *mutatis mutandis* with the requirements of Part 8, except that the financial statements need not include any *pro forma* or other statement referred to in sections 44 and 45.

DIVISION 4

Contents of Directors' Circulars

95. A directors' circular shall contain the following information:

- (a) the number, without duplication, and designation of any securities of the offeree company beneficially owned, directly or indirectly, by each director and each senior officer of the offeree company and their associates and, where known to the directors or

91. Bid by undisclosed principal.

92. Statement in circular where offeror a company.

93. Consent of expert to use of report to be reproduced in circular.

94. Contents of take-over bid circular where consideration is securities.

95. Contents of directors' circular.

- senior officers, by each person or company who beneficially owns, directly or indirectly, equity shares of the offeree company carrying more than 10 per cent of the voting rights attached to all equity shares of the offeree company for the time being outstanding or, in each case, if none are so owned, a statement to that effect;
- (b) a statement as to whether each director and senior officer of the offeree company and their associates, and, where known to the directors or senior officers, each person or company who beneficially owns, directly or indirectly, equity shares of the offeree company carrying more than 10 per cent of the voting rights attached to all equity shares of the offeree company for the time being outstanding, has accepted or intends to accept the offer in respect of any shares of the offeree company sought to be acquired;
 - (c) where a take-over bid is made by or on behalf of a company, the number, without duplication, and designation of any securities of the offeror beneficially owned, directly or indirectly, by each director and each senior officer of the offeree company and their associates and, where known to the directors or senior officers, by each person or company who beneficially owns, directly or indirectly, equity shares of the offeree company carrying more than 10 per cent of the voting rights attached to all equity shares of the offeree company for the time being outstanding;
 - (d) the particulars of any arrangement or agreement made or proposed to be made between the offeror and any of the directors or senior officers of the offeree company, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office or as to their remaining in or retiring from office if the take-over bid is successful;
 - (e) whether any director or senior officer of the offeree company and their associates and, where known to the directors or senior officers, whether any person or company who beneficially owns, directly or indirectly, equity shares of the offeree company carrying more than 10 per cent of the voting rights attached to all equity shares of the offeree company for the time being outstanding has any interest in any material contract to which the offeror is a party, and, if so, particulars of the nature and extent of such interest;
 - (f) where reasonably ascertainable, a summary showing in reasonable detail the volume of trading and the price range of the shares sought to be acquired pursuant to the take-over bid in the six-month

period preceding the date thereof if such information is not disclosed in the take-over bid circular or if, in the opinion of the directors of the offeree company, such information is not adequately disclosed therein;

- (g) the particulars of any information known to any of the directors or senior officers of the offeree company that indicate any material change in the financial position or prospects of the offeree company since the date of the last published interim or annual financial statement of the offeree company;
- (h) the particulars of any other material facts not disclosed in the foregoing.

96. The consent of a person or company required by section 87 to the inclusion of his report, statement or opinion in a directors' circular or in the material accompanying the directors' circular shall be reproduced in the directors' circular.

97. Where any financial statements of the offeree company accompany or form part of a directors' circular, such statements, if not reported upon by the auditor of the company, shall be accompanied by a report of the chief financial officer of the company who shall state in his report whether in his opinion the financial statements referred to therein present fairly the financial position of the offeree company and the results of its operations for the period under review.

98. A directors' circular shall contain a statement that the contents thereof have been approved and the delivery thereof authorized by the directors of the offeree company.

Offences

99. (1) An offeror, whether or not an undisclosed principal, who makes a take-over bid that fails to comply with section 81 or 82 or who, in the course of effecting a take-over bid,

- (a) fails to comply with section 83 or 84, where applicable,
- (b) fails to cause a take-over bid circular to form part of or accompany the take-over bid as required by subsection (1) of section 85,
- (c) mails a take-over bid circular that does not contain the information, statements or consents prescribed by Division 2 or contains any information that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact or that omits to state any material fact, the omission of which makes the statements contained therein false or misleading, or

96. Consent of expert to use of report to be reproduced in circular.

97. Financial statements in directors' circular.

98. Approval of circular by directors.

99. Offences.

- (d) mails a take-over bid circular to which subsection (3) of section 85 applies that does not contain the information, statements, consents and reports prescribed by Division 3 or contains any information that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact or that omits to state any material fact, the omission of which makes the statements contained therein false or misleading,

is guilty of an offence and is liable on summary conviction to a fine of not more than \$25,000 or to imprisonment for a term of not more than one year, or to both, and every person or company who authorizes, permits or acquiesces in any such act or failure is also guilty of an offence and is liable on summary conviction to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

(2) Every director of an offeree company who authorizes, permits or acquiesces in recommending to the shareholders of the offeree company by means of a directors' circular acceptance or rejection of a take-over bid without complying with section 86 is guilty of an offence and is liable on summary conviction to a fine of not more than \$2,000.

(3) Every director of an offeree company who authorizes, permits or acquiesces in the mailing of a directors' circular that does not contain the information, statements, consents and reports prescribed by Division 4 or contains any information that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact or that omits to state any material fact, the omission of which makes the statement contained therein false or misleading, is guilty of an offence and is liable on summary conviction to a fine of not more than \$2,000.

(4) No person or company is guilty of an offence under clause (c) or (d) of subsection (1) or under subsection (3) in respect of any untrue statement of a material fact or omission to state a material fact in a take-over bid circular or directors' circular, as the case may be, if the untruth of such statement or the fact of such omission was not known to the person or company who authorized, permitted or acquiesced in the mailing of the take-over bid circular or the directors' circular, as the case may be, and in the exercise of reasonable diligence could not have been known to such person or company.

PART 10

PROXIES AND PROXY SOLICITATION

100. In this Part,

- (a) "corporation" means a company
 - (i) that has issued equity shares that after this Act comes into force are distributed in the course of a primary distribution to the public, in respect of which a prospectus is filed with the Commission and a receipt therefor obtained, or
 - (ii) any of whose shares are listed and posted for trading on any stock exchange in Alberta recognized by the Commission, other than
 - (iii) a company incorporated by or under a general or special Act of the Legislature or incorporated by or under an ordinance of the Northwest Territories and subject to the legislative authority of the Province of Alberta, or
 - (iv) a bank to which the *Bank Act* (Canada) applies;
- (b) "information circular" means the circular referred to in subsection (1) of section 102;
- (c) "solicit" and "solicitation" include
 - (i) any request for a proxy whether or not accompanied by or included in a form of proxy,
 - (ii) any request to execute or not to execute a form of proxy or to revoke a proxy,
 - (iii) the sending or delivery of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
 - (iv) the sending or delivery of a form of proxy to a shareholder under section 101, but do not include
 - (v) the sending or delivery of a form of proxy to a shareholder in response to an unsolicited request made by him or on his behalf, or
 - (vi) the performance by any person or company of ministerial acts or professional services on behalf of a person or company soliciting a proxy.

