

1981 BILL 44

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Third Session, 19th Legislature, 30 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 44**

**THE SECURITIES ACT, 1981**

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THE MINISTER OF CONSUMER AND  
CORPORATE AFFAIRS

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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## BILL 44

1981

### THE SECURITIES ACT, 1981

(Assented to \_\_\_\_\_, 1981)

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

Definitions

**1** In this Act,

(a) “adviser” means a person or company engaging in or holding himself or itself out as engaging in the business of advising others with respect to investing in or the buying or selling of securities;

(a.1) “associate”, when used to indicate a relationship with a person or company, means

(i) an issuer of which the person or company beneficially owns or controls, directly or indirectly, voting securities entitling him to more than 10% of the voting rights attached to outstanding securities of the issuer,

(ii) any partner of the person or company,

(iii) any trust or estate in which the person or company has a substantial beneficial interest or in respect of which a person or company serves as trustee or in a similar capacity,

(iv) in the case of a person

(A) that person’s spouse or child, or

(B) any relative of that person or of his spouse who has the same residence as that person;

(a.2) “Chairman” means the chairman of the Commission;

(b) “Commission” means the Alberta Securities Commission;

(b.1) “company” means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

(c) “contract” includes a trust agreement, declaration of trust or other similar instrument;

(c.1) “contractual plan” means any contract or other arrangement for the purchase of shares or units of a mutual fund

(i) by payments over a specified period, or

(ii) by a specified number of payments,

if the amount deducted from any one of the payments as sales charges is larger than the amount that would have been deducted from the payment for sales charges had the deduction been made from each payment at a constant rate for the duration of the plan;

(d) “dealer” means a person or company that trades in securities as principal or agent;

(d.1) “decision”, when used in relation to the Commission or the Director, means a direction, decision, order or ruling made by the Commission or the Director under a power or right conferred by this Act or the regulations;

(e) “Director” means the Director of the Commission;

(e.1) “director”, when used in relation to a person, includes a person acting in a capacity similar to that of a director of a company;

(f) “distribution”, when used in relation to trading in securities, means

(i) a trade in securities of an issuer that have not been previously issued,

(ii) a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer,

(iii) a trade in previously issued securities of an issuer from the holdings of any person, company or combination of persons or companies holding a sufficient number of any securities of that issuer to affect materially the control of that issuer, but any holding of any person, company or combination of persons or companies holding more than 20% of the outstanding voting securities of an issuer shall, in the absence of evidence to the contrary, be deemed to affect materially the control of that issuer,

(iv) a trade by or on behalf of an underwriter in securities

which were acquired by that underwriter, acting as underwriter, prior to the coming into force of this section if those securities continue on the day this section comes into force to be owned by or for that underwriter, so acting,

(v) a distribution referred to in sections 109 to 112, or

(vi) a transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution referred to in subclauses (i) to (v);

(f.1) “distribution company” means a person or company distributing securities under a distribution contract;

(g) “distribution contract” means a contract between a mutual fund or its trustees or other legal representative and a person or company under which the person or company is granted the right to

(i) purchase the shares or units of the mutual fund for distribution, or

(ii) distribute the shares or units of the mutual fund on behalf of the mutual fund;

(g.1) “extra-provincial commission” means a board, commission or other agency established by another jurisdiction that performs a similar function in that jurisdiction that the Alberta Securities Commission performs in Alberta;

(g.2) “financial institution” means a bank, trust company, treasury branch or credit union;

(h) “form of proxy” means a written or printed form that, upon completion and execution by or on behalf of a security holder, becomes a proxy;

(h.1) “hearing” means a hearing of a matter before the Commission or the Director, as the case may be;

(h.2) “individual” means a natural person, but does not include

(i) a partnership, unincorporated association, unincorporated syndicate, unincorporated organization or a trust, or

(ii) a natural person in his capacity as trustee, executor, administrator or other legal personal representative;

(i) “insider” or “insider of a reporting issuer” means

(i) every director or senior officer of a reporting issuer,

(ii) every director or senior officer of a company that is itself an insider or subsidiary of a reporting issuer,

(iii) any person or company that

(A) beneficially owns, directly or indirectly, voting securities of a reporting issuer,

(B) exercises control or direction over voting securities of a reporting issuer, or

(C) beneficially owns, directly or indirectly, certain voting securities of a reporting issuer and exercises control or direction over certain other voting securities of a reporting issuer,

carrying more than 10% of the voting rights attached to all voting securities of the reporting issuer for the time being outstanding other than voting securities held by the person or company as underwriter in the course of a distribution, or

(iv) a reporting issuer if it has purchased, redeemed or otherwise acquired any of its securities, for so long as it holds any of its securities;

(i.1) “insurance company” means an insurance company licensed under *The Alberta Insurance Act*;

(j) “issuer” means a person or company that

(i) has outstanding securities,

(ii) is issuing securities, or

(iii) proposes to issue securities;

(j.1) “management company” means a person or company that provides investment advice under a management contract;

(k) “management contract” means a contract under which, for valuable consideration, a mutual fund is provided with investment advice, alone or together with administrative or management services;

(k.1) “material change”, when used in relation to the affairs of an issuer, means a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer and includes a decision to implement the change made by the board of directors of the issuer;

(l) “material fact” when used in relation to securities issued or proposed to be issued means a fact that significantly affects or would reasonably be expected to have a significant effect on the market price or value of the securities;

(l.1) “Minister” means the Minister of Consumer and Corporate Affairs;

(m) “misrepresentation” means

- (i) an untrue statement of a material fact, or
- (ii) an omission to state a material fact that is required to be made, or
- (iii) an omission to state a material fact that is necessary to be made in order for a statement not to be misleading;

(m.1) “mutual fund” includes an issuer of securities that entitles the holder to receive on demand or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;

(n) “officer” means a senior officer, assistant secretary, assistant comptroller or assistant treasurer of a company and includes any individual

- (i) designated as an officer of a company by by-law or similar authority, or
- (ii) acting in a similar capacity to that of a senior officer, assistant secretary, assistant comptroller or assistant treasurer on behalf of an issuer or registrant;

(o) “person” means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator or other legal representative;

(o.1) “portfolio manager” means an adviser registered for the purpose of managing the investment portfolio of his clients through discretionary authority granted by the clients;

(p) “portfolio securities” means securities held or proposed to be purchased by a mutual fund;

(p.1) “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
  - (A) persons who are in its employment and are shareholders of the company, and
  - (B) persons who, having been formerly in the employ-

ment of the company, were, while in that employment, shareholders of the company and have continued to be shareholders of that company after termination of that employment,

is limited to not more than 50 persons, 2 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,

and includes a company incorporated under the *Companies Act* (British Columbia) that is not a reporting company as defined in that Act;

(q) “private mutual fund” means a mutual fund that is

(i) operated as an investment club, and

(A) whose shares or units are held by not more than 50 persons and whose indebtedness has never been offered to the public,

(B) that does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and

(C) all of whose members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations,

or

(ii) administered by a trust company and that consists of

(A) a pooled fund maintained solely to serve registered retirement savings plans, registered home ownership savings plans or other savings plans registered under the *Income Tax Act* (Canada),

(B) a common trust fund as defined by section 98(1) of *The Trust Companies Act*, or

(C) a pooled fund maintained by a trust company in which money belonging to various estates and trusts in its care are commingled with the authority of the settlor, testator or trustee for the purpose of facilitating investment, if no general solicitations are made with a view to the sale of a right to participate in the pooled fund;

(q.1) “promoter” means

(i) a person or company, acting alone or in conjunction with

one or more other persons or companies or a combination of them, directly or indirectly, that takes the initiative

(A) in founding or organizing the business of the issuer, or

(B) in what the Director considers to be a substantial reorganization of the business of an issuer,

or

(ii) a person or company that directly or indirectly, receives in consideration of services or property or both,

(A) 10% or more of any class of securities of the issuer, or

(B) 10% or more of the proceeds from the sale of any class of securities of a particular issue,

in connection with

(C) the founding or organizing of the business of the issuer, or

(D) what the Director considers to be a substantial reorganization of the business of the issuer,

but does not include a person or company that receives securities or proceeds solely

(E) as underwriting commissions, or

(F) in consideration of property,

if that person or company does not otherwise take part in founding, organizing or substantially reorganizing the business;

(r) “prospectus” includes amendments made to a prospectus;

(r.1) “proxy” means a completed and executed form of proxy by which a security holder has appointed a person or company as his nominee to attend and act on his behalf at a meeting of security holders;

(s) “records” include

(i) an account, book, return, statement, report, financial document or other memorandum of financial or non-financial information whether in writing or in electronic form or represented or reproduced by any other means, and

(ii) the results of the recording of details of electronic data

processing systems and programs to illustrate what the systems and programs do and how they operate;

(s.1) “registrant” means a person or company registered or required to be registered under this Act;

(t) “Registrar” means the Registrar of the Commission;

(t.1) “reporting issuer” means an issuer

(i) that has issued voting securities on or after October 1, 1967 in respect of which a prospectus was filed and a receipt for it obtained under a predecessor of this Act or in respect of which a securities exchange take-over bid circular was filed under a predecessor of this Act,

(ii) that has filed a prospectus and obtained a receipt for it under this Act or that has filed a securities exchange take-over bid circular under this Act,

(iii) any of whose securities have been at any time since the coming into force of this section listed and posted for trading on a stock exchange in Alberta recognized by the Commission regardless of when the listing and posting for trading commenced, or

(iv) that is the company whose existence continues following the exchange of securities of a company by or for the account of that company with another company or the holders of the securities of that other company in connection with

(A) a statutory amalgamation or arrangement, or

(B) a statutory procedure under which one company takes title to the assets of the other company that in turn loses its existence by operation of law or under which the existing companies merge into a new company,

if one of the amalgamating or merged companies or the continuing company has been a reporting issuer for at least 12 months immediately prior to the amalgamation, merger or continuation;

(t.2) “review” means a review before the Commission of a matter based on a record of proceedings of a hearing held before the Commission or the Director, as the case may be;

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

(v) “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, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than
  - (A) a contract of insurance issued by an insurance company, or
  - (B) an evidence of deposit issued by a financial institution;
- (vi) any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets other than a contract issued by an insurance company that provides for payment at maturity of an amount of not less than 3/4 of the premiums paid by the purchaser for a benefit payable at maturity;
- (vii) any agreement under which 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;
- (viii) any certificate of share or interest in a trust, estate or association;
- (ix) any profit-sharing agreement or certificate;
- (x) any certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate;
- (xi) any oil or natural gas royalties or leases or fractional or other interest in them;
- (xii) any collateral trust certificate;
- (xiii) any income or annuity contract not issued by an insurance company or an issuer within the meaning of *The Investment Contracts Act*;

(xiv) any investment contract other than an investment contract within the meaning of *The Investment Contracts Act*;

(xv) any document constituting evidence of an interest in a scholarship or educational plan or trust,

whether or not any of them relate to an issuer or proposed issuer;

(w) “senior officer” means

(i) the chairman or vice-chairman of the board of directors, the president, vice-president, secretary, comptroller, treasurer or general manager of a company or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying that office, and

(ii) each of the 5 highest paid employees of an issuer, including any individual referred to in subclause (i);

(x) “trade” includes

(i) any sale or disposition of a security for valuable consideration, whether the terms of payment are on margin, instalment or otherwise but does not include

(A) a purchase of a security, or

(B) except as provided in subclause (iv), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt;

(ii) any participation as a floor trader in any transaction in a security on the floor of a stock exchange;

(iii) any receipt by a registrant of an order to buy or sell a security;

(iv) any transfer, pledge or encumbering of securities of an issuer from the holdings of any person or company or combination of persons or companies described in clause (f)(iii) for the purpose of giving collateral for a bona fide debt;

(v) any act, advertisement, solicitation, conduct or negotiation made directly or indirectly in furtherance of anything referred to in subclauses (i) to (iv);

(y) “underwriter” means a person or company that,

(i) as principal, agrees to purchase securities with a view to distribution, or

(ii) as agent, offers for sale or sells securities in connection with a distribution,

and includes a person or company that has a direct or indirect participation in the distribution, but does not include,

(iii) a person or company whose interest in the transaction is limited to receiving the usual and customary distributor's or seller's commission payable by an underwriter or issuer,

(iv) a mutual fund that, under the laws of the jurisdiction to which it is subject, accepts its shares or units for surrender and resells them,

(v) a company that, under the laws of the jurisdiction to which it is subject, purchases its shares and resells them, or

(vi) a bank with respect to the securities described in section 66(a)(iii) and to those banking transactions designated by the regulations;

(z) "voting security" means any security, other than a debt security, of an issuer carrying a voting right either under all circumstances or under some circumstances that have occurred and are continuing and includes a right, other than a call, to acquire a security.

Affiliation **2** An issuer is affiliated with another issuer if one of them is the subsidiary of the other or if each of them is controlled by the same person or company.

Control **3** An issuer is controlled by a person or company if  
  
(a) voting securities of the issuer carrying more than 50% of the votes that may be cast to elect directors are held, other than for the purpose of giving collateral for a bona fide debt, by or for the benefit of the person or company, and  
  
(b) the votes carried by the securities referred to in clause (a) are sufficient, if exercised, to elect a majority of the board of directors of the issuer.

Subsidiary **4** A subsidiary is an issuer that is controlled by another issuer.

Beneficial ownership **5** A person is deemed to beneficially own securities that are beneficially owned

(a) by a company controlled by that person or by an affiliate of that company, or

(b) through a trustee, legal representative, agent or other intermediary.

Deemed beneficial ownership **6** A company is deemed to beneficially own securities that are beneficially owned by its affiliates.

Deemed insiders of a mutual fund **7** The following are deemed to be an insider of a mutual fund:

- (a) every management company of a mutual fund that is a reporting issuer;
- (b) every distribution company of a mutual fund that is a reporting issuer;
- (c) every insider of a management company or distribution company referred to in clauses (a) and (b).

Deemed insiders **8**(1) If an issuer becomes an insider of a reporting issuer, every director or senior officer of the issuer is deemed to have been an insider of the reporting issuer for the previous 6 months or for that shorter period during which he was a director or senior officer of the issuer.

(2) If a reporting issuer becomes an insider of any other reporting issuer, every director or senior officer of the second-mentioned reporting issuer is deemed to have been an insider of the first-mentioned reporting issuer for the previous 6 months or for that shorter period during which he was a director or senior officer of the second-mentioned reporting issuer.

Special relationships **9** A person or company is in a special relationship with a reporting issuer if,

- (a) the person or company is an insider or an affiliate of the reporting issuer,
- (b) the person is a director, officer or employee of the reporting issuer or of a company that is an insider or an affiliate of the reporting issuer,
- (c) the person or company has engaged, is engaging in or proposes to engage in a business or professional activity with or on behalf of the reporting issuer and has acquired knowledge of a material fact or material change through that activity, or
- (d) the person or company is an associate of the reporting issuer or of any person or company referred to in clause (a), (b) or (c).

## PART 1

### ALBERTA SECURITIES COMMISSION

The Alberta Securities Commission **10**(1) The Alberta Securities Commission is continued and is responsible for the administration of this Act and the regulations.

(2) The Commission shall be composed of not more than 7 members appointed by the Lieutenant Governor in Council.

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

The Chairman,  
Vice-chairman and  
members

**11(1)** The Lieutenant Governor in Council shall designate one of the members of the Commission as the Chairman of the Commission and may designate another member of the Commission as the Vice-chairman of the Commission.

(2) The Chairman shall

- (a) be the chief executive officer of the Commission, and
- (b) devote his full time to the work of the Commission.

(3) The members of the Commission, other than the Chairman, shall devote as much time as may be necessary for the due performance of their duties as members of the Commission.

Staff of the  
Commission

**12** In accordance with *The Public Service Act* there may be appointed a Director, Deputy Director, Registrar and any other employees required to conduct the business of the Commission.

Director of the  
Commission

**13** The Director, subject to the direction of the Commission, is the chief administrative officer of the Commission.

Delegation of  
power

**14(1)** For the purposes of sections 116, 117, 123 and 184(2) of this Act and sections 41.5 and 88 of *The Companies Act*, the Chairman may, unless the applicant requests otherwise, act as the Commission and may exercise and perform the powers and duties of the Commission.

(2) The Commission may authorize in writing any member of the Commission, including the Chairman or Vice-chairman, to do any act or thing required or permitted to be done by the Commission under this Act other than those matters referred to in sections 23 and 28 to 35 or under any other Act.

(3) The Commission may authorize in writing the Director to do any act or thing required or permitted to be done by the Commission under this Act other than those matters referred to in sections 23 and 28 to 35 or under any other Act.

(4) A written authorization made under subsection (1), (2) or (3) may be

- (a) general or applicable to a particular case, and
- (b) conditional or unconditional.

(5) Notwithstanding that the Commission has given an authorization under this section, it may do the act or thing in respect of which the authorization was given.

Sitting in panels

**15(1)** The Chairman may designate 2 or more members of the Commission to sit as a panel of the Commission and may direct the panel

to conduct any hearing, review, inquiry, investigation or other proceeding that the Commission itself could conduct under this or any other Act.

(2) Two members constitute a quorum at a sitting of a panel of the Commission.

(3) A decision or other action made or taken at a sitting of a panel of the Commission at which a quorum is present is the decision or action of the Commission and binds all members of the Commission.

(4) A panel of the Commission has, with respect to its duties, the same jurisdiction as that of the Commission and may exercise and perform all the powers of the Commission under this or any other Act with respect to a hearing, review, inquiry, investigation or other proceeding that it is directed to conduct and for that purpose any reference in this or any other Act to the Commission shall be deemed to be a reference to a panel of the Commission.

(5) The Chairman may designate a member of a panel of the Commission to preside at any sitting of the panel at which the Chairman is not present.

(6) A panel of the Commission shall conduct its sittings separately from those of another panel of the Commission being conducted at the same time.

(7) Where a hearing, inquiry, investigation or other proceeding is conducted by a panel of the Commission and one or more members of the panel do not for any reason attend on any day or part of a day, the remaining members present may, if they constitute a quorum of the panel, continue with the hearing, inquiry, investigation or proceeding.

Extra-provincial  
power of  
Commission

**16(1)** The Commission is with respect to any matter coming under its purview by virtue of this Act empowered to exercise those powers and duties outside of Alberta that it could exercise and perform within Alberta if it is permitted to do so by the jurisdiction within which the Commission intends to exercise those powers and duties.

(2) The Commission in conjunction with an extra-provincial commission may hold hearings outside of Alberta with respect to any matter that would be within the jurisdiction of the Commission if the hearing were held in Alberta.

Extra-provincial  
commissions

**17(1)** The Commission and an extra-provincial commission may hold hearings together in Alberta in respect of any matter coming within the jurisdiction of the Commission.

(2) For the purpose of holding a hearing under this section,

(a) any powers to be exercised in respect of the hearing shall be exercised by the Commission, and

(b) section 19 applies as if it were a matter being heard solely by the Commission.

(3) When a hearing is held under this section only those decisions made by the Commission shall be implemented within Alberta.

Appointment of  
experts

**18(1)** The Commission may engage the services of a person to advise it or to inquire into and report to it on matters referred to him by the Commission.

(2) The Commission may submit any documents, records or things to one or more persons appointed under subsection (1) for examination.

(3) The Commission may

(a) summon and enforce the attendance of witnesses before, and

(b) compel witnesses to produce documents, records and things to

a person appointed under subsection (1) in the same manner as if the Commission were conducting a hearing.

(4) A person whose services are engaged under this section may be paid remuneration and living and travelling expenses in amounts determined by the Commission.

Rules governing  
hearings and  
reviews

**19** For the purposes of a hearing or a review, as the case may be, before the Commission or the Director, the following rules apply:

(a) except where otherwise provided for in this Act, notice in writing of the time, place and purpose of the hearing or review shall be sent to the person or company that is the subject of the hearing or review;

(b) except where otherwise provided for in this Act, in addition to any other person or company to whom notice is required to be sent under clause (a), notice in writing of the time, place and purpose of the hearing or review shall be sent to any person or company that, in the opinion of the Commission or the Director, as the case may be, is substantially affected by the hearing or review;

(c) in the case of a hearing, the Commission or the Director, as the case may be, has the same power as is vested in the Court of Queen's Bench for the trial of civil actions

(i) to summons and enforce the attendance of witnesses,

(ii) to compel witnesses to give evidence on oath or otherwise, and

(iii) to compel witnesses to produce documents, records and things;

- (d) the failure or refusal of a person summoned as a witness under clause (c) to attend the hearing, to answer questions or to produce documents, records and things that are in his custody or possession makes that person, on application to the Court of Queen's Bench by the Commission or the Director, as the case may be, liable to be committed for contempt by the Court of Queen's Bench in the same manner as if that person was in breach of an order or judgment of that Court;
- (e) in the case of a hearing, the Commission or the Director, as the case may be, shall receive that evidence that is relevant to the matter being heard;
- (f) in the case of a review, the Commission may receive new evidence that was not available at the hearing of the matter that is the subject of the review;
- (g) the laws of evidence applicable to judicial proceedings do not apply;
- (h) all oral evidence received shall be taken down in writing or recorded by electronic means;
- (i) all the evidence taken down in writing or recorded by electronic means and all documentary evidence and things received in evidence at a hearing or review forms the record of the proceeding;
- (j) if, in the opinion of the Commission or the Director, as the case may be, the decision made after a hearing or review adversely affects the right of a person or company to trade in securities, written reasons for the decision shall be issued;
- (k) notice of every decision together with a copy of the written reasons for it, if any, shall be promptly sent to
  - (i) the person or company to whom notice of the hearing or review was sent, and
  - (ii) any person or company that, in the opinion of the Commission or the Director, as the case may be, is substantially affected by it;
- (l) a person or company appearing at a hearing or review may be represented by legal counsel;
- (m) a hearing or review is open to the public unless the person presiding over the hearing or review considers it in the public interest to order otherwise;
- (n) the provisions of the Alberta Rules of Court relating to the payment of conduct money or witness fees apply to matters heard under this Act.

Decision made  
without a hearing

**20** If, under this Act,

(a) a person or company

(i) is given an opportunity to have a hearing or review, and

(ii) declines to have a hearing or review,

and

(b) the Commission or the Director makes a decision in respect of the matter for which the person or company was given an opportunity to have the hearing or review,

the Commission or the Director, as the case may be, shall send a copy of the decision to that person or company and to any other person or company, that in the opinion of the Commission or Director making the decision, will likely be affected by the decision.

Interim orders

**21(1)** Where

(a) the Act permits the Commission or the Director to make an order after giving a person or company an opportunity to have a hearing, and

(b) in the opinion of the Commission or the Director before whom the hearing is to be held, the length of time required for a hearing could be prejudicial to the public interest,

the Commission or the Director, as the case may be, may make an interim order without conducting a hearing.

(2) An interim order expires 15 days from the date that it was made.

(3) Notwithstanding subsection (2), if

(a) an interim order is made under subsection (1), and

(b) within 15 days from the day on which the interim order is made the hearing referred to in subsection (1)(a) is commenced,

the interim order may be extended until the hearing is concluded.

Orders subject to  
terms or conditions

**22(1)** A decision made by the Commission may be made subject to those terms and conditions or either of them that the Commission considers necessary.

(2) A decision made by the Director may be made subject to those terms and conditions or either of them that the Director considers necessary.

Decision by a  
member of the  
Commission

**23(1)** A decision made by a member of the Commission pursuant

to an authorization under section 14(2) may be appealed to the Commission.

(2) The person who made the decision referred to in subsection (1) shall not sit on any hearing or review by the Commission concerning that decision.

Appeal from  
Director's decision

**24(1)** A person or company directly affected by a decision of the Director may appeal that decision to the Commission.

(2) Notwithstanding section 25(5), the Director may be present and make representations at an appeal of his decision.

Appeals to the  
Commission

**25(1)** An appeal to the Commission shall, at the option of the appellant, be either

- (a) a hearing into the matter being appealed, or
- (b) a review of the decision.

