

1998 BILL 46

Second Session, 24th Legislature, 47 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 46

SECURITIES AMENDMENT ACT, 1998

THE PROVINCIAL TREASURER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 46

1998

SECURITIES AMENDMENT ACT, 1998

(Assented to _____, 1998)

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

Amends SA
1981 cS-6.1

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

2 Section 63(3) is repealed and the following is substituted:

(3) Subject to the regulations, every registered salesman shall, within 5 business days of the event, notify the Executive Director of the following:

- (a) any change in that salesman's
 - (i) address for service in Alberta;
 - (ii) business address;
 - (iii) employment with a registered dealer;
 - (iv) name;
- (b) any charge or indictment against or conviction of the salesman for an offence
 - (i) under any securities legislation, or
 - (ii) for which the salesman may be liable to imprisonment for a term of 5 or more years;
- (c) any finding or judgment made against the salesman in a civil proceeding by reason of fraud, theft, deceit, misrepresentation or similar conduct;
- (d) the bankruptcy of the salesman;

Explanatory Notes

1 Amends chapter S-6.1 of the Statutes of Alberta, 1981.

2 Section 63(3) presently reads:

(3) Subject to the regulations, every registered salesman shall, within 5 business days of the event, notify the Executive Director of the following:

- (a) any change in his address for service in Alberta;*
- (b) any change in his business address;*
- (c) every commencement of his employment with a registered dealer;*
- (d) every termination of his employment with a registered dealer.*

- (e) the appointment of a receiver or receiver and manager concerning the assets of the salesman;
- (f) any material change in any material, including material concerning matters referred to in clauses (a) and (e), that was previously filed with the Executive Director by or on behalf of the salesman.

3 Section 65(1) is amended

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

- (iii) in a security of its own issue that is issued or transferred
 - (A) through the exercise of a right
 - (I) of the holder to purchase, convert or exchange or otherwise acquire, or
 - (II) of the issuer to require the holder to purchase, convert or exchange,
 - or
 - (B) pursuant to an automatic conversion,
 - in accordance with the terms and conditions of a previously issued security of the issuer,

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

- (p) a trade in a security of an issuer that is exchanged by or for the account of the issuer with another issuer or the holders of the securities of that other issuer in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure,
 - (i) whether or not the securities are issued by the amalgamated, merged, reorganized or successor issuer, and
 - (ii) where, pursuant to the requirements of applicable legislation, the organization documents of the issuer or a court order,

3 Section 65(1)(m), (p) and (t) presently read:

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

(m) a trade by an issuer,

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

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

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

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

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

(i) a statutory amalgamation or arrangement, or

(ii) a statutory procedure under which one company takes title to the assets of another company that in turn loses its existence by operation of law or under which one company merges with one or more other companies,

whether or not the securities are issued by the amalgamated or successor company;

- (A) an information circular, proxy statement or other similar disclosure document concerning the amalgamation, merger, reorganization, arrangement or statutory procedure is prepared and delivered to those holders of the securities, and
- (B) the approval of those security holders for the amalgamation, merger, reorganization, arrangement or statutory procedure is obtained;

(c) in clause (t)(iii) by adding “or plan administrator” after “trustee”.

4 Section 107(1) is amended

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

(iii) in a security of its own issue that is issued or transferred

(A) through the exercise of a right

(I) of the holder to purchase, convert or exchange or otherwise acquire, or

(II) of the issuer to require the holder to purchase, convert or exchange,

or

(B) pursuant to an automatic conversion,

in accordance with the terms and conditions of a previously issued security of the issuer,

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

(i) the trade is made in a security of an issuer that is exchanged by or for the account of the issuer with another issuer or the holders of the securities of that other issuer in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure,

(i) whether or not the securities are issued by the amalgamated, merged, reorganized or successor issuer, and

- (t) a trade by an issuer in the securities of its own issue with
 - (i) its employees,*
 - (ii) the employees of an affiliate, or*
 - (iii) a trustee acting on behalf of the employees of the issuer or of an affiliate**if the employees are not directly or indirectly required by the employer to purchase the securities;**