101. (1) Subject to section 103, if the management of a corporation gives or intends to give to its shareholders notice of a meeting of shareholders, the management shall, concurrently with or prior to giving such notice to shareholders whose last address as shown on the books of the corporation is in Alberta send by prepaid mail to each such shareholder, who is entitled to vote at such meeting, at his

100. Definitions. This Part is new. See paragraph 7 in the general note at the beginning of this Bill.

101. Mandatory solicitation of proxies from shareholders residing in Alberta.

last address as shown on the books of the corporation a form of proxy for use at such meeting that complies with section 104.

(2) If the management of a corporation fails to comply with subsection (1), the corporation is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000 and every director or officer of the corporation who authorized, permitted or acquiesced in such failure is also guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000.

102. (1) Subject to subsection (2) and section 103 no person or company shall solicit proxies from shareholders whose last address as shown on the books of the corporation is in Alberta unless,

- (a) in the case of a solicitation by or on behalf of the management of a corporation, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each such shareholder of the corporation whose proxy is solicited at his last address as shown on the books of the corporation, or
- (b) in the case of any other solicitation, the person or company making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each such shareholder whose proxy is solicited.

(2) Subsection (1) does not apply to

- (a) any solicitation, otherwise than by or on behalf of the management of a corporation, where the total number of shareholders whose proxies are solicited is not more than 15, two or more persons or companies who are the joint registered owners of one or more shares being counted as one shareholder,
- (b) any solicitation by a person or company made under section 79, or
- (c) any solicitation by a person or company in respect of shares of which he is the beneficial owner.

(3) A person or company that fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000 and, where a company fails to comply, every director or officer of such company who authorized, permitted or acquiesced in such failure is also guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000.

(4) A person or company who effects a solicitation that is subject to this section by means of a form of proxy, information circular or other communication that contains an untrue statement of a material fact or omits to state a material fact necessary in order to make any statement contained therein not misleading in the light of the circumstances in

102. Information circular to be provided with solicitation.

which it was made is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000 and, where a company is guilty of such an offence, every director or officer of such company who authorized, permitted or acquiesced in such offence is also guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000.

(5) No person or company is guilty of an offence under subsection (4) in respect of any untrue statement of a material fact or omission to state a material fact in a form of proxy or information circular if the untruth of such statement or the fact of such omission was not known to the person or company that effected the solicitation and in the exercise of reasonable diligence could not have been known to such person or company.

103. (1) If a requirement of this Part, in so far as it is applicable to a corporation incorporated by or under a special or general Act of the Parliament of Canada, conflicts with or is substantially similar to a requirement of the laws of Canada, the requirement of this Part shall not apply.

(2) Subject to subsection (1), upon the application of any interested person or company, the Commission may,

- (a) if a requirement of this Part conflicts with a requirement of the laws of the jurisdiction in which a company is incorporated, or
- (b) if the laws of a jurisdiction to which the corporation is subject contain substantially similar requirements as contained in this Part, or
- (c) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing,

make an order on such terms and conditions as seem to the Commission just and expedient exempting, in whole or in part, a person or company from the requirements of this Part.

(3) A corporation that is subject to this Part by virtue only of subclause (i) of clause (a) of section 100 ceases to be subject to this Part if the corporation does not have owners of its equity shares whose last address as shown on the books of the corporation is in Alberta.

104. Where section 101 or 102 is applicable to a solicitation of proxies,

- (a) the form of proxy sent to a shareholder by a person or company soliciting proxies
 - (i) shall indicate in bold-face type whether or not the proxy is solicited by or on behalf of the management of the corporation, and

103. Where Part 10 does not apply.

104. Special form of proxy.

- (ii) shall provide a specifically designated blank space for dating the form of proxy,
- (b) the form of proxy shall provide means whereby the person or company whose proxy is solicited is afforded an opportunity to specify that the shares registered in his name shall be voted by the nominee in favour of or against, in accordance with the choice of such person or company, each matter or group of related matters identified therein or in the information circular as intended to be acted upon, other than the election of directors and the appointment of auditors, provided that a proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by such means if the form of proxy or the information circular states in bold-face type how it is intended to vote the shares represented by the proxy in each such case,
- (c) a proxy may confer discretionary authority with respect to
 - (i) amendments or variations to matters identified in the notice of meeting, or
 - (ii) other matters which may properly come before the meeting
 provided that
 - (iii) the person or company by whom or on whose behalf the solicitation is made is not aware a reasonable time prior to the time the solicitation is made that any such amendments, variations or other matters are to be presented for action at the meeting, and
 - (iv) a specific statement is made in the information circular or in the form of proxy that the proxy is conferring such discretionary authority,
- (d) no proxy shall confer authority
 - (i) to vote for the election of any person as a director of the corporation unless a *bona fide* proposed nominee for such election is named in the information circular, or
 - (ii) to vote at any meeting other than the meeting specified in the notice of meeting or any adjournment thereof,
- (e) the information circular or form of proxy shall state that the shares represented by the proxy will be voted and that, where the person or company whose proxy is solicited specifies a choice with respect to any matter to be acted upon pursuant to clause (b), the shares shall, subject to section 105, be voted in accordance with the specifications so made,
- (f) an information circular or form of proxy shall indicate in bold-face type that the shareholder has

the right to appoint a person to represent him at the meeting other than the person, if any, designated in the form of proxy and shall contain instructions as to the manner in which the shareholder may exercise such right, and

- (g) if the form of proxy contains a designation of a named person as nominee, means shall be provided whereby the shareholder may designate in a form of proxy some other person as his nominee.

105. If the aggregate number of shares represented at a meeting by proxies required to be voted for or against a particular matter or group of matters carries, to the knowledge of the chairman of the meeting, less than 5 per cent of the voting rights attached to the shares entitled to vote and represented at the meeting, the chairman of the meeting has the right not to conduct a vote by way of ballot on any such matter or group of matters unless a poll is demanded at the meeting or required by the laws of the jurisdiction of incorporation of the corporation.

106. (1) The Commission may in its discretion direct the Registrar to refuse to issue a receipt for a prospectus until such time as the company proposing to distribute equity shares to be offered by the prospectus delivers or causes to be delivered to the Commission undertakings satisfactory to the Commission in which the company and such of its directors and officers as the Commission may designate undertake to comply with this Part or such of the provisions thereof as the Commission may specify.

(2) The Commission may in its discretion, if satisfied that an undertaking given under subsection (1) has not been complied with, direct the Registrar either to refuse to issue a receipt for a prospectus relating to securities of the corporation that previously delivered an undertaking to the Commission or to refuse to issue such receipt unless the corporation and such of its directors and officers as the Commission may designate have agreed to comply with such terms and conditions relating to proxies and proxy solicitation as may be imposed by the Commission.