(2) To commence an appeal the appellant shall, within 30 days or a longer period of time as determined by the Commission from the day on which the written notice of the decision is given, serve on the Registrar either personally or by registered mail a written notice of appeal.

(3) The appellant shall state in his notice of appeal whether the appeal is to be a hearing or a review.

(4) On conducting an appeal, the Commission may by order,

- (a) in the case of a hearing, make any decision that the person who heard the matter in the first instance could have made, and
- (b) in the case of a review,
  - (i) confirm, vary or reject the decision,
  - (ii) direct the person whose decision is being appealed to re-hear the matter, or
  - (iii) make any decision that the person who heard the matter in the first instance could have made and substitute its decision for the decision of that person.

(5) The Commission may, if it considers it in the public interest to do so, permit the person whose decision is being appealed to be present and make representations at the appeal.

(6) Notwithstanding that a person or company requests an appeal, the decision under appeal takes effect immediately unless the Commission grants a stay until disposition of the appeal.

Appeal to Court of  
Appeal

**26(1)** A person or company directly affected by a decision of the

Commission, other than a ruling under section 116, may appeal the decision to the Court of Appeal.

(2) An appeal under this section shall be commenced by an originating notice within 30 days from the day that the Commission sends the notice of its decision to the person or company appealing the decision.

(3) On commencing an appeal under this section the appellant shall serve the Registrar with the originating notice and supporting documents.

(4) The Registrar shall certify to the registrar of the Court of Appeal

- (a) the decision that has been reviewed by the Commission,
- (b) the order of the Commission, together with any statement of reasons for it,
- (c) the record of the proceedings before the Commission, and
- (d) all written submissions to the Commission and other material, if any, that is relevant to the appeal.

(5) The practice and procedure in the Court of Appeal in respect of an appeal shall be the same as on an appeal from a judgment of the Court of Queen's Bench in an action.

(6) The Court of Appeal may

- (a) confirm, vary or reject the decision of the Commission,
- (b) direct the Commission to re-hear the matter, or
- (c) make any decision that the Commission could have made and substitute its decision for that of the Commission.

Financial  
Disclosure  
Advisory Board

**27(1)** There shall be a board called the "Financial Disclosure Advisory Board" that shall consist of not more than 9 persons appointed by the Minister.

(2) The Financial Disclosure Advisory Board shall, when requested by the Commission to do so, advise the Commission

- (a) in respect of the financial disclosure requirements under this Act and the regulations, and
- (b) on any matters referred to it by the Commission.

(3) The Financial Disclosure Advisory Board shall meet as required by the Commission.

**PART 2**  
**INVESTIGATIONS**

- Investigation order **28**(1) The Commission may, by order, appoint a person to make those investigations that it considers necessary
- (a) in respect of the administration of this Act and the regulations, or
  - (b) into any matter relating to trading in securities.
- (2) If an individual alleges under oath that a person or company has contravened this Act or the regulations, the Commission may, by order, appoint a person to make an investigation in respect of the allegation.
- (3) In an order made under subsection (1) or (2), the Commission shall prescribe the scope of the investigation that is to be carried out under the order.
- (4) For the purposes of an investigation ordered under this section, the person appointed to make the investigation may with respect to the person or company that is the subject of the investigation, investigate, inquire into and examine
- (a) the affairs of that person or company,
  - (b) documents, records, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with that person or company,
  - (c) the property, assets or things owned, acquired or alienated in whole or in part by that person or company or by any person or company acting on behalf of or as agent for that person or company,
  - (d) the assets at any time held by, the liabilities, debts, undertakings and obligations at any time existing and the financial or other conditions at any time prevailing in respect of that person or company, and
  - (e) the relationship that may at any time exist or have existed between that person or company and any other person or company by reason of
    - (i) investments,
    - (ii) commissions promised, secured or paid,
    - (iii) interests held or acquired,

- (iv) the loaning or borrowing of money, stock or other property,
- (v) the transfer, negotiation or holding of stock,
- (vi) interlocking directorates,
- (vii) common control,
- (viii) undue influence or control, or
- (ix) any other matter not referred to in clauses (i) to (viii).

Powers of  
investigators

**29(1)** The person making an investigation under section 28 has the same power as is vested in the Court of Queen's Bench for the trial of civil actions

- (a) to summon and enforce the attendance of witnesses,
- (b) to compel witnesses to give evidence on oath or otherwise, and
- (c) to compel witnesses to produce documents, records, securities and other property.

(2) The failure or refusal of a person summoned as a witness under subsection (1),

- (a) to attend,
- (b) to answer questions, or
- (c) to produce documents, records, securities or other property that are in his custody or possession,

makes that person, on application to the Court of Queen's Bench by the person making the investigation, liable to be committed for contempt by the Court of Queen's Bench in the same manner as if that person was in breach of an order or judgment of that Court.

(3) Notwithstanding *The Alberta Evidence Act*, a bank or any officer or employee of the bank is not exempt from the operation of this section.

(4) A person giving evidence at an investigation under section 28 may be represented by legal counsel.

(5) If authorized to do so by an order of the Court of Queen's Bench, a person conducting an investigation under section 28

- (a) enter into and search premises, and
- (b) seize and take possession of any documents, records, securities or other property,

of the person or company whose affairs are being investigated.

(6) An application for an order under subsection (5) may be made ex parte unless the Court of Queen's Bench otherwise directs.

(7) Documents, records, securities or other property seized under subsection (5) shall, at a time and place mutually convenient to the person or company from whom they were seized and the person making the investigation, be made available for inspection and copying by that person or company if a request for an opportunity to inspect or copy is made by that person or company to the person making the investigation.

(8) Where

(a) documents, records, securities or other property are seized under subsection (5)(b), and

(b) the matter for which the documents, records, securities or other property were seized is concluded,

the Commission shall return those documents, records, securities or other property to the person from whom they were seized within 60 days from the day that the matter is concluded.

(9) If

(a) documents, records, securities or other property are seized under subsection (5)(b), and

(b) the person from whom the documents, records, securities or other property are seized, alleges that the documents, records, securities or other property are not relevant in respect of the matter for which they were seized,

that person may apply by a notice of motion to the Court of Queen's Bench for the return of the documents, records, securities or other property.

(10) On hearing an application under section (9) the Court of Queen's Bench shall order the return of any documents, records, securities or other property that it determines are not relevant to the matter for which they were seized.

Appointment of  
experts

**30(1)** If an investigation is ordered under section 28, the Commission may appoint persons having special technical or other knowledge or skills to assist and be responsible to the person appointed under section 28.

(2) A person appointed under subsection (1) shall

(a) examine documents, records, securities and other property

of the person or company whose affairs are being investigated,  
and

(b) perform other duties,

as required by the person carrying out the investigation.

Report to  
Commission

**31** Every person appointed under section 28(1) or (2) shall provide the Commission with

(a) a full and complete report of the investigation including all transcripts of evidence and material in his possession relating to the investigation, and

(b) interim reports as requested by the Commission.

Report to the  
Minister and the  
Attorney General

**32** If, on a report made under section 31, it appears to the Commission that a person or company may have contravened this Act or the regulations, the Commission shall send the following to the Minister and the Attorney General:

(a) a report of the investigation, including the report made to the Commission by the person carrying out the investigation;

(b) all transcripts of evidence taken in respect of the investigation;

(c) all material in the possession of the Commission that relates to the matter being investigated.

Investigation by  
Ministerial order

**33(1)** Notwithstanding section 28, the Minister may, by order, appoint a person to make any investigation that the Minister considers necessary

(a) in respect of the administration of this Act and the regulations, or

(b) into any matter relating to trading in securities.

(2) A person appointed under subsection (1) has for the purposes of the investigation the same authority, powers, rights and privileges as a person appointed under section 28.

(3) If an investigation is ordered under subsection (1), the Minister may appoint persons having special technical or other knowledge or skills to assist and be responsible to the person appointed under subsection (1).

(4) A person appointed under subsection (3) shall

(a) examine documents, records, securities and other property of the person or company whose affairs are being investigated, and

(b) perform other duties,

as required by the person carrying out the investigation.

Investigation to be  
confidential

**34** Anything acquired and all information or evidence obtained pursuant to an investigation under this Part is confidential and shall not be divulged except

(a) in the case of an investigation under section 28, with the consent of the Commission, or

(b) in the case of an investigation under section 33, with the consent of the Minister, or

(c) as otherwise permitted by this Act or the regulations.

Release of  
information or  
evidence

**35** If the Commission considers it in the public interest to do so, it may prior to the conclusion of an investigation under section 28, by order, release any information or evidence acquired pursuant to the investigation.

Reports to Minister

**36** If an investigation has been made

(a) under section 28, the Commission may, or

(b) under section 33, the person making the investigation shall,

report the result of it, 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 a manner that he considers proper.

Order to freeze  
property

**37(1)** The Commission,

(a) if it is about to order an investigation in respect of a person or company under section 28,

(b) at any time during or after the carrying out of an investigation under section 28 or 33 in respect of a person or company,

(c) if it is about to make or has made an order under section 165 in respect of a person or company that trading in securities of an issuer shall cease,

(d) if it is about to make or has made a decision

(i) suspending or cancelling the registration of any person or company, or

(ii) affecting the right of any person or company to trade in securities,

or

(e) if there is evidence of a contravention by a person or company of

(i) this Act or the regulations, or

(ii) of the provision of any statute, other than this Act, that relates to the trading of securities,

may make an order doing one or more of the following:

(f) directing a person or company having on deposit, under control or for safekeeping any funds or securities of the person or company referred to in clauses (a) to (e) to hold the funds or securities;

(g) directing a person or company referred to in clauses (a) to (e) to refrain from withdrawing its funds or securities from any other person or company having any of them on deposit, under control or for safekeeping;

(h) directing a person or company referred to in clauses (a) to (e) to hold all funds or securities of clients or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver, receiver and manager or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Companies Act*, the *Winding-up Act* (Canada) or section 38 of this Act.

(2) An order made under subsection (1) does not take effect until it is served on the person or company to whom the order is directed.

(3) An order under subsection (1)

(a) that is directed to a financial institution applies only to the offices, branches or agencies of the financial institution named in the order, and

(b) does not apply to funds or securities

(i) in a stock exchange clearing house, or

(ii) in process of transfer by a transfer agent,

unless the order expressly so states.

(4) A person or company in receipt of an order given under subsection (1) that is in doubt as to

(a) the application of the order to any funds or security, or

(b) a claim being made to that person or company by any person or company not named in the order,

may apply to the Court of Queen's Bench for direction as to the disposition of the funds, security or claim.

(5) On the application of a person or company directly affected by a direction given in an order made under subsection (1)(f) or (g), the Commission may make an order revoking that direction or consenting to the release of any fund or security in respect of which the order was made under subsection (1)(f) or (g).

(6) In any of the circumstances mentioned in subsection (1)(a) to (e) the Commission may send to the Registrar of Land Titles or mining recorder a notice 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 and the notice shall

(a) be registered or recorded against the lands or claims mentioned in it, and

(b) have the same effect as the registration or recording of a certificate of lis pendens or a caveat.

(7) The Commission may in writing revoke or modify a notice given under subsection (6).

Appointment of  
receivers,  
managers, trustees  
or liquidators

**38(1)** The Commission may apply to the Court of Queen's Bench for the appointment of a receiver, receiver and manager, trustee or liquidator of the property of a person or company,

(a) if it is about to order an investigation in respect of the person or company under section 28,

(b) during or after an investigation in respect of the person or company under section 28 or 33,

(c) if it is about to make or has made an order under section 165 that trading in securities of an issuer shall cease,

(d) if it is about to make or has made a decision suspending or cancelling the registration of the person or company or affecting the right of the person or company to trade in securities,

(e) if the person or company fails or neglects to comply with the minimum net asset requirements, investment restrictions, ownership restrictions or capital requirements prescribed by the regulations for that person or company, or

(f) if there is evidence of a contravention by the person or company of

(i) this Act or the regulations, or

(ii) of the provisions of any statute, other than this Act, that relates to the trading of securities.

(2) On an application being made under this section, the Court may appoint a receiver, receiver and manager, trustee or liquidator of all or any part of the property of a person or company if the Court is satisfied that it is in the best interests of

- (a) the creditors of that person or company,
- (b) those persons or companies whose property is in the possession or under the control of that person or company, or
- (c) the security holders of or subscribers to that person or company.

(3) An application under subsection (1) may be made *ex parte* if the Court considers it proper to do so in the circumstances.

(4) If an application under this section is made *ex parte*, the Court may make an order appointing a receiver, receiver and manager, trustee or liquidator for a period not exceeding 15 days.

(5) A receiver, receiver and manager, trustee or liquidator of the property of a person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or part of the property

- (a) owned by the person or company, or
- (b) held by the person or company on behalf of or in trust for any other person or company.

(6) The receiver, receiver and manager, trustee or liquidator shall, if so directed by the Court,

- (a) have authority to wind up or manage the business and affairs of the person or company, and
- (b) exercise those powers that are necessary or incidental to the winding up or management of the business and affairs of the person or company.

Income and liabilities of person or company

**39** A receiver of the property of a person or company appointed under section 38 may, subject to the rights of secured creditors,

- (a) receive income from that property and pay liabilities in respect of that property, and
- (b) realize the security of the person or company on whose behalf he is appointed.

Powers of a receiver and manager

**40(1)** A receiver and manager of the property of a person or company appointed under section 38 may carry on the business and affairs of the person or company and

- (a) is vested with all the powers

(i) in the case of a person, of that person in respect to the operation of that person's business and affairs, and

(ii) in the case of a company, of the shareholders and directors of the company,

and

(b) has, in addition to those powers provided under clause (a), those powers prescribed in the order appointing the receiver and manager.

(2) On an order being made under section 38 appointing a receiver and manager of the property of a person or company,

(a) in the case of a person, the person shall not exercise any powers in respect of the operation of his business and affairs, and

(b) in the case of a company, the shareholders and the directors of the company shall not exercise any powers in respect of the company,

except as directed by the receiver and manager.

Court order

**41** The Court of Queen's Bench in making an order under section 38 appointing a receiver or a receiver and manager may provide for any matter or thing relating to the business and affairs of the person or company, as the case may be, during the appointment of the receiver or the receiver and manager.

Term of office

**42** A receiver or a receiver and manager appointed under section 38 remains in office until he is removed from office or until

(a) he winds up the business and affairs of the person or company pursuant to authority given under section 38, or

(b) a liquidator is appointed to wind up the business and affairs of the person or company.

Fees

**43** The fees payable to a receiver or a receiver and manager for his services, expenses and disbursements in connection with the discharge of his duties

(a) shall be fixed by the Court of Queen's Bench from time to time,

(b) shall be paid,

(i) out of the assets of the person or company in respect of which the receiver or receiver and manager was appointed, or

(ii) if the assets of the person or company in respect of which the receiver or receiver and manager was appointed are insufficient for the purpose, as directed by the Court from the assets of those persons or companies that benefited from the appointment of the receiver or receiver and manager,

and

(c) in the case of the winding up of the company, shall rank on the estate equally with the remuneration paid to the liquidator.

Directions from the Court

**44(1)** A receiver, receiver and manager, trustee or liquidator may apply to the Court of Queen's Bench for directions on any matter arising with respect to the carrying out of his duties.

(2) On an application under subsection (1), the Court may give direction, declare the rights of parties before the Court and make any further order as it considers necessary.

Appointment of a successor

**45** The Court of Queen's Bench may at any time revoke the appointment made under section 38 of a receiver, receiver and manager, trustee or liquidator and appoint another in his stead.

Funds expended by the Commission

**46** If the Commission expends funds in respect of the appointment under this Act of a receiver, receiver and manager, trustee or liquidator that directly relate to a person or company, the amount expended

(a) is a debt owing by that person or company to the Commission or Government, as the case may be, and

(b) may be recovered by the Commission or Government in the same manner as any other debt owing to the Crown in right of Alberta.

Solicitor-client privilege

**47(1)** Nothing in this Part shall be interpreted so as to affect the privilege that exists between a solicitor and his client.

(2) If a person is about to examine or seize under this Act any documents, records or things in the possession of a lawyer and the lawyer with respect to those documents, records or things claims that a privilege might exist between him and his client, the person who was about to examine or seize the documents, records or things shall, without examining or copying them,

(a) seize the documents, records or things,

(b) seal the documents, records or things in a marked package so that the package can be identified, and

(c) place the package in the custody of

(i) the clerk of the Court of Queen's Bench, or

(ii) a person that the parties agree on.

(3) On an application being brought by the lawyer, client or the person seizing the documents, records or things, the Court of Queen's Bench shall hear the matter in camera and determine whether the claim of the privilege is proper.

(4) If the Court of Queen's Bench determines

(a) that the claim of privilege is proper, it shall order that the documents, records or things seized be delivered to the lawyer, or

(b) that the claim is not proper, it shall order that the documents, records or things be delivered to the person who seized them.

(5) The notice of the application referred to in subsection (3) and the supporting documents shall be served on the Commission, the person having custody of the package and the parties to the application other than the one making the application not less than 3 days before the application is to be heard.

(6) On being served with the notice of the application and the supporting documents the person having custody of the package shall promptly deliver the package to the custody of the clerk of the Court of Queen's Bench.

(7) In determining the matter before it, the Court may open the package and inspect its contents.

(8) Following its inspection of the package and its contents under subsection (7) the Court shall reseal the contents in the package.

### **PART 3**

### **AUDITS**

Audits by the  
Commission

**48(1)** Notwithstanding anything in sections 49, 50 and 51, the Commission may in writing appoint a person to examine

(a) the financial affairs of a registrant or a reporting issuer, or

(b) the books and records of

(i) a custodian of assets of a mutual fund, or

(ii) a custodian of shares or units of a mutual fund under a custodial agreement or other arrangement with a person or company engaged in the distribution of shares or units of the mutual fund,

and prepare those financial or other statements and reports that may be required by the Commission.

(2) The person making an examination under this section may at any reasonable hour

- (a) enter into business premises, and
- (b) inquire into and examine all records, securities, cash, documents, bank accounts, vouchers and correspondence

of the person or company whose financial affairs are being examined.

(3) No person or company that is the subject of an examination under this section shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination.

(4) The Commission may charge those fees as may be prescribed by regulation for any examination made under this section.

Auditors

**49(1)** The Alberta District of the Investment Dealers' Association of Canada shall

- (a) select a panel of auditors, each of whom shall have practised as an auditor in Canada for not less than 5 years and who shall be known as a "members' auditor", and
- (b) employ a district association auditor
  - (i) the appointment of whom is subject to the prior approval of the Commission, and
  - (ii) who shall have practised as an auditor in Canada for not less than 10 years.

(2) Each stock exchange in Alberta recognized by the Commission shall

- (a) select a panel of auditors, each of whom shall have practised as an auditor in Canada for not less than 5 years and who shall be known as a "panel auditor", and
- (b) employ an exchange auditor
  - (i) the appointment of whom is subject to the prior approval of the Commission, and
  - (ii) who shall have practised as an auditor in Canada for not less than 10 years.

Audits and  
auditing by-laws

**50(1)** The Alberta District of the Investment Dealers' Association of Canada shall for the purposes of subsection (2) require those of its members as the Commission may designate in writing to appoint

a members' auditor from the panel of auditors selected under section 49(1)(a).

(2) A members' auditor shall

(a) make the examination of the financial affairs of the member as called for by the by-laws, rules or regulations applicable to the member, and

(b) report on the examination to the district association auditor.

(3) Each stock exchange in Alberta recognized by the Commission shall for the purposes of subsection (4) require those of its members as the Commission may designate in writing to appoint a panel auditor from the panel of auditors selected under section 49(2)(a).

(4) A panel auditor shall

(a) make the examination of the financial affairs of the member as called for by the by-laws, rules or regulations applicable to the member, and

(b) report on the examination to the exchange auditor.

(5) The Alberta District of the Investment Dealers' Association of Canada shall, to the satisfaction of the Commission, prepare by-laws, rules or regulations governing the practice and procedure respecting examinations made under subsection (2).

(6) Each stock exchange in Alberta recognized by the Commission shall, to the satisfaction of the Commission, prepare by-laws, rules or regulations governing the practice and procedure respecting examinations made under subsection (4).

(7) The examinations made under subsections (2) and (4) shall be conducted to the satisfaction of the Commission.

Annual financial  
statement

**51** Every registrant whose financial affairs are not subject to examination under section 50 shall

(a) keep those books and records necessary for the proper recording of his business transactions and financial affairs, and

(b) file with the Commission annually and at those other times that the Commission may require

(i) a financial statement that is satisfactory to the Commission as to the registrant's financial position, certified by the registrant or an officer or partner of the registrant and reported upon by the auditors of the registrant, and

(ii) any other information as the Commission may require in a form that it may prescribe.

**PART 4**  
**STOCK EXCHANGES**

Recognition of a  
stock exchange

**52(1)** No person or company shall carry on business as a stock exchange in Alberta unless it is recognized in writing by the Commission as a stock exchange.

(2) The Commission may, if it appears to it to be in the public interest, make any decision

(a) respecting the manner in which a stock exchange carries on business,

(b) respecting any by-law, ruling, instruction or regulation of a stock exchange,

(c) respecting the trading on or through the facilities of a stock exchange, or

(d) respecting any security that is listed and posted for trading on a stock exchange,

that it considers is necessary to ensure that issuers whose securities are listed and posted for trading on the stock exchange comply with this Act and the regulations.

(3) A person or company directly affected by any direction, order or decision made under a by-law, rule or regulation of a stock exchange may appeal the direction, order or decision to the Commission.

(4) Section 25 applies to an appeal made under subsection (3).

Record of  
transactions

**53** Every stock exchange shall

(a) keep a record showing the time at which each transaction on the stock exchange took place, and

(b) supply to any customer of any member of the stock exchange, on production of a written confirmation of any transaction with the member, particulars of the time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation.

**PART 5**  
**REGISTRATION**

Registration

**54(1)** No person or company shall

(a) trade in a security unless the person or company is registered as

(i) a dealer,

(ii) a salesman, or

(iii) a partner or officer of a registered dealer that acts on behalf of the dealer,

(b) act as an underwriter unless the person or company is registered as an underwriter, or

(c) act as an adviser unless the person or company is registered as

(i) an adviser, or

(ii) a partner or officer of a registered adviser that acts on behalf of the adviser.

(2) Registration under this section does not take effect until the person or company being registered has received written notice from the Registrar of the registration.

(3) The termination of the employment of a salesman with a registered dealer shall operate as a suspension of the registration of the salesman until

(a) notice in writing has been received by the Registrar from another registered dealer of the employment of the salesman by that other registered dealer, and

(b) the reinstatement of the registration has been approved by the Registrar.

(4) The Director may designate as “non-trading” any employee or class of employees of a registered dealer that does not usually sell securities.

(5) A designation made under subsection (4) may be cancelled as to any employee or class of employees if the Director is satisfied that the employee or any member of the class of employees should be registered under this Part.

Registration by  
Director

**55(1)** The Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an ap-

plicant if in the opinion of the Director the applicant is suitable for registration.

(2) The Director may in his discretion do one or more of the following:

- (a) restrict a registration of an applicant by imposing terms and conditions on the registration;
- (b) restrict the duration of a registration of an applicant;
- (c) restrict the registration of an applicant to trades in certain securities or a certain class of securities.

(3) The Director shall not refuse to grant, renew, reinstate or amend registration for an applicant or impose terms and conditions on it without giving the applicant an opportunity to have a hearing before the Director.

(4) The Director may

- (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 an amount and in a form satisfactory to the Director.

Suspension,  
cancellation and  
restrictions

**56** If after a hearing before the Commission, the Commission is of the opinion that a registrant has failed to comply with this Act, the regulations or a decision of the Commission or the Director or has failed to act in the public interest, the Commission may by order

- (a) suspend, cancel, restrict or impose terms or conditions or both on the registration of the registrant, or
- (b) reprimand the registrant.

