

1972 Bill 86

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First Session, 17th Legislature, 21 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 86**

**The Securities Amendment Act, 1972**

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MR. KOZIAK

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First Reading .....

Second Reading .....

Third Reading .....

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# BILL 86

1972

## THE SECURITIES AMENDMENT ACT, 1972

(Assented to \_\_\_\_\_, 1972)

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. *The Securities Act is hereby amended.*
2. *Section 2, subsection (1) is amended*
  - (a) *by striking out clauses 1 and 2 and by substituting therefor the following clauses:*
    1. “adviser” means a person or company engaged in or holding himself or itself out as engaging in the business of advising others as to the advisability of investing in or buying or selling securities;
    2. “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, or
      - (ii) any partners of that person or company acting by or for the partnership of which they are both partners, or
      - (iii) 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
      - (iv) any spouse, son or daughter of that person, or
      - (v) any relative of such person or of his spouse, other than a relative referred to in subclause (iv), who has the same home as such person;
  - (b) *by striking out clause 3,*

## **Explanatory Notes**

**1.** This Bill amends chapter 333 of the Revised Statutes of Alberta 1970.

**2.** (a) The definition of “adviser” replaces the definitions of “investment counsel” and of “securities adviser” and the definition of “associate” is widened.

(c) The definition of “dealer” replaces the definitions of “broker”, “broker-dealer”, “investment dealer” and “securities issuer”. “Sub-broker-dealers” are eliminated entirely.

(d) The definition of “distribution to the public” replaces the definition of “primary distribution to the public” and more clearly indicates what is a substantial holding.

(f) “Salesman” redefined.

(c) *by inserting after clause 5 the following clause:*

5.1 “dealer” means a person or company who trades in securities in the capacity of principal or agent;

(d) *by inserting after clause 6 the following clause:*

6.1 “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 to the public, 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 person, company or any combination of persons or companies holding a sufficient number of any of the securities of a company to materially affect the control of such company, but any person, company or any combination of persons or companies holding more than 20 per cent of the outstanding equity shares in a company shall, in the absence of evidence to the contrary, be deemed to be holding a sufficient number of equity shares to materially affect the control of such 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;

(e) *by striking out clauses 10, 11 and 16,*

(f) *by striking out clause 25 and by substituting therefor the following clause:*

25. “salesman” means an individual who is employed by a dealer for the purpose of making trades in securities on behalf of that dealer;

(g) *by striking out clauses 26, 28, and 30, and*

(h) *as to clause 32, by striking out the word “primary”.*

3. *Section 3 is amended*

(a) *as to subsection (4), clause (b) by striking out the words “subsection (1), (2) or (3),” and*

(b) *by striking out subsection (5) and by substituting therefor the following subsection:*

(5) Notwithstanding subsection (3), where the Commission is empowered to make a ruling on

**3.** This section will be amended to conform with the amendment to section 59 of The Securities Act in clause 18 of this Bill and to clarify the differences in the two subsections. Section 3, subsections (3), (4) and (5) read:

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

(4) Notwithstanding subsection (3), where an application is made to the Commission

(a) under section 103, subsection (2), section 115, subsection (1) or section 131, subsection (1) of this Act or section 88 of The Companies Act, or

(b) for a ruling under section 59, subsection (1), (2) or (3), the chairman may, unless the applicant requests otherwise, act as the Commission for the purpose of hearing and determining the application and may exercise and perform the powers and duties of the Commission in connection with it.

(5) Notwithstanding subsection (3), the chairman may act as the Commission for the purpose of making any ruling under section 59, subsection (1), (2) or (3) on the motion of the Commission and for that purpose may exercise and perform the powers and duties of the Commission.

its own motion under section 59, the chairman may, on the motion of the Commission, act as the Commission for the purpose of making the ruling and in so doing may exercise and perform all powers and duties of the Commission necessary to do so.