(3) Where section 101 or 102 is applicable to a solicitation of proxies, the corporation concerned shall file with the Commission all forms of proxy, information circulars, notices of meetings and other communications relating thereto which it sends to its shareholders, within five days after the date that they are first mailed or required to be mailed by the corporation to its shareholders, whichever is earlier.

107. The Lieutenant Governor in Council may make such regulations respecting the form and content of an information circular as he considers necessary or appropriate in the public interest.

105. Where vote by ballot not required.

106. Refusal to issue receipt for a prospectus.

107. Regulations.

PART 11
INSIDER TRADING

108. (1) In this Part,

- (a) "capital security" means any share of any class of shares of a company or any bond, debenture, note or other obligation of a company, whether secured or unsecured;
- (b) "corporation" has the same meaning as in Part 10;
- (c) "insider" or "insider of a corporation" means
 - (i) any director or senior officer of a corporation,
or
 - (ii) any person or company who beneficially owns, directly or indirectly, equity shares of a corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding, provided that in computing the percentage of voting rights attached to equity shares owned by an underwriter there shall be excluded any equity shares that have been acquired by him as underwriter in the course of distribution to the public of such shares, but such exclusion ceases to have effect on completion or cessation of the distribution to the public by him.

(2) For the purposes of this Part

- (a) every director or senior officer of a company that is itself an insider of a corporation shall be deemed to be an insider of such corporation, and
- (b) the acquisition or disposition by an insider of a put, call or other transferable option with respect to a capital security shall be deemed a change in the beneficial ownership of the capital security to which such transferable option relates.

109. (1) A person or company that is an insider of a corporation on the day on which this Act comes into force shall, within 10 days after the end of the month in which such day occurs, file with the Commission a report, as of such day, of his direct or indirect beneficial ownership of capital securities of the corporation.

(2) A person or company that, after the day on which this Act comes into force, becomes an insider of a corporation shall, within 10 days after the end of the month in which he becomes an insider, file with the Commission a report, as of the day on which he became an insider, of his direct or indirect beneficial ownership of capital securities of the corporation.

108. Definitions. This Part is new. See paragraph 8 of the general note at the beginning of this Bill.

109. Report by insider of beneficial ownership of securities.

(3) If a person or company that is an insider of a corporation, but has no direct or indirect beneficial ownership of capital securities of the corporation, acquires direct or indirect beneficial ownership of any such securities, he shall, within 10 days after the end of the month in which he acquired such direct or indirect beneficial ownership, file with the Commission a report, as of the date of such acquisition, of his direct or indirect beneficial ownership of capital securities of the corporation.

(4) A person or company who has filed or is required to file a report under subsection (1), (2) or (3) and whose direct or indirect beneficial ownership of capital securities of the corporation changes from that shown or required to be shown in such report or in the last report filed by him under this subsection shall, within 10 days following the end of the month in which such change takes place, provided that he was an insider of the corporation at any time during such month, file with the Commission a report of his direct or indirect beneficial ownership of capital securities of the corporation at the end of such month and the change or changes therein that occurred during the month and giving such details of each transaction as may be required by the regulations.

110. All reports filed with the Commission under section 109 shall be open to public inspection at the offices of the Commission during normal business hours of the Commission, and any person may make extracts from such reports.

111. (1) Every person or company that is required to file a report under section 109 and who fails to do so is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 and, where a company fails to so report, every director or officer of such company who authorized, permitted or acquiesced in such failure is also guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000.

(2) Every person or company who files a report under subsection (1), (2) or (3) of section 109 that is false or misleading by reason of the misstatement or omission of any material fact is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000 and, where a company files a false or misleading report, every director or officer of such company who authorized, permitted or acquiesced in the filing of such false or misleading report is also guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000.

(3) No person is guilty of an offence under subsection (2) if he did not know and in the exercise of reasonable diligence could not have known that the report was false or misleading by reason of this misstatement or omission of a material fact.

110. Inspection and publication of reports by insiders.

111. Offences re failing to report or filing false reports.

(4) No prosecution shall be brought under subsection (1) or (2) without the consent of the Commission.

112. (1) Whenever it appears to the Commission that any person or company has failed to comply with section 109, it may in its discretion apply to a judge of the Supreme Court designated by the Chief Justice of the Trial Division for an order requiring such person or company to comply therewith.

(2) An appeal lies to the Appellate Division from an order made under subsection (1).

113. (1) Every insider of a corporation or associate or affiliate of such insider, who, in connection with a transaction relating to the capital securities of the corporation, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of such securities, is liable to compensate any person or company for any direct loss suffered by such person or company as a result of such transaction, unless such information was known or ought reasonably to have been known to such person or company at the time of such transaction, and is also accountable to the corporation for any direct benefit or advantage received or receivable by such insider, associate or affiliate, as the case may be, as a result of such transaction.

(2) An action to enforce any right created by subsection (1) may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action.

114. (1) Upon application by any person or company who was at the time of a transaction referred to in subsection (1) of section 113 or is at the time of the application an owner of capital securities of the corporation, a judge of the Supreme Court designated by the Chief Justice of the Trial Division may, if satisfied that

(a) such person or company has reasonable grounds for believing that the corporation has a cause of action under section 113, and

(b) either

(i) the corporation has refused or failed to commence an action under section 113 within 60 days after receipt of a written request from such person or company to do so, or

(ii) the corporation has failed to prosecute diligently an action commenced by it under section 113,

make an order, upon such terms as to security for costs and otherwise as to the judge seems fit, requiring the Commis-

112. Court order requiring insider to report under section 109.

113. Liability of insiders.

114. Court order to require Commission to commence or continue an action against an insider on behalf of a corporation.

sion to commence or continue an action in the name of and on behalf of the corporation to enforce the liability created by section 113.

(2) The corporation and the Commission shall be given notice of any application under subsection (1) and shall have the right to appear and be heard thereon.

(3) Every order made under subsection (1) shall provide that the corporation shall co-operate fully with the Commission in the institution and prosecution of such action and shall make available to the Commission all books, records, documents and other material or information known to the corporation or reasonably ascertainable by the corporation relevant to such action.

(4) An appeal lies to the Appellate Division from an order made under subsection (1).

115. The Lieutenant Governor in Council may make regulations

- (a) prescribing the form and content of the reports required to be filed under section 109, and
- (b) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Part.

116. (1) Upon the application of an interested person or company, the Commission may,

- (a) if a requirement of section 109 conflicts with a requirement of the laws of the jurisdiction in which a corporation is incorporated, or
- (b) if the laws of the jurisdiction to which the corporation is subject contain substantially similar requirements as contained in section 109, or
- (c) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing,

make an order on such terms and conditions as seem to the Commission just and expedient exempting, in whole or in part, a person or company from the requirements of section 109.

(2) An insider of a corporation who is subject to this Part by virtue only of subclause (i) of clause (a) of section 100 ceases to be subject to this Part if the corporation does not have owners of its equity shares whose last address as shown on the books of the corporation is in Alberta.