Voluntary  
surrender

**57** Notwithstanding section 56, the Commission may, on application by a registrant, accept, subject to those terms or conditions as the Commission may impose, the voluntary surrender of the registration of the registrant if the Commission is satisfied that

- (a) the financial obligations of the registrant to its clients have been discharged, and
- (b) the surrender of the registration would not be prejudicial to the public interest.

Further application

**58** If registration has been refused, a further application to the Director for registration may be made

- (a) based on material not submitted to the Director at the time of the previous application, or
- (b) if the material circumstances have changed.

Application

**59** An application for registration shall

- (a) be made in writing on a form prescribed by the regulations, and
- (b) be accompanied by the fee in the amount prescribed by the regulations.

Address for service

**60** An applicant shall state in the application for registration an address for service in Alberta.

Further information

**61** The Director may require one or more of the following:

- (a) that further information or material be submitted by an applicant or a registrant within a specified time;
- (b) that there be verification by affidavit or otherwise of any information or material then or previously submitted;
- (c) that
  - (i) the applicant or the registrant, or
  - (ii) any partner, officer, director, governor or trustee of, or any person performing a like function for, or any employee of the applicant or registrant,

submit to examination under oath by a person designated by the Director.

Non-residents

**62(1)** The Director shall refuse registration to a person if he is satisfied, on the basis of the statements in the application or from any other source 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,
- (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.

**(2)** Notwithstanding subsection (1), a person may be registered if at the date the application is made that person

- (a) is registered in a capacity corresponding to that of a dealer, adviser, underwriter or salesman under the securities laws of a province, and

(b) has been so registered for a period of not less than one year immediately preceding the date the application is made.

(3) The Director may refuse registration to a company or partnership if he is satisfied, on the basis of the statements in the application or 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,

(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.

(4) Notwithstanding subsection (3), a company or partnership may be registered if at the date the application is made one or more of its officers or directors or one or more of the partners, as the case may be, not resident in Alberta,

(a) is registered in a capacity corresponding to that of a dealer, adviser, underwriter or salesman under the laws of a province, and

(b) has been so registered for a period of not less than one year immediately preceding the date the application is made.

(5) For the purposes of this section, a person shall not be deemed to have given up his residence in Canada or Alberta, as the case may be, by reason only of his absence

(a) while serving as a member of the Canadian Forces, or

(b) while attending a university, college, school, institute or other educational institution.

Notice of changes

**63(1)** Subject to the regulations, every registered dealer shall, within 5 business days of the event, notify the Registrar of the following:

(a) any change in the address for service in Alberta of the registered dealer;

(b) any change in a business address of the registered dealer;

(c) any change in the directors or officers of the registered dealer and, if required by the Director, the reason for any resignation, dismissal, severance or termination of employment or office;

(d) any change in the holders of the voting securities of the registered dealer;

- (e) the commencement and termination of employment of every registered salesman and, if required by the Director, the reason for the termination of employment;
  - (f) the opening or closing of any branch office in Alberta and, in the case of the opening of any branch office in Alberta, the name and address of the person in charge of it;
  - (g) any change in the name or address of the person in charge of any branch office in Alberta.
- (2) Subject to the regulations, every registered adviser and underwriter shall, within 5 business days of the event, notify the Registrar of the following:
- (a) any change in the address for service in Alberta of the registered adviser or underwriter;
  - (b) any change in a business address of the registered adviser or underwriter;
  - (c) any change in the directors or officers of the registered adviser or underwriter and, if required by the Director, the reason for any resignation, dismissal, severance or termination of employment or office;
  - (d) any change in the holders of the voting securities of the registered adviser or underwriter.
- (3) Every registered salesman shall, within 5 business days of the event, notify the Registrar of the following:
- (a) any change in his address for service in Alberta;
  - (b) any change in his business address;
  - (c) every commencement of his employment with a registered dealer;
  - (d) every termination of his employment with a registered dealer.
- (4) The Director may, on an application by a registrant that is a reporting issuer, make an order exempting the registrant from the requirement of subsection (1)(d) or (2)(d) if in the Director's opinion it would not be prejudicial to the public interest to do so.

**PART 6**  
**EXEMPTIONS FROM REGISTRATION**

Exemption of  
certain advisers

**64** Registration as an adviser need not be obtained, unless otherwise ordered by the Commission,

(a) by those persons or companies as designated by the regulations,

(b) by the following persons or companies if the performance of the service as an adviser is solely incidental to their principal business or occupation:

(i) a financial institution;

(ii) the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada);

(iii) an insurance company;

(iv) a lawyer, accountant, engineer or teacher;

(v) a registered dealer or any partner, officer or employee of a registered dealer,

or

(c) by a publisher of or a writer for a publication that is a bona fide newspaper, news magazine, business or financial journal or periodical that is

(i) of general and regular paid circulation, and

(ii) only available to persons or companies that are

(A) subscribers to it for value, or

(B) purchasers of it,

who acts as an adviser through the publication and has no interest either directly or indirectly in any of the securities on which the advice is given.

Exemption of  
trades by certain  
parties

**65(1)** Subject to the regulations, registration is not required in respect of the following trades:

(a) a trade

(i) by an executor, administrator, guardian or committee,

(ii) by an authorized trustee or assignee,

- (iii) by an interim or official receiver or a custodian under the *Bankruptcy Act* (Canada),
  - (iv) by a receiver under *The Judicature Act*,
  - (v) by a liquidator under *The Companies Act*, the *Canada Business Corporations Act* (Canada) or the *Winding-up Act* (Canada),
  - (vi) at a judicial sale, or
  - (vii) by the sheriff under *The Seizures Act*;
- (b) an isolated trade in a specific security by or on behalf of an owner or issuer, for the owner's or issuer's account, if the trade
- (i) is not made in the course of continued and successive transactions of a like nature, and
  - (ii) is not made by a person or company whose usual business is trading in securities;
- (c) a trade if the party purchasing as principal and not as an underwriter is
- (i) a financial institution,
  - (ii) the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada),
  - (iii) an insurance company,
  - (iv) the Government of Alberta, the Government of Canada or the government of any other province, or
  - (v) a municipal corporation or public board or commission in Canada;
- (d) a trade if the party purchasing as principal is recognized by the Commission as an exempt purchaser;
- (e) a trade if
- (i) the purchaser purchases as principal, and
  - (ii) it is in a security which has an aggregate acquisition cost to the purchaser of not less than \$97 000;
- (f) a trade from the holdings of any person, company or combination of persons or companies described in section 1(f)(iii) for the purpose of giving collateral for a bona fide debt;
- (g) a trade by or for the account of a pledgee, mortgagee or other encumbrancer for the purpose of liquidating a bona fide

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

(h) a trade in a security that may occasionally be transacted by employees of a registered dealer if the employees

(i) do not usually sell securities, and

(ii) have been designated by the Director as “non-trading” employees, either individually or as a class;

(i) a trade between a person or company and an underwriter acting as purchaser or between or among underwriters;

(j) a trade in a security by a person or company

(i) acting solely through an agent who is a registered dealer, or

(ii) with a registered dealer who is acting as principal;

(k) the execution of an unsolicited order to purchase or sell through a registered dealer by a financial institution as agent for a person or company and the trade by the person or company in placing the unsolicited order with the financial institution;

(l) a trade in a bond or debenture by way of an unsolicited order given to a financial institution if the financial institution is acting as principal and the bond or debenture is

(i) acquired by the financial institution from a registered dealer for the purpose of the trade, or

(ii) sold by the financial institution to a registered dealer following the trade;

(m) a trade by an issuer,

(i) in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,

(ii) in a security whether of its own issue or not that is distributed by it to holders of its securities as incidental to a bona fide re-organization, dissolution or winding up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws of the jurisdiction in which the issuer was incorporated, organized or continued, or

(iii) in securities of its own issue transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

if no commission or other remuneration is paid or given to others

in respect of the distribution except for administrative or professional services or for services performed by a registered dealer;

(n) a trade by an issuer in a security of a reporting issuer held by it that is distributed by it to holders of its securities as a dividend in specie;

(o) a trade by an issuer

(i) in a right, transferable or otherwise, granted by the issuer to holders of its securities to purchase additional securities of its own issue and the issue of securities pursuant to the exercise of the right, or

(ii) in securities of a reporting issuer held by it transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

if the issuer has given the Director written notice stating the date, amount, nature and conditions of the proposed trade, including the approximate net proceeds to be derived by the issuer on the basis of the additional securities being fully taken up and paid for, and either,

(iii) the Director has not informed the issuer in writing within 10 days from the date of receipt by the Director of the notice that he objects to the proposed trade, or

(iv) the issuer has delivered to the Director information relating to the securities that is satisfactory to and accepted by the Director;

(p) a trade in a security of a company that is exchanged by or for the account of the company with another company or the holders of the securities of that other company in connection with,

(i) a statutory amalgamation or arrangement, or

(ii) a statutory procedure under which one company takes title to the assets of the other company which in turn loses its existence by operation of law or under which the existing companies merge into a new company;

(q) a trade in a security of an issuer that is exchanged by or for the account of the issuer with the security holders of another issuer in connection with a take-over bid as defined in Part 13;

(q.1) a trade in a security of an issuer that is exchanged by or for the account of the issuer with its security holders in connection with an issuer bid as defined in Part 13;

(r) a trade in a security of an issuer in connection with a take-

over bid exempted from the requirements of Part 13 by section 132(1) or by the Commission under section 145;

(r.1) a trade in a security of an issuer in connection with an issuer bid exempted from the requirements of Part 13 by section 133(1) or by the Commission under section 145;

(s) a trade by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, if the fair value of the assets so purchased is not less than \$100 000;

(t) a trade by an issuer in the securities of its own issue with

(i) its employees,

(ii) the employees of an affiliate, or

(iii) a trustee acting on behalf of the employees of the issuer or of an affiliate

if the employees are not directly or indirectly required by the employer to purchase the securities;

(t.1) a trade made in the security of an issuer where each of the parties to the trade is a person or company that is, as regards the issuer, a person or company referred to in section 1(f)(iii);

(u) a trade by an issuer in securities of its own issue if

(i) the trade is reasonably necessary to facilitate the incorporation or organization of the issuer, and

(ii) the securities are traded

(A) for a nominal consideration to not more than 15 incorporators or organizers, or

(B) for a greater consideration or to a larger number of incorporators or organizers than prescribed under paragraph (A), if the statute under which the issuer is incorporated or organized requires the trade to be for that greater consideration or to that larger number of incorporators or organizers;

(u.1) a trade by an issuer in the securities of its own issue with a promoter of the issuer or by a promoter of an issuer in securities of the issuer with another promoter of the issuer;

(v) a trade made by an issuer with a view to the sale of securities of its own issue if

(i) solicitations in all jurisdictions including Alberta are

made to not more than 50 prospective purchasers resulting in sales to not more than 25 purchasers,

(ii) each purchaser purchases as principal,

(iii) all of the purchases are completed within a period of 6 months after the first purchase, but subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that 6-month period,

(iv) each purchaser has access to information on the basis of which a prudent investor may make a reasoned judgment and is an investor who is, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company that

(A) is not a promoter of the issuer whose securities are being offered, and

(B) is a registered adviser or a registered dealer,

able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer,

(v) the offer and sale of the securities are not accompanied by an advertisement,

(vi) no selling or promotional expenses have been paid or incurred in connection with the offer or sale of the securities, except for professional services or for services performed by a registered dealer, and

(vii) the distribution is the first distribution by that issuer under this exemption;

(v.1) a trade made by an issuer with a view to the sale of securities of its own issue if

(i) solicitations in all jurisdictions including Alberta are made to not more than 50 prospective purchasers resulting in sales to not more than 25 purchasers,

(ii) each purchaser purchases as principal,

(iii) all of the purchases are completed within a period of 6 months after the first purchase, but subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that 6-month period,

(iv) each purchaser has access to information on the basis of which a prudent investor may make a reasoned judgment

and is an investor who is, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company that

(A) is not a promoter of the issuer whose securities are being offered, and

(B) is a registered adviser or a registered dealer,

able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer,

(v) the offer and sale of the securities are not accompanied by an advertisement,

(vi) no selling or promotional expenses have been paid or incurred in connection with the offer or sale of the securities, except for professional services or for services performed by a registered dealer,

(vii) a period of 12 months has lapsed since the completion of its distribution under the exemption contained in clause (v), and

(viii) in the distribution under this exemption, in any 12 month period, the amount paid for the securities of that issuer by all the purchasers under this exemption does not exceed in total the amount of \$3 000 000;

(v.2) a trade made by a promoter of an issuer or by an issuer in a government incentive security of the issuer's own issue if

(i) solicitations in all jurisdictions including Alberta are made to not more than 75 prospective purchasers resulting in sales to not more than 50 purchasers,

(ii) each purchaser purchases as principal,

(iii) all of the purchases are completed within a period of 6 months after the first purchase, but subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that 6-month period,

(iv) each purchaser has access to information on the basis of which a prudent investor may make a reasoned judgment and is an investor who is, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company that

(A) is not a promoter of the issuer whose securities are being offered, and

(B) is a registered adviser or a registered dealer,

able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer,

(v) the offer and sale of the securities are not accompanied by an advertisement,

(vi) no selling or promotional expenses have been paid or incurred in connection with the offer or sale of the securities, except for professional services or for services performed by a registered dealer, and

(vii) the distribution is the first distribution of the government incentive security by that promoter or issuer;

(v.3) a trade made by a promoter of an issuer or by an issuer in a government incentive security of the issuer's own issue if

(i) solicitations in all jurisdictions including Alberta are made to not more than 75 prospective purchasers resulting in sales to not more than 50 purchasers,

(ii) each purchaser purchases as principal,

(iii) all of the purchases are completed within a period of 6 months after the first purchase, but subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that 6-month period,

(iv) each purchaser has access to information on the basis of which a prudent investor may make a reasoned judgment and is an investor who is, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company that

(A) is not a promoter of the issuer whose securities are being offered, and

(B) is a registered adviser or a registered dealer,

able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer,

(v) the offer and sale of the securities are not accompanied by an advertisement,

(vi) no selling or promotional expenses have been paid or incurred in connection with the offer or sale of the securities, except for professional services or for services performed by a registered dealer,

(vii) a period of 12 months has lapsed since the completion of its distribution under the exemption contained in clause (v.2), and

(viii) in the distribution under this exemption, in any 12 month period, the amount paid for the securities of that issuer by all the purchasers under this exemption does not exceed in total the amount of \$3 000 000;

(v.4) a trade in securities of an issuer previously disposed of pursuant to the exemption contained in clause (v) if each of the parties to the trade is one of the not more than 25 purchasers referred to in clause (v);

(v.5) a trade in securities of an issuer previously disposed of pursuant to an exemption contained in clause (v.1) if each of the parties to the trade is one of the not more than 25 purchasers referred to in clause (v.1);

(v.6) a trade in securities of an issuer previously disposed of pursuant to the exemption contained in clause (v.2) if each of the parties to the trade is one of the not more than 50 purchasers referred to in clause (v.2);

(v.7) a trade in securities of an issuer previously disposed of pursuant to an exemption contained in clause (v.3) if each of the parties to the trade is one of the not more than 50 purchasers referred to in clause (v.3);

(w) a trade by an issuer of voting securities pursuant to a plan

(i) made available by that issuer to every holder

(A) of a class of publicly traded securities of the issuer, and

(B) whose last address is shown on the books of the issuer as being in Alberta,

and

(ii) that permits the holder to direct by express election annually that dividends or interest paid in respect of securities of the issuer's own issue be applied to the purchase from the issuer of

(A) publicly traded voting securities of the issuer's own issue, or

(B) other securities of the issuer not referred to in paragraph (A) that are redeemable at the option of the holder;

(x) a trade by an offeree described in section 131(1)(f) in se-

curities that are being disposed of to a person or company making a cash or share exchange take-over bid, issuer bid or exempt offer;

(y) a trade by an issuer with

(i) a senior officer or director of the issuer or a spouse, parent, brother, sister or child of the senior officer or director of the issuer, or

(ii) unless otherwise ordered by the Director, close friends or business associates of a promoter of the issuer if

(A) the trade is with not more than 15 people, and

(B) there is not an invitation to the public to subscribe for the securities;

(z) a trade in respect of which the regulations provide that registration is not required.

(2) For the purpose of subsection (1), a trust company is deemed to be acting as principal when it trades as trustee or as agent for accounts fully managed by it.

Exemption of  
trades in certain  
securities

**66** Subject to the regulations, registration is not required to trade in the following securities:

(a) bond, debentures or other evidences of indebtedness,

(i) of or guaranteed by the Government of Canada, the Government of Alberta, a government of another province of Canada or by any foreign country or any political division of them,

(ii) of any municipal corporation in Canada, including debentures issued for public, separate or secondary 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 the province and to be collected by or through the municipality in which the property is situated,

(iii) of or guaranteed by a financial institution or an insurance company if the bond, debenture or other evidence of indebtedness has priority in right of payment over deposits held by the issuer or guarantor of those bonds, debentures or other evidence of indebtedness,

(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, or

(v) of or guaranteed by the Asian Development Bank or the Inter-American Development Bank, if

(A) the bonds, debentures or evidences of indebtedness are payable in the currency of Canada or the United States of America, and

(B) with respect to those securities, those documents, certificates, reports, releases, statements, agreements or other information as may be required by the Director are filed with the Commission;

(b) certificates or receipts issued by a trust company for money received for investments that are guaranteed by the trust company;

(c) securities issued by a private mutual fund;

(d) negotiable promissory notes or commercial paper maturing not more than one year from the date of issue, if each note or commercial paper traded to an individual has a denomination or principal amount of not less than \$50 000;

(e) 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 similar indenture, if the mortgages or other encumbrances are offered for sale by a person or company registered or exempted from registration under *The Mortgage Brokers Act* or *The Real Estate Agents' Licensing Act*;

(f) securities evidencing indebtedness due under any conditional sales contract or other title retention contract providing for the acquisition of personal property if the securities are not offered for sale to an individual;

(g) securities issued by an issuer organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit;

(h) voting securities issued by corporations to which *The Co-operative Associations Act* applies;

(i) shares of a credit union;

(j) securities of a private company if they are not offered for sale to the public;

(k) securities issued and sold by a prospector for the purpose of financing a prospecting expedition;

(l) securities issued by a natural resource company as consid-

eration for mining claims or oil and gas rights if the vendor enters into an escrow or pooling agreement that the Director considers necessary;

(m) variable insurance contracts issued by an insurance company if the variable insurance contract is,

(i) a contract of group insurance,

(ii) a whole life insurance contract providing for the payment at maturity of an amount not less than 75% of the premium paid up to age 75 years for a benefit payable at maturity,

(iii) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or

(iv) a variable life annuity;

(n) securities in respect of which the regulations provide that registration is not required.

Exemption of  
certain  
underwriters

**67** Registration is not required to act as an underwriter in respect of

(a) a trade referred to in section 65, or

(b) a trade in a security referred to in section 66.

## PART 7

### TRADING IN SECURITIES GENERALLY

Requirements for  
confirmation of  
trade

**68(1)** Every registered dealer who has acted as principal or agent in connection with any trade in a security shall promptly send to the customer a written confirmation of the transaction, setting forth

(a) the number and description of the securities,

(b) the consideration,

(c) whether or not the registered dealer is acting as principal or agent,

(d) if acting as agent in a trade, the name of the person or company from, to or through whom the security was bought or sold,

(e) the name of the stock exchange, if any, through which the transaction took place,

- (f) the date on which the transaction took place,
  - (g) the commission, if any, charged in respect of the trade, and
  - (h) the name of the salesman, if any, in the transaction.
- (2) If a trade is made in a security of a mutual fund, the confirmation shall, in addition to the requirements of subsection (1), contain the amount deducted by way of sales, service and other charges.
- (3) Subject to the regulations, when a trade is made in a security of a mutual fund under a contractual plan, the confirmation shall, in addition to the requirements of subsections (1) and (2), contain the following statements calculated up to the date that the confirmation is sent to the customer:
- (a) in respect of an initial payment made under a contractual plan that requires the prepayment of sales, service and other charges, a statement of
    - (i) the initial payment, and
    - (ii) the portion of the sales, service and other charges that is allocated to subsequent investments in the mutual fund and the manner of allocation of those portions;
  - (b) in respect of each subsequent payment after the initial payment made under a contractual plan that requires the prepayment of sales, service and other charges, a statement of the portion of the sales, service and other charges that is allocated to the payment that is the subject of the confirmation;
  - (c) in respect of an initial purchase made under a contractual plan that permits the deduction of sales, service and other charges from the first and subsequent instalments, a statement of the sales, service and other charges to be deducted from subsequent purchases;
  - (d) in respect of each purchase made under a contractual plan, a statement of
    - (i) the total number of shares or units of the mutual fund acquired, and
    - (ii) the amount of sales charges paid under the contractual plan.
- (4) For the purposes of subsection (1)(d) and (h), a person, company or salesman may be identified in a written confirmation by means of a code or symbol, if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

(5) If a person or company uses a code or symbol for identification in a confirmation under subsection (1), the person or company shall

(a) promptly file with the Registrar the code or symbol and its meaning, and

(b) notify the Registrar within 5 days of any change in or addition to the code or symbol or its meaning.

(6) Every dealer who has acted as agent in connection with a trade in a security shall promptly disclose to the Director, on request by the Director, the name of the person or company from, to or through whom the security was bought or sold.

Attendance on or  
calls to residences

**69**(1) The Director may, by order, suspend, cancel, restrict or impose terms and conditions upon the right of any person or company or class of persons or companies named or described in the order to

(a) attend at a residence, or

(b) call to a residence by telephone,

for the purpose of trading in any security or in any class of securities.

(2) The Director shall not make an order under subsection (1) without giving the person or company or class of persons or companies affected an opportunity to have a hearing before the Director.

Prohibitions  
respecting  
representations

**70**(1) Unless otherwise permitted by the Director, no person or company shall represent that the person or company or any other person or company will

(a) resell or repurchase a security, or

(b) refund any purchase price of a security.

(2) Subsection (1) does not apply to a security that carries or is accompanied by

(a) an obligation of the issuer to redeem or repurchase the security, or

(b) a right of the owner of the security to require the issuer to redeem or repurchase the security.

(3) No person or company, with the intention of effecting a trade in a security, shall

(a) give any undertaking relating to the future value or price of the security, or

(b) except with the written permission of the Director, make any representation

- (i) that the security will be listed on any stock exchange, or
- (ii) that application has been or will be made to list the security on any stock exchange.

- (4) No person shall represent that he is offering to trade in a security
  - (a) at the market price, or
  - (b) at a price related to the market price,

unless he reasonably believes that a market for the security exists that is not made, created or controlled by him, his employer or an affiliate or by a person or company for whom he is acting in the transaction.

Dealer as principal **71(1)** If a registered dealer, with the intention of effecting a trade in a security with any person or company other than another registered dealer,

- (a) proposes to act in the trade as a principal, and
- (b) makes any statement in writing to the person or company in respect of the security,

the registered dealer shall disclose in the statement that he acts as a principal.

(2) A statement made under subsection (1) shall be made by the registered dealer before he

- (a) enters into a contract for the sale or purchase of the security, or
- (b) accepts payment or receives any security or other consideration under or in anticipation of the contract,

whichever occurs first.

(3) A statement made in compliance with this section or section 68(1)(c) that a registered dealer proposes to act or has acted as principal in connection with a trade in a security does not prevent the dealer from acting as agent in connection with a trade of the security.

(4) This section does not apply to trades referred to in section 65 or to securities referred to in section 66.

Disclosure by advisers

**72(1)** Subject to the regulations, a registered adviser shall cause to be printed

- (a) in a conspicuous position on all printed material issued, published or sent out by him, in which the adviser recommends that a specific security be purchased, sold or held, and

(b) in type not less legible than that used in the body of the printed matter,

a full and complete statement of any financial or other interest that he or any partner, director, officer or a person or company that would be an insider of the adviser, if the adviser was a reporting issuer, may have either directly or indirectly in any securities referred to in the printed matter or in the sale or purchase of the securities.