*4. Section 6 is amended*

*(a) as to subsection (1)*

*(i) by striking out clause (a) and by substituting therefor the following clause:*

(a) trade in a security unless such person or company is registered as a dealer, or as a salesman of a registered dealer, or

*and*

*(ii) by striking out clauses (c), (d) and (e) and by substituting therefor the following clauses:*

(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 dealer, or

(d) act as an underwriter unless such person or company is registered as an underwriter or is a bank to which the *Bank Act* (Canada) applies, or

(e) act as an adviser unless such person or company is registered as an adviser, or

*and*

*(b) by striking out subsection (2) and by substituting therefor the following subsection:*

(2) No person shall act as a dealer, adviser or underwriter for or on behalf of a person or company that is registered as a dealer, adviser or underwriter except such partners or officers thereof as are designated by the Director.

*5. Section 14 is amended as to subsections (1) and (2) by striking out the words "broker, investment dealer, underwriter, broker-dealer, sub-broker-dealer, security issuer, investment counsel, securities adviser or salesman" where they occur therein and by substituting therefor the words "dealer, adviser, underwriter or salesman".*

*6. Section 15 is amended*

*(a) as to subsection (1) by striking out the words "broker, investment dealer and broker-dealer" and by substituting therefor the word "dealer",*

*(b) by striking out subsection (2),*

4. Persons and companies required to register. Amendments made to complement new definitions. The new subsection (2) in effect removes automatic exemption for partners and officers.

5. Refusal of registration of non-resident. Amendment arises from new definitions.

6. Notice of change. Amendments arise from new definitions.

- (c) *as to subsection (3) by striking out the words “investment counsel, securities adviser” and by substituting therefor the word “adviser”, and*
- (d) *by striking out subsection (5).*

7. *Section 18 is amended by striking out the words “investment counsel or securities”.*

8. *Section 19 is amended*

- (a) *as to subsection (1) by inserting after clause 9 the following clauses:*

9.1 *a trade in a security of a company in connection with an offer to purchase shares by way of private agreement with fewer than 15 shareholders, or an offer to purchase all of the shares in a private company;*

9.2 *a trade in a security by a company as consideration for a portion of or all of the assets of any person, other than an individual, or any company who agrees to hold the securities for investment only and not with a view to resale or distribution, if the fair value of the assets so purchased is not less than \$100,000;*

9.3 *a trade by a company in the securities of its own issue to its promoters;*

- (b) *as to subsection (2) by adding after clause 12 the following clause:*

12.1 *securities of a commercial syndicate within the meaning of Part 6, issued by the commercial syndicate, where a commercial syndicate agreement relating to the commercial 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;*

*and*

- (c) *as to subsection (3) by adding after the words “aggregate acquisition cost” the words “to that purchaser”.*

9. *Section 21, subsection (2) is amended by striking out the words “with the consent of the Minister, by order, appoint one or more persons” and by substituting therefor the words “by order, appoint any person”.*

10. *Section 35, subsection (1) is amended by striking out the word “primary”.*

11. *Section 37 is amended by striking out the word “primary”.*



**7. Amendment in accordance with new definitions.**

**8. New exemptions from registration. Section 19(3) reads:**

(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.

**9. Minister's consent not required for investigation. Section 21 (2) reads:**

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

A report would still be made to the Minister under Section 22 and he could still initiate investigations under Section 23.

**10. Amended in accordance with new definition.**

**11. Amended in accordance with new definition.**

12. Section 39 is amended by striking out the word “primary”.

13. Section 54 is amended as to subsections (1) and (2) by striking out the word “primary” wherever it occurs.

14. Section 55 is amended by striking out the word “primary”.

15. Section 56 is amended by striking out the word “primary”.

16. Section 57 is amended by striking out the word “primary”.

17. Section 58 is amended

(a) by striking out subsection (1) and by substituting therefor the following subsections:

**58.** (1) Section 35 does not apply to a trade in the course of a distribution to the public where

- (a) the purchaser or proposed purchaser is a person or company referred to in section 19, subsection (1), clause 3 who purchases as principal for investment only and not with a view to resale or distribution, or
- (b) the purchaser or proposed purchaser is a person or company referred to in section 19, subsection (3) who purchases as principal, or
- (c) the trade is one referred to in section 19, subsection (1), clauses 6, 8, 9, 9.1, 9.2, 9.3 and 10, or
- (d) the trade is made 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.

