

1989 BILL 6

First Session, 22nd Legislature, 38 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 6

SECURITIES AMENDMENT ACT, 1989

THE MINISTER OF CONSUMER AND CORPORATE AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 6

1989

SECURITIES AMENDMENT ACT, 1989

(Assented to _____, 1989)

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2 *Section 9 is repealed and the following is substituted:*

9 A person or company is in a special relationship with a reporting issuer if

(a) the person or company is an insider, affiliate or associate of

(i) the reporting issuer,

(ii) a person or company that is proposing to make a take-over bid, as defined in Part 13, for the securities of the reporting issuer, or

(iii) a person or company that is proposing

(A) to become a party to a reorganization, amalgamation, merger or arrangement or a similar business combination with the reporting issuer, or

(B) to acquire a substantial portion of the property of the reporting issuer;

(b) the person or company has engaged, is engaging or proposes to engage in any business or professional activity with or on behalf of

(i) the reporting issuer, or

(ii) a person or company described in clause (a)(ii) or (iii);

(c) the person is a director, officer or employee of

(i) the reporting issuer, or

(ii) a person or company described in clause (a)(ii) or (iii) or (b);

Explanatory Notes

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

2 Section 9 presently reads:

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).

- (d) the person or company learned of a material fact or material change with respect to the reporting issuer while the person or company was a person or company described in clause (a), (b) or (c);
- (e) the person or company
 - (i) learns of a material fact or material change with respect to the reporting issuer from any other person or company described in this section, including a person or company described in this clause, and
 - (ii) knows or ought reasonably to know that the other person or company is a person or company in a special relationship with the reporting issuer.

3 Section 65(1) is amended

(a) by repealing clauses (q), (q.1), (r) and (r.1) and substituting the following:

(q) a trade in a security that is exchanged by or for the account of an offeror, as defined in Part 13, with the security holders of an offeree issuer pursuant to a take-over bid or an exempt take-over bid;

(r) a trade in a security that is exchanged by or for the account of an offeror, as defined in Part 13, with the security holders of an offeree issuer pursuant to an issuer bid or an exempt issuer bid;

(b) by repealing clause (x) and substituting the following:

(x) a trade by a security holder in securities that are being disposed of to an issuer in respect of a transaction described in clause (p);

(x.1) a trade in a security by security holders of an offeree issuer, as defined in Part 13, that is made in connection with a take-over bid, an issuer bid, an exempt take-over bid or an exempt issuer bid;

4 Section 72 is repealed and the following is substituted:

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

(c) the adviser, or

(d) any partner, director, officer, person or company that,

(i) if the adviser is a reporting issuer, is an insider of the adviser, or

3 Section 65(1)(q), (q.1), (r), (r.1) and (x) presently read:

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

(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 Board 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 Board under section 145;

(x) a trade by

(i) an offeree defined in section 131(1)(e) in securities that are being disposed of to a person or company making a take-over bid or issuer bid, or

(ii) a security holder in securities that are being disposed of to an issuer in respect of a transaction described in clause (p);

4 Section 72 presently reads:

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:

(ii) if the adviser is not a reporting issuer, would be an insider of the adviser if the adviser were 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

(a) the registered adviser, or

(b) any partner, director, officer, person or company referred to in subsection (1)(d),

shall include at least the following:

(c) 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;

(d) any option that any of them has in respect of the securities and the terms of the option;

(e) 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;

(f) any financial arrangement relating to the securities that any of them has with any person or company;

(g) any financial arrangement that any of them has with any underwriter or other person or company who has any interest in the securities.

5 *Section 107(1) is amended*

(a) *by repealing clauses (j), (j.1), (k) and (k.1) and substituting the following:*

(j) the trade is made in a security that is exchanged by or for the account of an offeror, as defined in Part 13, with the security holders of an offeree issuer pursuant to a take-over bid or an exempt take-over bid;

(k) the trade is made in a security that is exchanged by or for the account of an offeror, as defined in Part 13, with the security holders of an offeree issuer pursuant to an issuer bid or an exempt issuer bid;

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

(y) the trade is made by a security holder in securities that are being disposed of to an issuer in respect of a transaction described in clause (i);

(y.1) the trade is made in a security by security holders of an offeree issuer, as defined in Part 13, in connection with a take-over bid, an issuer bid, an exempt take-over bid or an exempt issuer bid;

(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.

5 Section 107(1)(j), (j.1), (k), (k.1) and (y) presently read:

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

(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 Board 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 Board under section 145;

(y) the trade is made by

(i) an offeree defined in section 131(1)(e) in securities that are being disposed of to a person or company making a take-over bid or issuer bid, or

(ii) a security holder in securities that are being disposed of to an issuer in respect of a transaction described in clause (i);

6 *Section 119 is repealed and the following is substituted:*

119(1) For the purpose of subsection (2), a security of a reporting issuer includes

- (a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer, or
- (b) a security the market price of which varies materially with the market price of the securities of the reporting issuer.

(2) No person or company in a special relationship with a reporting issuer shall purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed.

(3) No reporting issuer or person or company in a special relationship with a reporting issuer shall, other than when it is necessary in the course of business, inform another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed.

(4) No person or company that proposes

- (a) to make a take-over bid, as defined in Part 13, for the securities of a reporting issuer,
- (b) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer, or
- (c) to acquire a substantial portion of the property of a reporting issuer,

shall, other than when it is necessary in the course of business for the carrying out of the take-over bid, business combination or acquisition, inform another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed.

(5) No person or company shall be found to have contravened subsection (2), if that person or company does one or more of the following:

(a) proves that

- (i) the person or company had knowledge of the material fact or material change by reason only that the material fact or material change was known to one or more of that person's or company's directors, officers, partners, employees or agents,
- (ii) in the case where that person is an individual, that person did not have any actual knowledge of the material fact or material change,
- (iii) the decision to purchase or sell the securities was made by that person's or company's director, officer, partner, employee or agent who did not have any actual knowledge of the material fact or material change, and

6 Section 119 presently reads:

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 ordinary 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

(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.

(2.1) For the purposes of subsection (2)(b)(ii), the Chief of Securities Administration, 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).

(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.

- (iv) the person's or company's director, officer, partner, employee or agent who had actual knowledge of the material fact or material change did not, with respect to the purchase or sale of the securities, give any specific advice based on that knowledge to that person's or company's director, officer, partner, employee or agent who made the decision to purchase or sell the securities;
- (b) proves that the person or company
 - (i) purchased or sold the securities, as an agent for another person or company pursuant to
 - (A) an unsolicited order, or
 - (B) a solicited order given prior to the person or company that acted as agent having knowledge of the material fact or material change,
 - and
 - (ii) did not, with respect to the purchase or sale of the securities, give any specific advice to that other person or company based on the knowledge of that material fact or change;
- (c) proves that the purchase or sale of the securities was made pursuant to the person's or company's participation in an automatic dividend reinvestment plan, an automatic security purchase plan or another similar automatic plan that the person or company had entered into prior to the person or company acquiring knowledge of the material fact or material change;
- (d) proves that the purchase or sale of the securities was made pursuant to a legal obligation that the person or company had entered into prior to the person or company acquiring knowledge of the material fact or material change;
- (e) proves that the person or company, as an agent for another person or company, purchased or sold the securities as a result of that other person's or company's
 - (i) participation in an automatic dividend reinvestment plan, an automatic security purchase plan or another similar automatic plan, or
 - (ii) legal obligation.
- (6) No person or company shall be found to have contravened subsection (2), (3) or (4) if that person or company does one or more of the following:
 - (a) proves that the person or company reasonably believed that the material fact or material change had been generally disclosed;
 - (b) proves that the person or company reasonably believed that
 - (i) the other party to the purchase or sale of the securities, or

(ii) the other person or company informed of the material fact or material change,

had prior knowledge of or ought reasonably to have known of the material fact or material change.