(2) A statement made under subsection (1) concerning the registered adviser or any partner, director, officer or a person or company that would be an insider of the adviser if the adviser was a reporting issuer shall include at least the following:

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

Disclosure by  
registered dealer

**73** If a registered dealer recommends in any printed material intended for general circulation a purchase, sale, exchange or hold of a security, the registered dealer shall, in type not less legible than that used in the body of the publication, state whether it or any of its officers or directors

- (a) has at any time during the previous 12 months
  - (i) assumed an underwriting liability with respect to the securities, or
  - (ii) for consideration provided financial advice to the issuer of the securities,

or

- (b) will receive any fees as a result of the recommended action.

Disclosure by  
registered dealer

**74(1)** A registered dealer shall provide to any of its customers on request

(a) the names of the partners or the directors, as the case may be, of the dealer and of the senior officers of the dealer made up and certified as at a recent date,

(b) the names of any person or company having directly or indirectly an interest of not less than 5% of the registered dealer's capital, and

(c) a statement of the dealer's financial conditions as of the end of its financial year made up and certified as required by the regulations.

(2) A registered dealer shall inform its customers on every statement of account or in another manner as the Director may approve that the information referred to in subsection (1) is available.

(3) If the Director determines that a registered dealer or a class of registered dealers is

(a) pursuant to the conditions of registration, or

(b) in regulations imposed by a self-regulating organization,

required to provide to customers information similar to the information required under subsections (1) and (2), the Director may by order exempt the registered dealer or class of registered dealers from the requirements of subsection (1) and (2).

Use of name

**75** No registrant shall use the name of another registrant unless he is a partner, officer or agent of or is authorized to do so in writing by the other registrant.

Representations involving the Commission

**76** No person or company shall make any representation that the Commission has in any manner expressed an opinion or passed judgment on

(a) the financial standing, fitness or conduct of a registrant, or

(b) the merits of a security or issuer.

Margin contracts

**77(1)** If

(a) a person or a partner or employee of a partnership or a director, officer or employee of a company,

(i) after he or the partnership or company has contracted as a registered dealer with a customer to buy and carry on margin any securities of an issuer either in Canada or elsewhere, and

(ii) while the contract referred to in subclause (i) continues, he or the partnership or company sells or causes to be sold securities of the same issuer for any account in which the person, a partner or employee of the partnership or the com-

pany or a director of the company, as the case may be, has a direct or indirect interest,

and

(b) the effect of the sale referred to in clause (a)(ii) would, otherwise than unintentionally, be to reduce the amount of the securities in the hands of the dealer or under its control in the ordinary course of business to below the amount of the securities that the dealer should be carrying for all its customers,

the dealer shall disclose that fact to the customer and the contract with the customer is, at the option of the customer, voidable.

(2) If a customer exercises his option under subsection (1) to void a contract he may recover from the dealer

(a) all the money paid by that customer with interest on it, and

(b) securities deposited by that customer,

as the case may be, in respect of that contract.

(3) The customer may exercise the option referred to in subsection (1) within 30 days from the day that the disclosure was made under subsection (1) by sending a notice to that effect to the dealer.

Declaration of short position

**78** A person or company,

(a) that places an order for the sale of a security through a registered dealer that is acting as his or its agent, and

(b) that,

(i) at the time of placing the order, does not own the security, or

(ii) if acting as agent, knows his principal does not own the security,

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

Rights of beneficial owners

**79(1)** Subject to subsection (5), voting securities of an issuer registered in the name of

(a) a registrant or in the name of his nominee, or

(b) a custodian or in the name of his nominee, if the issuer is a mutual fund that is a reporting issuer,

that are not beneficially owned by the registrant or the custodian, as

the case may be, shall not be voted by the registrant or custodian at any meeting of security holders of the issuer.

(2) Where

(a) the registrant or custodian referred to in subsection (1) has received a copy of a notice

(i) of a meeting of security holders of an issuer,

(ii) of a take-over bid circular, issuer bid circular or exempt offer relating to securities of an issuer, or

(iii) of a rights offering,

and

(b) the beneficial owner has agreed to pay the reasonable costs to be incurred by the registrant or custodian,

the registrant or custodian, as the case may be, shall promptly send to the beneficial owner of the securities a copy of that notice and any other notice, financial statement, information circular, take-over bid circular, issuer bid circular, directors' circular, director's circular, officer's circular or other similar material respecting those securities that is received by the registrant or custodian.

(3) Subsection (2) only applies if the registrant or custodian knows the name and address of the beneficial owner of the securities

(a) at the record date for notice of the meeting of security holders,

(b) at the date of the take-over bid, issuer bid or exempt offer, or

(c) at the date of the rights offering,

as the case may be.

(4) At the request of a registrant or custodian, the person or company sending material referred to in subsection (2) shall promptly furnish to the registrant or custodian, at the expense of the sender, the requisite number of copies of the material.

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

(6) A registrant or custodian shall, if requested in writing by a beneficial owner, give to the beneficial owner or his nominee a proxy enabling the beneficial owner or his nominee to vote any voting securities referred to in subsection (1).

(7) For the purpose of this section, "custodian" means a person or company that

- (a) has physical possession of securities, and
- (b) holds the securities for another person or company.

Advertising and  
sales material

**80(1)** The Director may order a registered dealer to send to the Director copies of all advertising or sales material that the dealer intends to use in connection with trading in securities if the Director is satisfied that the dealer's past conduct in respect of advertising or sales material used by the dealer in connection with trading in securities is such that it is necessary for the Director to inspect the material before it is used in connection with trading in securities.

(2) The Director shall not make an order under subsection (1) until he has given the registered dealer an opportunity to have a hearing before the Director.

(3) Any advertising or sales material that is to be sent to the Director pursuant to an order made under subsection (1), shall be sent to the Director at least 14 days before it is to be used in connection with trading in securities.

(4) With respect to any advertising or sales material sent to him under subsection (1), the Director may decline to make any representation or objection concerning the material or by order do one or more of the following:

- (a) prohibit the use of the material;
- (b) prescribe deletions to be made to the material before it may be used;
- (c) prescribe changes to be made to the material before it may be used.

(5) If

- (a) sales or advertising material is sent to the Director, and
- (b) within 14 days from the day he receives the sales or advertising material, the Director does not advise the dealer of any objection to the use of the material,

the dealer may proceed to use the material in connection with trading in securities.

(6) Where the Director declines to make any representation or objection under subsection (4), it shall not be construed to mean that the Director has made any judgment on the merits of the material or its contents.

**PART 8**  
**DISTRIBUTION BY PROSPECTUSES**

Filing prospectus **81**(1) No person or company shall trade in a security on his own account or on behalf of any other person or company if the trade would be a distribution of the security unless

(a) a preliminary prospectus has been filed and the Registrar has issued a receipt for it, and

(b) a prospectus has been filed and the Registrar has issued a receipt for it.

(2) A preliminary prospectus and a prospectus may be filed in accordance with this Part to enable the issuer to become a reporting issuer, notwithstanding the fact that no distribution is contemplated.

Preliminary prospectus **82**(1) A preliminary prospectus shall, subject to subsection (2), comply with the requirements of this Act and the regulations respecting the form and content of a prospectus.

(2) The report or reports of the auditor or accountant required by the regulations and any information with respect to

(a) the price to the underwriter,

(b) the offering price of any securities, and

(c) matters dependent upon or relating to those prices,

may be omitted from a preliminary prospectus.

Receipt for preliminary prospectus **83** The Registrar shall promptly issue a receipt for a preliminary prospectus on the filing of the preliminary prospectus.

Prospectus and supplemental material **84**(1) A prospectus shall

(a) provide full, true and plain disclosure of all material facts relating to the securities proposed to be issued or distributed, and

(b) comply with the requirements of this Act and the regulations.

(2) A prospectus shall contain or be accompanied by financial statements, reports or other documents in accordance with this Act and the regulations.

Preliminary prospectus - adverse material change **85**(1) If an adverse material change occurs after a receipt for a preliminary prospectus is issued but before a receipt for the prospectus is issued, an amendment to that preliminary prospectus shall be filed within 10 days from the day that the change occurs.

(2) An amendment to a preliminary prospectus shall, promptly after it has been filed, be forwarded to each recipient of the preliminary prospectus according to the record maintained under section 101.

(3) An amendment to a preliminary prospectus filed under subsection (1) shall, immediately on filing, form part of the preliminary prospectus.

Prospectus -  
adverse material  
change

**86(1)** If an adverse material change occurs after a receipt for the prospectus is issued but prior to the completion of the distribution under the prospectus, an amendment to the prospectus shall be filed within 10 days from the day that the change has occurred.

(2) An amendment to a prospectus filed under subsection (1) shall, immediately on filing, form part of the prospectus.

Preliminary  
prospectus - non-  
adverse material  
change

**87(1)** If a material change, that is not an adverse change, occurs after a receipt for a preliminary prospectus is issued but before a receipt for the prospectus is issued, an amendment to that preliminary prospectus shall be filed within 10 days from the day that the change occurs.

(2) An amendment to the preliminary prospectus shall, promptly after it has been filed, be forwarded to each recipient of the preliminary prospectus according to the record maintained under section 101.

(3) An amendment to a preliminary prospectus filed under subsection (1) shall immediately on filing, form part of the preliminary prospectus.

Prospectus - non-  
adverse material  
change - issuer  
control

**88(1)** If a material change that

- (a) is not an adverse change, and
- (b) is not within the control of the issuer,

occurs after a receipt for a prospectus is issued but prior to the completion of the distribution under the prospectus, an amendment to the prospectus shall be filed within 10 days from the day that the change has occurred.

(2) An amendment to a prospectus filed under subsection (1) shall, immediately on filing, form part of the prospectus.

Prospectus - non-  
adverse material  
change - issuer  
control

**89(1)** If a material change that

- (a) is not an adverse change, and
- (b) is within the control of the issuer,

occurs after a receipt for a prospectus is issued but prior to the completion of the distribution under that prospectus, an amendment to the prospectus shall be filed within 10 days from the day that the change has occurred.

(2) The distribution for which the prospectus was filed will not be proceeded with from the time of the material change until a receipt has been issued for the amendment.

(3) The Director may direct the Registrar to issue a receipt for an amendment filed under subsection (1) unless it appears to him that it is not in the public interest to do so.

(4) The Director shall direct the Registrar not to issue a receipt for an amendment filed under subsection (1) if it appears to the Director that any of the circumstances contained in section 96(2) are present.

(5) An amendment to a prospectus filed under subsection (1) shall, immediately on a receipt being issued for the filing, form part of the prospectus.

Certificates

**90(1)** A preliminary prospectus, a prospectus and an amendment to a prospectus filed with the Commission shall contain a certificate signed

(a) in the case of a company, by

(i) the chief executive officer,

(ii) the chief financial officer, and

(iii) any 2 directors, other than those persons referred to in subclauses (i) and (ii), who are duly authorized by the board of directors to sign on behalf of the board of directors,

(b) in the case of an issuer other than a company, by the persons who perform the functions for the issuer that are similar to the functions performed by the persons referred to in clause (a),

(c) by the person or company who is a promoter of the issuer, if any, and

(d) by any other person as the Director requires.

(2) A certificate referred to in subsection (1) shall state the following:

*The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part 8 of The Securities Act, 1981 and the regulations under it.*

(3) A prospectus filed under section 81(2) shall contain a certificate signed

(a) in the case of a company, by

(i) the chief executive officer,

(ii) the chief financial officer, and

(iii) any 2 directors, other than those persons referred to in subclauses (i) and (ii), who are duly authorized by the board of directors to sign on behalf of the board of directors,

(b) in the case of an issuer other than a company, by the persons who perform the functions for the issuer that are similar to the functions performed by the persons referred to in clause (a),

(c) by the person or company who is a promoter of the issuer, if any, and

(d) by any other person as the Director requires.

(4) A certificate referred to in subsection (3) shall state the following:

*The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities previously issued by the issuer as required by Part 8 of The Securities Act, 1981 and the regulations under it.*

(5) Notwithstanding subsection (1) or (3), if the Director is satisfied that

(a) subsection (1) or (3) can not be complied with, and

(b) the preliminary prospectus or prospectus, as the case may be, meets all other requirements for filing,

he may waive the requirements of subsection (1) or (3), as the case may be, and prescribe specific signing requirements in respect of that preliminary prospectus or prospectus.

(6) The Director may make an order requiring any person or company who was a promoter of the issuer within the 2 preceding years to sign the certificates required under this section.

(7) Notwithstanding subsection (1) or (3), the Director may

(a) exempt a promoter from the signing requirements of this section, or

(b) authorize an agent of the promoter duly appointed in writing by the promoter for the purpose to sign the certificate on behalf of the promoter.

Underwriter's  
certificate

**91(1)** If there is an underwriter, a prospectus shall contain a certificate in the following form, signed by the underwriter:

*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 8 of The Securities Act, 1981 and the regulations under it.*

(2) Notwithstanding subsection (1), the Director may authorize an agent of an underwriter duly appointed in writing for the purpose by the underwriter to sign the certificate on behalf of the underwriter.

**Statement of rights** **92** Every prospectus shall contain a statement of the rights given to a purchaser by sections 105, 106 and 168.

**Summary statement** **93(1)** A person or company may, if permitted by the regulations, file a summary statement as a separate document in the prescribed form together with a prospectus filed under section 81 or 97.

(2) When a summary statement is filed with a prospectus, the Director shall direct the Registrar not to issue a receipt for the prospectus if it appears to the Director that the summary statement does not comply with the regulations applicable to the summary statement.

(3) A summary statement filed with a prospectus for which a receipt has been issued may be sent by a dealer to a purchaser of securities instead of a prospectus as required in section 105.

(4) If a dealer elects to send a summary statement to a purchaser of securities instead of a prospectus, sections 105, 106 and 168 apply to the summary statement as well as to the prospectus.

(5) Every summary statement sent to a purchaser shall contain a statement informing the purchaser that a copy of the prospectus that was filed with the summary statement will be provided to the purchaser on request.

(6) Each person or company who signs or causes to be signed, as the case may be, a certificate contained in the prospectus shall ensure compliance with a request made by a purchaser under subsection (5).

**Use of summary statement** **94** If, during the distribution of a security pursuant to a prospectus,

- (a) an order is made to cease trading in the security,
- (b) the receipt issued by the Registrar for the prospectus is revoked,
- (c) the prospectus lapses, or
- (d) the use of a prospectus is otherwise prohibited by the Act, the regulations or by a decision of the Commission or an order of a court,

a summary statement filed with the prospectus shall no longer be used for the purposes of section 105 unless the Director otherwise orders.

**Misrepresentation in a summary statement** **95** For the purposes of section 168, if a misrepresentation is con-

tained in a summary statement filed with a prospectus, the misrepresentation is deemed to be contained in the prospectus.

**96**(1) The Director may direct the Registrar to issue a receipt for a prospectus filed under this Part unless it appears to the Director that it is not in the public interest to do so.

(2) On the filing of a prospectus the Director shall direct the Registrar not to issue a receipt under subsection (1) if it appears to the Director that

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

(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) contains a misrepresentation,

(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 issuer, together with other resources of the issuer are insufficient to accomplish the purpose of the issue stated in the prospectus,

(d) having regard to the financial condition of the issuer or an officer, director, promoter or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer, the issuer cannot reasonably be expected to be financially responsible in the conduct of its business,

(e) the past conduct of the issuer or an officer, director, promoter or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its security holders,

(f) an escrow or pooling agreement that the Director considers necessary or advisable with respect to securities has not been entered into,

(g) an agreement that the Director considers necessary or advisable to accomplish the objects indicated in the prospectus for the holding in trust of the proceeds payable to the issuer from the sale of the securities pending the distribution of the securities has not been entered into.

- (h) in the case of a prospectus filed by a finance company
  - (i) the plan of distribution of the securities offered is not in the public interest,
  - (ii) the securities offered are not secured in a manner, on those terms and by those means as are required by the regulations, or
  - (iii) the finance company does not meet those financial and other requirements and conditions that are specified in the regulations,

or

- (i) a person or company that
  - (i) has prepared or certified any part of the prospectus, or
  - (ii) is named as having prepared or certified a report or valuation used in or in connection with a prospectus

is not acceptable to the Director.

(3) No person or company filing a prospectus shall be refused a receipt for that prospectus without an opportunity to have a hearing before the Director.

(4) If in the opinion of the Director a preliminary prospectus or prospectus raises

- (a) a material question involving the public interest, or
- (b) a question of interpretation respecting a provision of subsection (2) not previously considered by the Commission,

that might result in the Director refusing to direct the issue of a receipt, the Director may refer the question to the Commission for determination.

(5) For the purpose of referring a question to the Commission, the Director shall submit to the Commission

- (a) a written statement setting forth the question,
- (b) a written statement of the facts on which the question is based, and
- (c) any additional material
  - (i) that the Director considers necessary for the determination of the question, or
  - (ii) that is requested by the Commission.

(6) On receipt by the Commission of the question, the statement of the facts and any additional material submitted under subsection (5), the Commission shall promptly serve on those persons or companies that in the opinion of the Commission should be served,

(a) a copy of the question, and

(b) any other material that the Commission considers necessary.

(7) The Commission after hearing the matter shall decide the question.

(8) Subject to any order of the Court of Appeal made under section 26, the decision of the Commission on the question is binding on the Director.

Time limits on distributions

**97**(1) In this section “lapse date” means the date on which a prospectus ceases to be valid for the distribution of the securities for which the prospectus was filed.

(2) Subject to subsection (5), a distribution of a security to which section 81(1) applies shall not continue after 12 months have elapsed from

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

(b) the date that the last prospectus is filed under section 81(1),

unless a new prospectus is filed and the Registrar has issued a receipt for it.

(3) Notwithstanding subsection (2), the Director may by order restrict the period of time to less than 12 months within which securities may be distributed pursuant to a prospectus.

(4) If the Director has made an order under subsection (3), he may extend the period of time stated in the order to a period of time that is not greater than that allowed under subsection (2).

(5) A distribution may be continued for a further 12 months beyond the lapse date of a prospectus if

(a) a pro forma prospectus prepared in accordance with the regulations is filed within 30 days prior to the lapse date of the prospectus,

(b) a new prospectus is filed within 10 days following the lapse date of the prospectus, and

(c) a receipt for the new prospectus referred to in clause (b) is issued by the Registrar within the 20 days following the lapse date of the prospectus.

(6) Subject to any extension granted under subsection (8), all trades completed in reliance upon subsection (5) after the lapse date may be cancelled at the option of the purchaser if any of the conditions to the continuation of a distribution under subsection (5) are not complied with.

(7) A purchaser must exercise his option under subsection (6) within 90 days from the day on which he became aware that a condition under subsection (5) was not complied with.

(8) The Commission may, on an application of a reporting issuer, extend the time limits prescribed under subsection (5) if in its opinion it would not be prejudicial to the public interest to do so.

Distribution of  
previously issued  
securities

**98(1)** If a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain from the issuer of the securities information or material that is necessary for the purpose of the distribution or for enabling that person or company to comply with this Part and the regulations, the Director may order the issuer of the securities to give to the person or company that proposes to make the distribution that information and material that the Director considers necessary for the purposes of the distribution or for enabling that person or company to comply with this Part and the regulations.

(2) If a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain the signatures to the certificates required by this Part or the regulations or otherwise to comply with this Part or the regulations, the Director, on being satisfied that

(a) all reasonable efforts have been made to comply with this Part and the regulations, and

(b) no person or company is likely to be prejudicially affected by the failure to comply with this Part or the regulations,

may make an order waiving any of the provisions of this Part or the regulations as he considers advisable to facilitate the distribution.

## PART 9

### DISTRIBUTION GENERALLY

Distribution of  
material

**99** During the period of time between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for a prospectus it is permitted to do the following:

(a) communicate with any person or company

- (i) identifying the security proposed to be issued,
- (ii) stating the price of the security if it is then determined,
- (iii) stating the name and address of a person or company from whom purchases of the security may be made, and
- (iv) any further information as may be permitted or required by the regulations,

if every communication states the name and address of a person or company from whom a preliminary prospectus may be obtained;

(b) distribute a preliminary prospectus;

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

Distribution of preliminary prospectus

**100** Any dealer acting under section 99 shall, in addition to the requirements of section 99(c), send a copy of the preliminary prospectus to each prospective purchaser who, without solicitation,

- (a) indicates an interest in purchasing the security, or
- (b) requests a copy of the preliminary prospectus.

Distribution list

**101** A dealer acting under section 99 shall maintain a record of the names and addresses of all persons and companies to whom the preliminary prospectus has been forwarded.

Defective preliminary prospectus

**102(1)** If it appears to the Director that a preliminary prospectus is defective in that it does not substantially comply with the requirements of this Act and the regulations as to form and content, he may, without giving notice, order that the trading permitted under section 99 in the security to which the preliminary prospectus relates cease.

(2) An order made under subsection (1) remains in force until a revised preliminary prospectus satisfactory to the Director is filed and forwarded to each recipient of the defective preliminary prospectus who was shown on the record maintained under section 101 to have received the defective preliminary prospectus.

Material given on distribution

**103** From the date that the Registrar issues a receipt for a prospectus, a person or company trading in the security in a distribution pursuant to the prospectus, shall not distribute any material respecting the security that is prohibited by the regulations or by an order made by the Director under section 55 or 80.

Order to cease trading

**104(1)** If it appears to the Commission, after a receipt is issued for a prospectus, that any of the circumstances set out in section 96(2)

exist, the Commission may order that the distribution of the securities under the prospectus cease.

(2) An order made under this section shall be served by the Commission on

(a) the issuer of the securities to which the prospectus relates, and

(b) any person or company that the Commission so directs.

(3) On the receipt of the order,

(a) distribution of the securities pursuant to the prospectus by the person or company named in the order shall cease, and

(b) any receipt issued by the Registrar for the prospectus is revoked.

(4) An order shall not be made under subsection (1) without the issuer being given an opportunity to have a hearing before the Commission.

Obligation to deliver prospectus

**105** A dealer who receives an order or subscription for a security offered in a distribution to which section 81(1) or 97 applies, unless he has previously done so, shall send to a purchaser of the security the latest prospectus and any amendment to the prospectus filed either

(a) before entering into an agreement of purchase resulting from the order or subscription, or

(b) not later than midnight on the 2nd day, exclusive of Saturdays and holidays, after entering into the agreement.

Revocation of purchase

**106(1)** An agreement to purchase securities offered in a subscription to which section 81(1) or 97 applies is not binding on the purchaser if the dealer receives, not later than midnight on the 2nd day exclusive of Saturdays and holidays, after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, notice in writing that the purchaser does not intend to be bound by the agreement of purchase.

(2) A beneficial owner who is not the purchaser under this section may exercise the same rights under subsection (1) as may be exercised by a purchaser.

(3) A purchaser referred to in subsection (1) who is not the beneficial owner of the securities shall advise the person or company who is the beneficial owner of the securities of the provisions of subsections (1) and (2).

(4) Subsection (3) only applies if the purchaser knows the name and address of the beneficial owner of the securities.

(5) Subsections (1) to (3) do not apply if the beneficial owner of the securities is a registrant.

(6) The receipt of the notice referred to in subsection (1) by a dealer is deemed to be receipt of the notice by the vendor of the security.

(7) The onus of proving that the time for giving notice under subsection (1) has expired is on the dealer from whom the purchaser has agreed to purchase the security.