(1.1) For the purposes of subsection (1), a trust company registered under *The Trust Companies Act* shall be deemed to be acting as principal when it trades as trustee for accounts fully managed by it.

(b) as to subsection (2) by

- (i) inserting after the words “Section 35 does not apply to” the words “a distribution to the public of”, and
- (ii) striking out the words “clause 16,” in clause (c) and by substituting therefor the words “clause 6.1,”, and

(c) by adding the following subsection after subsection (2):

**12.** Amended in accordance with new definition.

**13.** Amended in accordance with new definition.

**14.** Amended in accordance with new definition.

**15.** Amended in accordance with new definition.

**16.** Amended in accordance with new definition.

**17.** The amendment makes it clear that the exemptions from the requirement for a prospectus are confined to purchases as principal for the purchaser's own account, preventing the exemptions from being used as a means of avoiding obtaining registration as an underwriter.

Section 58, subsections (1) and (2) read:

58. (1) Section 35 does not apply to a trade where the purchaser or proposed purchaser is a person or company referred to in section 19, subsection (1), clause 3 or in section 19, subsection (3) or to a trade referred to in section 19, subsection (1), clauses 6, 8, 9 and 10 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 section 19, subsection (2), or
- (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, or
- (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 section 2, subsection (1), clause 16, subclause (ii) 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.

(2.1) The Commission may recognize any stock exchange located inside or outside of Alberta but the recognition may be for such limited purposes or may be subject to such terms and conditions as the Commission considers necessary.

*18. Section 59 is struck out and the following section is substituted therefor:*

**59.** (1) Where doubt exists whether a trade proposed or intended to be made in a security would be in the course of a 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 a distribution to the public of the security and rule accordingly.

(2) The Commission, where in its opinion to do so would not be prejudicial to the public interest, upon the application of an interested party may rule that, subject to such terms or conditions as the Commission may impose, a trade or an intended trade in a security shall be deemed not to be a distribution to the public.

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

(4) Where doubt exists whether a distribution to the public of any security has been concluded or is currently in progress, the Commission may determine the question and rule accordingly.

(5) A ruling of the Commission under this section is final and there is no appeal therefrom.

*19. Section 60 is amended as to subsections (1) and (2) by striking out the word "primary".*

*20. Section 61, subsection (1) is amended by striking out clause (d) and by substituting therefor the following clause:*

(d) such escrow or pooling agreement as the Director considers necessary or advisable with respect to securities has not been entered into, or

*21. Section 62 is amended as to subsections (1) and (3) by striking out the word "primary" wherever it occurs.*

*22. Section 63 is amended as to subsections (1) and (2) by striking out the word "primary".*

**18.** Commission given the power to exempt on the basis of public interest subject to conditions.

**19.** Amended in accordance with new definition.

**20.** The amendment permits the Director to refuse to issue a receipt for a prospectus where there is not an escrow agreement for securities including those issued for cash consideration. Section 61 (1) (d) reads:

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

(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

**21.** Amended in accordance with new definition.

**22.** Amended in accordance with new definition.

*23. Section 64, subsection (1) is amended by striking out the word “primary”.*

*24. Section 65 is amended*

- (a) as to subsection (1) by striking out the word “primary”,*
- (b) by striking out subsection (2) and by substituting the following subsection therefor:*

*(2) No action shall be commenced to enforce the right of rescission conferred by this section after the expiration of 90 days from the receipt of the prospectus or amended prospectus by the purchaser or from the date of the contract referred to in subsection (1), whichever is later.*

*and*

- (c) as to subsection (7) by striking out the words “The cause of action” and by substituting therefor the words “The right of rescission”.*

*25. Section 66 is amended by striking out the word “primary”.*

*26. Section 71 is amended by striking out the words “investment counsel and securities”.*

*27. Section 80 is amended by striking out clause (b) and by substituting therefor the following clause:*

- (b) “exempt offer” means*
  - (i) an offer to purchase shares by way of private agreement with fewer than 15 shareholders and not made to shareholders generally, or*
  - (ii) an offer to purchase shares to be effected through the facilities of a stock exchange or in the over-the-counter market, where such purchases are reported in accordance with section 109.1, or*
  - (iii) an offer to purchase shares in a private company, or*
  - (iv) an offer exempted by order of the Commission made under section 89;*

*28. Section 81 is amended*

- (a) by striking out clause (c) and by substituting therefor the following clause:*
- (c) any shares deposited pursuant to a take-over bid may be withdrawn by or on behalf of an*

**23.** Amended in accordance with new definition.

**24.** (a) Amended in accordance with new definition.

(b) and (c) The words implying that the provision confers a cause of action are changed to more accurately refer to a right conferred by the provision. Section 65 (1), (2) and (7) read:

65. (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).