(7) Where a person or company with knowledge of a material fact or material change with respect to a reporting issuer purchases or sells securities of that reporting issuer for the account of another person or company while acting as agent with discretionary authority for that other person or company, the person or company for whose account the securities were purchased or sold shall not be found to have contravened subsection (2) if

(a) the transaction was entered into without the knowledge of the person or company for whose account the securities were purchased or sold,

(b) the material fact or material change was not communicated to the person or company for whose account the securities were purchased or sold, or

(c) the person or company for whose account the securities were purchased or sold had actual knowledge of the material fact or material change but did not exercise influence over or make recommendations to the person or company acting as the agent with the discretionary authority.

(8) It is not a contravention of this section to provide information to the Commission.

7 *Part 13 is repealed and the following is substituted:*

PART 13

TAKE-OVER BIDS AND ISSUER BIDS

131(1) In this Part,

(a) “bid” means a take-over bid or an issuer bid;

(b) “business day” means a day other than a Saturday or a holiday;

(c) “class of securities” includes a series of a class of securities;

(d) “equity security” means any security of an issuer that carries the residual right to participate in

(i) the earnings of the issuer, and

(ii) the assets of the issuer on the liquidation or the winding-up of the issuer;

(e) “exempt issuer bid” means an issuer bid that, pursuant to

(i) section 133, or

(ii) an exemption granted under section 144(2)(c),

is exempt from the requirements of sections 135 to 137.2 and section 140;

7 Part 13 – Take-over bids and issuer bids.

(f) “exempt take-over bid” means a take-over bid that, pursuant to

(i) section 132(1), or

(ii) an exemption granted under section 144(2)(c),

is exempt from the requirements of sections 135 to 140;

(g) “expiration of the bid” means the later of

(i) the expiration of the period, including any extensions, during which securities may be deposited under a bid, and

(ii) the time at which the offeror becomes obligated by the terms of the bid to take up or reject securities deposited under the bid;

(h) “formal bid” means

(i) subject to subclauses (ii) and (iii), a bid that is not an exempt take-over bid or an exempt issuer bid,

(ii) a bid that is an exempt take-over bid or an exempt issuer bid by reason of an exemption pursuant to section 132(1)(a) or 133(e) where the offeror is required to send to every holder in Alberta of the offeree issuer a disclosure document of the type contemplated by section 169(10), or

(iii) a bid that is an exempt take-over bid or an exempt issuer bid by reason of an exemption under section 132(1)(e) or 133(h) where the offeror is required to send all the disclosure documents relating to the exempt take-over bid or exempt issuer bid to holders of the class of securities that is subject to the bid;

(i) “holder in Alberta” means, in respect of an offeree issuer, a person or company that is a holder of a security of that issuer whose last address as shown on the books of that issuer is in Alberta;

(j) “interested person” means

(i) an offeree issuer,

(ii) a security holder of an offeree issuer,

(iii) a director or an officer of an offeree issuer,

(iv) an offeror,

(v) the Chief of Securities Administration, and

(vi) any person or company not referred to in subclauses (i) to (v) that, in the opinion of the Court of Queen’s Bench or the Board, as the case may be, is a proper person or company to make an application under this Part;

(k) “issuer bid”

(i) means an offer to acquire or redeem securities of the issuer made by that issuer to any person or company that is in Alberta or that is a holder in Alberta, and

(ii) includes a purchase, redemption or other acquisition of securities of the issuer by the issuer from that person or company,

but does not include an offer to acquire or redeem debt securities that are not convertible into securities other than debt securities;

(l) “offer to acquire” includes

- (i) an offer to purchase securities,
- (ii) a solicitation of an offer to sell securities,
- (iii) an acceptance of an offer to sell securities, whether or not the offer to sell was solicited, or
- (iv) any combination of
 - (A) an offer to purchase securities,
 - (B) a solicitation of an offer to sell securities, and
 - (C) an acceptance of an offer to sell securities, whether or not the offer to sell was solicited,

or one or more of them,

and the person or company accepting an offer to sell is deemed to be making an offer to acquire to the person or company that made the offer to sell;

(m) “offeree issuer” means an issuer whose securities are the subject of a take-over bid, an issuer bid or an offer to acquire;

(n) “offeror”

- (i) means a person or company that makes a take-over bid, an issuer bid or an offer to acquire, and
- (ii) for the purposes of section 141, includes a person or company that acquires a security whether by way of a take-over bid, an issuer bid or an offer to acquire;

(o) “offeror’s securities” or “securities of an offeror” means securities of the offeree issuer that are beneficially owned, or over which control or direction is exercised,

- (i) by the offeror, or
- (ii) by any person or company acting jointly or in concert with the offeror,

on the date that an offer to acquire is made;

(p) “private transaction” means, in relation to a class of securities, an arranged or negotiated transaction to acquire or sell securities that is not generally available on identical terms to holders of that class of securities;

(q) “published market” means, with respect to any class of securities, any market on which those securities are traded if the prices at which they have been traded on that market are regularly published in a bona fide newspaper, news magazine, business or financial journal or periodical of general and regular paid circulation;

- (r) “take-over bid” means an offer to acquire outstanding
- (i) voting securities of a class of the offeree issuer, or
 - (ii) equity securities of a class of the offeree issuer,
- that is made to any person or company that is in Alberta or to any holder in Alberta where, as of the date of the offer to acquire, securities that are subject to the offer to acquire, together with the offeror’s securities, constitute in the aggregate 20% or more of all outstanding securities of that class of securities.
- (2) For the purposes of this Part, where a security, whether or not on conditions,
- (a) is or may be convertible into,
 - (b) is or may be exchangeable for, or
 - (c) carries the right or obligation to acquire,
- a security of another class, that first mentioned security is deemed to be convertible into the security of that other class notwithstanding whether the security of that other class is of the same or another issuer.
- (3) For the purposes of this Part, where a security, whether
- (a) directly, or
 - (b) through securities of one or more other classes of securities that are themselves convertible,
- is convertible into a security of another class, that first mentioned security is deemed to be convertible into
- (c) a security, or
 - (d) securities of each class,
- into which the security of that other class may be converted.
- (4) For the purposes of this Part in determining, at any given date, the beneficial ownership of securities of an offeror, the offeror and any person or company acting jointly or in concert with the offeror shall be deemed to have acquired and to be the beneficial owner of those securities, including unissued securities, if, within 60 days following that date, the offeror or that person or company
- (a) is the beneficial owner of any securities that are convertible to those securities, or
 - (b) has the right or obligation, whether or not on conditions, to acquire the beneficial ownership of those securities
 - (i) through the exercise of an option, warrant, right or subscription privilege, or
 - (ii) by some other means not referred to in subclause (i).
- (5) If 2 or more offerors acting jointly or in concert make one or more offers to acquire securities of a class, the securities that are subject to the offer or offers to acquire shall be deemed to be securities that are subject to the offer to acquire made by each offeror for the purpose of determining whether that offeror is making a take-over bid.

(6) If an offeror or any person or company acting jointly or in concert with the offeror is, pursuant to subsection (4), deemed to be the beneficial owner of unissued securities, those unissued securities shall, in respect of that offeror's offer to acquire, be deemed to be outstanding for the purpose of calculating the number of outstanding securities of that class.

(7) For the purposes of this Part, a period of days shall be calculated as

- (a) commencing on the day next following the event that began the period, and
- (b) terminating
 - (i) at midnight on the last day of the period, or
 - (ii) if the last day of the period does not fall on a business day, at midnight on the next business day.