## PART 10

### EXEMPTIONS FROM PROSPECTUS REQUIREMENTS

Exemptions from  
prospectus  
requirements

**107(1)** Subject to the regulations, sections 81 and 97 do not apply to a distribution if

(a) the purchaser is

(i) a financial institution,

(ii) the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada),

(iii) an insurance company,

(iv) the Government of Canada, the Government of Alberta or the government of any other province, or

(v) any municipal corporation or public board or commission in Canada,

who purchases as principal;

(b) the trade

(i) is an isolated trade in a specific security by or on behalf of an issuer, for the issuer's account,

(ii) is not made in the course of continued and successive transactions of a like nature, and

(iii) is not made by a person or company whose usual business is trading in securities;

(c) the party purchasing as principal is recognized by the Commission as an exempt purchaser;

(d) the purchaser purchases as principal and the trade is in a security which has an aggregate acquisition cost to the purchaser of not less than \$97 000;

(e) the trade is to a lender, pledgee, mortgagee or other encumbrancer from the holdings of any person or company or combination of persons or companies described in section 1(f)(iii) for the purpose of giving collateral for a bona fide debt;

(f) the trade is made by an issuer,

(i) in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,

(ii) in a security whether of its own issue or not that is distributed by it to holders of its securities as incidental to a bona fide reorganization, dissolution or winding up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws of the jurisdiction in which the issuer was incorporated, organized or continued, or

(iii) in securities of its own issue transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

and no commission or other remuneration is paid or given in respect of the distribution except for administrative or professional services or for services performed by a registered dealer;

(g) the trade is made by an issuer in a security of a reporting issuer held by the issuer that is distributed by it to holders of its securities as a dividend in specie;

(h) the trade is made by an issuer,

(i) in a right, transferable or otherwise, granted by the issuer to holders of its securities to purchase additional securities of its own issue and the issue of securities pursuant to the exercise of the right, or

(ii) in securities of a reporting issuer held by it transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

if the issuer has given the Commission written notice stating the date, amount, nature and conditions of the proposed trade, including the approximate net proceeds to be derived by the issuer on the basis of the additional securities being fully taken up and either,

(iii) the Director has not informed the issuer in writing within 10 days from the date of receipt by the Director of the notice that he objects to the proposed trade, or

(iv) the issuer has delivered to the Director information re-

lating to the securities that is satisfactory to and accepted by the Director;

(i) the trade is made in a security of a company that is exchanged by or for the account of the company with another company or the holders of the securities of that other company in connection with

(i) a statutory amalgamation or arrangement, or

(ii) a statutory procedure under which one company takes title to the assets of the other company which in turn loses its existence by operation of law or under which the existing companies merge into a new company;

(j) the trade is made in a security of an issuer that is exchanged by or for the account of the issuer with the security holders of another issuer in connection with a take-over bid as defined in Part 13;

(j.1) the trade is made in a security of an issuer that is exchanged by or for the account of the issuer with its security holders in connection with an issuer bid as defined in Part 13;

(k) the trade is made in a security of an issuer in connection with a take-over bid exempted from the requirements of Part 13 by section 132(1) or by the Commission under section 145;

(k.1) the trade is made in a security of an issuer in connection with an issuer bid exempted from the requirements of Part 13 by section 133(1) or by the Commission under section 145;

(l) the trade is made by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, if the fair value of the assets purchased is not less than \$100 000;

(m) the trade is made by an issuer in a security of its own issue in consideration of mining claims if the vendor enters into an escrow or pooling agreement that the Director considers necessary;

(n) the trade is made by an issuer in securities of its own issue with

(i) its employees,

(ii) employees of an affiliate, or

(iii) a trustee acting on behalf of the employees of the issuer or of an affiliate,

if the employees are not directly or indirectly required by the employer to purchase the securities;

(o) the trade is made by an issuer in securities of its own issue if

(i) the trade is reasonably necessary to facilitate the incorporation or organization of the issuer, and

(ii) the securities are traded for

(A) a nominal consideration to not more than 15 incorporators,

(B) for a greater consideration or to a larger number of incorporators than prescribed under paragraph (A), if the statute under which the issuer is incorporated or organized requires the trade to be for that greater consideration or to that larger number of incorporators;

(p) a trade made by an issuer with a view to the sale of securities of its own issue if

(i) solicitations in all jurisdictions including Alberta are made to not more than 50 prospective purchasers resulting in sales to not more than 25 purchasers,

(ii) each purchaser purchases as principal,

(iii) all of the purchases are completed within a period of 6 months after the first purchase, but subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that 6-month period,

(iv) each purchaser has access to information on the basis of which a prudent investor may make a reasoned judgment and is an investor who is, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company that

(A) is not a promoter of the issuer whose securities are being offered, and

(B) is a registered adviser or a registered dealer,

able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer,

(v) the offer and sale of the securities are not accompanied by an advertisement,

(vi) no selling or promotional expenses have been paid or incurred in connection with the offer or sale of the securities, except for professional services or for services performed by a registered dealer, and

- (vii) the distribution is the first distribution by the issuer under this exemption;
- (q) a trade made by an issuer with a view to the sale of securities of its own issue if
- (i) solicitations in all jurisdictions including Alberta are made to not more than 50 prospective purchasers resulting in sales to not more than 25 purchasers,
  - (ii) each purchaser purchases as principal,
  - (iii) all of the purchases are completed within a period of 6 months after the first purchase, but subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that 6-month period,
  - (iv) each purchaser has access to information on the basis of which a prudent investor may make a reasoned judgment and is an investor who is, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company that
    - (A) is not a promoter of the issuer whose securities are being offered, and
    - (B) is a registered adviser or a registered dealer,able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer,
  - (v) the offer and sale of the securities are not accompanied by an advertisement,
  - (vi) no selling or promotional expenses have been paid or incurred in connection with the offer or sale of the securities, except for professional services or for services performed by a registered dealer,
  - (vii) a period of 12 months has lapsed since the completion of its distribution under the exemption contained in clause (p), and
  - (viii) in the distribution under this exemption in any 12 month period, the amount paid for the securities of that issuer by all the purchasers under this exemption does not exceed in total the amount of \$3 000 000;
- (r) a trade made by a promoter of an issuer or by an issuer in a government incentive security of the issuer's own issue if

(i) solicitations in all jurisdictions including Alberta are made to not more than 75 prospective purchasers resulting in sales to not more than 50 purchasers,

(ii) each purchaser purchases as principal,

(iii) all of the purchases are completed within a period of 6 months after the first purchase, but subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that 6-month period,

(iv) each purchaser has access to information on the basis of which a prudent investor may make a reasoned judgment and is an investor who is, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company that

(A) is not a promoter of the issuer whose securities are being offered, and

(B) is a registered adviser or a registered dealer,

able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer,

(v) the offer and sale of the securities are not accompanied by an advertisement,

(vi) no selling or promotional expenses have been paid or incurred in connection with the offer or sale of the securities, except for professional services or for services performed by a registered dealer, and

(vii) the distribution is the first distribution of the government incentive security by that promoter or issuer;

(s) a trade made by a promoter of an issuer or by an issuer in a government incentive security of the issuer's own issue if

(i) solicitations in all jurisdictions including Alberta are made to not more than 75 prospective purchasers resulting in sales to not more than 50 purchasers,

(ii) each purchaser purchases as principal,

(iii) all of the purchases are completed within a period of 6 months after the first purchase, but subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that 6-month period,

(iv) each purchaser has access to information on the basis of which a prudent investor may make a reasoned judgment and is an investor who is, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company that

(A) is not a promoter of the issuer whose securities are being offered, and

(B) is a registered adviser or a registered dealer,

able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer,

(v) the offer and sale of the securities are not accompanied by an advertisement,

(vi) no selling or promotional expenses have been paid or incurred in connection with the offer or sale of the securities, except for professional services or for services performed by a registered dealer,

(vii) a period of 12 months has lapsed since the completion of its first distribution under the exemption contained in clause (r), and

(viii) in the distribution under this exemption in any 12 month period, the amount paid for the securities of that issuer by all the purchasers under this exemption does not exceed in total the amount of \$3 000 000;

(t) the trade is made in securities of an issuer previously disposed of pursuant to the exemption contained in clause (p) if each of the parties to the trade is one of the not more than 25 purchasers referred to in clause (p);

(t.1) the trade is made in securities of an issuer previously disposed of pursuant to an exemption contained in clause (q) if each of the parties to the trade is one of the not more than 25 purchasers referred to in clause (q);

(t.2) the trade is made in securities of an issuer previously disposed of pursuant to the exemption contained in clause (r) if each of the parties to the trade is one of the not more than 50 purchasers referred to in clause (r);

(t.3) the trade is made in securities of an issuer previously disposed of pursuant to an exemption contained in clause (s) if each of the parties to the trade is one of the not more than 50 purchasers referred to in clause (s);

(u) the trade is made from one registered dealer to another registered dealer when the registered dealer making the purchase is acting as principal;

(u.1) the trade is made between a person or company and an underwriter acting as purchaser or between or among underwriters;

(v) the trade is made in the security of an issuer where each of the parties to the trade is a person or company that is, as regards the issuer, a person or company referred to in section 1(f)(iii);

(w) the trade is made by an issuer in the securities of its own issue with a promoter of the issuer or by a promoter of an issuer in securities of the issuer with another promoter of the issuer, referred to in clause (p);

(x) the trade is made by an issuer of voting securities pursuant to a plan

(i) made available by that issuer to every holder

(A) of a class of publicly traded securities of the issuer, and

(B) whose last address is shown on the books of the issuer as being in Alberta,

and

(ii) that permits the holder to direct by express election annually that dividends or interest paid in respect of securities of the issuer's own issue be applied to the purchase from the issuer of

(A) publicly traded voting securities of the issuer's own issue, or

(B) other securities of the issuer not referred to in paragraph (A) that are redeemable at the option of the holder;

(y) the trade is made by an offeree described in section 131(1)(f) in securities that are being disposed of to a person or company making a cash or share exchange take-over bid, issuer bid or exempt offer;

(z) the trade is made by an issuer with

(i) a senior officer or director of the issuer or a spouse, parent, brother, sister or child of the senior officer or director of the issuer, or

(ii) unless otherwise ordered by the Director, close friends or business associates of a promoter of the issuer if

(A) the trade is with not more than 15 people, and

(B) there is not an invitation to the public to subscribe for the securities.

(2) For the purpose of subsection (1), a trust company is deemed to be acting as principal when it trades as trustee or as agent for accounts fully managed by it.

Filing report of the trade

**108(1)** Subject to the regulations, when a trade has been made under section 107(1)(a), (b), (c), (d), (l), (p), (q), (r), (s), (t), (t.1), (t.2), (t.3), (u) or (z), the vendor shall within 10 days from the date the trade is made file a report of the trade prepared and executed in accordance with the regulations.

(2) Notwithstanding subsection (1), a report is not required if, by a trade under section 107(1)(a), a financial institution acquires from a customer an evidence of indebtedness.

First trades are distributions

**109(1)** Subject to subsection (2), the first trade in securities previously acquired under an exemption contained in section 107(1)(a), (b), (c), (d), (l), (m), (p), (q), (r), (s), (t), (t.1), (t.2), (t.3), (u) or (z), other than a further trade exempted by section 107(1), is a distribution.

(2) Subject to subsection (3), a distribution under subsection (1) shall be considered not to be a distribution, if

- (a) the issuer of the security
  - (i) is a reporting issuer, and
  - (ii) is not in default of any requirement of this Act or the regulations,
- (b) the vendor files a report of the trade within 10 days from the beginning of the distribution,
- (c) the report referred to in clause (b) is prepared and executed in accordance with the regulations,
- (d) no effort is made to prepare the market or to create a demand for the securities making up the distribution, and
- (e) no extraordinary commission or consideration is paid to a person or company other than the vendor of the securities in respect of the trade.

(3) Subsection (2) only applies to the following:

- (a) securities that
  - (i) are listed and posted for trading on a stock exchange recognized for this purpose by the Commission,

(ii) comply with the requirements of either section 94(1)(k) or (l) of *The Alberta Insurance Act*, and

(iii) have been held for at least 6 months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is the later;

(b) securities that

(i) are bonds, debentures or other evidences of indebtedness issued or guaranteed by an issuer, or

(ii) are preferred shares of an issuer and comply with the requirements of section 94(1)(j) or (k) of *The Alberta Insurance Act*

and have been held for at least 6 months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is the later;

(c) securities that

(i) are listed and posted for trading on a stock exchange recognized for this purpose by the Commission, or

(ii) are bonds, debentures or other evidences of indebtedness issued or guaranteed by the reporting issuer whose securities are so listed,

and have been held for at least one year from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is later;

(d) securities that have been held for at least 18 months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is later.

First trades are  
distributions

**110(1)** Subject to subsection (2), the following, other than a further trade exempted by section 107(1), is a distribution:

(a) the first trade in securities previously acquired under an exemption contained in section 107(1)(f), (i), (j), (k) or (n), and

(b) the first trade in previously issued securities of a company that has ceased to be a private company.

(2) Notwithstanding subsection (1), if

(a) the issuer of the securities

(i) is a reporting issuer and has been a reporting issuer for at least 12 months, or

(ii) in the case of securities acquired under section 107(1)(i),

one of the amalgamating or merged corporations or one of the continuing corporations, as the case may be, has been a reporting issuer for at least 12 months,

and the issuer is not in default of any requirement of this Act or the regulations,

(b) disclosure to the Commission has been made of its exempt trade or, in the case of a company that has ceased to be a private company, the issuer has filed with the Commission the report with respect to its outstanding securities that is required by the regulations, and

(c) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or consideration is paid to a person or company other than the vendor of the securities in respect of the trade,

then the first trade is a distribution only if it is a distribution as defined in section 1(f)(iii).

First trades are distribution

**111** The first trade in securities previously purchased under an exemption contained in section 107(1)(o) or (u.1), other than a further trade exempted by section 107(1), is a distribution.

Exemptions from prospectus requirements

**112(1)** Sections 81 and 97 do not apply to a distribution,

(a) within the meaning of section 1(f)(iii), or

(b) by a lender, pledgee, mortgagee or other encumbrancer for the purpose of liquidating a bona fide debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt in accordance with section 107(1)(e)

if no effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or consideration is paid to a person or company other than the vendor of the securities in respect of the trade and

(c) the distribution is exempted by section 107(1), or

(d) the issuer of the security is a reporting issuer, has been a reporting issuer for at least 12 months and is not in default of any requirement of this Act or the regulations and the seller, unless exempted by the regulations,

(i) within 14 days prior to the first trade made to carry out the distribution, files with the Commission and any stock exchange recognized by the Commission for this purpose on which the securities are listed a notice and declaration set out in subsection (2), and

(ii) files the prescribed form required under Part 14 within 3 days after the completion of any trade.

(2) For the purpose of subsection (1)(d)(i) the seller shall file

(a) a notice of intention to sell in the form prescribed by the regulations disclosing particulars of the control position known to him, the number of securities to be sold and the method of distribution, and

(b) a declaration

(i) signed by the seller as at a date not more than 24 hours prior to its filing,

(ii) prepared and executed in accordance with the regulations, and

(iii) certified as follows:

*“The seller for whose account the securities are to be sold to which this certificate relates hereby represents that he has no knowledge of any material change which has occurred in the affairs of the issuer of the securities which has not been generally disclosed and reported to the Commission, nor has he any knowledge of any other material adverse information in regard to the current and prospective operations of the issuer which have not been generally disclosed”.*

(3) A notice required to be filed under subsection (2)(a) and a declaration required to be filed under subsection (2)(b) shall be renewed and filed at the end of 60 days after the original date of filing and thereafter at the end of each 28 day period so long as

(a) any of the securities specified under the original notice have not been sold, or

(b) until notice has been filed that the securities so specified or any part of them are no longer for sale.

Reporting issuer -  
default

**113(1)** Subject to subsection (3), for the purpose of determining whether an issuer is a reporting issuer and, if so, whether the reporting issuer is not in default of any requirement of this Act or the regulations, the seller is entitled

(a) to apply to the Commission for a certificate issued for this purpose in accordance with section 189, and

(b) subject to subsection (3), to rely on the certificate so issued.

(2) Subject to subsection (3), for the purpose of determining whether a reporting issuer is not in default of any requirement of this Act or the regulations, the seller is entitled to rely on a list of defaulting reporting issuers that is

- (a) maintained by the Commission for public inspection, and
- (b) open to inspection at the office of the Commission during its normal business hours.

(3) No person or company that knows or ought reasonably to know that a reporting issuer is in default may rely on the certificate referred to in subsection (1) or on the list referred to in subsection (2).

Reporting issuer -  
time

**114** For the purposes of sections 107 to 113, an issuer shall be deemed to have been a reporting issuer as of the date that it met the condition of the appropriate subclause of section 1(t.1) if,

- (a) in each case it is currently in compliance with the requirements of this Act, and
- (b) in the case of qualification under section 1(t.1)(iii), it is currently listed and posted for trading on a stock exchange in Alberta recognized by the Commission.

Exemptions of  
securities from  
prospectus  
requirements

**115(1)** Sections 81 and 97 do not apply to a distribution of securities

- (a) referred to in section 66, except for those referred to in clauses (l) and (n) of that section,
- (b) that are listed and posted for trading on any stock exchange recognized for the purpose of this section by the Commission if
  - (i) the securities are distributed through the facilities of the stock exchange pursuant to the rules of the stock exchange and the requirements of the Commission, and
  - (ii) a statement of material facts, that complies as to form and content with the regulations, is filed with and is accepted by the stock exchange and the Commission,
- (c) that are options to sell or purchase securities known as puts and calls or any combination of them that provide that the holder of them may sell to or purchase from the writer of the option a specified amount of securities at a specific price, on or prior to a specified date or the occurrence of a specified event, if
  - (i) the option has been written by a member of a stock exchange recognized by the Commission for that purpose or the performance under the option is guaranteed by a member of an exchange recognized by the Commission for that purpose,
  - (ii) the securities that are the subject of the option are listed and posted for trading on a stock exchange recognized by the Commission for that purpose, and

(iii) the option is in the form prescribed by the regulations,

or

(d) that are exempted by the regulations.

(2) Sections 105, 106 and 168 apply to a distribution under subsection (1)(b),

(a) as if sections 81 and 97 were applicable to the distribution, and

(b) the statement of material facts referred to in subsection (1)(b) is deemed to be a prospectus for the purposes of sections 105, 106 and 168.

Discretionary  
exemptions

**116(1)** The Commission may, if it is satisfied that to do so would not be prejudicial to the public interest, make an order exempting a trade from section 54 or 81.

(2) The Commission may, if it is satisfied that to do so would not be prejudicial to the public interest, make an order declaring whether a distribution has been concluded or is still in progress.

(3) An order under subsection (1) or (2) may be made by the Commission on its own motion or on an application of a person or company directly affected by the trade in respect of which the application is being made.

(4) An order made under subsection (1) may, at the direction of the Commission, come into force on a date prior to the date on which the order is made.

(5) A decision of the Commission under this section is final and there is no appeal from it.

Reporting issuer by  
declaration

**117(1)** On

(a) the application of a reporting issuer, or

(b) the motion of the Commission,

the Commission may, if in the opinion of the Commission to do so would not be prejudicial to the public interest, make an order declaring that a person or company is a reporting issuer for the purposes of this Act and the regulations.

(2) An order will not be made under subsection (1) without giving the person or company in respect of which the order is to be made, an opportunity to have a hearing before the Commission.

**PART 11**  
**CONTINUOUS DISCLOSURE**

Disclosure of  
material changes

**118**(1) Subject to subsection (3), if a material change occurs in the affairs of a reporting issuer, the reporting issuer shall

(a) file with the Commission a statement setting forth the material change,

(b) file with any stock exchange on which the securities are listed and posted for trading, a statement setting forth the material change,

(c) publish in a daily newspaper having general circulation in the City of Calgary a notice that a material change has occurred, and

(d) publish in a daily newspaper having general circulation in the City of Edmonton a notice that a material change has occurred.

(2) Subject to subsection (3), the reporting issuer shall file a report of a material change in accordance with the regulations within 10 days from the day on which the change occurs.

(3) If in the opinion of the reporting issuer, the timing of the disclosure required by subsections (1) and (2) would be unduly detrimental to its affairs, the reporting issuer may keep the material change confidential until the timing of its release or publication is no longer unduly detrimental to its affairs.

(4) Notwithstanding subsection (3) the reporting issuer shall file, issue and publish the material change under subsection (1) not later than 180 days from the day that the material change became known to the reporting issuer.

Undisclosed fact or  
change

**119**(1) No person or company in a special relationship with a reporting issuer shall

(a) purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change in the affairs of the reporting issuer that he or it knew or ought reasonably to have known had not been generally disclosed, or

(b) inform, other than in the necessary course of business, another person or company about a material fact or material change that he or it knows or ought reasonably to have known is a material fact or material change before the material fact or material change has been generally disclosed.

(2) No purchaser or vendor shall be found to have contravened subsection (1)(a) if the purchaser or vendor proves that he did not

know of the material fact or material change at the time of the purchase or sale of the securities.

(3) It is not a contravention of this section to provide information to the Commission.

(4) Notwithstanding subsection (1), a person or company in a special relationship with a reporting issuer may trade in a security referred to in subsection (1),

(a) in the case of a listed security, 24 hours after the time that the information has been disclosed, or

(b) in the case of a security traded over the counter, 7 days after the day that the information has been disclosed.

Interim financial statement

**120**(1) Every reporting issuer that is not a mutual fund shall file an interim financial statement within 60 days from the day on which it is made up,

(a) if the reporting issuer has not completed its first financial year, for periods commencing with the beginning of that year and ending 9, 6 and 3 months respectively before the day on which that year ends, but no interim financial statement is required to be filed for any period that is less than 3 months in length, or

(b) if the reporting issuer has completed a financial year, to the end of each of the 3-month, 6-month and 9-month periods of the current financial year that commenced immediately following the last financial year, including a comparative statement to the end of each of the corresponding periods in the last financial year.

(2) Every mutual fund shall file an interim financial statement within 60 days from the day on which it is made up,

(a) if the mutual fund has not completed its first financial year, for the period commencing with the beginning of that year and ending 6 months before the day on which that year ends but, if the first financial year is less than 6 months in length no interim financial statement is required to be filed, or

(b) if the mutual fund has completed a financial year, for the 6-month period of the current financial year that commenced immediately following the last financial year.

(3) A financial statement filed under this section shall be made up as required by the regulations.

Comparative financial statements

**121**(1) Every reporting issuer shall file annually within 140 days from the end of its last financial year comparative financial statements relating separately to

(a) the period that commenced on the date of incorporation or

organization and ended as of the close of the first financial year or, if the reporting issuer has completed a financial year, the last financial year, as the case may be, and

(b) the period covered by the financial year next preceding the last financial year, if any,

made up and certified as required by the regulations.

(2) Every financial statement referred to in subsection (1) shall be accompanied by a report of the auditor of the reporting issuer prepared in accordance with the regulations.

(3) In this section “auditor”, when used in relation to a company, includes the auditor of the company or an independent accountant acceptable to the Commission.

Delivery of  
financial statements

**122** Every financial statement required to be filed pursuant to section 120 or 121 shall be concurrently sent by the reporting issuer or the mutual fund, as the case may be, to each holder of its securities, other than debt instruments, whose latest address as shown on the books of the reporting issuer or mutual fund is in Alberta.

Exemptions for  
reporting issuers

**123** On the application of a reporting issuer or on the motion of the Commission, the Commission may, if in its opinion to do so would not be prejudicial to the public interest, make an order

(a) permitting the omission from the financial statements required to be filed under this Part of one or more of the following:

(i) comparative financial statements for particular periods of time;

(ii) sales or gross operating revenue if the Commission is satisfied that the disclosure of the information would be unduly detrimental to the interests of the reporting issuer;

(iii) basic earnings per share or fully diluted earnings per share,

or

(b) exempting, in whole or in part, any reporting issuer or class of reporting issuers from a requirement of this Part or the regulations relating to a requirement of this Part, if

(i) the requirement conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer or class of reporting issuers is incorporated, organized or continued,

(ii) the reporting issuer or class of reporting issuers ordinarily distributes financial information to holders of its securities in a different form or at different times from those required by this Part, or

(iii) it is otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing.

Filing of  
information  
circular

**124(1)** If the management of a reporting issuer sends an information circular under section 128(1)(a), the reporting issuer shall promptly file a copy of the information circular certified in accordance with the regulations.