(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.

**25.** Amended in accordance with new definition.

**26.** Amended in accordance with new definition.

**27.** The definition of exempt offer is revised to eliminate inconsistencies and to complement sections 7 and 30 of this Bill. Clause (b) now reads:

80. In 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, or
- (ii) an offer to purchase shares to be effected through the facilities of a stock exchange or in the over-the-counter market, or
- (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;

**28.** The amendment gives an offeree an additional seven-day withdrawal period where the terms of the take-over bid are varied before the expiration of the offer and deletes the restrictive words "of a class" so that the offer must be for all of the equity shares if the offeror wishes it to extend longer than 35 days. The amendment also requires certain additional information in the take-over circular and prohibits any conditions to the offer except the right to withdraw if a minimum number of shares is not tendered.

offeree at any time until the expiration of seven days from its date, but where the terms of the take-over bid are varied before the expiration thereof the offeree shall have an additional seven days from the date of their receipt of the varied offer to withdraw any shares deposited pursuant to the take-over bid;

(b) *as to clauses (d), (e), (f) and (g) by striking out the words "of a class", and*

(c) *by adding the following clauses:*

- (h) where the laws applicable to the company provide for a right of appraisal or acquisition, the offeror shall advise the offeree of his rights of appraisal and whether the offeror intends exercising any right of acquisition he may have;
- (i) where the offeror intends to purchase securities in the market, his intention shall be set out in the take-over bid circular and, where the take-over bid is made for less than all of the equity shares owned by the offeree, he shall not reduce the number of shares he is bound or willing to take up under clause (g) by the number of shares purchased in the market;
- (j) the offeror shall not attach any conditions to the offer except the right to withdraw the offer if the offerees fail to tender the minimum number of shares the offeror is bound and willing to take up or where the action of the board of directors of the offeree company subsequent to the date of the offer materially changes the undertakings, assets or capital of the offeree company;
- (k) where the offer is made for all of the equity shares owned by offerees the offeror shall, at the expiration of 35 days from the making of the offer, take up and pay for the shares tendered at that time or abandon his offer.

*29. Section 86 is struck out and the following section is substituted therefor:*

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

(2) Where the board of directors is considering sending a circular under subsection (1), it may advise its shareholders of this fact and may advise them not to tender their shares until a further communication is received from the directors.



**29.** The provisions for directors' circulars are rewritten to provide for advance notice of the circular and to permit an individual director to recommend acceptance or rejection of the take-over bid.

(3) Where the board of directors elects to send a communication under subsection (2), it shall send a directors' circular at least seven days prior to the expiry of the offer.

(4) An individual director or officer may recommend to offerees acceptance or rejection of a take-over bid made to such offerees if the director or officer sends or causes to be sent to each offeree with this communication a circular containing, with all necessary modifications, the information required by section 95 relating to his holdings and interest.

(5) All communications required or permitted by this section shall be sent to each offeree by prepaid mail at his last address as shown on the books of the company.

*30. The following section is added after section 88:*

**88.1** (1) Subject to subsection (2), where a take-over bid is made by or on behalf of a company, the take-over bid circular 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:

*The foregoing constitutes full, true and plain disclosure of all material facts relating to the take-over bid made by this circular as required by Part 9 of The Securities Act, and the regulations thereunder.*

(2) Where the company has only three directors, two of whom are the chief executive officer and the chief financial officer, the certificate may be signed by all the directors of the company.

(3) Where a take-over bid is made by a person, the circular shall be certified in the form set out in subsection (1) by the person making the offer.

