

1982 BILL 22

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Fourth Session, 19th Legislature, 31 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 22

**SECURITIES AMENDMENT ACT, 1982**

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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 22

1982

### SECURITIES AMENDMENT ACT, 1982

(Assented to \_\_\_\_\_, 1982)

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

1 *The Securities Act is amended by this Act.*

2 *Section 1 is amended*

(a) *in clause (h.2)(ii) by striking out "personal";*

(b) *by repealing clause (p.1)(ii) and substituting the following:*

(ii) the number of its shareholders, exclusive of

(A) persons who are in its employment or that of an affiliate, and

(B) persons who, having been formerly in its employment or that of an affiliate, 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 1 or more shares being counted as 1 shareholder, and

(c) *by repealing clause (q) and substituting the following:*

(q) "private mutual fund" means a mutual fund that is

(i) operated as an investment club, and

(A) the shares or units of the investment club are held by not more than 50 persons,

(B) the indebtedness of the investment club has never been offered to the public,

## Explanatory Notes

1 This Bill will amend chapter S-6.1 of the Statutes of Alberta, 1981.

2 Section 1(h.2), (p.1) and (q) presently read:

*(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;*

*(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 employment 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*

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

(D) all of the members of the investment club are required to make contributions in proportion to the shares or units each holds for the purpose of financing the club's operations,

or

(ii) administered by a trust company and, but for the applicability of an exemption under this Act or the regulations, that would need to be registered as a portfolio manager, or

(A) that has no promoter other than a trust company or an affiliate of a trust company, and

(B) that has no manager other than a trust company, an affiliate of a trust company or a person or company who is a portfolio manager,

and consists of

(C) a pooled fund maintained solely to serve registered retirement savings plans, registered home ownership savings plans, retirement income funds, deferred profit sharing plans, pension plans, or other such plans registered under the *Income Tax Act* (Canada),

(D) a common trust fund as defined by section 102(1) of the *Trust Companies Act*, or

(E) 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;

<sup>3</sup> Section 19(c)(iii) and (d) are amended by adding “, securities, contracts” after “records”.

(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 102(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;*

**3** Section 19(c)(iii) and (d) presently reads:

*(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*

*(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*

4 *Section 26 is amended*

(a) *in subsection (2) by striking out “an originating notice” and substituting “a notice of appeal”;*

(b) *in subsection (3) by striking out “originating notice” and substituting “notice of appeal”.*

5 *Section 29 is amended*

(a) *in subsection (1)(c) by striking out “and other property” and substituting “, contracts and things”;*

(b) *by repealing subsection (2) and substituting the following:*

(2) The failure or refusal of a person summoned as a witness under subsection (1) to attend, to answer questions or to produce documents, records, securities, contracts or things 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.

(c) *in subsections (5)(b), (7), (8) and (9) by striking out “or other property” wherever it occurs and substituting “, contracts or things”;*

(d) *by repealing subsection (10) and substituting the following:*

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

*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;*

**4 Section 26 presently reads in part:**

*(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.*

**5 Section 29 presently reads in part:**

*29(1) The person appointed to make 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*

*(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.*

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

*(b) seize and take possession of any documents, records, securities or other property,*

*of the person or company whose affairs are being investigated.*

*(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,*

6 Section 30(2)(a) is amended by striking out “and other property” and substituting “, contracts and things”.

7 Section 33(4)(a) is amended by striking out “and other property” and substituting “, contracts and things”.

8 Section 37 is amended

(a) in subsection (4) by striking out “Court of Queen’s Bench” and substituting “Commission”;

(b) in subsection (5) by striking out “subsection (1)(f) or (g)” and substituting “subsection (1)(f), (g) or (h)”.



*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.*

**6** Section 30(2)(a) presently reads:

*(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*

**7** Section 33(4)(a) presently reads:

*(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*

**8** Section 37 presently reads in part:

*37(1) The Commission,*

*(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 Business Corporations Act, the Winding-up Act (Canada) or section 38 of this Act.*

*(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.*

9 Section 49(1)(a) and (2)(a) are amended by striking out “who”.

10 Section 62 is amended

(a) in subsection (1) by striking out “shall” and substituting “may” and by striking out “a person” and substituting “an individual”;

(b) in subsection (2) by striking out “a person” and substituting “an individual” and by striking out “that person” and substituting “that individual”;

(c) by repealing subsections (3) and (4) and substituting the following:

(3) The Director may refuse registration to a company or person other than an individual, 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

(a) has not been a resident of Canada for at least 1 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 person other than an individual may be registered if at the date the application is made 1 or more of its officers or directors not resident in Alberta is registered in a capacity corresponding

*(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).*

**9** Section 49 presently reads in part:

*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*

*(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*

**10** Section 62 presently reads:

*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.*

to that of a dealer, adviser, underwriter or salesman under the laws of a jurisdiction where the dealer, adviser, underwriter or salesman has been so registered for a period of not less than 1 year immediately preceding the date the application is made.