117. (1) The Commission may in its discretion direct the Registrar to refuse to issue a receipt for a prospectus until such time as the company proposing to distribute equity shares to be offered by the prospectus delivers or causes to be delivered to the Commission undertakings satisfactory to

115. Regulations.

116. Exemption from requirements of section 109.

117. Refusal to issue receipt for prospectus.

the Commission in which the company undertakes to cause its present and future directors and senior officers to comply with section 109 and in which the directors and senior officers of the company then in office undertake to comply with section 109.

(2) The Commission may in its discretion if satisfied that an undertaking given under subsection (1) has not been complied with, direct the Registrar either to refuse to issue a receipt for a prospectus relating to securities of a corporation which previously delivered an undertaking to the Commission or to refuse to issue such receipt unless the corporation, its directors and senior officers have agreed to comply with such terms and conditions relating to insider trading as may be imposed by the Commission.

PART 12

FINANCIAL DISCLOSURE

118. In this Part "corporation" means a company

- (a) that has issued equity shares that, after this Act comes into force, are distributed in the course of a primary distribution to the public, in respect of which a prospectus is filed with the Commission and a receipt therefor obtained, or
- (b) any of whose shares are listed and posted for trading on any stock exchange in Alberta recognized by the Commission,

but does not include

- (c) a company incorporated by or under a general or special Act of the Legislature or by or under an ordinance of the Northwest Territories and subject to the legislative authority of the Province of Alberta, or
- (d) a bank to which the *Bank Act* (Canada) applies, or
- (e) a trust company registered under *The Trust Companies Act, 1967* or a company undertaking and transacting life insurance licensed under *The Alberta Insurance Act*.

119. (1) The auditor of a corporation shall make such examination as will enable him to make the reports referred to in subsections (2), (3) and (4).

(2) The financial statements referred to in section 120 shall be accompanied by a report of the auditor of the corporation who shall state in his report whether in his opinion the financial statements, other than the part thereof that relates to the period referred to in clause (b) of subsection (1) of section 120, referred to therein present fairly the

118. "Corporation" defined. This Part is new. See paragraph 9 in the general note at the beginning of this Bill.

119. Auditor's examination and report.

financial position of the corporation and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

(3) If the financial statements contain a statement of source and application of funds, the auditor shall include in his report a statement whether in his opinion, in effect, the statement of source and application of funds presents fairly the information shown therein.

(4) The auditor in his report shall make such statements as he considers necessary

- (a) if the corporation's financial statements are not in agreement with its accounting records,
- (b) if the corporation's financial statements are not in accordance with the requirements of this Act,
- (c) if he has not received all the information and explanations that he has required, or
- (d) if proper accounting records have not been kept, so far as appears from his examination.

120. (1) A corporation shall file with the Commission, within 170 days of the date to which it is made up, comparative financial statements relating separately to

- (a) the period that commenced on the date of incorporation and ended as of the close of its first financial year or, if the corporation has completed a financial year, the latest completed financial year, as the case may be, and
- (b) the period covered by the financial year next preceding such latest completed financial year, if any,

made up of,

- (c) a statement of profit and loss for each period,
- (d) a statement of surplus for each period,
- (e) a statement of source and application of funds for each period, and
- (f) a balance sheet as at the end of each period.

(2) It is not necessary to designate the financial statements referred to in subsection (1) as the statement of profit and loss, statement of surplus, statement of source and application of funds and balance sheet.

(3) Notwithstanding subsection (1), the financial statements referred to therein may relate only to the latest completed financial year if the reason for the omission of the statements in respect of the financial year next preceding such latest completed financial year is set out in the financial statements or by way of note thereto.

(4) Notwithstanding clause (e) of subsection (1), the statement of source and application of funds may be omitted if the reason for such omission is set out in the financial statements or by way of note thereto.

120. Comparative financial statements.

121. (1) The statement of profit and loss referred to in clause (c) of subsection (1) of section 120 shall be drawn up so as to present fairly the results of the operations of the corporation for the period covered by the statement and so as to distinguish severally at least

- (a) sales or gross operating revenue,
- (b) the operating profit or loss before including or providing for other items of income or expense that are required to be shown separately,
- (c) income from investments in subsidiaries whose financial statements are not consolidated with those of the company,
- (d) income from investments in affiliated companies other than subsidiaries,
- (e) income from other investments,
- (f) non-recurring profits and losses of significant amount including profits or losses on the disposal of capital assets and other items of a special nature to the extent that they are not shown separately in the statement of earned surplus,
- (g) provision for depreciation or obsolescence or depletion,
- (h) amounts written off for goodwill or amortization of any other intangible assets to the extent that they are not shown separately in the statement of earned surplus,
- (i) interest on indebtedness initially incurred for a term of more than one year, including amortization of debt discount or premium and expense, and
- (j) taxes on income imposed by any taxing authority and shall show the net profit or loss for the financial period.

(2) Notwithstanding subsection (1), items of the natures described in clauses (g) and (h) of subsection (1) may be shown by way of note to the statement of profit and loss.

(3) A corporation may apply to the Commission for an order permitting sales or gross operating revenue referred to in clause (a) of subsection (1) or subclause (i) of clause (b) of subsection (1) of section 129 to be omitted from the statement of profit and loss or the interim financial statement, as the case may be, and the Commission may, on such terms and conditions as it may impose, permit such omission where it is satisfied that in the circumstances the disclosure of such information would be unduly detrimental to the interests of the corporation.

122. (1) The statement of surplus shall be drawn up so as to present fairly the transactions reflected in the statement and shall show separately a statement of contributed surplus and a statement of earned surplus.

(2) The statement of contributed surplus shall be drawn up so as to include and distinguish the following items :

121. Content of statement of profit and loss.

122. Content of statement of surplus.

1. the balance of such surplus at the end of the preceding financial period;
 2. the additions to and deductions from such surplus during the financial period including,
 - (a) the amount of surplus arising from the issue of shares or the reorganization of the corporation's issued capital, including *inter alia*,
 - (i) the amount of premiums received on the issue of shares at a premium, and
 - (ii) the amount of surplus realized on the purchase for cancellation of shares,
 and
 - (b) donations of cash or other property by shareholders;
 3. the balance of such surplus at the end of the financial period.
- (3) The statement of earned surplus shall be drawn up so as to distinguish at least the following items:
1. the balance of such surplus at the end of the preceding financial period;
 2. the additions to and deductions from such surplus during the financial period and, without restricting the generality of the foregoing, at least
 - (a) the amount of the net profit or loss for the financial period,
 - (b) the amount of dividends declared on each class of shares,
 - (c) the amount transferred to or from reserves;
 3. the balance of such surplus at the end of the financial period.