(4) Where the take-over bid is made on behalf of an undisclosed principal, as permitted by section 91, the circular shall be certified in the form set out in subsection (1) by the agent making the offer.

*31. Section 89 is struck out and the following section is substituted therefor:*

**89.** Any person or company may apply to the Commission for an order declaring a take-over bid to be an exempt offer and the Commission may, where in its opinion such an order would not be prejudicial to the public interest, upon such terms or conditions as it may impose, deem the proposed offer to be exempt.

**30.** The take-over bid circular is required to be certified in the same manner as a prospectus and to be subject to the same liabilities.

**31.** Commission may exempt offers. At present there must be a court application. Section 89 reads:

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).

There would still be a right of appeal under section 29.

*32. Section 91 is amended by renumbering it as subsection (1) and by adding thereafter the following subsection:*

(2) Where a take-over bid is made for less than all of the outstanding equity shares owned by offerees, the identity of the offeror shall be disclosed in the take-over bid circular.

*33. Section 98 is struck out and the following section is substituted therefor:*

**98.** (1) Subject to subsection (2), where a directors' circular is sent to offerees under section 86, subsection (1), it 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:

*The foregoing constitutes full, true and plain disclosure of all material facts relating to the take-over bid as required by sections 95 to 97 of The Securities Act, and the regulations thereunder.*

(2) Where the company has only three directors, two of whom are the chief executive officer and the chief financial officer, the certificate may be signed by all the directors of the company.

(3) Where a circular is sent out to offerees under section 86, subsection (4), it shall be certified by the individual director or officer in the form set out in subsection (1).

*34. The following section is added after section 99:*

#### **Right of Rescission**

**99.1** (1) An offeree who is a party to a contract resulting from a take-over bid has a right to rescind the contract if the take-over bid circular forwarded in compliance with this Part and received by the offeree, 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 to enforce the right of rescission conferred by this section after the expiration of 90 days from the receipt of the take-over bid circular or amended circular or from the date of the contract referred to in subsection (1), whichever is later.

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

(a) if the untruth of such statements or the fact of such omission was unknown to the offeror and, in the

**32.** Self-explanatory.

**33.** The directors' circular is required to be certified in the same way as the take-over bid circular.

**34.** The offerees are given the same right to rescind when the take-over circular is misleading as a purchaser has in the case of a misleading prospectus.

exercise of reasonable diligence, could not have been known to the offeror, or

- (b) if the offeree knew of the untruth of the statement or knew of the omission at the time he tendered his securities to the offeror.

(4) For the purpose of this section, where a take-over bid circular or amended circular 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.

(5) The right of rescission conferred by this section is in addition to and without derogation from any other right the offeree may have at law.

(6) Every take-over bid circular shall contain a statement of the right of rescission provided by this section.

*35. Section 100, clause (a) is amended by striking out sub-clause (i) and by substituting therefor the following sub-clause:*

- (i) that has issued equity shares that after October 1, 1967 are distributed in the course of a distribution to the public, in respect of which a prospectus is filed with the Commission and a receipt therefor obtained, or

*36. Section 108, subsection (2) is amended*

- (a) *by striking out the word "and" at the end of clause (a),*
- (b) *by adding the word ", and" at the end of clause (b), and*
- (c) *by adding after clause (b) the following clause:*
  - (c) for the purpose of reporting under section 109 or 109.1, ownership shall be deemed to pass at such time as an offer to sell is accepted by the purchaser or his agent or an offer to buy is accepted by the vendor or his agent.

*37. The following section is added after section 109:*

**109.1** (1) Where an offeror as defined in Part 9 becomes an insider under this Part or under *The Companies Act* and through purchases effected through the facilities of a stock exchange or in the over-the-counter market becomes the beneficial owner, directly or indirectly, of equity shares of a corporation carrying 20 per cent or more of the voting rights attached to all equity shares of the corporation for the time being outstanding, such offeror within three days of acquiring such 20 per cent ownership, shall file with the Commission a report as of the day on which he attained such ownership.