131.1(1) For the purposes of this Part, it is a question of fact as to whether a person or company is acting jointly or in concert with an offeror and, without limiting the meaning of "acting jointly or in concert", each of the following persons or companies shall be presumed to be acting jointly or in concert with an offeror:

(a) any person or company that, as a result of any agreement, commitment or understanding, whether formal or informal, with

- (i) the offeror, or
- (ii) any person or company acting jointly or in concert with the offeror,

acquires or offers to acquire securities of the issuer of the same class as those that are subject to the offer to acquire;

(b) any person or company that, as a result of any agreement, commitment or understanding, whether formal or informal, with

- (i) the offeror, or
- (ii) any person or company acting jointly or in concert with the offeror,

intends to exercise jointly or in concert with the offeror or with any person or company acting jointly or in concert with the offeror any voting rights attaching to any securities of the offeree issuer;

(c) every associate and affiliate of the offeror.

(2) Notwithstanding subsection (1), no registered dealer who is

(a) acting solely in an agency capacity for the offeror in connection with a bid, and

(b) not

- (i) executing principal transactions for the registered dealer's own account in the class of securities that are subject to the offer to acquire, or

- (ii) performing services beyond customary dealer's functions,

shall be presumed solely by reason of the agency relationship to be acting jointly or in concert with the offeror in connection with the bid.

131.2 For the purposes of this Part, a reference to

- (a) an offer to acquire,
- (b) the acquisition or ownership of securities, or
- (c) the control or direction over securities,

shall be deemed to include a direct or indirect

- (d) offer to acquire,
- (e) acquisition or ownership of securities, or
- (f) control or direction over securities,

as the case may be.

132(1) The following take-over bids are exempt from the requirements of sections 135 to 140:

- (a) a take-over bid that is made through the facilities of a stock exchange recognized by the Board for the purposes of this clause;

- (b) a take-over bid where

- (i) the bid is for not more than 5% of the outstanding securities of a class of securities of the issuer,

- (ii) the aggregate number of securities acquired in reliance on this exemption by the offeror and any person or company acting jointly or in concert with the offeror within any period of 12 months, when totalled with the acquisitions made by the offeror and any person or company acting jointly or in concert with the offeror within the same 12-month period, does not constitute a total number of securities in excess of 5% of the outstanding securities of that class of the issuer at the commencement of the 12-month period, and

- (iii) in the case where there is a published market for the securities that are being acquired, the value of the consideration, including reasonable brokerage fees or commissions actually paid, for any of those securities is not in excess of the market price at the date of acquisition as determined in accordance with the regulations;

- (c) a take-over bid that, subject to subsection (2),

- (i) is not made generally to security holders of a class of securities that is the subject of the bid, and

- (ii) is made to not more than 5 persons or companies in total whether or not the persons or companies are located in or outside Alberta,

where the value of the consideration provided for any of those securities including brokerage fees or commissions does not exceed 115% of the market price of the securities of that class at the date of the take-over bid as determined in accordance with the regulations;

(d) a take-over bid where

- (i) the offeree issuer is not a reporting issuer,
- (ii) there is not a published market in respect of the securities that are the subject of the take-over bid, and
- (iii) the number of holders of securities of that class is not more than 50, exclusive of holders

(A) who are in the employment of the offeree issuer or an affiliate of the offeree issuer, or

(B) who were formerly in the employment of the offeree issuer or an affiliate of the offeree issuer and while in that employment were and have continued after that employment to be security holders of the offeree issuer;

(e) a take-over bid that complies in all respects with the laws of a jurisdiction that is recognized by the Board for the purposes of this clause where

(i) the number of holders in Alberta of securities of the offeree issuer that are of the class that are subject to the take-over bid is less than 50 in total,

(ii) the securities that are held by the holders referred to in subclause (i) constitute in total less than 2% of the outstanding securities of that class, and

(iii) all the material relating to the take-over bid that is sent to the holders of the securities of the class that are the subject of the take-over bid is concurrently

(A) sent to those holders referred to in subclause (i), and

(B) filed with the Chief of Securities Administration;

(f) any take-over bid that is exempted by the regulations.

(2) For the purposes of subsection (1)(c), when

(a) an offeror makes an offer to acquire securities from a person or company, and

(b) the offeror knows or ought to know after reasonable inquiry that

(i) the person or company from whom the acquisition is being made is acting as a nominee, agent, trustee, executor, administrator or other legal representative for one or more other persons or companies having a direct beneficial interest in those securities, then each of those other persons or companies shall be included in the determination of the number of persons or companies to which an offer to acquire has been made, or

(ii) the person or company acquired the securities in order that the offeror might make use of the exemption under subsection (1)(c), then each person or company from which those securities were acquired shall be included in the determination of the number of persons or companies to which an offer to acquire has been made.

(3) Notwithstanding subsection (2)(b), 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 a single security holder in the determination of the number of security holders to whom an offer to acquire has been made.

133 The following issuer bids are exempted from the requirements of sections 135 to 137.2 and section 140:

(a) an issuer bid where

(i) the securities are purchased, redeemed or otherwise acquired in accordance with terms and conditions attaching to the securities that permit the purchase, redemption or acquisition of the securities by the issuer without the prior agreement of the owners of the securities to the purchase, redemption or acquisition, or

(ii) the securities are acquired to meet sinking fund or purchase fund requirements;

(b) an issuer bid where the purchase, redemption or other acquisition is required by

(i) the instrument creating or governing the class of securities, or

(ii) the statute under which the issuer was incorporated, organized or continued;

(c) an issuer bid where the securities

(i) carry with them or are accompanied by a right of the owner of the securities to require the issuer to redeem or repurchase the securities, and

(ii) are acquired pursuant to the exercise of the right referred to in subclause (i);

(d) an issuer bid where the securities are acquired from an employee or a former employee of the issuer or of an affiliate of the issuer and, if there is a published market in respect of those securities,

(i) the value of the consideration paid for any of the securities acquired does not exceed the market price of the securities at the date of the acquisition as determined in accordance with the regulations, and

- (ii) the aggregate number of securities or, in the case of convertible debt securities, the total principal amount of securities, acquired by the issuer within a period of 12 months in reliance on the exemption provided by this clause does not exceed 5% of the securities of that class issued and outstanding at the commencement of that 12-month period;
- (e) an issuer bid that is made through the facilities of a stock exchange recognized by the Board for the purposes of this clause;
- (f) an issuer bid where,
 - (i) following the publication of a notice of intention in the form and manner prescribed by the regulations, the issuer purchases securities in the normal course in the open market, including through the facilities of a stock exchange, and
 - (ii) the aggregate number of securities, or, in the case of convertible debt securities, the aggregate principal amount of securities, acquired by the issuer within a period of 12 months in reliance on the exemption provided by this clause does not exceed 5% of the securities of that class issued and outstanding at the commencement of that 12-month period;
- (g) an issuer bid where
 - (i) the issuer is not a reporting issuer,
 - (ii) there is not a published market in respect of the securities that are the subject of the issuer bid, and
 - (iii) the number of holders of securities of the issuer is not more than 50, exclusive of holders
 - (A) who are in the employment of the issuer or an affiliate of the issuer, or
 - (B) who were formerly in the employment of the issuer or an affiliate of the issuer and while in that employment were and have continued after that employment to be security holders of the issuer;
- (h) an issuer bid that complies in all respects with the laws of a jurisdiction that is recognized by the Board for the purposes of this clause where
 - (i) the number of holders in Alberta of securities of the class that is subject to the issuer bid is less than 50 in total,
 - (ii) the securities that are held by the holders referred to in subclause (i) constitute in total less than 2% of the outstanding securities of that class, and
 - (iii) all the material relating to the issuer bid that is sent to the holders of the securities of the class that are the subject of the issuer bid is concurrently

- (A) sent to those holders referred to in subclause (i), and
- (B) filed with the Chief of Securities Administration;

(i) any issuer bid that is exempted by the regulations.

133.1 Where a bid is made through the facilities of a stock exchange that is recognized by the Board for the purposes of an exemption under section 132 or 133, the bid shall be made in accordance with the by-laws, regulations and policies, as the case may be, of that stock exchange.