*(d) in subsection (5) by striking out “a person” and substituting “an individual”.*

*11 Section 63(3) is amended by striking out “Every” and substituting “Subject to the regulations, every”.*

*12 Section 65(1)(x) is amended by striking out “131(1)(f)” and substituting “131(1)(e)”.*

*13 Section 66 is amended*

*(a) in clause (a) by striking out “bond, debentures” and substituting “bonds, debentures”;*

*(b) by repealing clause (a)(iii) and substituting the following:*

*(iii) of or guaranteed by a financial institution or an insurance company, other than bonds, debentures or other evidences of indebtedness which are subordinate in the right of payment to deposits held by the issuer or guarantor of those bonds, debentures or other evidences of indebtedness,*

*(c) in clause (e) by striking out “Mortgage Brokers Act” and substituting “Mortgage Brokers Regulation Act”.*

*(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.*

**11** Section 63(3) presently reads:

*(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.*

**12** Corrects a cross reference.

**13** Section 66 presently reads in part:

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

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

*(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,*

*(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;*

14 *Section 92 is repealed and the following is substituted:*

**92(1)** Every prospectus shall contain

(a) a statement of the rights given to a purchaser by sections 106 and 168, and

(b) a statement of the limits on the time within which an action to enforce a right under section 168 must be commenced.

(2) Every prospectus of a mutual fund shall contain, in addition to the statements required under subsection (1), a statement of rights given to the purchaser by section 174.

15 *Section 93 is amended by adding the following after subsection (6):*

(7) For the purposes of sections 90(2) and 91(1), if

(a) a summary statement is filed concurrently with a prospectus, and

(b) the financial statements as required by this Act or the regulations are filed but not included in the prospectus or summary statement,

then the financial statements shall be deemed to be included in the prospectus or summary statement and a statement to this effect shall be included in the certificate required by sections 90(2) and 91(1).

16 *The following is added after section 93:*

**93.1** If a summary statement is filed with a prospectus, the certificates required by sections 90(2) and 91(1) shall also contain the following:

*The summary statement filed concurrently with this prospectus contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.*

**14 Section 92 presently reads:**

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

**15 Section 93 presently reads:**

*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).*

**16 Statement to be contained in certificate.**

17 *Section 97 is amended*

(a) *by repealing subsection (1) and substituting the following:*

**97(1)** In this section, “lapse date” means

(a) in the case of a prospectus, the date on which a prospectus ceases to be valid for the distribution of securities for which the prospectus was filed, and

(b) in the case of a summary statement, the date on which a summary statement ceases to be valid for the distribution of securities for which the summary statement was filed.

(b) *in subsection (5)(a) by striking out “within” and substituting “not less than”;*

(c) *by adding the following after subsection (5):*

(5.1) A distribution may be continued beyond the lapse date of a summary statement if a new summary statement is filed concurrently with the filing of a pro forma prospectus and a new prospectus pursuant to subsection (5).

(d) *in subsections (6), (7) and (8) by striking out “subsection (5)” wherever it occurs and substituting “subsection (5) or (5.1)”.*

18 *Section 107(1) is amended*

(a) *in clause (h) by striking out “Commission” and substituting “Director”;*

(b) *in clause (y) by striking out “131(1)(f)” and substituting “131(1)(e)”.*



**17** Section 97 presently reads:

*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.*

**18** The amendment to clause (h) substitutes “Director” for “Commission” and makes the provision consistent with section 65(1)(o) of the Securities Act. The amendment to clause (y) corrects a cross reference.

19 Section 108(1) is amended by adding “(m),” after “(l),”.

20 Section 109(2) is repealed and the following is substituted:

(2) Subject to subsection (3), a distribution under subsection (1), other than a distribution as defined under section 1(f)(iii), 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 unusual 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.

21 Section 110(1)(a) is repealed and the following is substituted:

(a) the first trade in securities previously acquired under an exemption contained in section 107(1)(f), (i), (j), (j.1), (k), (k.1) or (n), or

22 Section 112(1) is amended by striking out “no effort” and substituting “no unusual effort”.

**19** Section 108(1) presently reads:

*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.*

**20** Section 109(2) presently reads:

*(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.*

**21** Section 110(1)(a) presently reads:

*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.*

**22** Section 112(1) presently reads:

*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*

23 *Section 119(2) is repealed and the following is substituted:*

(2) No purchaser or vendor shall be found to have contravened subsection (1)(a) if the purchaser or vendor proves that

(a) he did not know of the material fact or material change at the time of the purchase or sale of securities, or

(b) the purchaser or vendor knew of the material fact or material change by reason only of the fact or change being known to a director, partner or employee of that purchaser or vendor, and

(i) the decision to trade in the securities was not made by that director, partner or employee,

(ii) arrangements were made by the purchaser or vendor to ensure that

(A) the material fact or material change was not communicated, and

(B) no advice with respect to the securities was given,

by that director, partner or employee, and

(iii) the purchaser or vendor establishes that the material fact, material change or advice respecting the securities of the issuer was not communicated by that director, partner or employee.