123. The statement of source and application of funds referred to in clause (e) of subsection (1) of section 120 and clause (a) of subsection (1) of section 129 shall be drawn up so as to present fairly the information shown therein for the period and shall show separately at least,

- (a) funds derived from
 - (i) current operations,
 - (ii) sale of non-current assets, segregating investments, fixed assets and intangible assets,
 - (iii) issue of securities maturing more than one year after issue, and
 - (iv) issue of shares,
 and
- (b) funds applied to
 - (i) purchase of non-current assets, segregating investments, fixed assets and intangible assets,

123. Content of statement of source and application of funds.

- (ii) redemption or other retirement of securities or repayment of other indebtedness maturing more than one year after issue,
- (iii) redemption or other retirement of shares, and
- (iv) payment of dividends.

124. (1) The balance sheet referred to in clause (f) of subsection (1) of section 120 shall be drawn up so as to present fairly the financial position of the corporation as at the date to which it is made up and so as to distinguish severally at least the following:

1. Cash.
2. Debts owing to the corporation from its directors, officers or shareholders, except debts of reasonable amount arising in the ordinary course of its business that are not overdue, having regard to its ordinary terms of credit.
3. Debts owing to the corporation, whether on account of a loan or otherwise, from subsidiaries whose financial statements are not consolidated with those of the corporation.
4. Debts owing to the corporation, whether on account of a loan or otherwise, from affiliated companies other than subsidiaries.
5. Other debts owing to the corporation, segregating those that arose otherwise than in the ordinary course of its business.
6. Inventory, stating the basis of valuation.
7. Shares, bonds, debentures and other investments owned by the corporation, except those referred to in items 8 and 9, stating their nature and the basis of their valuation and showing separately those that are marketable with a notation of their market value.
8. Shares or other securities of subsidiaries whose financial statements are not consolidated with those of the corporation, stating the basis of valuation.
9. Shares or other securities of affiliated companies other than subsidiaries, stating the basis of valuation.
10. Lands, buildings, and plant and equipment, stating the basis of valuation, whether cost or otherwise, and, if valued on the basis of an appraisal, the date of appraisal, the name of the appraiser, the basis of the appraisal value and, if such appraisal took place within the five years preceding the date to which the balance sheet is made up, the disposition in the accounts of the corporation of any amounts added to or deducted from such assets on appraisal and

124. Content of balance sheet.

also the amount or amounts accumulated in respect of depreciation, obsolescence and depletion.

11. There shall be stated under separate headings, in so far as they are not written off,
 - (a) expenditures on account of future business;
 - (b) any expense incurred in connection with any issue of shares;
 - (c) any expense incurred in connection with any issue of other securities, including any discount thereon; and
 - (d) any one or more of the following: goodwill, franchises, patents, copyrights, trade marks and other intangible assets and the amount, if any, by which the value of any such assets has been written up after the coming into force of this Act.
12. The aggregate amount of outstanding loans to provide, in accordance with a scheme for the time being in force, money for the purchase by trustees of fully paid shares of the corporation to be held by or for the benefit of *bona fide* employees of the corporation, whether or not they are shareholders or directors, and the aggregate amount of outstanding loans to *bona fide* employees of the corporation, other than directors, made with a view to enabling them to purchase fully paid shares of the corporation to be held by them by way of beneficial ownership.
13. Bank loans and overdrafts.
14. Debts owing by the corporation on loans from its directors, officers or shareholders.
15. Debts owing by the corporation to subsidiaries whose financial statements are not consolidated with those of the corporation, whether on account of a loan or otherwise.
16. Debts owing by the corporation to affiliated companies other than subsidiaries, whether on account of a loan or otherwise.
17. Other debts owing by the corporation, segregating those that arose otherwise than in the ordinary course of its business.
18. Liability for taxes, including the estimated liability for taxes in respect of the income of the period covered by the statement of profit and loss.
19. Dividends declared but not paid.
20. Deferred income.
21. Securities, other than shares, issued by the corporation, stating the interest rate, the maturity date, the

amount outstanding and the existence of sinking fund, redemption requirements and conversion rights, if any.

22. The authorized capital, giving the number of each class of shares and a brief description of each such class, and indicating therein any class of shares that is redeemable and the redemption price thereof.
23. The issued capital, giving the number of shares of each class issued and outstanding and the amount received therefor that is attributable to capital, and showing,
 - (a) the number of shares of each class issued since the date of the last balance sheet and the value attributed thereto, distinguishing shares issued for cash, shares issued for services and shares issued for other consideration; and
 - (b) where any shares have not been fully paid,
 - (i) the number of shares in respect of which calls have not been made and the aggregate amount that has not been called, and
 - (ii) the number of shares in respect of which calls have been made and not paid and the aggregate amount that has been called and not paid.
24. Contributed surplus.
25. Earned surplus.
26. Reserves, showing the amounts added thereto and the amounts deducted therefrom during the financial period.

(2) Explanatory information or particulars of any item referred to in subsection (1) may be shown by way of note to the balance sheet.

125. (1) There shall be stated by way of note to the financial statements particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of any of the statements with any of those for the preceding period, and the effect, if material, of any such change upon the profit or loss for the period.

(2) For the purpose of subsection (1), a change in accounting principle or practice or in the method of applying any accounting principle or practice affects the comparability of a statement with that for the preceding period, even though it did not have a material effect upon the profit or loss for the period.

125. Notes to financial statements.

(3) Where applicable, the following matters shall be referred to in the financial statements or by way of note thereto:

1. The basis of conversion of amounts from currencies other than the currency in which the financial statements are expressed.
2. Foreign currency restrictions that affect the assets of the corporation.
3. Contractual obligations that will require abnormal expenditures in relation to the corporation's normal business requirements or financial position or that are likely to involve losses not provided for in the accounts.
4. Material contractual obligations in respect of long-term leases, including, in the year in which the transaction was effected, the principal details of any sale and lease transaction.
5. Contingent liabilities, stating their nature and, where practicable, the approximate amounts involved.
6. Any liability secured otherwise than by operation of law on any asset of the corporation, stating the liability so secured.
7. Any default of the corporation in principal, interest, sinking fund or redemption provisions with respect to any issue of its securities, other than shares, or credit agreements.
8. The gross amount of arrears of dividends on any class of shares and the date to which such dividends were last paid.
9. Where a corporation has contracted to issue shares or has given an option to purchase shares, the class and number of shares affected, the price and the date for issue of the shares or exercise of the option.
10. The aggregate direct remuneration paid or payable by the corporation and its subsidiaries, whose financial statements are consolidated with those of the corporation, to the directors and the senior officers of the corporation, and as a separate amount the aggregate direct remuneration paid or payable to such directors and senior officers by the subsidiaries of the corporation whose financial statements are not consolidated with those of the corporation.
11. Where the corporation is a holding company, the aggregate of any shares in and the aggregate of any securities, other than shares, of such corporation held by subsidiary companies whose financial statements are not consolidated with that of the holding company.