134(1) For the purposes of this section and section 134.1, “offeror” means

- (a) an offeror making a formal bid, other than a bid referred to in section 132(1)(e) or 133(h);
- (b) any person or company acting jointly or in concert with an offeror referred to in clause (a);
- (c) any person or company that is a control person of an offeror referred to in clause (a);
- (d) any associate or affiliate of a control person of an offeror referred to in clause (a).

(2) Otherwise than pursuant to a bid, an offeror shall not, during a period of time

- (a) commencing on the date of the announcement of the offeror’s intention to make the bid, and
- (b) terminating on the date of the expiration of the bid,

offer to acquire or make or enter into any agreement, commitment or understanding to acquire the beneficial ownership of any securities of the class that is subject to the bid.

(3) Notwithstanding subsection (2), in the case of a take-over bid, an offeror in compliance with the exemption under section 132(1)(a) may, during the period of time

- (a) commencing on the 3rd business day following the date of the take-over bid, and
- (b) terminating on the date of the expiration of that bid,

purchase securities of the class that is subject to a take-over bid and securities that are convertible into securities of the class if,

- (c) the intention to make those purchases is stated in the take-over bid circular,
- (d) the total number of securities acquired by the offeror in compliance with this subsection does not constitute in total more than 5% of the outstanding securities of that class at the date of that bid, and
- (e) the offeror issues and files with the Chief of Securities Administration a news release promptly after the close of business on the stock exchange on each day on which securities have been purchased under this subsection disclosing the information prescribed by the regulations.

(4) Notwithstanding subsection (2), in the case of an issuer bid, an offeror in compliance with the exemption under section 133(a), (b) or (c) may, during the period of time

- (a) commencing on the date of the announcement of the issuer's intention to make an issuer bid, and
 - (b) terminating on the date of the expiration of the bid,
- purchase, redeem or otherwise acquire securities that are subject to an issuer bid.

134.1(1) Subject to subsection (3), an offeror, whether or not any securities are taken up under a bid, shall not, during the period

- (a) commencing on the date of expiration of the bid, and
- (b) terminating on the 20th business day from the date of the expiration of the bid,

acquire, by way of a private transaction, beneficial ownership of securities of the class that was subject to the bid.

(2) Subject to subsection (3), if

- (a) a take-over bid that is a formal bid is made by an offeror, and
- (b) within the period of 90 days immediately prior to the date of the take-over bid the offeror acquired, pursuant to a private transaction, beneficial ownership of securities of the class that are subject to the bid,

then

- (c) the consideration to be offered for securities deposited under the bid must be at least equal to the highest consideration that was paid on a per security basis under the private transaction or the offeror must offer at least the cash equivalent of that consideration, and
- (d) the offeror shall offer to acquire that percentage of securities of the class that is subject to the bid that is at least equal to the highest percentage that the number of securities acquired from a seller in that private transaction was of the total number of securities of that class beneficially owned by that seller at the time of that private transaction.

(3) Subsections (1) and (2) do not apply to trades made in the normal course on a published market where

- (a) any broker acting for the purchaser or seller does not
 - (i) perform services beyond the customary broker's function, and
 - (ii) receive more than reasonable fees or commissions,
- (b) the purchaser or any person or company acting for the purchaser does not solicit or arrange for the solicitation of offers to sell securities of the class that is subject to the bid, and
- (c) the seller or any person or company acting for the seller does not solicit or arrange for the solicitation of offers to buy securities of the class that is subject to the bid.

(4) An offeror, except pursuant to a bid, shall not, during the period

- (a) commencing on the date of the announcement of the intention to make the bid, and
- (b) terminating on the date of the expiration of the bid,

sell, or make or enter into any agreement, commitment or understanding to sell, any securities of the class that is subject to the bid.

(5) Notwithstanding subsection (4), an offeror, before the expiration of a bid, may make or enter into an agreement, commitment or understanding to sell securities that may be taken up by the offeror pursuant to a bid after the expiration of a bid if the intention to sell is disclosed in the take-over bid circular or issuer bid circular, as the case may be.

135 Subject to sections 132(1) and 133 and the regulations, the following rules apply to all bids:

(a) a bid shall be made to all holders of securities of the class that is subject to the bid who are in Alberta;

(b) a bid shall be sent by the offeror to all holders in Alberta who hold

(i) securities of the class that is subject to the bid, or

(ii) securities that, before the expiration of the bid, are convertible into securities of the class that is subject to the bid;

(c) the offeror shall allow at least 21 days from the date of the bid during which securities may be deposited pursuant to the bid;

(d) any securities that are deposited pursuant to a bid shall not be taken up by the offeror until the expiration of 21 days from the date of the bid;

(e) any securities that are deposited pursuant to a bid may be withdrawn by or on behalf of a depositing security holder

(i) at any time before the expiration of 21 days from the date of the bid,

(ii) at any time before the expiration of 10 days from the date of a notice of change or variation under section 137 or 137.1, or

(iii) if the securities have not been taken up and paid for by the offeror, at any time after 45 days have expired from the date of the bid;

(f) the right of withdrawal under clause (e)(ii) does not apply

(i) where the securities have been taken up by the offeror by the date of the notice,

(ii) where

(A) a variation in the terms of a bid consists solely of an increase in the consideration offered for the securities that are subject to the bid, and

(B) the time for deposit is not extended for a period greater than that provided for by section 137.1(2),

or

(iii) in the circumstances described in section 137.1(3);

(g) notice of withdrawal of any securities pursuant to clause (e) by or on behalf of the depositing security holder

(i) shall be made by a method that provides the depositary designated under the bid with

(A) a written copy, or

(B) a printed copy,

and

(ii) to be an effective notice, must be actually received by the depositary designated under the bid;

(h) when a notice is given in accordance with clause (g), the offeror shall promptly return the securities to the depositing security holder;

(i) when

(i) a bid is made for less than all of the securities of the class of securities that are subject to the bid, and

(ii) a greater number of securities are deposited pursuant to the bid than the offeror is bound or willing to acquire under the bid,

the securities shall be taken up and paid for by the offeror, as nearly as possible, pro rata, disregarding fractions, according to the number of securities deposited by each depositing security holder;

(j) if an offeror purchases securities as permitted under section 134(3), those purchased securities shall be counted in the determination as to whether a condition as to the minimum number of securities to be deposited in the bid has been fulfilled but shall not reduce the number of securities that the offeror is bound to take up under the bid;

(k) subject to clauses (l) and (m), securities that are deposited pursuant to a bid shall be taken up and paid for by the offeror if all terms and conditions of the bid have been complied with or waived not later than 10 days from the expiration of the bid;

(l) any securities that are taken up by the offeror under a bid shall be paid for by the offeror as soon as possible and in any event not more than 3 days after the taking up of the securities;

(m) securities that are deposited pursuant to a bid after the date on which the offeror first took up securities deposited under the bid shall be taken up and paid for by the offeror within 10 days from the day of the deposit of the securities;

(n) a bid may not be extended by the offeror if all the terms and conditions of the bid, except those waived by the offeror, have been complied with unless the offeror first takes up and pays for all the securities that are deposited under the bid and not withdrawn;

(o) if all the terms and conditions of the bid have been complied with or waived, the offeror shall promptly issue a notice by means of a news release to that effect and the news release shall disclose

(i) the approximate number of securities deposited, and

(ii) the approximate number of securities that will be taken up.

135.1 When a bid provides that the consideration for the securities deposited pursuant to the bid is to be paid in cash or partly in cash, the offeror shall make adequate arrangements prior to the bid to ensure that the required funds are available to effect payment in full for all securities that the offeror has offered to acquire.

136(1) Subject to the regulations, when a bid is made all the holders of securities that are of the same class shall be offered identical consideration.

(2) When a bid is made or there is an intention to make a bid, neither the offeror nor any person or company acting jointly or in concert with the offeror shall enter into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value for those securities than that offered to the other holders of the same class of securities.