*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.*

**23** Section 119(2) presently reads:

*(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.*

(2.1) For the purposes of subsection (2)(b)(ii), the Commission, by order, may prescribe the requirements to be complied with by the purchaser or vendor in respect of arrangements referred to in subsection (2)(b)(ii).

24 *Section 120 is amended*

(a) *in subsection (1) by striking out “day on” and substituting “day to”;*

(b) *by repealing subsection (2) and substituting the following:*

(2) Every mutual fund shall file an interim financial statement within 60 days from the day to 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, including a comparative statement for the corresponding period in the last financial year.

25 *Section 131(1)(j) is amended*

(a) *by striking out “combination or” and substituting “combination of”;*

(b) *in subclause (ii)(C) by adding “voting” after “owned”.*

26 *Section 132(4) is amended by striking out “the exemptions provided by subsection (1)” and substituting “that exemption”.*

**24** Section 120 presently reads in part:

*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,*

*(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 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.*

**25** Section 131(1)(j) presently reads in part:

*131(1) In this Part,*

*(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,*

*(ii) if*

*(C) the offeror's presently owned securities, if any, and*

**26** Section 132(4) presently reads:

*(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.*

27 *Section 144 is repealed and the following is substituted:*

**144(1)** When a take-over bid has been issued or is intended to be issued, there shall not be any communication to offerees by any person if the effect of that communication is to recommend acceptance or rejection of the bid.

(2) Subsection (1) does not apply to a communication

(a) by the directors of the offeree company

(i) as part of a directors' circular prepared in accordance with the regulations, or

(ii) following the date that a directors' circular prepared in accordance with the regulations is sent to each offeree,

(b) by an individual director or officer of the offeree company if the director or officer sends to each offeree with his communication a circular prepared in accordance with the regulations, or

(c) by any person other than those mentioned in clauses (a) and (b) if

(i) the communication is requested by an offeree, and

(ii) the communication is made only to the offeree requesting it.

(3) Nothing in subsection (2) shall prohibit a person making a communication authorized by subsection (2) from stating that acceptance or rejection of the take-over bid has been recommended by any other person.

28 *Section 161(1) is amended*

(a) *by adding the following after clause (c):*

(c.1) fails

(i) to file under this Act or the regulations, or

(ii) to file under this Act or the regulations within the time limits prescribed by this Act or the regulations,

any document, record or report required to be filed under this Act or the regulations;

(b) *in clause (e)*

(i) *by striking out* "section 108(1);";



**27** Section 144 presently reads:

*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.*

**28** Section 161(1) presently reads in part:

*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;*

*(ii) by striking out “section 119;” and substituting the following:*

section 119(1);  
section 122;

29 *Section 168 is amended*

*(a) by repealing subsection (2) and substituting the following:*

(2) 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 rescission 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, and

(c) any other underwriter of the securities.

(2.1) If the purchaser elects to exercise a right of action for rescission against a person or company, he shall have no right of action for damages against that person or company.

*(b) in subsections (3), (4), (5) and (6) by adding “or (2)” after “subsection (1)”.*

*(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.*

**29** Section 168 presently reads in part:

*(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;*

30 *Section 171 is amended*

*(a) in subsection (3) by striking out “Subsections” and substituting “Subsection”;*

*(b) in subsection (7)*

*(i) by striking out “do” and substituting “does”;*

*(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 reasonable 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.*

**30** Section 171(7) presently reads:

*(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*

*(ii) by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following after clause (c):*

**(d) the purchaser 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 purchaser 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 purchaser 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 purchaser 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.**

*(c) by adding the following after subsection (7):*

**(7.1) For the purposes of subsection (7)(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 (7)(d)(ii).**

*31 Section 186 is amended by adding “or any former Securities Act or regulations” after “or the regulations”.*

*32 Section 190(2) is amended by striking out “originating” and substituting “originating”.*

*33 Section 196 is amended by adding the following after clause (d.1):*

**(d.2) permitting the Director to require that any documents, certificates, reports, releases, statements, agreements or other information be filed, furnished or delivered;**

*(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.*

**31** Section 186 presently reads:

*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.*

**32** Corrects a misspelling.

**33** Section 196 presently reads in part:

*196 The Lieutenant Governor in Council may make regulations*

*(d.1) designating mutual funds or a class or classes of them as private mutual funds;*

(d.3) permitting the Director to require the inclusion or permit the exclusion of any matter from any documents, certificates, reports, releases, statements, agreements or other information which may be required to be filed, furnished or delivered under this Act or the regulations;

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*In accordance with section 4(1) of the Interpretation Act, this Bill comes into force on the date it receives Royal Assent.*