12. The amount of any loans by the corporation or by a subsidiary company, otherwise than in the ordinary course of business, during the corporation's financial period, to the directors or officers of the corporation.
13. Any restriction by the instrument of incorporation or any by-law, article or other like instrument or any amendments thereto or by contract on the payment of dividends that is significant in the light of the corporation's financial position.
14. Any event or transaction, other than one in the normal course of business operations, between the date to which the financial statements are made up and the date of the auditor's report thereon that materially affects the financial statements.
15. The amount of any obligation for pension benefits arising from service prior to the date of the balance sheet, whether or not such obligation has been provided for in the accounts of the corporation, the manner in which the corporation proposes to satisfy such obligation and the basis on which it has charged or proposes to charge the related costs against operations.

(4) A note to the financial statements is a part of such financial statements.

126. Notwithstanding sections 121 to 125, it is not necessary to state in the financial statements any matter that in all the circumstances is of relative insignificance.

127. (1) A corporation, in this section referred to as "the holding company", may include in the financial statements referred to in section 120 the assets and liabilities and income and expense of any one or more of its subsidiaries, making due provision for minority interests, if any, and indicating in such financial statements that they are presented in consolidated form.

(2) Where the assets and liabilities and income and expense of any one or more subsidiaries of the holding company are not so included in the financial statements of the holding company,

- (a) the financial statements of the holding company shall include a statement setting forth
 - (i) the reason why the assets and liabilities and income and expense of such subsidiary or subsidiaries are not included in the financial statements of the holding company,
 - (ii) if there is only one such subsidiary, the amount of the holding company's proportion of the profit or loss of such subsidiary for the fin-

126. Idem.

127. Consolidated financial statements of a corporation and its subsidiaries.

- ancial period coinciding with or ending in the financial period of the holding company, or, if there is more than one such subsidiary, the amount of the holding company's proportion of the aggregate profits less losses, or losses less profits, of all such subsidiaries for the respective financial periods coinciding with or ending in the financial period of the holding company,
- (iii) the amount included as income from such subsidiary or subsidiaries in the statement of profit and loss of the holding company and the amount included therein as a provision for the loss or losses of such subsidiary or subsidiaries,
 - (iv) if there is only one such subsidiary, the amount of the holding company's proportion of the undistributed profits of such subsidiary earned since the acquisition of the shares of such subsidiary by the holding company to the extent that such amount has not been taken into the accounts of the holding company, or, if there is more than one such subsidiary, the amount of the holding company's proportion of the aggregate undistributed profits of all such subsidiaries earned since the acquisition of their shares by the holding company less its proportion of the losses, if any, suffered by any such subsidiary since the acquisition of its shares to the extent that such amount has not been taken into the accounts of the holding company,
 - (v) any qualifications contained in the report of the auditor of any such subsidiary on its financial statements for the financial period ending as aforesaid, and any note or reference contained in the financial statements to call attention to a matter that, apart from the note or reference, would properly have been referred to in such a qualification, in so far as the matter that is the subject of the qualification or note is not provided for by the holding company's financial statements and is material from the point of view of its shareholders,
- (b) if for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement that is to be included in the financial statements of the holding company, the directors who sign the financial statements of the holding company shall so report in writing, and their report shall be included in the financial statements of the holding company in lieu of such statement, and
 - (c) if, in the opinion of the auditor of the holding company, adequate provision has not been made in the

financial statements of the holding company for the holding company's proportion,

- (i) where there is only one such subsidiary, of the loss suffered by such subsidiary since the acquisition of its shares by the holding company, or
- (ii) where there is more than one such subsidiary, of the aggregate losses suffered by such subsidiaries since the acquisition of their shares by the holding company in excess of its proportion of the undistributed profits, if any, earned by any of such subsidiaries since such acquisition,

the auditor shall state in his report the additional amount that in his opinion is necessary to make full provision therefor.

128. In a financial statement, the term "reserve" shall be used to describe only

- (a) amounts appropriated from earned surplus at the discretion of management for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred,
- (b) amounts appropriated from earned surplus pursuant to the instrument of incorporation or a by-law, article or other like instrument or any amendments thereto of the corporation for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred, and
- (c) amounts appropriated from earned surplus in accordance with the terms of a contract and that can be restored to the earned surplus when the conditions of the contract are fulfilled.

129. (1) A corporation shall file with the Commission within 60 days of the date to which it is made up a copy of a comparative interim financial statement for the six-month period that commenced on the date of incorporation or if the corporation has completed a financial year, for the six-month period that commenced immediately after the end of the last completed financial year and for the comparable six-month period, if any, in the 12 months immediately preceding the commencement of the six-month period in respect of which such interim financial statement is issued, made up of

- (a) a statement of source and application of funds for each period that complies with section 123, and

128. Use of the term “reserve” in a financial statement.

129. Comparative interim financial statements.

- (b) sufficient relevant financial information in summary form to present fairly the results of the operations of the corporation for each period, including
 - (i) a statement of sales or gross operating revenue,
 - (ii) extraordinary items of income or expense,
 - (iii) net income before taxes on income imposed by any taxing authority,
 - (iv) taxes on income imposed by any taxing authority, and
 - (v) net profit or loss.
- (2) The interim financial statement required by subsection (1) may omit either or both of
 - (a) the information relating to the comparable period,
 - (b) the statement of source and application of fundsif the reason for the omission or omissions, as the case may be, is set out in the interim financial statement or by way of note thereto.
- (3) There shall be stated by way of note to the interim financial statement required by subsection (1) the particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of such statement with the statement for the preceding period or with the interim financial statement for a part of the preceding period, and the effect, if material, of any such change upon the profit or loss for the period covered by the interim financial statement.
- (4) For the purpose of subsection (3), a change in accounting principle or practice or in the method of applying any accounting principle or practice affects the comparability of a statement with that for the preceding period or part thereof, even though it did not have a material effect upon the profit or loss for the period covered by the interim financial statement.
- (5) The interim financial statement required by subsection (1) shall be sent, within 60 days of the date to which it is made up, by prepaid mail to each shareholder whose latest address as shown on the books of the corporation is in Alberta.

130. (1) A corporation may comply with this Part by concurrently filing with the Commission

- (a) the financial statements and the auditor's reports thereon and the interim financial statements, if any, that are sent or otherwise made available by the corporation to its shareholders, and
- (b) such additional financial information, if any, as is required, when combined with the financial information contained in the financial statements and

130. Filing of statements and reports with Commission.

interim financial statements referred to in clause (a), to substantially comply with sections 120 to 129.

(2) Additional financial information filed under clause (b) of subsection (1) shall be accompanied by a report of the auditor of the corporation who shall state in his report whether, in his opinion, such additional financial information, together with the financial statements filed under clause (a) of subsection (1) relating to the same financial period, provides the information required by subsection (1).

(3) Notwithstanding subsection (2), the report of the auditor of the corporation need not relate to the financial year referred to in clause (b) of subsection (1) of section 120 or to any interim financial statement or information.