(3) When the terms of a bid are varied before the expiration of the bid by increasing the value of the consideration offered for the securities subject to the bid, the offeror shall pay that increased consideration to each person or company that has securities taken up pursuant to the bid, whether or not those securities had been taken up by the offeror before the variation of the bid.

137(1) An offeror shall send a take-over bid circular or an issuer bid circular, as the case may be, with or as part of a bid.

(2) When

- (a) prior to the expiration of the bid, or
- (b) after the expiration of the bid but prior to the expiration of any applicable withdrawal rights,

a change has occurred in the information contained in a take-over bid circular or an issuer bid circular or in any notice of change or notice of variation that would reasonably be expected to affect the decision of the holders of the securities of the offeree issuer to accept or reject the bid, a notice of the change shall be sent to every person or company

- (c) to which a circular was previously sent, and
- (d) that has securities that have not been taken up as at the date of the occurrence of the change.

(3) Subsection (2) does not apply to a change that is not within the control of the offeror or an affiliate of the offeror unless it is a change in a material fact relating to the securities being offered in exchange for securities of the offeree issuer.

137.1(1) When a bid is varied by changing any of its terms,

- (a) including any extension of the period during which securities may be deposited under the bid, and
- (b) whether or not that variation results from the exercise of any right contained in the bid,

a notice of that variation shall be sent to every person or company

- (c) to which a take-over bid circular or issuer bid circular was previously sent, and
- (d) that has securities that have not been taken up as at the date of the variation.

(2) Subject to subsection (3), when there is a variation in the terms of a bid, the period during which securities may be deposited pursuant to the bid shall not expire at any time before 10 days after the sending of the notice of variation.

(3) Subsection (2) does not apply to a variation in the terms of a bid consisting solely of the waiver of a condition in the bid where the consideration offered for the securities that are subject to the bid consists solely of cash.

137.2 A take-over bid circular, an issuer bid circular, a notice of change and a notice of variation shall be in the form and contain the information prescribed by this Part and the regulations.

138(1) Where a take-over bid has been made, a directors' circular shall be prepared and sent, not later than 10 days from the date of the take-over bid, by the board of directors of an offeree issuer to every person and company to which a take-over bid was required to be sent under section 135(b).

(2) The board of directors shall include in a directors' circular either

(a) a recommendation to accept or to reject a take-over bid and the reasons for the recommendation, or

(b) a statement stating that they are unable to make or are not making a recommendation and, if no recommendation is made, the reasons for not making a recommendation.

(3) If a board of directors is considering recommending acceptance or rejection of a take-over bid, the board of directors

(a) shall, at the time of sending a directors' circular, advise the persons or companies referred to in subsection (1) of that fact, and

(b) may advise them not to tender their securities until further communication is received from the directors.

(4) Where subsection (3) applies, the board of directors shall send the recommendation or the decision not to make a recommendation not less than 7 days before the scheduled expiration of the period during which securities may be deposited under the bid.

(5) If,

(a) prior to the expiration of a take-over bid, or

(b) after the expiration of a take-over bid but prior to the expiration of applicable withdrawal rights,

a change has occurred in the information contained in a directors' circular or in any notice of change to a directors' circular that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, the board of directors of the offeree issuer shall

(c) promptly send a notice of the change to every person or company to which the circular was sent, and

(d) disclose in the notice of change the nature and substance of that change.

139(1) An individual director or officer may recommend acceptance or rejection of a take-over bid if the director or officer sends with the recommendation a circular prepared in accordance with the regulations.

(2) If,

(a) prior to the expiration of a take-over bid, or

(b) after the expiration of a take-over bid but prior to the expiration of applicable withdrawal rights,

a change, other than a change that is not within the control of the individual director or officer, as the case may be, has occurred in the information contained in an individual director's or officer's circular

or any notice of change to that circular that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, the individual director or officer, as the case may be, shall

(c) promptly send a notice of change to the circular to the board of directors of the offeree issuer, and

(d) disclose in the notice of change the nature and substance of that change.

(3) Where an individual director or officer submits

(a) a circular prepared in accordance with subsection (1), or

(b) a notice of change in accordance with subsection (2),

to the board of directors, the board of directors shall, at the offeree issuer's expense, send a copy of the circular or notice, as the case may be, to every person and company to which the take-over bid was required to be sent under section 135(b).

139.1 Every directors' circular, individual director's or officer's circular and notice of change shall be in a form and contain the information required by this Part and the regulations.

140(1) A take-over bid and any notice of change or variation to it shall be filed with the Chief of Securities Administration and sent to the offeree issuer at its principal office on the day that the take-over bid or the notice of change or variation, as the case may be, is sent to the holders of securities of the offeree issuer, or as soon thereafter as practicable.

(2) An issuer bid and any notice of change or variation to it shall be filed with the Chief of Securities Administration on the day that the issuer bid or the notice of change or variation, as the case may be, is sent to the holders of securities of the offeree issuer, or as soon thereafter as practicable.

(3) Every directors' circular or individual director's or officer's circular and any notice of change or variation to it that is sent to the security holders of an offeree issuer shall be filed with the Chief of Securities Administration and sent to the offeror at its principal office on the day that the circular or notice of change or variation, as the case may be, is sent to the holders of securities of the offeree issuer, or as soon thereafter as practicable.

(4) Subject to the regulations,

(a) a bid,

(b) a take-over bid circular or an issuer bid circular, as the case may be,

(c) a directors' circular,

(d) an individual director's or officer's circular, and

(e) any notice of change or variation to a bid or circular referred to in clauses (a) to (d),

shall, for the purposes of sections 135, 137, 137.1, 137.2, 138 and 139 and this section, be deemed to have been sent and dated as of the date on which it was sent to all or substantially all of the persons and companies entitled to receive it.

141(1) Every offeror, other than an offeror under a formal bid, that acquires beneficial ownership of, or the power to exercise control or direction over,

- (a) voting or equity securities of any class of a reporting issuer, or
 - (b) securities convertible into voting or equity securities of any class of a reporting issuer,
- that, together with the offeror's securities of that class, would constitute 10% or more of the outstanding securities of that class, shall
- (c) promptly issue and file with the Chief of Securities Administration a news release containing the information prescribed by the regulations, and
 - (d) within 2 business days from the day of the acquisition file with the Chief of Securities Administration a report containing the same information contained in the news release issued under clause (c).
- (2) Where an offeror is required to file a report under subsection (1) and
- (a) the offeror or any person or company acting jointly or in concert with the offeror acquires
 - (i) beneficial ownership of,
 - (ii) the power to exercise control or direction over, or
 - (iii) securities convertible into,an additional 2% or more of the outstanding securities of the class, or
 - (b) there is a change in a material fact in that report,
- the offeror that filed that report shall
- (c) promptly issue and file with the Chief of Securities Administration a news release containing the information prescribed by the regulations, and
 - (d) within 2 business days from the day of the occurrence of the change in respect of which the report was made file with the Chief of Securities Administration the same information as is contained in the news release issued under clause (c).
- (3) After the filing of a report under subsection (2) by an offeror, every time that
- (a) the offeror or any person or company acting jointly or in concert with the offeror acquires
 - (i) beneficial ownership of,
 - (ii) the power to exercise control or direction over, or
 - (iii) securities convertible into,an additional 2% or more of the outstanding securities of the class, or
 - (b) there is a change in a material fact in the latest report filed under this section,
- that offeror shall
- (c) promptly issue and file with the Chief of Securities Administration a news release containing the information prescribed by the regulations, and

(d) within 2 business days from the day of the occurrence of the change in respect of which the report was made file with the Chief of Securities Administration the same information as is contained in the news release issued under clause (c).