(2) If subsection (1) is not applicable, the reporting issuer shall file annually within 140 days from the end of its last financial year a report prepared and certified in accordance with the regulations.

Small reporting  
issuer

**125** On the application of a reporting issuer that has fewer than 15 security holders whose latest addresses as shown on the books of the reporting issuer are in Alberta, the Commission may by order declare that the reporting issuer is no longer a reporting issuer if it is satisfied that to do so would not be prejudicial to the public interest.

## PART 12

### PROXIES AND PROXY SOLICITATIONS

Definitions

**126** In this Part,

- (a) “information circular” means an information circular prepared in accordance with the regulations;
- (b) “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 security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, or
  - (iv) the sending or delivery of a form of proxy to a security holder under section 127,

but does not include,

- (v) the sending or delivery of a form of proxy to a security holder in response to an unsolicited request made by him or on his behalf, or
- (vi) the performance by any person or company of admin-

istrative or professional services on behalf of a person or company soliciting a proxy.

Mandatory solicitation

**127** If the management of a reporting issuer gives or intends to give to holders of its voting securities notice of a meeting, the management shall, concurrently with or prior to giving the notice to each of the security holders whose latest addresses as shown on the books of the reporting issuer are in Alberta, send to each security holder who is entitled to notice of meeting a form of proxy that complies with the regulations for use at the meeting.

Restrictions on solicitation

**128(1)** Subject to subsection (2), no person or company shall solicit proxies from a holder of its voting securities whose latest address as shown on the books of the reporting issuer is in Alberta unless,

(a) in the case of a solicitation by or on behalf of the management of a reporting issuer, an information circular either as an appendix to or as a separate document accompanying the notice of the meeting, is sent to each security holder of the reporting issuer whose proxy is solicited at his latest address as shown on the books of the reporting issuer, or

(b) in the case of a solicitation other than one referred to in clause (a), the person or company making the solicitation, concurrently with or prior to the solicitation sends an information circular to each security holder 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 reporting issuer, if the total number of security holders whose proxies are solicited is not more than 15 persons or companies,

(b) any solicitation by a person or company made under section 79, or

(c) any solicitation by a person or company in respect of securities of which he is the beneficial owner.

(3) For the purpose of this section, 2 or more persons or companies who are joint registered owners of one or more securities shall be counted as being one security holder.

Voting - proxies

**129(1)** Notwithstanding that the form of proxy of those proxies present at a meeting specify how a person or company whose proxy is solicited may vote the securities registered in the name of that person or company, the chairman of the meeting may, subject to subsection (2), refuse to conduct a vote by way of ballot on a matter or group of matters.

(2) At a meeting the vote shall be conducted by ballot if

- (a) a poll is demanded by any security holder present in person or represented by proxy at the meeting, or
- (b) the proxies
  - (i) require that the securities represented by them be voted against what would otherwise be the decision of the meeting in relation to those matters or group of matters being decided, and
  - (ii) represent more than 5% of all the voting rights attached to all the securities entitled to be voted and represented at the meeting.

Security holders  
meeting

**130** A reporting issuer shall hold a meeting of its security holders in each calendar year and the meeting shall take place within 15 months of its last meeting.

### PART 13 TAKE-OVER BIDS AND ISSUER BIDS

Definitions

**131(1)** In this Part,

- (a) “class of securities” means the particular class or series of securities for which a take-over bid or an issuer bid is made;
- (b) “directors’ circular” means a directors’ circular prepared in accordance with the regulations;
- (c) “issuer bid” means
  - (i) an offer to purchase made by an issuer to a security holder, whose latest address as shown on the books of the issuer is in Alberta, to purchase, redeem or otherwise acquire any or all of a class of the securities of the issuer, other than debt securities that are not convertible into voting securities, or
  - (ii) the acceptance by an issuer of an offer to sell securities of the issuer, other than debt securities that are not convertible into voting securities;
- (d) “offer to purchase” means an offer to purchase, the acceptance by a person or company of an offer to sell or a combination of an offer to purchase and an acceptance of an offer to sell;
- (e) “offeree” means a person or company to whom a take-over bid or an issuer bid is made;

(f) “offeree company” means a company or other issuer whose securities are the subject of a take-over bid;

(g) “offeror” means

(i) a person or company, other than an agent, who makes a take-over bid or an issuer bid, or

(ii) an issuer who accepts from a security holder an offer to sell securities of the issuer other than debt securities that are not convertible into voting securities;

(h) “offeror’s presently-owned securities” means voting securities or rights to voting securities of an offeree company beneficially owned, directly or indirectly, on the date of a take-over bid by the offeror or associates of the offeror and if 2 or more persons or companies make offers

(i) jointly or in concert, or

(ii) intending to exercise jointly or in concert any voting rights attaching to the securities acquired through the offers,

includes the voting securities and rights to voting securities owned by all of the persons or companies and their associates;

(i) “right to a voting security” means

(i) a security currently convertible into another security that is a voting security,

(ii) a security carrying a warrant or right to acquire another security that is a voting security, or

(iii) a currently exercisable option, warrant or right to acquire another security that is a voting security or a security referred to in subclause (i) or (ii);

(j) “take-over bid” means an offer to purchase, directly or indirectly, voting securities of a company or other issuer or a combination or rights to voting securities and voting securities of the company or other issuer made to a security holder whose latest address on the books of the offeree company or other issuer is in Alberta,

(i) if

(A) the voting securities that are the subject of the offer to purchase, and

(B) the voting securities that would be obtained on exercise of the offeror’s presently owned rights to voting securities,

will in the aggregate exceed 20% of the voting securities of the company or other issuer that would be outstanding on exercise of the offeror's presently owned rights to voting securities, or

(ii) if

(A) the voting securities that would be obtained on exercise of the rights to voting securities that are the subject of the offer to purchase, or

(B) the combination of,

(I) voting securities that would be obtained on exercise of the rights to voting securities that are the subject of the offer to purchase, and

(II) the voting securities that are the subject of the offer to purchase,

together with the combination of,

(C) the offeror's presently owned securities, if any, and

(D) the voting securities that would be obtained on exercise of the offeror's presently owned rights to voting securities, if any,

will in the aggregate exceed 20% of the voting securities of the company or other issuer that would be outstanding on the exercise of,

(E) the rights to voting securities that are the subject of the offer to purchase, and

(F) the offeror's presently owned rights to voting securities.

(2) For the purposes of subsection (1)(g), if 2 or more persons or companies make offers

(a) jointly or in concert, or

(b) intending to exercise jointly or in concert any voting rights attaching to the securities acquired through the offers,

then each of them shall be deemed to be an offeror if the offer made by any of them is a take-over bid.

(3) For the purposes of subsection (1)(j), if 2 or more persons or companies make offers

(a) jointly or in concert, or

(b) intending to exercise jointly or in concert any voting rights attaching to the securities acquired through the offers,

the securities owned by each of them shall be included in the calculation of the percentage of the voting securities of the company or other issuer that would be outstanding and owned by each of them.

Exemptions - take  
overbids

**132(1)** A take-over bid is exempted from the requirements of this Part, if

(a) it is made through the facilities of a stock exchange

(i) recognized by the Commission for the purpose of this section, and

(ii) according to the by-laws, regulations or policies of the stock exchange,

(b) it is an offer to purchase securities in a private company,

(c) it is an offer to purchase securities by way of agreements with fewer than 15 security holders and not made pursuant to an offer to security holders generally,

(d) subject to subsection (4), it involves the acquisition of not more than 5% of the voting securities of the offeree company, or

(e) it is an offer to acquire voting securities of an issuer made by an offeror and accepted by an offeree each of whom is, as regards the issuer, a person or company referred to in section 1(f)(iii).

(2) For the purpose of subsection (1)(c), if an offeror enters into an agreement to purchase securities from a person or company and the offeror knows or ought to know after reasonable inquiry that

(a) one or more other persons or companies on whose behalf that person or company is acting as trustee, executor, administrator or other legal representative have a direct beneficial interest in those securities, then each of those others shall be included in the determination of the number of security holders with whom there have been agreements, or

(b) the person or company acquired the securities during the 2 years preceding the date of the agreement with the intent that they should be sold under the agreement, then each person or company from whom those securities were acquired shall be included in the determination of the number of security holders with whom there have been agreements.

(3) Notwithstanding subsection (2)(a), if

- (a) an inter vivos trust has been established by a single settlor, or
- (b) an estate has not vested in all persons beneficially entitled to it,

the trust or estate shall be considered to be a single security holder in the determination of the number of security holders with whom there have been agreements.

(4) The exemption given under subsection (1)(d) does not apply if the aggregate number of voting securities acquired by the offeror, his associates or affiliates within a period of any 12 consecutive months in reliance on the exemptions provided by subsection (1), when totalled with acquisitions made under subsection (1)(a), exceeds 5% of the outstanding voting securities of the offeree company at the beginning of the period.

Exemptions -  
issuer bids

**133(1)** An issuer bid is exempted from the requirements of this Part, if

- (a) the securities
  - (i) are purchased, redeemed or otherwise acquired in accordance with the terms and conditions attaching to them that permit the purchase, redemption or acquisition of the securities by the issuer without the prior agreement of the owners of the securities, or
  - (ii) carry with them or are accompanied by
    - (A) an obligation of the issuer to redeem or repurchase the securities, or
    - (B) a right of the owner of the securities to require the issuer to redeem or repurchase the securities,
- (b) the securities are acquired to meet sinking fund requirements,
- (c) the securities are acquired from an employee of the issuer or an employee of an affiliate,
- (d) the purchases, redemptions or other acquisitions are required by the instrument creating or governing the class of securities or by the statute under which the issuer was incorporated or organized,
- (e) the issuer bid is made through the facilities of a stock exchange
  - (i) recognized by the Commission for the purposes of this Part, and

(ii) according to the by-laws, regulations or policies of the stock exchange,

(f) the issuer, following the publication of a notice of intention in the form and in the manner prescribed by the regulations, purchases securities of the issuer, or

(g) the issuer bid is made by a private company.

(2) The exemption provided under subsection (1)(f) does not apply if

(a) the aggregate number of securities, or

(b) in the case of convertible debt securities, the aggregate principal amount of securities,

purchased by the issuer in reliance on the exemption provided by subsection (1)(f) during any period of 12 consecutive months exceeds 5% of the securities of the class outstanding that are sought at the commencement of that period.

Requirements

**134(1)** Except as provided by this Part, the following provisions apply to every take-over bid and, except for clauses (k), (l)(ii)(B) and (n), to every issuer bid:

(a) the bid shall be sent to all holders of

(i) the class of securities sought, and

(ii) securities convertible into or carrying the right to purchase securities of the class sought,

whose latest addresses as shown on the records of the offeree company or issuer are in Alberta;

(b) the period of time during which securities may be deposited pursuant to a bid shall not be less than 21 days from the day on which the bid was made;

(c) any securities deposited pursuant to a bid shall not be taken up and paid for by the offeror until the expiration of 10 days from the day on which the bid was made;

(d) any securities deposited pursuant to a bid may be withdrawn by an offeree at any time up until the expiration of

(i) 10 days from the day on which the bid was made, or

(ii) if the terms of the bid are varied before the expiration of the bid, 10 days from the day of receipt by offeree of the varied terms of the bid;

(e) notice of withdrawal of any securities pursuant to clause (d)

- (i) shall be made by the offeree or his agent,
  - (ii) shall be in writing or by electronic means that produces a printed copy, and
  - (iii) must be actually received by the depositary;
- (f) if a bid made for the class of securities sought is for less than all of the class of securities that are owned by offerees, securities deposited pursuant to it shall not be taken up and paid for by an offeror until the expiration of 21 days from the day on which the bid was made;
- (g) if a bid made for the class of securities sought is for less than all of the class of securities that are owned by offerees, the period of time within which securities may be deposited pursuant to the bid or any extension of it, shall not exceed 35 days from the day on which the bid was made;
- (h) if a bid made for the class of securities sought is for less than all of the class of securities that are owned by offerees, securities deposited pursuant to the bid shall be taken up and paid for, if all the terms and conditions of it not waived by the offeror have been complied with, within 14 days from the last day within which securities may be deposited under the bid;
- (i) if
    - (i) a bid made for the class of securities sought is for less than all of the class of securities that are owned by offerees, and
    - (ii) a greater number of securities are deposited pursuant to the bid than the offeror is bound or willing to take up and pay for,
- the securities taken up by the offeror shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each offeree;
- (j) if the offeror making a bid intends to purchase in the market securities that are the subject of the bid, his intention shall be set out in the circular relating to the bid and, if the bid made for the class of securities sought is for less than all of the class of securities that are owned by the offerees,
- (i) the offeror shall not reduce the number of securities he is bound or willing to take up under clauses (h) and (i) by the number of securities purchased in the market, and
  - (ii) the securities purchased in the market shall be counted in the determination of whether a condition as to the minimum

number of securities the offeror is bound or willing to take up has been fulfilled;

(k) in the case of a take-over bid, if the laws applicable to the offeree company provide for a right of appraisal or acquisition, the offeror shall advise the offeree

(i) of his rights of appraisal, and

(ii) whether the offeror intends exercising any right of acquisition he may have;

(l) the offeror shall not attach any conditions to the offer except the right not to take up and pay for the securities deposited if

(i) the offerees fail to tender the minimum number of securities the offeror is bound and willing to take up,

(ii) any undisclosed action or omission prior to the date of the offer or any action subsequent to that date,

(A) by a person or company other than the offeror, including a governmental or regulatory authority, or

(B) in the case of a take-over bid, by the offeree company or its directors or senior officers,

results in a material change in the affairs of the offeree company,

(iii) the required approval of a governmental or regulatory authority is not obtained prior to the expiration of the offer, or

(iv) there exists, at the time for so doing, any prohibition at law against taking up or paying for the securities deposited;

(m) if the bid made for the securities sought is for all of the class of securities that are owned by offerees, the offeror shall, at the expiration of 35 days from the day on which the offer was made, take up and pay for the securities tendered at that time or abandon his offer;

(n) in the case of a take-over bid, where the bid is subject to the approval of a governmental or regulatory authority, the time within which the offeror is bound to take up and make payment for the securities under clauses (h) and (m) may be extended by the offeror for an additional period not exceeding 90 days if the extension was set forth at the time the offer was made.

(2) The offeror shall not sell any of the class of the securities that are the subject of the take-over bid during the period of the take-over bid.

(3) If, during the course of a take-over bid or an issuer bid, the offeror pays or agrees to pay a price for securities higher than the consideration offered through the take-over bid or issuer bid, the take-over bid or issuer bid, as the case may be, shall be deemed to be varied by increasing the consideration to the higher price for all securities that have been deposited in respect of the bid.

(4) If

- (a) pursuant to a take-over bid securities are deposited, and
- (b) before the expiration of the take-over bid referred to in clause (a) a competing take over bid is made,

a security referred to in clause (a) may be withdrawn within 10 days from the day the competing take-over bid was made.

(5) If a security is to be withdrawn under subsection (4), a notice of withdrawal of the security by the offeree or his agent

- (a) shall be made in writing or by electronic means that produces a printed copy, and
- (b) must be actually received by the depositary,

within 10 days from the day the competing take-over bid was made.

(6) Subsection (4) does not apply to a security that has been taken down and paid for by the offeror before a notice of withdrawal is received by the depositary under subsection (5).

Notice of variation

**135**(1) If a significant change occurs in the information contained in a take-over bid circular or issuer bid circular while the offer is still outstanding, every person or company

- (a) whose securities have not been taken up and paid for, and
- (b) who has been sent the take-over bid circular or issuer bid circular,

shall be sent a notice of variation that sets out the significant change and the rights of an offeree under section 134(1)(d).

(2) Unless a significant change is solely an increase in price, the date of the take-over bid or issuer bid, for the purposes of section 134, is deemed to be the date of the sending of the notice of variation.

(3) For the purposes of subsection (1), a change that is not within the control of the offeror or of an affiliate of the offeror shall not be considered to be a significant change unless it is a material change affecting the affairs of the issuer of the securities being offered in exchange for securities of the offeree company.

(4) While an offer remains outstanding, the exercise of a right con-

tained in a take-over bid or an issuer bid to modify the terms of the offer or to waive a condition of the offer shall be considered to be a significant change.

- Consideration **136** If a take-over bid or an issuer bid is made,
- (a) all holders of the same class of securities shall be offered the same consideration, and
  - (b) no collateral agreement shall be entered into with a holder of the securities that has the effect, directly or indirectly, of offering that holder a consideration of greater value for his securities than that offered to the other holders of the same class of securities.
- Sending of bid **137** A take-over bid, a varied take-over bid, an issuer bid or a varied issuer bid
- (a) shall be sent to each offeree, and
  - (b) is deemed to have been dated as of the date on which it was sent.
- Consideration in cash **138** If a take-over bid or an issuer bid provides that the consideration for the securities deposited pursuant to it 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 the cash payment for all securities owned by offerees that the offeror has offered to purchase pursuant to the take-over bid or issuer bid.
- Take-over bid circular **139**(1) A take-over bid circular shall form part of a take-over bid.
- (2) Every take-over bid circular shall be in the form and shall contain the information prescribed by this Part and the regulations.
  - (3) The identity of the offeror shall be disclosed in a take-over bid circular.
  - (4) If a take-over bid provides that the consideration for the securities of the offeree company is to be, in whole or in part, securities of an issuer, the take-over bid circular shall contain the additional information prescribed by the regulations.
- Issuer bid circular **140**(1) An issuer bid circular shall form part of an issuer bid.
- (2) Every issuer bid circular shall be in the form and shall contain the information prescribed by this Part and the regulations.
  - (3) If an issuer bid provides that the consideration for the securities is to be, in whole or in part, other securities of the issuer, the issuer bid circular shall contain the additional information prescribed by the regulations.
- Other circulars **141**(1) The board of directors of an offeree company shall send a

directors' circular prepared in accordance with the regulations to each offeree not later than 10 days from the day of the take over bid.

(2) The board of directors may include in a directors' circular a recommendation to accept or reject the take-over bid.

(3) If a board of directors is considering recommending acceptance or rejection of a take-over bid, it may advise the offerees of that fact and advise them not to tender their securities until further communication is received from the directors.

(4) An individual director or officer may recommend to the offerees, acceptance or rejection of the take-over bid made to the offerees if the director or officer sends to each offeree with his communication a circular prepared in accordance with the regulations.

(5) If a significant change has occurred in the information contained in a circular that has been sent to offerees under this section, the board of directors of the offeree or the individual director or officer, as the case may be, shall forthwith send to each offeree an amendment to the circular disclosing the nature and substance of the change.

Approval of take-over bid circular

**142(1)** If a take-over bid is made by or on behalf of an issuer, the contents of the take-over bid circular and any notice of a significant change shall be approved by and the delivery of it authorized by the directors of the issuer.

(2) If a take-over bid is made by or on behalf of an issuer, the take-over bid circular and any notice of a significant change shall contain a statement that the contents of it have been approved by and the delivery of it authorized by the directors of the issuer.

(3) The contents of a directors' circular and any amendments to a directors' circular shall be approved by and the delivery of them authorized by the directors of the offeree company.

Approval of issuer bid circular

**143** The issuer bid circular and any notice of a significant change shall be approved by and the delivery of it authorized by the directors of the issuer.

Communication

**144** If a take-over bid has been issued there shall not be any communication in respect of the bid by

- (a) the offeror or directors of the offeror, or
- (b) the offeree company or the directors or officers of the offeree company,

except for those communications

- (c) that are authorized by this Part, or
- (d) that call attention to the fact that a bid, circular or other

document has been issued by an offeror or sent to an offeree under this Part.

Discretionary  
exemptions

**145** On an application by an interested person or company, the Commission may by order, exempt any person or company from any requirements of this Part if in the opinion of the Commission it would not be prejudicial to the public interest to do so.

## PART 14

### INSIDER TRADING AND SELF-DEALING

Interpretation

**146(1)** In this Part,

(a) “mutual fund” means, except in section 152, a mutual fund that is a reporting issuer;

(b) “related mutual funds” includes more than one mutual fund under common management;

(c) “related person or company” means, in relation to a mutual fund, a person in whom or a company in which, the mutual fund, its management company and its distribution company are prohibited by this Part from making any investment.

(2) For the purpose of this Part,

(a) any issuer in which

(i) a mutual fund holds in excess of 10% of the voting securities, or

(ii) a mutual fund and related mutual funds hold in excess of 20% of the voting securities,

is deemed to be a related person or company of that mutual fund or of each of those mutual funds, as the case may be;

(b) the acquisition or disposition of a put, call or other option with respect to a security is deemed to be a change in the beneficial ownership of the security to which the put, call or other option relates;

(c) with respect to reporting under section 147 or 148, ownership is deemed to pass at the time

(i) an offer to sell is accepted by the purchaser or his agent, or

(ii) an offer to buy is accepted by the vendor or his agent.

Reports of insider

**147(1)** A person or company who becomes an insider of a reporting issuer, other than a mutual fund, shall, within 10 days from the day that he or it becomes an insider file a report as of the day on which he became an insider, disclosing any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer as may be required by the regulations.

(2) An insider

(a) who has filed or is required to file a report under this section or any predecessor of it, and

(b) whose direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer changes from that shown or required to be shown in the report or in the latest report filed by him under this section or any predecessor of it,

shall file, within 10 days from the day within which the change takes place a report of the following:

(c) his direct or indirect beneficial ownership of or his control or direction over securities of the reporting issuer;

(d) the transfer, if any, of his securities of the reporting issuer into the name of an agent, nominee or custodian other than giving collateral for a bona fide debt;

(e) the change or changes in the report or latest report, as the case may be, setting forth those details of each transaction that are required by the regulations.

(3) A person or company that becomes an insider of a reporting issuer by reason of section 8 shall file, within 10 days from the day that the issuer became a reporting issuer or an insider of a reporting issuer, the reports required by subsections (1) and (2) of this section for the previous 6 months or such shorter period that he was a director or senior officer of the reporting issuer.

Report of  
beneficial owner

**148(1)** If a person or company becomes the beneficial owner, directly or indirectly, of voting securities of a reporting issuer carrying at least 20% of the voting rights attached to all voting securities for the time being outstanding, through purchases effected through

(a) a take-over bid, or

(b) an issuer bid exempted from the requirements of Part 13 by section 133,

the person or company shall file a report within 3 days from the day that he or it acquired those voting rights.

(2) A person or company who is the beneficial owner, directly or indirectly, of voting securities of a reporting issuer carrying at least 20% of the voting rights attached to all voting securities for the time

being outstanding shall, within 3 days from the day of purchasing further voting securities carrying at least an additional 5% of the voting rights, file a report as of the day on which he or it acquired those additional voting rights and after that each time he or it acquires a further 5% of the voting rights.

(3) Notwithstanding section 147, if the facts required to be reported by this section are identical to those required under section 147, the filing of a separate report under section 147 is not required.

Purchase during a  
take over bid

**149**(1) If a person or company, other than an offeror, purchases for his or its own account, directly or indirectly, voting securities of a reporting issuer carrying at least 5% of the voting rights attached to all voting securities for the time being outstanding, while a take-over bid subject to the requirements of Part 13 is outstanding, that person or company shall file a report, as of the day on which he or it acquired the ownership of the securities, within 3 days from the day that he or it acquired the ownership of those securities.

(2) Notwithstanding sections 147 or 148, if the facts required to be reported by this section are identical to those required under section 147 or 148(2), the filing of a separate report under section 147 or 148(2) is not required.

Report of a legal  
owner

**150** If voting securities are registered in the name of a person or company other than the beneficial owner and the person or company knows that

- (a) the securities are beneficially owned by an insider, and
- (b) the insider has failed to file a report of ownership as required by this Part,

the person or company shall file a report in accordance with the regulations unless the transfer to the person or company was for the purpose of giving collateral for a bona fide debt.