**35.** Amended in accordance with new definition.

**36.** Ownership defined for the purposes of insider reporting.

**37.** The amendment requires a timely insider report upon the acquisition through market purchases of 20 per cent of the equity shares. A similar report is required on the acquisition of each 5 per cent thereafter.

(2) An offeror required to file a report under subsection (1) shall, within three days of purchasing further equity shares carrying an additional 5 per cent of the voting rights through the facilities of a stock exchange or in the over-the-counter market, file with the Commission a report as of the day on which he attained the additional 5 per cent of the voting rights and thereafter each time he acquires a further 5 per cent.

(3) Where the facts required to be reported by this section are identical to those required under section 109, a separate report under section 109 is not required.

*38. Section 110 is amended by inserting after the figure "109" the figure "or 109.1".*

*39. Section 111 is amended*

- (a) as to subsection (1) by inserting after the figure "109" the words "or 109.1", and*
- (b) as to subsection (2) by inserting after the figure "109" the words "or 109.1".*

*40. Section 114, clause (a) is amended by inserting after the figure "109" the words "or 109.1".*

*41. Section 115, subsection (1) is amended by inserting after the figure "109" wherever it appears in the subsection the words "or 109.1".*

*42. Section 117 is amended*

- (a) as to subsection (1) by striking out clause (a) and by substituting therefor the following clause:*
  - (a) that has issued equity shares that, after October 1, 1967 are distributed in the course of a distribution to the public, in respect of which a prospectus is filed with the Commission and a receipt therefor obtained, or*
- (b) by adding after subsection (1) the following subsection:*
  - (1.1) In this Part,*
    - (a) "auditor", used in relation to a corporation, includes the auditor of the corporation or any other independent accountant acceptable to the Commission;*
    - (b) "basic earnings per share" means the amount of income attributable to each outstanding share that carries as an incident of ownership*



**38.** Consequential amendment. See section 36 of this Bill.

**39.** Consequential amendment. See section 36 of this Bill.

**40.** Consequential amendment. See section 36 of this Bill.

**41.** Consequential amendment. See section 36 of this Bill. Section 115 (1) reads:

115. (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.

**42.** Definitions.

the right to participate in earnings to an unlimited degree, calculated in the manner prescribed by the regulations;

- (c) "fully diluted earnings per share" means the amount of income attributable to each share that would, if all potential conversions, exercises and contingent issuances had occurred during the period, be outstanding and have as an incident of ownership the right to participate in earnings to an unlimited degree, calculated in the manner prescribed by the regulations.

*and*

- (c) *as to subsection (2) by striking out the word "primary".*

*43. Section 119 is amended by striking out subsections (3) and (4).*

*44. Section 120 is amended*

- (a) *as to subsection (1) by striking out the word "and" at the end of clause (i) and by adding after clause (j) the following clauses:*

- (k) the basic earnings per share for the current and preceding year for
  - (i) income before extraordinary items, and
  - (ii) net income for the period,
- and
- (l) fully diluted earnings per share for the current year for
  - (i) income before extraordinary items, and
  - (ii) net income for the period,

- (b) *by striking out subsection (3).*

*45. Section 125, subsection (3) is amended by adding after clause 15 the following clauses:*

16. Where the corporation

- (i) has in the course of a financial period, carried on business of two or more classes that, in the opinion of its directors, differ substantially from each other and the corporation is not one that has any subsidiaries at the end of that financial period, or if it has one or more subsidiaries, does not prepare its financial statement in consolidated form in respect of any subsidiary, or
- (ii) has one or more subsidiaries at the end of its financial period and prepares its financial statement in consolidated form in respect of

**43. The provisions repealed read:**

(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 subsection (1), clause (e), 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.

and are covered by the amendment made by section 47 of the Bill.

**44. (a) Earnings per share are required to be shown in the financial statement.**

**(b) subsection (3) of section 120 reads:**

(3) A corporation may apply to the Commission for an order permitting sales or gross operating revenue referred to in subsection (1), clause (a) or section 129, subsection (1), clause (b), subclause(i) 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.

This is covered by the amendment made by section 47 of the Bill.