(4) During the period

(a) commencing on the occurrence of an event in respect of which a report or a further report is required to be filed pursuant to this section, and

(b) terminating on the expiry of one business day from the date that the report or further report is filed in accordance with the requirements of this section,

neither the offeror that is required to file the report or further report nor any person or company acting jointly or in concert with the offeror shall offer to acquire or acquire beneficial ownership of or the power to exercise control or direction over

(c) any securities of the class in respect of which the report or further report is required to be filed, or

(d) any securities convertible into securities of the class referred to in clause (c).

(5) Subsection (4) does not apply to an offeror that

(a) is the beneficial owner of, or

(b) has the power to exercise control or direction over,

securities that, together with that offeror's securities of that class, constitute 20% or more of the outstanding securities of that class.

142(1) If, during the period

(a) after the commencement of a formal bid that is made for the voting or equity securities of an offeree issuer that is a reporting issuer, and

(b) prior to the expiration of the bid referred to in clause (a),

an offeror, other than a person or company making the formal bid, acquires beneficial ownership of, or the power to exercise control or direction over, securities of the class subject to the bid that, when added to that offeror's securities of that class, total 5% or more of the outstanding securities of that class, that offeror shall

(c) not later than the opening of trading on the next business day issue a news release containing the information prescribed by the regulations, and

(d) promptly file a copy of the news release with the Chief of Securities Administration.

(2) Where

(a) an offeror that is required to file a news release under subsection (1), or

(b) any person or company acting jointly or in concert with the offeror,

acquires beneficial ownership of, or control or direction over, securities of the class that are subject to the bid that, when added to the securities of that class acquired after the filing of that news release by the offeror and any person or company acting jointly or in concert with that offeror, total an additional 2% or more of the outstanding

securities of that class, the offeror shall

(c) not later than the opening of trading on the next business day issue a further news release containing the information prescribed by the regulations, and

(d) promptly file a copy of the news release with the Chief of Securities Administration.

(3) After the filing of a news release under subsection (2) by an offeror, every time that the offeror or any person or company acting jointly or in concert with the offeror acquires beneficial ownership of, or control or direction over, securities of the class that are subject to the bid that, when added to the securities of that class acquired after the filing of the latest news release filed under this section by the offeror and any person or company acting jointly or in concert with that offeror, total an additional 2% or more of the outstanding securities of the class, that offeror shall

(a) not later than the opening of trading on the next business day issue a further news release containing the information prescribed by the regulations, and

(b) promptly file with the Chief of Securities Administration a copy of the news release.

143 Where the facts

(a) required to be reported, or

(b) in respect of which a news release is required to be filed,

under sections 141 and 142 are identical, a report or news release is required only under the provision requiring the earlier report or news release, as the case may be.

144(1) On application of an interested person, the Board may, where it is of the opinion that a person or company has not complied or is not complying with this Part or the regulations made in respect of this Part, by order do one or more of the following:

(a) restrain the distribution of any document or any advertisement used or issued in connection with a bid;

(b) require

(i) an amendment or correction to or variation of any document or advertisement used or issued in connection with a bid, and

(ii) the distribution of any amended, varied or corrected document or advertisement referred to in subclause (i);

(c) direct any person or company to comply with this Part or the regulations made in respect of this Part;

(d) restrain any person or company from contravening this Part or the regulations made in respect of this Part;

(e) direct the directors and senior officers of the person or company to cause the person or company to comply with or to cease contravening this Part or the regulations made in respect of this Part.

(2) On an application by any interested person, the Board may by order do one or more of the following:

(a) notwithstanding section 136(2), permit an agreement, commitment or understanding to be entered into or made with a selling security holder on determining that the agreement, commitment or understanding is being made for reasons other than to increase the value of the consideration to be paid to the selling security holder for his securities;

(b) vary the time periods set out in this Part and the regulations made in respect of this Part;

(c) exempt any person or company from any requirement of this Part or the regulations made in respect of this Part where it is satisfied that to do so would not be prejudicial to the public interest.

(3) An order made under subsection (2)(c) shall be retroactive in effect if the order so provides.

145 On the application of an interested person, the Court of Queen's Bench, where it is satisfied that a person or company has not complied with this Part or the regulations made in respect of this Part, may make an interim or final order

(a) compensating any interested person who is a party to the application for damages suffered as a result of a contravention of this Part or the regulations made in respect of this Part;

(b) rescinding a transaction with any interested person, including the issue of a security or a purchase and sale of a security;

(c) requiring any person or company to dispose of any securities acquired pursuant to or in connection with a bid;

(d) prohibiting any person or company from exercising any or all of the voting rights attaching to any securities;

(e) requiring the trial of an issue;

(f) respecting any matter not referred to in clauses (a) to (e) that the Court considers proper.

8 Sections 148 and 149 are repealed.

8 Sections 148 and 149 presently read:

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 with the Chief of Securities Administration 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 with the Chief of Securities Administration a report as of the day on which the person or company acquired those additional voting rights and after that each time he or it acquires a further 5% of the voting rights.

9 *Section 161 is amended*

(a) *in subsection (1)(e) by striking out “section 119(1)” and substituting “section 119(2), (3) or (4)”;*

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

(2) Where a person or company is guilty of an offence, that person or company is liable,

(a) in the case of a person or company other than an individual, to a fine of not more than \$1 000 000, and

(b) in the case of an individual, to

(i) a fine of not more than \$1 000 000, or

(ii) imprisonment for a term of not more than 5 years,

or to both fine and imprisonment.

(c) *in subsection (4)*

(i) *by striking out “\$5000” and substituting “\$1 000 000”;*

(ii) *by striking out “1 year” and substituting “5 years”;*

(d) *in subsection (5)*

(i) *by striking out “\$5000” and substituting “\$1 000 000”;*

(ii) *by striking out “1 year” and substituting “5 years”;*

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

(6) Notwithstanding subsection (2)(a) or (b)(i), if a person or company

(a) has contravened section 119(2), (3) or (4), and

(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.

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 with the Chief of Securities Administration a report, as of the day on which the person or company acquired the ownership of the securities, within 3 days from the day that he or it acquired the ownership of those securities.

(1.1) For the purpose of determining under subsection (1) whether a person or company purchases securities carrying at least 5% of the voting rights attached to all voting securities for the time being outstanding, if 2 or more persons or companies make purchases jointly or in concert or intend to exercise jointly or in concert any voting rights attaching to the securities so acquired, then each of those persons or companies shall be deemed to have purchased, in addition to the securities actually purchased by each of them, the securities purchased by the other persons or companies.

(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.

9 Section 161 presently reads:

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 Board, its representative, the Chief of Securities Administration 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 Board or Chief of Securities Administration made under this Act;

(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;

(c.2) fails to comply with or is in contravention of a written undertaking made by that person or company to the Board or the Chief of Securities Administration;

(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 48(3);

section 52(1);

section 53;

section 54(1);

section 63(1), (2) or (3);

(b) has made a profit by reason of the contravention,
the fine to which the person or company is liable shall be

(c) not less than the profit made by the person or company
by reason of the contravention, and

(d) not more than

(i) \$1 000 000, or

(ii) an amount equal to 3 times the profit made by the
person or company by reason of the contravention,
whichever is the greater amount.

section 68;
section 70;
section 71(1) or (2);
section 72(1) or (2);
section 73;
section 74(1) or (2);
section 75;
section 76;
section 78;
section 79(1), (2), (5) or (6);
section 81;
section 82(1);
section 84(1) or (2);
section 85(2);
section 93(5) or (6);
section 93.1;
section 97(2);
section 100;
section 101;
section 103;
section 105;
section 106(3);
section 118(1) or (4);
section 119(1);
section 122;
section 127;
section 128(1);
section 129(2);
Part 13;
section 147;
section 152;
section 153(1);
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 1 year 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.