Interpretation

**151** For the purposes of sections 152 to 156,

- (a) “investment” means a purchase of any security or any class of securities of an issuer including loans to persons or companies but does not include advances or loans, whether secured or unsecured, that
  - (i) are made by a mutual fund or its management company or distribution company, and
  - (ii) are ancillary to the main business of the mutual fund or its management company or its distribution company;
- (b) a person or company or a combination of persons or companies has a significant interest in an issuer, if,
  - (i) in the case of a person or company, he or it, as the case

may be, owns beneficially, either directly or indirectly, more than 10%, or

(ii) in the case of a combination of persons or companies, they own beneficially, either individually or together and either directly or indirectly, more than 50%,

of the outstanding shares or units of the issuer;

(c) a person or company or a combination of persons or companies is a substantial security holder of an issuer if that person or company or combination of persons or companies owns beneficially, either individually or together or directly or indirectly, voting securities to which are attached more than 20% of the voting rights attached to all the voting securities of the issuer for the time being outstanding;

(d) if a person or company or combination of persons or companies owns beneficially, directly or indirectly, voting securities of an issuer, that person or company or combination of persons or companies shall be deemed to own beneficially a proportion of voting securities of any other issuer that are owned beneficially, directly or indirectly, by the first mentioned issuer, in a proportion that is equal to the proportion of the voting securities of the first mentioned issuer that are owned beneficially, directly or indirectly by that person or company or combination of persons or companies.

(2) For the purposes of subsection (1)(c), when computing the percentage of voting rights attached to voting securities owned by an underwriter there shall be excluded any voting securities acquired by him as underwriter in a distribution of the securities up until the time of completion or cessation of the distribution by him.

Loans and  
investments of  
mutual funds

**152(1)** No mutual fund shall knowingly make an investment by way of loan to

(a) an officer or director of the mutual fund or its management company or its distribution company or an associate of any of them, or

(b) an individual, if the individual or an associate of the individual is a substantial security holder of the mutual fund or its management company or its distribution company.

(2) No mutual fund shall knowingly make an investment

(a) in a person or company that is a substantial security holder of the mutual fund or its management company or its distribution company,

(b) in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder, or

(c) in an issuer in which

(i) an officer or director of the mutual fund or its management company or its distribution company or an associate of any of them has a significant interest, or

(ii) a person or company who is a substantial security holder of the mutual fund or its management company or in which the mutual fund's distribution company has a significant interest.

(3) No mutual fund or its management company or its distribution company shall knowingly hold an investment that is an investment described in this section at any time after 6 months from the day this section comes into force.

Indirect investment

**153**(1) No mutual fund or its management company or its distribution company shall knowingly enter into any contract or other arrangement that results in its being directly or indirectly liable or contingently liable in respect of any investment by way of loan to or other investment in a person or company

(a) to whom it is by section 152 prohibited from making a loan, or

(b) in which it is prohibited from making an investment.

(2) For the purpose of section 152, a contract or other arrangement referred to in subsection (1) is deemed to be a loan or an investment, as the case may be.

Discretionary exemption

**154** The Commission may, if it is satisfied that a particular investment or class of investment is in fact in the best interests of a mutual fund, order that section 152 or 153 does not apply to that investment or class of investment.

Permitted investment - mutual fund

**155** A mutual fund is not prohibited from making an investment in an issuer by reason only that a person or company or a combination of persons or companies that owns beneficially, directly or indirectly, voting securities of the mutual fund or its management company or its distribution company is by reason of the investment deemed under section 151(d) to own beneficially voting securities of the issuer.

Fees on investment

**156**(1) No mutual fund shall make an investment in consequence of which a related person or company of the mutual fund will receive a fee or other compensation except fees paid pursuant to a contract that is disclosed in a preliminary prospectus or prospectus that is filed by the mutual fund and is accepted by the Director.

(2) The Commission may,

(a) on the application of a mutual fund, and

(b) if it is satisfied that it would not be prejudicial to the public interest to do so,

order that subsection (1) does not apply to the mutual fund.

Standard of care

**157** In addition to any other obligation imposed by law, every person or company responsible for the management of a mutual fund shall, with respect to the mutual fund,

(a) exercise the powers and perform the duties of its office honestly, in good faith and in the best interests of the mutual fund, and

(b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

Filing by management companies

**158(1)** Every management company shall, in respect of each mutual fund to which it provides service or advice, file a report prepared in accordance with the regulations of the following matters within 30 days from the end of the month in which the matter occurred:

(a) every transaction of purchase or sale of securities between the mutual fund and any related person or company;

(b) every loan

(i) received by the mutual fund from, or

(ii) made by the mutual fund to,

any of its related persons or companies;

(c) every purchase or sale effected by the mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or from both;

(d) every transaction, other than an arrangement relating to insider trading in portfolio securities, in which the mutual fund is a joint participant with one or more of its related persons or companies.

(2) The Commission may order that subsection (1) does not apply to any transaction or class of transactions.

Portfolio managers

**159(1)** In this section, “responsible person” means a portfolio manager and includes

(a) every individual who is a partner, director or officer of a portfolio manager,

(b) every affiliate of a portfolio manager, and

(c) every individual who is

- (i) a director, officer or employee of an affiliate of a portfolio manager, or
- (ii) is an employee of the portfolio manager,

if the affiliate or the individual participates in the formulation of, or has access prior to the implementation of, investment decisions made on behalf of or the advice given to the client of the portfolio manager.

(2) A portfolio manager shall not knowingly cause any investment in a portfolio managed by it to be made up of any of the following:

- (a) an investment in any issuer in which a responsible person or an associate of a responsible person is an officer or director unless
  - (i) that specific fact is disclosed to the client, and
  - (ii) the written consent of the client to the investment is obtained before the purchase;
- (b) a purchase or sale of the securities of any issuer from or to the account of a responsible person or any associate of a responsible person;
- (c) a loan made to a responsible person or an associate of a responsible person.

Trades by mutual fund insiders

**160** No person or company who has access to

- (a) information concerning the investment program of a mutual fund, or
- (b) the investment portfolio managed for a client by a portfolio manager,

shall purchase or sell securities of an issuer for his or its account if

- (c) the portfolio securities of
  - (i) the mutual fund, or
  - (ii) the investment portfolio managed for a client by a portfolio manager

include securities of that issuer, and

- (d) the information is used by the person or company for his or its direct benefit or advantage.

**PART 15**  
**ENFORCEMENT**

General offences  
and penalties

**161(1)** Any person or company that does one or more of the following is guilty of an offence:

- (a) makes a misrepresentation in respect of any material submitted or given under this Act or the regulations to the Commission, its representative, the Director or any person appointed to make an investigation or audit under this Act;
- (b) makes a misrepresentation in any document required to be filed or furnished under this Act or the regulations;
- (c) fails to comply with any decision of the Commission or Director made under this Act;
- (d) contravenes those provisions of the regulations that are specified by regulation to be an offence if contravened;
- (e) contravenes the following provisions of this Act:

- section 54(1);
- section 70;
- section 75;
- section 76;
- section 81;
- section 97(2);
- section 108(1);
- section 118(1) or (4);
- section 119;
- section 128(1);
- section 134(1)(a) or (2);
- section 141;
- section 147;
- section 152;
- section 156(1);
- section 159(2);
- section 160.

(2) A person or company that is guilty of an offence

- (a) other than an individual, is liable to a fine of not more than \$75 000, and
- (b) in the case of an individual, is liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both fine and imprisonment.

(3) No person or company is guilty of an offence under subsection (1)(a) or (b) if he or it, as the case may be, did not know, and in the exercise of reasonable diligence could not have known, that a misrepresentation was made.

(4) If a company is guilty of an offence under subsection (1),

(a) every director or officer of the company, and

(b) every person who authorized, permitted or acquiesced in the offence,

is also guilty of the offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both fine and imprisonment.

(5) If a person other than an individual is guilty of an offence under subsection (1), every person who authorized, permitted or acquiesced in the offence is also guilty of the offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both fine and imprisonment.

Attorney General's  
consent

**162** No proceedings under section 161 shall be instituted except with the consent or under the direction of the Attorney General.

Extra-provincial  
warrant

**163(1)** If a provincial judge, magistrate or justice of another province issues a warrant for the arrest of a person on a charge of contravening any provision of a statute or regulation of that province that is similar to this Act or the regulations, a provincial judge or justice of Alberta within whose jurisdiction that person is or is suspected to be, may, upon satisfactory proof of the handwriting of the provincial judge, magistrate or a justice who issued the warrant, make an endorsement on the warrant in the form prescribed by the regulations.

(2) A warrant endorsed under subsection (1) is sufficient authority to

(a) the person bringing the warrant,

(b) all persons to whom the warrant was originally directed, and

(c) all peace officers within the territorial jurisdiction of the provincial judge or justice so endorsing the warrant,

to execute it within Alberta and to take the person arrested under it either out of or anywhere in Alberta and to re-arrest the person anywhere in Alberta.

(3) A peace officer of Alberta or of any other province who is passing through Alberta having in his custody a person arrested in another province under a warrant endorsed under subsection (1) is entitled to hold, take and re-arrest the accused anywhere in Alberta

under the warrant without proof of the warrant or the endorsement of it.

Order requiring compliance

**164(1)** If it appears to the Commission that a person or company has failed to comply with or is contravening any provision of this Act, the regulations or a decision of the Commission or the Director, the Commission may, whether or not the person or company has been prosecuted under this Act and in addition to any other rights the Commission may have, apply to the Court of Queen's Bench for an order

(a) directing the person or company to comply with the provision or decision, or

(b) restraining the person or company from contravening the provision or decision,

and the Court may make the order or such other order as it thinks fit.

(2) An application under this section shall be by originating notice and may be made ex parte, if the Court of Queen's Bench considers it proper to do so.

Cease trading order

**165(1)** The Commission may order that

(a) trading cease in respect of any security for a period of time as is specified in the order, or

(b) that a person or company cease trading in securities or specified securities for a period of time as is specified in the order.

(2) The Commission shall not make an order under subsection (1) without conducting a hearing.

Commission's power to remove exemptions

**166(1)** The Commission may order that any or all of the exemptions contained in sections 65, 66, 107, 115, 116, 132 and 133 or in the regulations do not apply to the person or company named in the order.

(2) The Commission shall not make an order under subsection (1) without conducting a hearing.

Limitation period

**167(1)** No proceedings under this Part shall be commenced in a court more than one year from the day that the facts upon which the proceedings are based first came to the knowledge of the Commission.

(2) No proceedings under this Act shall be commenced before the Commission more than 2 years from the day that the facts upon which the proceedings are based first came to the knowledge of the Commission.

(3) The Commission may by certificate certify the day on which the

facts referred to in subsection (1) or (2) first came to the knowledge of the Commission.

## PART 16

### CIVIL LIABILITY

Civil liability -  
prospectus

**168(1)** If a prospectus contains a misrepresentation, a purchaser who purchases a security offered by it during the period of distribution shall be deemed to have relied on the misrepresentation and has a right of action for damages against

(a) the issuer or a selling security holder on whose behalf the distribution is made,

(b) each underwriter of the securities who is required to sign the certificate referred to in section 91,

(c) every director of the issuer at the time the prospectus was filed,

(d) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them, and

(e) every person or company, other than ones referred to in clauses (a) to (d), who signed the prospectus.

(2) If the purchaser purchased the security from a person or company referred to in subsection (1)(a) or (b) or from another underwriter of the securities, he may elect to exercise a right of rescission against the person, company or underwriter, in which case he shall have no right of action for damages against that person, company or underwriter.

(3) No person or company is liable under subsection (1) if he or it proves that the purchaser purchased the securities with knowledge of the misrepresentation.

(4) No person or company, other than the issuer or selling security holder, is liable under subsection (1) if he or it proves

(a) that the prospectus was filed without his or its knowledge or consent and that on becoming aware of its filing he or it forthwith gave reasonable general 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 the purchaser, on becoming aware of any misrepresentation in the prospectus he or it withdrew

his consent to it and gave reasonable general notice of the withdrawal and the reason for it;

(c) that, with respect to any part of the prospectus purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he or it had no reasonable grounds to believe and did not believe that

(i) there had been a misrepresentation,

(ii) the part of the prospectus did not fairly represent the report, opinion or statement of the expert, or

(iii) the part of the prospectus was not a fair copy of or extract from the report, opinion or statement of the expert;

(d) that, with respect to any part of the prospectus purporting to be made on his or its own authority as an expert or purporting to be a copy of or an extract from his or its own report, opinion or statement as an expert but that contains a misrepresentation attributable to a failure to represent fairly his or its report, opinion or statement as an expert,

(i) he or it had, after reasonable investigation, reasonable grounds to believe and did believe that the part of the prospectus fairly represented his report, opinion or statement, or

(ii) on becoming aware that the part of the prospectus did not fairly represent his or its report, opinion or statement as an expert, he or it promptly advised the Commission and gave reasonable general notice that misuse had been made of it and that he or it would not be responsible for that part of the prospectus;

(e) that, with respect to a 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,

(i) it was a correct and fair representation of the statement or copy of or extract from the document, and

(ii) he or it had reasonable grounds to believe and did believe that the statement was true.

(5) No person or company, other than the issuer or the selling security holder, is liable under subsection (1) with respect to any part of the prospectus purporting to be made on his or its own authority as an expert or purporting to be a copy of or an extract from his or its own report, opinion or statement as an expert unless he or it

(a) did not conduct an investigation sufficient to provide rea-

sonable grounds for a belief that there had been no misrepresentation, or

(b) believed there had been a misrepresentation.

(6) No person or company, other than the issuer or selling security holder, is liable under subsection (1) with respect to any part of the prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he or it

(a) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation, or

(b) believed there had been a misrepresentation.

(7) No underwriter is liable for more than the total public offering price represented by the portion of the distribution underwritten by him.

(8) In an action for damages pursuant to subsection (1), the defendant is not liable for all or any portion of the damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon.

(9) All or any one or more of the persons or companies specified in subsection (1) that are found to be liable or accept liability under this section are jointly and severally liable.

(10) If in a distribution of securities

(a) no receipt for a prospectus was issued,

(b) no exemption exists or was given exempting the filing of a prospectus, and

(c) a misrepresentation existed in respect of the distribution,

each purchaser of the securities has a right of rescission and a right of action for damages as if a prospectus containing a misrepresentation had been filed in respect of the distribution.

(11) If a purchaser purchases securities pursuant to a statement of material facts that contains a misrepresentation, he has a right of rescission and a right of action for damages as if the statement of material facts were a filed prospectus containing a misrepresentation.

(12) The amount recoverable under this section shall not exceed the price at which the securities were offered to the public.

(13) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law.

**169**(1) If a take-over bid circular or a notice of change or variation sent to the offerees of an offeree company as required by Part 13 contains a misrepresentation, each of those offerees shall be deemed to have relied on the misrepresentation and may elect to exercise a right of action for rescission or damages against the offeror or a right of action for damages against

(a) every person who, at the time the circular or notice was signed, was a director of the offeror,

(b) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them, and

(c) each person other than the one referred to in clause (a) who signed a certificate in the circular or notice.

(2) If a directors' circular or a director's or officer's circular or an amendment to a circular sent to the offerees of an offeree company as required by Part 13 contains a misrepresentation, each of those offerees shall be deemed to have relied on the misrepresentation and

(a) in respect of a misrepresentation in a directors' circular or an amendment to it, have a right of action for damages against

(i) every person who at the time the circular or amendment was signed was a director of the offeree, and

(ii) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them,

and

(b) in respect of a misrepresentation in a director's or officer's circular or an amendment to it, have a right of action for damages against

(i) every director or officer who signed the circular or amendment, and

(ii) every person or company whose consent has been filed pursuant to the regulations but only with respect to reports, opinions or statements that have been made by them.

(3) The provisions of subsection (1) apply to an issuer bid circular or a notice of change or variation that contains a misrepresentation.

(4) No person or company is liable under subsection (1), (2) or (3) if he proves that the offeree had knowledge of the misrepresentation.

(5) No person or company, other than the offeror, is liable under subsection (1), (2) or (3) if he or it proves that

(a) the circular or amendment to it, as the case may be, was sent without his or its knowledge or consent and that, on becoming aware of it, he or it promptly gave reasonable general notice that it was so sent;

(b) after the sending of the circular or amendment to it, as the case may be, on becoming aware of any misrepresentation in the circular or amendment to it, he or it withdrew his or its consent to it and gave reasonable general notice of the withdrawal and the reason for it;

(c) with respect to any part of the circular or amendment to it purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he or it had no reasonable grounds to believe and did not believe

(i) that there had been a misrepresentation,

(ii) that the part of the circular or amendment did not fairly represent the report, opinion or statement of the expert, or

(iii) that the part of the circular or amendment was not a fair copy of or extract from the report, opinion or statement of the expert;

(d) with respect to any part of the circular or an amendment to it purporting to be made on his or its own authority as an expert or purporting to be a copy of or an extract from his or its own report, opinion or statement as an expert, but that contains a misrepresentation attributable to a failure to represent fairly his or its report, opinion or statement as an expert,

(i) he or it had, after conducting an investigation, reasonable grounds to believe and did believe that the part of the circular fairly represented his or its report, opinion or statement as an expert, or

(ii) on becoming aware that the part of the circular did not fairly represent his or its report, opinion or statement as an expert, he or it promptly advised the Commission and gave reasonable general notice that misuse had been made of it and that he or it would not be responsible for that part of the circular;

(e) with respect to a 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,

(i) it was a correct and fair representation of the statement or copy of or extract from the document, and

(ii) he or it had reasonable grounds to believe and did believe that the statement was true.

(6) No person or company, other than the offeror, is liable under subsection (1), (2) or (3) with respect to any part of the circular or amendment to it purporting to be made on his or its own authority as an expert or purporting to be a copy of or an extract from his or its own report, opinion or statement as an expert unless he or it

(a) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation, or

(b) believed there had been a misrepresentation.

(7) No person or company, other than the offeror, is liable under subsection (1), (2) or (3) with respect to any part of the circular or amendment to it not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he or it

(a) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation, or

(b) believed there had been a misrepresentation.

(8) All or any one or more of the persons or companies specified in subsection (1), (2) or (3) that are found to be liable or accept liability under this section are jointly and severally liable.

(9) In an action for damages pursuant to subsection (1), (2) or (3) based on a misrepresentation affecting a security offered by the offeror company in exchange for securities of the offeree company, the defendant is not liable for all or any portion of the damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation.

(10) If the offeror,

(a) in a take-over bid exempted from the provisions of Part 13 by section 132(1)(a), or

(b) in an issuer bid exempted from the provisions of Part 13 by section 133(1)(e),

is required by the by-laws, regulations or policies of the stock exchange through the facilities of which the take-over bid or issuer bid is made to file with the stock exchange or to deliver to offerees a disclosure document, the disclosure document is deemed, for the purposes of this section, to be a take-over bid circular or issuer bid circular, as the case may be, sent to the offerees as required by Part 13.

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

Liability of dealer  
or offeror

**170** A person who is

- (a) a purchaser of a security to whom a prospectus was required to be sent in compliance with section 105 but was not so sent, or
- (b) an offeree to whom a take-over bid circular or issuer bid circular was required to be sent in compliance with section 137 but was not so sent,

has a right of action of rescission or damages against the dealer or offeror who did not comply with the statutory requirement and section 168 or 169, as the case may be, applies to the action.

Liability - material  
fact or change

**171**(1) Every person or company in a special relationship with a reporting issuer that

- (a) sells the securities of the reporting issuer, and
- (b) has knowledge of a material fact or material change in respect of the reporting issuer that has not been generally disclosed,

is liable to compensate the purchaser of the securities for damages as a result of the trade.

(2) Every person in a special relationship with the reporting issuer who directly or indirectly informs the vendor of a material fact or material change other than in the necessary course of business is liable to compensate the purchaser of the securities for damages as a result of the trade.

(3) Subsections (1) or (2), as the case may be, do not apply if

- (a) the vendor or informer had reasonable grounds to believe that the material fact or material change had been generally disclosed,
- (b) the material fact or material change was known or ought reasonably to have been known to the purchaser,
- (c) the vendor or informer proves that the vendor did not know of the material fact or material change
  - (i) when selling the securities, or
  - (ii) in communicating information that in fact contained the material fact or material change,

or

(d) the vendor or informer knew of the material fact or material change by reason only of that fact or change being known to a director, partner or employee of that vendor or informer and

(i) the decision to trade in the securities was not made by that director, partner or employee,

(ii) arrangements were made by the vendor or informer to ensure that

(A) the material fact or material change was not communicated, and

(B) no advice with respect to the securities of the issuer was given,

by that director, partner or employee, and

(iii) the vendor or informer establishes that the material fact, material change or advice respecting the securities of the issuer was not communicated by that director, partner or employee.

(4) For the purposes of subsection (3)(d)(ii), the Commission by order may prescribe the requirements to be complied with by a person or company in respect of arrangements referred to in subsection (3)(d)(ii).

(5) Every person or company in a special relationship with a reporting issuer who

(a) purchases the securities of a reporting issuer, and

(b) has knowledge of a material fact or material change in respect of the reporting issuer that has not been generally disclosed

is liable to compensate the vendor of the securities for damages as a result of the trade.

(6) Every person in a special relationship with the reporting issuer who directly or indirectly informs the purchaser of the material fact or material change other than in the necessary course of business is liable to compensate the vendor of the securities for damages as a result of the trade.

(7) Subsection (5) or (6), as the case may be, do not apply if

(a) the purchaser or informer had reasonable grounds to believe that the material fact or material change had been generally disclosed,

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

(c) the purchaser or informer proves that the purchaser did not know of the material fact or material change

(i) when purchasing the securities, or

(ii) in communicating information that in fact contained the material fact or material change.

(8) Any person or company who has access to information concerning

(a) the investment program of a mutual fund, or

(b) the investment portfolio managed for a client by a portfolio manager or by a registered dealer acting as a portfolio manager,

and uses that information for his or its direct benefit or advantage to purchase or sell securities of an issuer for his or its accounts, if the portfolio securities of the mutual fund or the investment portfolio managed for the client by the portfolio manager or registered dealer include securities of that issuer, is accountable to the mutual fund or the client of the portfolio manager or registered dealer, as the case may be, for any benefit or advantage received or receivable as a result of the purchase or sale.

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

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

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

is accountable to the reporting issuer for any benefit or advantage received or receivable by him or it as a result of the purchase, sale or communication, as the case may be.

(10) Subsection (9) does not apply if

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

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

(c) the person or company in the special relationship with the reporting issuer proves that he or it did not know of the material fact or material change

(i) when selling or purchasing the securities, or

(ii) in communicating information that in fact contained the material fact or material change.

(11) All or any one or more of the persons or companies

(a) in a special relationship with a reporting issuer, and

(b) liable under subsection (1), (2) (5) or (6)

as to the same transaction or series of transactions, are jointly and severally liable.

(12) In assessing damages under subsection (1), (2), (5) or (6) the court shall consider,

(a) if the plaintiff is a purchaser, the price that he paid for the security less the average market price of the security in the 20 trading days following general disclosure of the material fact or material change, or

(b) if the plaintiff is a vendor, the average market price of the security in the 20 trading days following general disclosure of the material fact or material change less the price that he received for the security.

(13) Notwithstanding subsection (12), the court may consider such other measure of damages as may be relevant in the circumstances.

Action by the  
Commission

**172(1)** On application by the Commission or by any person or company who

(a) was at the time of a transaction referred to in section 171(1), (2), (5) or (6), or

(b) is at the time of the application,

a security holder of the reporting issuer, the Court of Queen's Bench may make an order,

(c) requiring the Commission, or

(d) authorizing the person or company or the Commission,

to commence or continue an action in the name of and on behalf of the reporting issuer to enforce the liability created by section 171(9).

(2) The Court shall not make an order under subsection (1) unless it is satisfied that

(a) the Commission or the person or company has reasonable grounds for believing that the reporting issuer has a cause of action under section 179(9), and

(b) either

(i) the reporting issuer has refused or failed to commence an action under section 171 within 60 days from the day that it received a written request from the Commission or the person or company to do so, or

(ii) the reporting issuer has failed to prosecute diligently an action commenced by it under section 171.