**45. The amendment provides for the break-down by note to the financial statement of certain information in respect of each class of business where the corporation carries on more than one class of business.**

any of the subsidiaries, if the corporation and any of the subsidiaries carried on between them in the course of the period business of two or more classes that, in the opinion of the directors of the corporation, differ substantially from each other,

a statement of the proportions in which the amount of sales or gross revenue for that period, so far as stated in the financial statement in respect of that period, is divided among those classes of business, but for the purposes of subclauses (i) and (ii),

- (iii) classes of business that, in the opinion of the directors, do not differ substantially from each other shall be treated as one class, and
- (iv) a corporation having gross sales and revenues exceeding \$25,000,000 need only report in respect of a class of business that contributes 10 per cent or more of the total gross revenue of the corporation and a corporation having gross sales and revenues of \$25,000,000 or less need only report in respect of a class of business that contributes 15 per cent or more of the total gross revenue of the corporation.

- 17. Where there has been a business combination or acquisition arrived at through private agreements, consolidation, amalgamation, merger or reorganization, a take-over bid as defined in Part 9, asset purchases or other methods of materially adding to or combining with an existing business, the details thereof in accordance with the acquisition equation prescribed by the regulations.
- 18. Where securities have been issued to acquire assets, the proportion of the total securities outstanding, expressed as a percentage, represented by the securities issued to make the acquisition.
- 19. Where the pooling of interest method is used to account for a business combination or acquisition, an earnings history for at least two years as though the companies were pooled for the years covered by such history, set out alongside the earnings history of the acquiring company.

*46. Section 129 is amended*

- (a) *as to subsection (1), clause (b) by striking out the word "and" at the end of subclause (iv) and by adding after subclause (v) the following subclauses:*
  - (vi) the basic earnings per share for income before extraordinary items and for net income for the period, and

**46.** (a) The earnings per share are required to be shown on the interim financial statements in the same way as they are required by section 42 of this Bill to be shown on the financial statement.

(b) subsection (3) reads:

(3) The interim financial statement required by subsection (1) may omit either or both of

(a) the information relating to the comparable period, and

(b) the statement of source and application of funds

if 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.

This is covered by the amendment made by section 47 of the Bill.

- (vii) fully diluted earnings per share for income before extraordinary items and for net income.  
*and*
- (b) *by striking out subsection (3).*

*47. Section 131 is amended*

- (a) *by striking out subsection (1) and by substituting therefor the following subsection:*

**131.** (1) Upon the application of a corporation, the Commission may, where in the opinion of the Commission to do so would not be prejudicial to the public interest, make an order on such terms and conditions as the Commission may impose,

- (a) permitting the omission of
  - (i) financial statements relating separately to the period covered by the financial year next preceding the latest completed financial year referred to in section 119, subsection (1), clause (b), or
  - (ii) sales or gross operating revenue referred to in section 120, subsection (1), clause (a) or section 129, subsection (1), clause (b), subclause (i), from the statement of profit and loss or the interim financial statement, as the case may be, where the Commission is satisfied that the disclosure of such information would be unduly detrimental to the interests of the corporation,  
**or**
  - (iii) the basic earnings per share or fully diluted earnings per share referred to in section 120, subsection (1), clauses (k) and (l) or in section 129, subsection (1), clause (b), subclauses (vi) and (vii) from the statement of profit and loss or the interim financial statement, as the case may be, or
  - (iv) the information relating to the comparable period referred to in section 129, subsection (1);
- (b) where, in the opinion of the Commission, the corporation is unable to comply with the requirements of section 122, permitting the corporation to file in lieu thereof, an alternative statement containing such information, if any, as the Commission considers appropriate;
- (c) exempting, in whole or in part, the corporation from the requirements of this Part,

**47.** The amendment requires the Commission's approval to omit certain information from the financial statement, which at present can be omitted through the use of a note to the financial statement and consolidates in one place the procedure for all similar applications to the Commission.