10 *The following is added after section 161:*

161.1(1) In this section,

- (a) “highest price received” means the highest price at which the seller sold any one security of the securities sold after he had knowledge of the material fact or material change;
- (b) “lowest price paid” means the lowest price paid by the purchaser for any one security of the securities that he purchased after he had knowledge of the material fact or material change;
- (c) “market price” means the weighted average market price of the securities as determined with respect to the first 20 trading days for that security following the general disclosure of the material fact or material change;
- (d) “purchaser” means a person or company that purchased securities in contravention of section 119(2);
- (e) “securities” means securities purchased or sold in contravention of section 119(2);
- (f) “seller” means a person or company that sold securities in contravention of section 119(2).

(2) For the purposes of section 161(6)(c) and (d), “profit” means

- (a) in the case of securities purchased in contravention of section 119(2), the amount that is determined by
 - (i) subtracting the lowest price paid by the purchaser for any one of those securities from the market price of the securities, and
 - (ii) multiplying the difference calculated under subclause (i) by the total number of securities purchased by the purchaser after he had knowledge of the material fact or material change;
- (b) in the case of securities sold in contravention of section 119(2), the amount that is determined by
 - (i) subtracting the market price of the securities from the highest price received by the seller for any one of those securities, and

- (4) *If a company is guilty of an offence under subsection (1),*
- (a) every director and every senior officer of the company who authorized, permitted or acquiesced in the offence, and*
 - (b) every person, other than a director or senior officer of the company, who authorized or permitted 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 1 year 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 1 year or to both fine and imprisonment.*

10 Determination of profits.

- (ii) multiplying the difference calculated under subclause (i) by the total number of securities sold by the seller after he had knowledge of the material fact or material change;
- (c) in the case where the person or company
 - (i) informed another person or company of a material fact or material change in contravention of section 119(3) or (4), and
 - (ii) received any direct or indirect consideration for providing that information,
 the value of the consideration received.

11 Section 169 is amended

(a) by repealing subsections (1) and (2) and substituting the following:

169(1) If a take-over bid circular or a notice of change or variation that is sent to the holders of securities of an offeree issuer or to the holders of securities convertible into securities of an offeree issuer as required by Part 13 contains a misrepresentation, each of those holders

- (a) shall be deemed to have relied on the misrepresentation, and
- (b) may elect to exercise a right of action
 - (i) for rescission or damages against the offeror, or
 - (ii) 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 ones referred to in paragraph (A) who signed a certificate in the circular or notice.

(2) If a directors' circular or an individual director's or officer's circular or any notice of change or variation to one of those circulars sent to security holders of an offeree issuer as required by Part 13 contains a misrepresentation, each of the persons or companies to whom the circular or notice was sent shall be deemed to have relied on the misrepresentation, and

- (a) in respect of a misrepresentation in a directors' circular or a notice of change or variation to it, has a right of action for damages against
 - (i) every director or officer who signed the circular or notice of change or variation, and

11 Section 169 presently reads:

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 company, 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.

(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 an individual director's or officer's circular or a notice of change or variation to it, has a right of action for damages against

(i) every director or officer who signed the circular or notice of change or variation, 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.

(b) by repealing subsection (4) and substituting the following:

(4) No person or company is liable under subsection (1), (2) or (3) if the person or company proves that the security holder had knowledge of the misrepresentation.

(c) in subsection (5)

(i) as to clause (a) by striking out "amendment to it" and substituting "the notice of change or variation in respect of it";

(ii) as to clause (b) by striking out "amendment to it" and substituting "the notice of change or variation in respect of it";

(iii) as to clause (c) by striking out "amendment to it" and substituting "the notice of change or variation in respect of it";

(iv) as to clause (c)(ii) and (iii) by striking out "amendment" and substituting "the change or variation";

(v) as to clause (d) by striking out "an amendment to it" and substituting "the notice of change or variation in respect of it";

(d) in subsection (6) by striking out "amendment to it" and substituting "the notice of change or variation in respect of it";

(e) in subsection (7) by striking out "amendment to it" and substituting "the notice of change or variation in respect of it";

(f) in subsection (9)

(i) by striking out "offeror company" and substituting "offeror";

(ii) by striking out "offeree company" and substituting "offeree issuer";

(g) by repealing subsection (10) and substituting the following:

(10) If the offeror,

(a) in a take-over bid exempted from the provisions of Part 13 by section 132(1)(a), or

(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 Chief of Securities Administration 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.

(b) in an issuer bid exempted from the provisions of Part 13 by section 133(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 send to the security holders of an offeree issuer 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 security holders as required by Part 13.

(h) by repealing subsection (11) and substituting the following:

(11) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right that the security holders may have at law.

12 Section 169.1 is repealed.

(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 does not derogate from any other right the offeree may have at law.

12 Section 169.1 presently reads:

169.1(1) Every person or company that, before his or its intention has been generally disclosed, other than in the ordinary course of business, communicates his or its intention to make a take-over bid or an issuer bid other than

(a) a take-over bid effected in reliance on an exemption under section 132(1)(b), (d) or (e), or

(b) an issuer bid effected in reliance on an exemption under section 133(1)(a), (b), (d), (f) or (g),

to another person or company that thereafter purchases securities of the offeree company is liable to compensate the vendor of the securities for damages as a result of the trade.

(2) No person or company is liable under subsection (1) if he or it proves that

(a) he or it had reasonable grounds to believe that the intention to make the take-over bid or issuer bid was generally disclosed, or

(b) the intention to make the take-over bid or issuer bid was known or ought reasonably to have been known to the vendor.

(3) Every person or company in a special relationship with a reporting issuer that has the intention of making a take-over bid or issuer bid that, before that intention has been generally disclosed, other than in the ordinary course of business, communicates that intention to make a take-over bid or issuer bid, other than

13 Section 170 is repealed and the following is substituted:

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) a security holder of an offeree issuer or another person or company who is not a security holder of an offeree issuer to which

(i) a take-over bid and take-over bid circular,

(ii) an issuer bid and issuer bid circular, or

(iii) a notice of change or variation to that bid or circular referred to in subclause (i) or (ii)

was required to be sent in compliance with Part 13, but was not sent,

has a right of action for rescission or damages against the dealer or offeror, as the case may be, who did not comply with the statutory requirement.

14 Section 171 is repealed and the following is substituted:

171(1) Every person or company in a special relationship with a reporting issuer that

(a) purchases or sells 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 seller or purchaser of the securities, as the case may be, for damages as a result of the trade.

(2) Subsection (1) does not apply to the person or company if the person or company

(a) proves that the person or company reasonably believed that the material fact or material change had been generally disclosed;

(a) a take-over bid effected in reliance on an exemption under section 132(1)(b), (d) or (e), or

(b) an issuer bid effected in reliance on an exemption under section 133(1)(a), (b), (d), (f) or (g),

to another person or company that thereafter purchases securities of the offeree company is liable to compensate the vendor of the securities for damages as a result of the trade.

(4) No person or company is liable under subsection (3) if he or it proves that

(a) he or it had reasonable grounds to believe that the intention to make the take-over bid or issuer bid was generally disclosed, or

(b) the intention to make the take-over bid or issuer bid was known or ought reasonably to have been known to the vendor.

13 Section 170 presently reads:

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.

14 Section 171 presently reads:

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 ordinary course of business is liable to compensate the purchaser of the securities for damages as a result of the trade.