(3) On application by the Commission or any person or company who

(a) was at the time of a transaction referred to in section 171(8), or

(b) is at the time of the application,

a security holder of the mutual fund, the Court of Queen's Bench may make an order,

(c) requiring the Commission, or

(d) authorizing the person or company or the Commission,

to commence and prosecute or to continue an action in the name of and on behalf of the mutual fund to enforce the liability created by section 171(8).

(4) The Court shall not make an order under subsection (3) unless it is satisfied that

(a) the Commission or the person or company has reasonable grounds for believing that the mutual fund has a cause of action under section 171(8), and

(b) the mutual fund has either

(i) refused or failed to commence an action under section 171(8) within 60 days from the day it received a written request from the Commission or the person or company to do so, or

(ii) failed to prosecute diligently an action commenced by it under section 171(8).

(5) If an action under section 171(8) or (9) is commenced, commenced and prosecuted or continued, by a board of directors of a reporting issuer, the Court of Queen's Bench may order that the costs

properly incurred by the board of directors in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the reporting issuer, if the Court is satisfied that the action was prima facie in the best interests of the reporting issuer and its security holders.

(6) If an action under section 171(8) or (9) is commenced, commenced and prosecuted or continued, by a person or company who is a security holder of the reporting issuer, the Court of Queen's Bench may order that the costs properly incurred by that person or company in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the reporting issuer, if the Court is satisfied that

(a) the reporting issuer failed to commence the action or had commenced it but had failed to prosecute it diligently, and

(b) the continuance of the action is prima facie in the best interests of the reporting issuer and the security holders of the reporting issuer.

(7) When an action under section 171(8) or (9) is commenced, commenced and prosecuted or continued, by the Commission, the Court of Queen's Bench shall order the reporting issuer to pay all costs properly incurred by the Commission in commencing, commencing and prosecuting or continuing the action, as the case may be.

(8) In determining whether an action or its continuance is prima facie in the best interests of a reporting issuer and its security holders, the Court shall consider the relationship between

(a) the potential benefit to be derived from the action by the reporting issuer and its security holders, and

(b) the cost involved in respect of the action.

(9) Notice of every application under subsection (1) or (2) shall be given to the Commission, the reporting issuer, or the mutual fund, as the case may be, and each of them may appear and be heard.

(10) In every action commenced, commenced and prosecuted or continued by the Commission under this section, the reporting issuer or mutual fund, as the case may be, shall provide to the Commission all books, records, documents and other material or information

(a) that are

(i) known to the reporting issuer or mutual fund, or

(ii) reasonably ascertainable by the reporting issuer or mutual fund, and

(b) that are relevant to the action.

Rescission of contract

**173**(1) If section 71(1) applies to a contract and the section is not complied with, a person or company who has entered into the contract may rescind the contract only if he or it is the owner of the securities at the time notice for rescission is given.

(2) A person or company may rescind a contract under subsection (1) by sending written notice of rescission to the registered dealer within 60 days from the day of the delivery of the security to or by the person, as the case may be.

(3) If section 68(1)(c) applies to a contract and a registered dealer has failed to comply with the section by not disclosing that he acted as principal, a person or company who has entered into the contract may rescind the contract.

(4) A person or company may rescind a contract under subsection (2) by sending written notice of rescission to the registered dealer within 7 days from the day of the delivery of the written confirmation of the contract.

(5) In an action respecting a rescission to which this section applies, the onus of proving compliance with section 68 or 71 is upon the registered dealer.

(6) No action respecting a rescission under this section shall be commenced after the expiration of a period of 90 days from the day of the sending of the notice under subsection (2) or (4).

Rescission by purchase - mutual fund

**174**(1) Every purchaser of a security of a mutual fund may, if the amount of the purchase does not exceed the sum of \$50 000, rescind the purchase.

(2) A purchaser may rescind a purchase under subsection (1) by sending written notice of the rescission to the registered dealer from whom the purchase was made within

(a) 48 hours from the time the purchaser received the confirmation for a lump sum purchase, or

(b) 60 days from the day the purchaser received the confirmation for the initial payment under a contractual plan.

(3) Subject to subsection (5), the amount the purchaser is entitled to recover on exercise of the right to rescind under this section shall not exceed the net asset value of the securities purchased at the time the right to rescind is exercised.

(4) The right to rescind a purchase made under a contractual plan may be exercised only with respect to payments scheduled to be made within the time specified in subsection (2) for rescinding a purchase made under a contractual plan.

(5) Every registered dealer from whom the purchase was made shall reimburse the purchaser who has exercised his right of rescission in

accordance with this section for the amount of sales charges and fees relevant to the investment of the purchaser in the mutual fund in respect of the shares or units of which the notice of rescission was given.

- Limitation period **175** Unless otherwise provided in this Act, no action shall be commenced to enforce a right created by this Part more than,
- (a) in the case of an action for rescission, 180 days from the day of the transaction that gave rise to the cause of action, or
  - (b) in the case of any action, other than an action for rescission, the earlier of
    - (i) 180 days from the day that the plaintiff first had knowledge of the facts giving rise to the cause of action, or
    - (ii) one year from the day of the transaction that gave rise to the cause of action.

## PART 17

### SELF-REGULATING BODIES

Definition **176** In this Part “self-regulating body” means an association or organization recognized by the Commission under this Part as a self-regulating body.

Recognition by Commission **177** The Commission may in writing recognize an association or organization representing registrants, whether incorporated or unincorporated, as a self-regulating body, if it is satisfied

- (a) that to do so would not be prejudicial to the public interest, and
- (b) that the association or organization has satisfied or can satisfy all conditions with respect to self-regulating bodies prescribed under the regulations.

Duties **178** A self-regulating body shall, subject to this Act and the regulations and any decision made by the Commission, regulate the standards and business conduct of its members.

Decision by Commission **179** The Commission may, if it appears to it to be in the public interest, make any decision with respect to

- (a) a by-law, rule or regulation or proposed by-law, rule or regulation of a self-regulating body,
- (b) a direction, decision, order or ruling made under a by-law, rule or regulation of a self-regulating body, or

(c) any practice of a self-regulating body.

Appeal to  
Commission

**180**(1) A person or company directly affected by a direction, decision, order or ruling made under a by-law, rule or regulation of a self-regulating body recognized under section 177 may appeal that direction, decision, order or ruling to the Commission.

(2) Section 25 applies to an appeal made under this section.

Auditors

**181** Every self-regulating body shall

(a) select a panel of auditors, each of whom shall have practised as an auditor in Canada for not less than 5 years and who shall be known as a ‘‘members’ auditor’’, and

(b) employ a general association auditor

(i) the appointment of whom is subject to the prior approval of the Commission, and

(ii) who shall have practised as an auditor in Canada for not less than 10 years.

Audits and  
auditing by-laws

**182**(1) Every self-regulating body shall require for the purposes of subsection (2) those of its members as the Commission may designate in writing to appoint a members’ auditor from the panel of auditors selected under section 181(a).

(2) A members’ auditor shall

(a) make an examination of the financial affairs of the member as called for by the by-laws, rules or regulations applicable to the member, and

(b) report on the examination to the general association auditor.

(3) Every self-regulating body shall, to the satisfaction of the Commission, prepare by-laws, rules or regulations governing the practice and procedure respecting examinations made under subsection (2).

(4) The examinations made under subsection (2) shall be conducted to the satisfaction of the Commission.

Administration of  
the Act

**183**(1) The Commission on the application of a self-regulating body may by order authorize the self-regulating body to administer this Act and the regulations or any provision of them as they relate to the members of the self-regulating body.

(2) The Commission shall not revoke or vary an order made under subsection (1) without giving the self-regulating body an opportunity to have a hearing before the Commission.

(3) A self-regulatory body in respect of which an order is made

under subsection (1) shall provide to the Commission those reports and that information concerning the administration of this Act or the regulations as the Commission may prescribe.

(4) Notwithstanding that an order is made under subsection (1), nothing in this section shall be construed as to restrict the Commission in the administration of this Act or the regulations as they relate to the members of the self-regulating body.

## PART 18

### GENERAL PROVISIONS

Compliance with another jurisdiction

**184**(1) Unless otherwise provided by this Act or ordered by the Commission a person or company that has complied with the requirements of the laws of the jurisdiction in which

(a) in the case of a person, he carries on the substantial part of his business, or

(b) in the case of a company, it is incorporated, organized or continued,

is deemed to have complied with requirements of this Act if

(c) the requirements of that jurisdiction and this Act are substantially the same, and

(d) the documents that are filed in that jurisdiction are also promptly filed with the Commission.

(2) Subject to subsection (1), the Commission may make an order exempting in whole or in part, a person or company, class of persons or companies or class of transactions from the requirements of all or part of this Act or the regulations.

General exemption

**185** The Commission may by order exempt any person, company, trade or distribution from all or any provision of this Act or the regulations.

Revoke or vary decisions

**186** The Commission may, if in its opinion to do so would not be prejudicial to the public interest, make an order revoking or varying any decisions made by it under this Act or the regulations.

Self-incrimination

**187** A person examined under this Act may be examined on oath on all matters relevant to the matter for which he is being examined and shall not be excused from answering any question on the ground that the answer might

(a) tend to incriminate him,

- (b) subject him to punishment under this Act, or
- (c) tend to establish his liability
  - (i) to a civil proceeding at the instance of the Crown or of any other person, or
  - (ii) to prosecution under any Act or regulations under any Act,

but if the answer so given tends to incriminate him, subject him to punishment or tends to establish his liability, it shall not be used or received against him in any civil proceeding or in any proceeding under any Act.

Sending of documents or notices

**188(1)** Unless otherwise provided by this Act or ordered by the Director any document required to be sent, communicated, delivered or served under this Act or the regulations may be

- (a) personally delivered to the person or company that is to receive it,
- (b) sent by prepaid post to the person or company that is to receive it, or
- (c) sent by electronic means that produces a printed copy to the person or company that is to receive it.

(2) A document sent to a person or company referred to in subsection (1)(b) or (c) shall be sent to that person or company

- (a) at the latest address known for that person or company by the sender of the document, or
- (b) at the address for service in Alberta filed by that person or company with the Commission.

Admissibility of certified statements

**189** 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,
- (c) a matter other than one referred to in clause (a) or (b) pertaining to the registration, non-registration, filing or non-filing or to any person, company, document or material, or
- (d) the day the facts on which any proceedings are to be based first came to the knowledge of the Commission,

purporting to be certified by the Commission or a member of it or by the Registrar is, without proof of the office or signature of the

person certifying the statement, admissible in evidence for all purposes in any action, proceeding or prosecution.

Applications to a court

**190(1)** Unless otherwise provided for under this Act, an application made under this Act to a court shall be made by originating notice and may be heard not less than 3 days from the day that the notice of the application and its supporting documents are served by the person bringing the application on the other parties to the application.

(2) A notice of an application referred to in subsection (1) and its supporting documents shall be served in a manner prescribed by the Alberta Rules of Court for an originating notice.

Service on Commission

**191** Service of any document on the Commission may be effected by serving the document on the Registrar.

Filing and inspection

**192(1)** When this Act or the regulations require that material be filed, the filing shall be effected by depositing the material or causing it to be deposited, with the Commission.

(2) Subject to subsection (3) all material filed under subsection (1) shall be made available by the Commission for public inspection at the office of the Commission during the normal business hours of the Commission.

(3) Notwithstanding subsection (2), the Commission may hold material or any class of material required to be filed by this Act or the regulations in confidence so long as the Commission is of the opinion that it is in the public interest to do so.

Immunities

**193(1)** No action or other proceeding for damages shall be instituted against the Commission or any member of it or any officer, servant or agent of the Commission

(a) for any act done in good faith

(i) in the performance or intended performance of any duty, or

(ii) in the exercise or the intended exercise of any power under this Act or the regulations,

or

(b) for any neglect or default in the performance or exercise in good faith of the duty or power.

(2) No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company for any act or omission of the last-mentioned person or company done or omitted in compliance with this Act, the regulations or any decision made or given under this Act or the regulations.

(3) Subsection (1) of this section does not, by reason of section 5(2)

and (3) of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by the Commission or any person referred to in subsection (1) of this section to which the Crown would otherwise be subject and the Crown is liable under that Act for the tort in a like manner as if subsection (1) of this section had not been enacted.

Refund of fees      **194** The Director may refund any fee or part of it that is payable under this Act as he considers reasonable in the circumstances.

Annual report      **195**(1) The Commission shall, after the end of the Commission's fiscal year, prepare and deliver to the Minister a general report consisting of

- (a) a summary of the nature and number of
  - (i) filings under this Act,
  - (ii) registrations under this Act, and
  - (iii) enforcement proceedings taken under the Act,
- (b) a general commentary on the law concerning securities and on the practice and development of that law, and
- (c) information similar to that required under clause (a) in respect of other statutes administered by the Commission, and
- (d) that other information as requested by the Minister or the Lieutenant Governor in Council.

(2) On receiving a report delivered to him under subsection (1), the Minister shall

- (a) if the Legislative Assembly is sitting when the report is received by him, lay the report before the Assembly, or
- (b) if the Legislative Assembly is not sitting when the report is received by him, lay the report before the Assembly within 15 days after the commencement of the sitting next following the receipt of the report.

Regulations      **196** The Lieutenant Governor in Council may make regulations

- (a) defining for the purposes of this Act terms used in this Act that are not defined in this Act;
- (a.1) prescribing categories for persons and companies and the manner of allocating persons and companies to categories;
- (b) prescribing the form and content or either of them of prospectuses, preliminary prospectuses, pro forma prospectuses, short form prospectuses, summary statements and statements of material facts to be filed under this Act;

- (b.1) governing the use of prospectuses, preliminary prospectuses, pro forma prospectuses, short form prospectuses, summary statements and statements of material facts to be filed under this Act;
- (c) governing certificates to be used in pro forma prospectuses, preliminary prospectuses, short form prospectuses and prospectuses;
  - (c.1) governing certificates to be used in summary statements and statements of material facts;
- (d) permitting the Director to make the allocations referred to in clause (a.1);
  - (d.1) designating mutual funds or a class or classes of them as private mutual funds;
- (e) designating banking transactions for the purposes of section 1(y)(vi);
  - (e.1) governing the form and content or either of them of financial statements and interim financial statements required to be filed under this Act;
- (f) governing the form and content or either of them of comparative financial statements to be filed under this Act;
  - (f.1) governing the audit requirements with respect to the comparative financial statements referred to in clause (f);
- (g) prescribing requirements respecting applications for registration and renewal of registration;
  - (g.1) providing for the expiration of registrations;
- (h) 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 in Alberta recognized by the Commission;
- (h.1) regulating the listing and trading of securities;
- (i) prescribing records to be maintained with respect to the listing and trading of securities;
  - (i.1) governing the furnishing of information to the public or to

the Commission by a registrant in connection with securities or trades in securities;

(j) governing the furnishing of information by a registrant or class of registrant to a person or company recognized by the Commission and the payment of fees with respect thereto;

(j.1) governing the form and content of the financial statements to be provided to the customer of a registered dealer;

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

(k.1) prescribing requirements, other than those set out in this Act, that must be met by auditors appointed under this Act;

(l) governing

(i) the keeping of accounts and records,

(ii) the preparation and filing of financial statements of the affairs of the security issuers, and

(iii) the audit requirements with respect to the financial statements referred to in subclause (ii);

(l.1) respecting fees payable by an issuer to a management company as consideration for investment advice, alone or together with administrative or management services, provided by the management company to the mutual fund;

(m) respecting

(i) sales charges imposed by a distribution company or contractual plan service company under a contractual plan on purchasers of shares or units of a mutual fund, and

(ii) commissions to be paid to salesmen of shares of units of a mutual fund;

(m.1) exempting confirmation of any trade in a security of a mutual fund under a contractual plan from section 68(1)(a) or (3) and prescribing terms and conditions, if any, to the exemption, as they may apply to the trade under the contractual plan;

(n) designating any person or company or any class of persons or companies who are not required to obtain registration as an adviser;

(n.1) prescribing the fees payable to the Commission;

(o) prescribing costs for matters heard before the Commission or the Director;

- (o.1) prescribing the documents, certificates, reports, releases, statements, agreements and other information and the form, content and other particulars relating to them that are required to be filed, furnished or delivered under this Act and the regulations;
- (p) prescribing the practice and procedure of investigations under sections 28 and 33;
- (p.1) prescribing rules of practice and procedure for hearings held under this Act;
- (q) prescribing the forms for use under this Act and the regulations;
- (q.1) designating persons or companies for the purposes of section 64(a);
- (q.2) respecting the rules and procedures as to the maintenance of a list of defaulting reporting issuers;
- (r) prescribing rules and procedures governing public inspection of certain documents, certificates, statements, reports, and other information maintained by the Commission;
- (r.1) prescribing trades or securities, in addition to the trades and securities referred to in sections 65 and 66, in respect of which registration is not required;
- (s) prescribing the practice and procedure by which the Commission recognizes an exempt trade or exempt security pursuant to section 65 or 66;
- (s.1) prescribing trades or securities, referred to in section 65 or 66, in respect of which there shall cease to be exemption from registration;
- (t) prescribing trades or securities, in addition to the trades and securities referred to in sections 107 to 115, in respect of which section 81 does not apply;
- (t.1) prescribing exempt trades or exempt distribution of securities in addition to the exempt trades or exempt distribution of securities referred to in sections 107 to 115, in respect of which sections 81 and 97 do not apply;
- (u) prescribing the practice and procedure whereby the Commission recognizes an exempt trade or exempt distribution of securities under section 107 or 115;
- (u.1) prescribing trades or securities in respect of which sections 81 and 97 are applicable notwithstanding sections 107 to 115;
- (u.2) exempting any seller or class of sellers from the requirements of section 112(1)(d)(i) and (ii);

- (v) prescribing terms and conditions that shall be contained in an escrow or pooling agreement;
- (v.1) prescribing the practice and procedure by which the Commission recognizes exempt purchasers under sections 65(1)(d) and 107(1)(c);
- (w) exempting any category of registered advisers from the provisions of section 72 and prescribing terms and conditions, if any, to the exemption, as they apply to any category of registered advisers;
- (w.1) prescribing the information required or permitted to be distributed under section 99;
- (x) respecting the matters referred to in section 96(2)(h);
- (x.1) respecting the content and distribution of material that may be distributed or used by a person or company with respect to a security whether in the course of distribution or otherwise;
- (x.2) prescribing the form and content of the reports to be filed under Part 14;
- (x.3) prescribing the form and content of a take-over bid circular, issuer bid circular, directors' circular, director's or officer's circular or amended circular;
- (y) prescribing exempt take-over bids in addition to those exempt take-over bids that are referred to in section 132(1);
- (y.1) prescribing exempt issuer bids, in addition to those issuer bids that are referred to in section 133(1);
- (y.2) prescribing a penalty for the early redemption of shares or units of a mutual fund;
- (y.3) prescribing the form and content of reports to be filed by the management company of a mutual fund;
- (z) prescribing the form and content of proxies, information circulars and reports required by Parts 11 and 12;
- (z.1) governing the use of proxies, information circulars and reports required under Parts 11 and 12;
- (z.2) permitting the Commission or the Director to exempt any person or company from the regulations or any part of them or vary the regulations as they apply to any person or company;
- (z.3) governing self-regulating bodies;

(z.4) prescribing the form of endorsements for the purposes of section 163.

Transitional provision

**197(1)** Every registration made and receipt for a prospectus issued under *The Securities Act*, and in effect immediately before the coming into force of this Act, continues in the same manner as if made or issued under this Act.

(2) A trade or distribution made

(a) before the commencement of this Act, and

(b) pursuant to an exemption under *The Securities Act*,

shall remain exempted from the provisions of this Act in the same manner as if the exemption were contained in this Act.

### Consequential Amendments

Consequential amendments

**198(1)** *The Alberta Gas Trunk Line Company Act* is amended in section 31(1) by striking out “*The Securities Act*” and substituting “*The Securities Act, 1981*”.

(2) *The Alberta Insurance Act* is amended

(a) in section 161(14)(b) by striking out “section 79 of *The Securities Act*” and substituting “section 79 of *The Securities Act, 1981*”,

(b) in section 166(1)(i) by striking out “*The Securities Act*” and substituting “*The Securities Act, 1981*”, and

(c) in section 166(6.1) by striking out “Part 9 of *The Securities Act*” and substituting “Part 13 of *The Securities Act, 1981*”.

(3) *The Alberta Municipal Financing Corporation Act* is amended in section 43 by striking out “*The Securities Act*” and substituting “*The Securities Act, 1981*”.

(4) *The Alberta Resources Railway Corporation Act* is amended in section 28 by striking out “*The Securities Act*” and substituting “*The Securities Act, 1981*”.

(5) *The Cemeteries Act* is amended in section 37(6)(c) by striking out “*The Securities Act*” and substituting “*The Securities Act, 1981* or a predecessor of that Act”.

(6) *The Companies Act* is amended

(a) in section 81(1)(g) by striking out “*The Securities Act*” and substituting “*The Securities Act, 1981*”,

- (b) in section 82.1(1) by striking out “Part 9 of *The Securities Act*” and substituting “Part 13 of *The Securities Act, 1981*”,
- (c) in section 93(1)(a) by striking out “*The Securities Act*” and substituting “*The Securities Act, 1981*”,
- (d) in section 93(2) by striking out “*The Securities Act*” and substituting “*The Securities Act, 1981*”,
- (e) in section 95(1) by striking out “Part 7 of *The Securities Act*” and substituting “Part 8 of *The Securities Act, 1981*”,
- (f) in section 141(2)(b) by striking out “section 79 of *The Securities Act*” and substituting “section 79 of *The Securities Act, 1981*”, and
- (g) in section 176(1) and (2) by striking out “Part 7 of *The Securities Act*” wherever it occurs and substituting “Part 8 of *The Securities Act, 1981*”.
- (7) *The Credit Union Act* is amended in sections 17 and 82(2)(c) by striking out “*The Securities Act*” wherever it occurs and substituting “*The Securities Act, 1981*”.
- (8) *The Credit Union Federation of Alberta Limited Act* is amended in section 9 by striking out “*The Securities Act, 1967*” and substituting “*The Securities Act, 1981*”.
- (9) *The Deposits Regulation Act* is amended in section 6(5) by striking out “section 21, subsections (4) and (6) of *The Securities Act* to a person making an investigation under that section” and substituting “section 29(1) and (5) of *The Securities Act, 1981* to a person appointed under section 28 of that Act to make an investigation”.
- (10) *The Investment Contracts Act* is amended
- (a) in section 2(1)(a) by striking out, “established under *The Securities Act*” and substituting “under *The Securities Act, 1981*”, and
- (b) in section 44 by striking out “*The Securities Act*” and substituting “*The Securities Act, 1981*”.
- (11) *The Rural Mutual Telephone Companies Act* is amended in section 35 by striking out “*The Securities Act*” and substituting “*The Securities Act, 1981*”.
- (12) *The Trust Companies Act* is amended
- (a) in section 25(2)(b) by striking out “section 79 of *The Securities Act*” and substituting “section 79 of *The Securities Act, 1981*”,
- (b) in section 72(1)(a) by striking out “section 2 of *The Secu-*

*rities Act* and substituting “section 1 of *The Securities Act, 1981*”,

(c) in section 72(1)(h) by striking out “*The Securities Act*” and substituting “*The Securities Act, 1981*”,

(d) in section 73.1(1) by striking out “Part 9 of *The Securities Act*” and substituting “Part 13 of *The Securities Act, 1981*”, and

(e) in section 123(d)(ii) by striking out “*The Securities Act*” and substituting “*The Securities Act, 1981*”.

(13) *The Unfair Trade Practices Act* is amended in section 1(f)(iii) by striking out “*The Securities Act*” and substituting “*The Securities Act, 1981*”.

Repeals Chapter  
333 of the Revised  
Statutes of Alberta  
1970

**199** *The Securities Act* is repealed on Proclamation.

Commencement

**200** This Act comes into force on Proclamation.