- (i) if such a requirement conflicts with a requirement of the laws of the jurisdiction in which a corporation is incorporated, or
  - (ii) if the laws of the jurisdiction to which the corporation is subject contain substantially similar requirements as contained in this Part, or
  - (iii) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing.
- (b) *as to subsection (2) by striking out the words "clause (b)" and by substituting therefor the words "subsection (1), clause (a)".*

*48. Section 133, subsection (1) is amended by striking out clause (a) and by substituting therefor the following clause:*

- (a) that has issued equity shares that, after October 1, 1967, are distributed in the course of a distribution to the public in respect of which a prospectus is filed with the Commission and a receipt therefor obtained, or

*49. Section 137 is amended by striking out subsection (2) and by substituting therefor the following subsections:*

(2) No prosecution for an offence under this Act shall be commenced by the Commission or anyone on its behalf more than one year after the facts upon which the prosecution would be based first came to the knowledge of the Commission.

(3) Subject to subsection (2), no proceedings under this Act shall be commenced by the Commission or anyone on its behalf more than two years after the facts upon which the proceedings would be based first came to the knowledge of the Commission.

*50. Section 139 is amended by adding after subsection (2) the following subsection:*

(3) Any person or company who feels aggrieved by any direction, order or decision made under any by-law, rule or regulation of a stock exchange in Alberta may apply to the Commission for a hearing and review thereof and section 28 applies to the hearing and review in the same manner as to the hearing and review of a direction, decision, order or ruling of the Director.



**48.** Amended in accordance with new definition.

**49.** Time limitations. Section 137 reads:

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

(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.

**50.** Review of decisions of a stock exchange.

*51. The following section is added after section 140:*

**140.1** Where a circular has been sent to the offerees or the shareholders of an offeree company as required by Part 9, every person or company to whom such circular was sent shall be deemed to have relied upon the statements made in the circular and, if a material false statement is contained in a circular, each person who at the time the circular was signed was a director of the company on whose behalf the circular was signed and each person who was required to sign a certificate under section 88.1 or section 98 is liable to pay compensation to all shareholders of the company whose shares are the subject of the take-over bid for any loss or damage such shareholders have sustained as a result of such material false statement unless it is proved

- (a) that the circular was prepared and sent without his knowledge or consent, and that, on becoming aware of its being sent, he forthwith gave reasonable public notice that it was so sent without his knowledge or consent, or
- (b) that, before the statement was relied or acted upon, on becoming aware of any false statement therein, he withdrew his consent thereto and gave reasonable public notice of such withdrawal and of the reasons therefor, or
- (c) that, with respect to every false statement, he had reasonable grounds to believe and did believe that the statement was true, or
- (d) that he had no reasonable grounds to believe that an expert who made a statement in a circular 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 a copy or extract from the document.

*52. Section 143 is struck out and the following section is substituted therefor:*

**143.** (1) The Commission may, where in its opinion such action is in the public interest, order, subject to such terms and conditions as it may impose, that trading shall cease in respect of such securities for such period as is specified in the order.

(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 the Commission may

**51.** The amendment provides similar civil liability and defences in respect of errors in a take-over bid circular as are provided in respect of false statements in a prospectus.

**52. Orders to cease trading. Section 143 reads:**

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.

make a temporary order, which shall expire 15 days from the date of the making thereof, but such order may be extended for such period as the Commission considers necessary where satisfactory information is not provided to the Commission within the 15-day period.

(3) The Commission may give notice of its intention to make an order or to hold a hearing under this section by publication in a newspaper of general circulation or in such other manner and to such persons as the Commission thinks fit.

*53. Section 144 is amended*

*(a) by inserting after clause (b) the following clause:*

(b1) classifying registrants into categories and prescribing the terms and conditions of registration of registrants in each category, but no registrant shall be included in a category designated as

(i) investment dealer, unless he is a member of the Alberta District of the Investment Dealers' Association of Canada, or

(ii) broker, unless he is a member of a stock exchange recognized by the Commission,

*(b) by inserting after clause (d) the following clause:*

(d1) regulating the trading of securities other than on a stock exchange recognized by the Commission,

*(c) as to clause (f) by striking out the words "investment counsel or securities", and*

*(d) by inserting after clause (m) the following clause:*

(m1) prescribing the manner of calculating basic earnings per share and fully diluted earnings per share for the purposes of section 117, subsection (1.1), clauses (b) and (c),

*54. This Act comes into force on the day upon which it is assented to.*

**53. Regulations.**