(4) Where a corporation complies with this Part by complying with subsection (1), the financial statements and the auditor's reports thereon, the interim financial statements and the additional financial information referred to in clauses (a) and (b) of subsection (1) shall be filed with the Commission

(a) within five days after such financial statements are mailed by the corporation to its shareholders, or

(b) within 170 days of the date to which such financial statements are made up or, in the case of interim financial statements, within 60 days of the date to which the interim financial statements are made up,

whichever is earlier.

131. (1) Upon the application of a corporation, the Commission may,

(a) if a requirement of this Part conflicts with a requirement of the laws of the jurisdiction in which the corporation is incorporated, or

(b) if the laws of the jurisdiction to which the corporation is subject contain substantially similar requirements as contained in this Part, or

(c) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing,

make an order on such terms and conditions as seem to the Commission just and expedient exempting, in whole or in part, the corporation from the requirements of this Part.

(2) A corporation that is subject to this Part by virtue only of subclause (i) of clause (b) of section 118 ceases to be subject to this Part if the corporation does not have owners of its equity shares whose last address as shown on the books of the corporation is in Alberta.

131. Exemption from requirements of Part 12.

132. (1) The Commission may in its discretion direct the Registrar to refuse to issue a receipt for a prospectus until such time as the company proposing to distribute the equity shares to be offered by the prospectus delivers or causes to be delivered to the Commission undertakings satisfactory to the Commission in which the company undertakes to comply with this Part.

(2) The Commission may in its discretion, if satisfied that an undertaking given under subsection (1) has not been complied with, direct the Registrar either to refuse to issue a receipt for a prospectus relating to securities of the corporation that previously delivered an undertaking to the Commission or to refuse to issue such receipt unless the corporation has agreed to comply with such terms and conditions relating to financial disclosure as may be imposed by the Commission.

133. (1) An Alberta public company

- (a) that has issued equity shares that, after this Act comes into force, are distributed in the course of a primary distribution to the public in respect of which a prospectus is filed with the Commission and a receipt therefor obtained, or
- (b) any of whose shares are listed and posted for trading on any stock exchange in Alberta recognized by the Commission,

shall file with the Commission its financial statements, auditor's statements thereon and interim financial statements that are required to be mailed by the company to its shareholders.

(2) The financial statements, auditor's reports thereon and interim financial statements referred to in subsection (1) shall be filed with the Commission within five days after the date such statements are mailed or required to be mailed by the company to its shareholders, whichever is earlier.

(3) In this section, "Alberta public company" means a company that is registered under *The Companies Act* and is a public company within the meaning of that Act, but does not include a foreign company as defined in that Act.

134. The financial statements, auditor's reports thereon, interim financial statements and additional financial information filed with the Commission under this Part shall be open to public inspection at the offices of the Commission during normal business hours of the Commission.

135. A corporation that fails to comply with any provision of this Part is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000 and every director or officer of the corporation who authorized, permitted or acquiesced in any such failure is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000.

132. Refusal to issue receipt for a prospectus.

133. Material to be filed by certain Alberta public companies.

134. Public inspection of filed material.

135. Offences.

PART 13

OFFENCES AND PENALTIES

136. (1) Every person or company who

- (a) makes a statement in any material, evidence or information submitted or given under this Act or the regulations to the Commission, its representative, the Director or the Registrar or to any person appointed to make an investigation or audit under this Act, that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact or that omits to state any material fact, the omission of which makes the statement false or misleading,
- (b) makes a statement in any application, report, prospectus, return, financial statement or other document, required to be filed or furnished under this Act or the regulations that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact or that omits to state any material fact, the omission of which makes the statement false or misleading,
- (c) contravenes this Act or the regulations, or
- (d) fails to observe or comply with any order, direction or other requirement made under this Act or the regulations

is, exempt where such conduct also constitutes an offence under Parts 9, 10, 11 and 12 is guilty of an offence and is liable on summary conviction to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

(2) No person or company is guilty of an offence under clause (a) or (b) of subsection (1) if he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

(3) Where a company is guilty of an offence under subsection (1), every director or officer of such company who authorized, permitted or acquiesced in such offence is also guilty of an offence and is liable on summary conviction to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

(4) Notwithstanding subsection (1), where a company is convicted thereunder, the maximum fine that may be imposed is \$25,000.

137. (1) No proceedings under section 99 or 136 shall be instituted except with the consent or under the direction of the Minister.

136. Offences and penalties.

137. (1) Consent of Minister to prosecutions under section 99
or 136.

(2) No proceedings under this Act shall be commenced more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission.

138. 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.

PART 14

GENERAL PROVISIONS

139. (1) No person or company shall carry on business as a stock exchange in Alberta unless such stock exchange is recognized in writing as such by the Commission.

(2) The Commission may, where it appears to it to be in the public interest, make any direction, order, determination or ruling

- (a) with respect to the manner in which any stock exchange in Alberta carries on business,
- (b) with respect to any by-law, ruling, instruction or regulation of any such stock exchange,
- (c) with respect to trading on or through the facilities of any such stock exchange or with respect to any security listed and posted for trading on any such stock exchange, or
- (d) to ensure that companies whose securities are listed and posted for trading on any such stock exchange comply with this Act and the regulations.

140. 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 any 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.

141. Where a receipt for a prospectus has been issued by the Registrar, notwithstanding that such receipt is thereafter revoked, every purchaser of the securities to which the prospectus relates shall be deemed to have relied upon the statements made in the prospectus whether the purchaser has received the prospectus or not, and, if a material false statement is contained in the prospectus, every person who, at the time of the issue of a receipt for the prospectus, is

(2) Time limitation for prosecution.

138. Information may charge more than one offence.

139. Commission's powers re stock exchanges.

140. Records and particulars of transactions on stock exchange.

141. Liability of directors as to statements in prospectus.

a director of a company issuing the securities or a person or company who signed the certificate required by section 52 is liable to pay compensation to all persons or companies who have purchased the securities for any loss or damage such persons or companies have sustained as a result of such purchase unless it is proved

- (a) that the prospectus was filed with the Commission without his knowledge or consent, and that, on becoming aware of its filing with the Commission, he forthwith gave reasonable public notice that it was so filed,
- (b) that, after the issue of a receipt for the prospectus and before the purchase of the securities by such purchaser, on becoming aware of any false statement therein, he withdrew his consent thereto and gave reasonable public notice of such withdrawal and of the reason therefor,
- (c) that, with respect to every false statement, he had reasonable grounds to believe and did believe that the statement was true,
- (d) that he had no reasonable grounds to believe that an expert who made a statement in a prospectus or whose report or valuation was produced or fairly summarized therein was not competent to make such statement, valuation or report, or
- (e) that, with respect to every false 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.