(3) Subsection (1) or (2), as the case may be, does 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) proves that the material fact or material change was known or ought reasonably to have been known to the seller or purchaser, as the case may be;

(c) proves that

(i) the person or company had knowledge of the material fact or material change by reason only that the material fact or material change was known to one or more of that person's or company's directors, officers, partners, employees or agents,

(ii) in the case where that person is an individual, that person did not have any actual knowledge of the material fact or material change,

(iii) the decision to purchase or sell the securities was made by that person's or company's director, officer, partner, employee or agent who did not have any actual knowledge of the material fact or material change, and

(iv) the person's or company's director, officer, partner, employee or agent who had actual knowledge of the material fact or material change did not, with respect to the purchase or sale of the securities, give any specific advice based on that knowledge to that person's or company's director, officer, partner, employee or agent who made the decision to purchase or sell the securities;

(d) proves that the person or company

(i) purchased or sold the securities as an agent for another person or company pursuant to

(A) an unsolicited order, or

(B) a solicited order given prior to the person or company that acted as agent having knowledge of the material fact or material change,

and

(ii) did not, with respect to the purchase or sale of the securities, give any specific advice to that other person or company based on the knowledge of that material fact or change;

(e) proves that the purchase or sale of the securities was made pursuant to the person's or company's participation in an automatic dividend reinvestment plan, an automatic security purchase plan or another similar automatic plan that the person or company had entered into prior to the person or company acquiring knowledge of the material fact or material change;

(f) proves that the purchase or sale of the securities was made pursuant to a legal obligation that the person or company had entered into prior to the person or company acquiring knowledge of the material fact or material change;

(g) proves that the person or company, as an agent for another person or company, purchased or sold the securities as a result of that other person's or company's

(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 Chief of Securities Administration 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 ordinary 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, does 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,

(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, or

(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) participation in an automatic dividend reinvestment plan, an automatic security purchase plan or another similar automatic plan, or
 - (ii) legal obligation.
- (3) Every
 - (a) reporting issuer,
 - (b) person or company in a special relationship with a reporting issuer, or
 - (c) person or company that proposes
 - (i) to make a take-over bid, as defined in Part 13, for the securities of a reporting issuer,
 - (ii) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer, or
 - (iii) to acquire a substantial portion of the property of a reporting issuer,

who informs another person or company of a material fact or material change with respect to that reporting issuer that has not been generally disclosed is liable to compensate for damages any person or company that thereafter

 - (iv) sells securities of the reporting issuer to, or
 - (v) purchases securities of the reporting issuer from,

the person or company that received the information.
- (4) Subsection (3) does not apply if
 - (a) the person or company who informed the other person or company proves that the informing person or company reasonably believed 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 seller or purchaser, as the case may be,
 - (c) in the case of an action against a reporting issuer or a person or company in a special relationship with the reporting issuer, the information was given when it was necessary in the course of business, or
 - (d) in the case of an action against a person or company described in subsection (3)(c)(i), (ii) or (iii), the information was given when it was necessary in the course of business for the carrying out of the take-over bid, business combination or acquisition.
- (5) Every person or company in a special relationship with a reporting issuer
 - (a) who is an insider or an associate or an affiliate of the reporting issuer, 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.

(7.1) For the purposes of subsection (7)(d)(ii), the Chief of Securities Administration, 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).

(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 ordinary 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

(b) who

(i) 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

(ii) directly or indirectly communicates, other than when it is necessary in the course of business, knowledge of a material fact or material change in respect of the reporting issuer that has not been generally disclosed,

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.

(6) Subsection (5) does not apply if the person or company in the special relationship reasonably believed that the material fact or material change had been generally disclosed.

(7) 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

(i) a portfolio manager, or

(ii) a registered dealer acting as a portfolio manager,

and uses the information for his or its direct benefit or advantage to purchase or sell securities of an issuer for the person's or company's accounts 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, if the securities of that issuer are included, as the case may be, in

(c) the portfolio securities of the mutual fund, or

(d) the investment portfolio managed for the client by the portfolio manager or registered dealer.

(8) 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) or (3),

as to the same transaction or series of transactions, are jointly and severally liable.

(9) In assessing damages under subsection (1) or (3) the court shall consider,

(a) if the plaintiff is a purchaser, the price that he paid for the security less the weighted average market price of the security as determined with respect to the first 20 trading days for that security following the general disclosure of the material fact or material change, or

- (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.

(b) if the plaintiff is a vendor, the weighted average market price of the security as determined with respect to the first 20 trading days for that security following the general disclosure of the material fact or material change less the price that he received for the security.

(10) Notwithstanding subsection (9), the court may consider any other measure of damages as may be relevant in the circumstances.

(11) For the purpose of subsections (1), (3) and (5), a security of the reporting issuer includes

(a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer, or

(b) a security, the market price of which varies materially with the market price of the securities of the reporting issuer.

15 Section 192 is amended

(a) by adding the following after subsection (1):

(1.1) When this Act or the regulations

(a) require that material be filed, and

(b) do not specify as to where or with whom the material is to be filed,

the filing shall be effected by depositing the material or causing it to be deposited with the Chief of Securities Administration unless the Board by order directs otherwise.

(b) in subsection (2) by adding “or (1.1)” after “subsection (1)”.

16 Section 196 is amended

(a) by repealing clauses (x.3), (y) and (y.1) and substituting the following:

(y) respecting any other matters necessary or advisable to carry out effectively the intent and purpose of Part 13 including, without restricting the generality of the foregoing,

(i) providing for exemptions in addition to those set out in sections 132(1) and 133,

(ii) providing for exemptions from sections 134 and 134.1,

(iii) restricting any exemptions set out in sections 132(1), 133, 134 or 134.1,

(iv) prescribing rules in addition to those set out in sections 135 to 140,

15 Section 192(1) and (2) presently read:

192(1) When this Act or the regulations require that material be filed

(a) with the Board, the filing shall be effected by depositing the material or causing it to be deposited with the Executive Director;

(b) with the Agency or the Chief of Securities Administration, the filing shall be effected by depositing the material or causing it to be deposited with the Chief of Securities Administration;

(c) with a Registrar, the filing shall be effected by depositing the material or causing it to be deposited with the Registrar.

(2) Subject to subsections (3) and (4), all material filed under subsection (1) shall,

(a) in the case of material deposited with the Executive Director, be made available by the Executive Director for public inspection at the office of the Board, and

(b) in the case of material deposited with the Chief of Securities Administration or a Registrar, be made available by the Chief of Securities Administration or the Registrar, as the case may be, for public inspection at the office of the Agency,

during the normal business hours of the Board or the Agency, as the case may be.

16 Section 196(x.3), (y), (y.1) and (z.1) presently read:

196 The Lieutenant Governor in Council may make regulations

(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);

(z.1) governing the use of proxies, information circulars and reports required under Parts 11 and 12;

- (v) varying rules set out in sections 135 to 140, and
- (vi) governing the form and contents, or either of them, of any circular, report, news release or other document required to be sent or filed under Part 13;

(b) *by adding the following after clause (z.1):*

(z.11) respecting any matter necessary or advisable to carry out effectively the intent and purpose of sections 119 and 171, including, without restricting the generality of the foregoing,

(i) exempting any class or classes of persons, companies, trades or securities

(A) from any of the requirements of section 119, and

(B) from liability under section 171;

(ii) prescribing standards for determining when a material fact or material change has been generally disclosed;

(iii) requiring that a person or company establish one or more methods, arrangements or policies respecting, restricting or prohibiting the communication of a material fact or a material change;

(iv) governing the methods, arrangements and policies to be established by a person or company respecting, restricting or prohibiting the communication of a material fact or a material change;

(z.12) governing self dealing and conflicts of interest;

17(1) In this section,

(a) *“bid” means a bid made under Part 13 before the coming into force of section 7 of this Act;*

(b) *“Part 13” means Part 13 of the Securities Act as it read immediately before the coming into force of section 7 of this Act;*

(c) *“regulations” means the regulations made in respect of Part 13.*

(2) Part 13 and the regulations apply to a bid as if Part 13 had not been repealed by this Act.

18(1) In this section,

(a) *“former section 171” means section 171 of the Securities Act as it read immediately before the coming into force of section 14 of this Act;*

(b) *“new section 171” means section 171 of the Securities Act as enacted by section 14 of this Act.*

(2) Where, before the coming into force of the new section 171, an action was commenced to which the former section 171 applied, the former section 171 shall continue to apply to that action as if section 14 of this Act had not been enacted.

19 This Act comes into force on Proclamation.

17 Transitional.

18 Transitional.

19 Coming into force.