142. (1) Except with the consent of the Minister, no action whatever and no proceedings by way of injunction, mandamus, prohibition or other extraordinary remedy lies or shall be instituted

- (a) 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 the carrying out of the provisions of this Act or the regulations where such person is a member of the Commission, a representative of the Commission or the Director or Registrar, or where such person or company was proceeding under the written or oral direction or consent of any one of them or under an order of the Minister made under this Act, or
- (b) against any exchange auditor, district association auditor or association auditor, employed under clause (b) of section 30, in respect of the performance of his duties as such.

142. Actions and other proceedings.

(2) No person or company has any rights or remedies and no proceedings lie or shall 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 with

- (a) any requirement, order or direction under this Act of
 - (i) the Commission or any member thereof,
 - (ii) the Director,
 - (iii) the Registrar,
 - (iv) any person appointed by order of the Minister,
 - (v) the Minister,
 - (vi) any representative of the Minister, the Commission, the Director or Registrar or of any person appointed by the Minister,
- or
- (b) this Act and the regulations.

143. (1) The Director 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.

144. The Lieutenant Governor in Council may make regulations

- (a) prescribing the form and content of prospectuses and statements of material facts,
- (b) prescribing requirements respecting applications for registration and renewal of registration, and providing for the expiration of registrations,
- (c) regulating the listing and trading of securities and records relating thereto,
- (d) governing the furnishing of information to the public or to the Commission by a registrant in connection with securities or trades therein,
- (e) governing the keeping of accounts and records, the preparation and filing of financial statements of the affairs of security issuers and the audit requirements with respect thereto,
- (f) designating any person or company or any class of persons or companies that 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

143. Cessation from trading by broker or salesman. The present section 91.

144. Regulations.

Commission and other fees in connection with the administration of this Act and the regulations,

- (h) prescribing the documents, reports, statements, agreements and other information and the form, content and other particulars relating thereto that are required to be filed, furnished or delivered under this Act and the regulations,
- (i) prescribing the practice and procedure of investigations under sections 21 and 23,
- (j) prescribing the forms for use under this Act and the regulations,
- (k) prescribing trades or securities, in addition to the trades and securities referred to in section 19, in respect of which registration shall not be required,
- (l) prescribing trades or securities referred to in section 19 in respect of which there shall cease to be exemption from registration,
- (m) prescribing trades or securities, in addition to the trades and securities referred to in section 58, in respect of which section 35 does not apply,
- (n) prescribing terms and conditions that shall be contained in an escrow or pooling agreement with respect to securities issued for a consideration other than cash,
- (o) prescribing the practice and procedure by which the Commission recognizes exempt purchasers under clause 3 of subsection (1) of section 19,
- (p) prescribing the information required or permitted to be distributed under clause (a) of subsection (2) of section 36,
- (q) prohibiting or otherwise regulating the distribution of written or printed material by a person or company in respect of a security whether in the course of primary distribution to the public or otherwise,
- (r) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

145. 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, document or material,

purporting to be certified by the Commission or a member thereof or by the Director or 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.

145. Admissibility in evidence of certified statements.

146. (1) Where a magistrate or justice of another province issues a warrant for the arrest of any person on a charge of contravening any provision of a statute of such province similar to this Act, 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 issued the warrant, make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed 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.

(2) Any constable of Alberta or of any other province of Canada who is passing through Alberta having in his custody a person arrested in another province under a warrant endorsed in pursuance of 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.

147. (1) The Commission

- (a) upon the commencement of or after the investigation of a person or company under section 21 or 23, or
- (b) where it has made a direction, decision, order or ruling suspending or cancelling the registration of a person or company or affecting the right of a 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,

have been instituted against a person or company and, 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 that person or company involving securities, may by originating notice of motion apply to the Supreme Court of Alberta for an injunction to restrain that person or company from doing any act that is similar to or related to any act or matter that is the subject of any investigation, direction, decision, order, ruling or proceedings referred to in clause (a), (b) or (c).

(2) The originating notice shall be served at least two clear days before the day named in the notice for hearing the application.

146. Execution of warrant issued in another province.

147. Injunction to restrain contravention of Act. The present section 33a.

(3) The court may grant the injunction or interlocutory injunction applied for where

- (a) it appears from the material and the evidence adduced that the person or company to be restrained is apparently continuing to do or may in future do the act complained of, and
- (b) it is satisfied that the granting of the injunction or interlocutory injunction is in the interest of the public generally or any person or class of persons in particular.

(4) An application may be made under subsection (1) *ex parte* upon the filing of the originating notice and the court may grant an interlocutory injunction for a period not exceeding 10 days.

(5) An interlocutory injunction made under subsection (4) remains in force for the period specified therein unless the period is extended upon application made *ex parte* but if it is in force on the day when the originating motion is determined, it shall be deemed to be dissolved on that day.

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

(7) Except where otherwise provided, the Consolidated Rules of the Supreme Court of Alberta apply to proceedings under this section.

148. (1) Any bond mentioned in subsection (4) of section 7 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

- (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

148. Forfeiture or cancellation of bonds. The present sections
22 to 26.

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.

(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.

(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.

(4) Where a bond secured by the deposit of collateral security with the Provincial Treasurer is forfeited under subsection (1), the Lieutenant Governor in Council may direct the Provincial Treasurer to sell the collateral security at the current market price.

(5) Where Her Majesty becomes a creditor of any person or company in respect of a debt to the Crown arising from the provisions of subsection (1), 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.

(6) The Lieutenant Governor in Council may direct the Provincial Treasurer

- (a) to assign any bond forfeited under subsection (1) 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 subsection (4),

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.

(7) Where

- (a) a bond has been forfeited under subsection (1) by reason of a conviction or judgment under clause (a) or (b) of subsection (1), 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.

PART 15

MISCELLANEOUS

149. (1) *The Securities Act, 1955*, being chapter 64 of the Statutes of Alberta, 1955 is hereby repealed.

(2) Every registration in force under *The Securities Act, 1955* at the date of the coming into force of this Act shall, subject to this Act, continue in force as a registration under this Act.

(3) Where, within a period of one year prior to the date on which this Act comes into force, a prospectus was filed pursuant to *The Securities Act, 1955* in such circumstances that section 35 or 56 of this Act would have been applicable thereto if the sections had been in force on the date of the filing of such prospectus, then sections 55 and 56 of this Act shall be applicable thereto *mutatis mutandis*, and the material, if any, required to be filed with the Commission under section 56, if the primary distribution is to continue, shall be filed with the Commission and a receipt therefor obtained from the Registrar within 12 months and 20 days of the date of the prospectus filed or last prospectus filed, as the case may be, under *The Securities Act, 1955* or, subject to such terms and conditions as the Commission may require, within such greater number of days as it may permit.

150. *The Deposits Regulation Act* is amended as to subsection (5) of section 6 by striking out the words "subsections (3) and (4) of section 27 of *The Securities Act, 1955*" and by substituting the words "subsections (3) and (4) of section 21 of *The Securities Act, 1967*".

151. This Act comes into force on July 1, 1967.

149. Repeal and transitional.

150. Amends Statutes of Alberta, 1964, chapter 21.