4 Section 107(1)(f), (i) and (n) presently read:

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

- (f) the trade is made by an issuer,
 - (i) in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,*
 - (ii) in a security whether of its own issue or not that is distributed by it to holders of its securities as incidental to a bona fide reorganization, dissolution or winding up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws of the jurisdiction in which the issuer was incorporated, organized or continued, or*
 - (iii) in securities of its own issue transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,**

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

- (i) the trade is made in a security of a company that is exchanged by or for the account of the company with another company or the holders of the securities of that other company in connection with
 - (i) a statutory amalgamation or arrangement, or*
 - (ii) a statutory procedure under which one company takes title to the assets of another company that in**

(ii) where, pursuant to the requirements of applicable legislation, the organization documents of the issuer or a court order,

(A) an information circular, proxy statement or other similar disclosure document concerning the amalgamation, merger, reorganization, arrangement or statutory procedure is prepared and delivered to those security holders, and

(B) the approval of those security holders for the amalgamation, merger, reorganization, arrangement or statutory procedure is obtained;

(c) in clause (n)(iii) by adding “or plan administrator” after “trustee”.

5 Section 135 is amended

(a) by repealing clauses (c), (d) and (e) and substituting the following:

(c) the offeror shall allow securities to be deposited pursuant to the bid for at least the period of time provided for by the regulations;

(d) any securities that are deposited pursuant to the bid shall not be taken up by an offeror until the expiration of the period of time provided for by the regulations;

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

(i) at any time where the securities have not been taken up by the offeror,

(ii) at any time before the expiration of the period of time provided for by the regulations from the date of a notice of change or variation under section 137 or 137.1, or

(iii) if the securities have not been paid for by the offeror within the period of time provided for by the regulations after the securities have been taken up;

turn loses its existence by operation of law or under which one company merges with one or more other companies,

whether or not the securities are issued by the amalgamated or successor company;

(n) the trade is made by an issuer in securities of its own issue with

(i) its employees,

(ii) employees of an affiliate, or

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

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

5 Section 135(c), (d), (e), (k), (l), (m) and (n) presently read:

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

(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;

(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

- (b) **in clause (k) by striking out** “10 days from the expiration of the bid” **and substituting** “the expiration of the period of time provided for by the regulations”;
- (c) **in clause (l) by striking out** “not more than 3 days after the taking up of the securities” **and substituting** “not later than the expiration of the period of time provided for by the regulations”;
- (d) **in clause (m) by striking out** “10 days from the day of the deposit of the securities” **and substituting** “the period of time provided for by the regulations”;
- (e) **in clause (n) by striking out** “and pays for”;
- (f) **by adding the following after clause (n):**

(n.1) notwithstanding clause (n), if the offeror

- (i) waives any terms or conditions of a bid, and
- (ii) extends the bid in circumstances where the rights of withdrawal conferred by clause (e)(ii) are applicable,

the bid shall be extended without the offeror first taking up the securities that are subject to those rights of withdrawal;

6 Section 138 is amended

- (a) **in subsection (1) by striking out** “10 days from the date of the take-over bid” **and substituting** “the expiration of the period of time provided for by the regulations”;
- (b) **in subsection (4) by striking out** “not less than 7 days before the scheduled expiration of the period during which securities may be deposited under the bid” **and substituting** “not later than the expiration of the period of time provided for by the regulations”.

7 Section 140 is repealed and the following is substituted:

Commence-
ment of bids

140(1) A take-over bid may be commenced in accordance with either subsection (2) or (7).

(2) A take-over bid may, and an issuer bid shall, be commenced by mailing or delivering the bid to the holders

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;*

6 Section 138(1) and (4) presently read:

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).

(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.

7 Section 140 presently reads:

140(1) A take-over bid and any notice of change or variation to it shall be filed with the Executive Director 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.

of securities referred to in section 135 in accordance with subsection (6) of this section.

(3) If a bid is commenced under subsection (2), the bid must be filed and, in the case of a take-over bid, delivered to the offeree issuer's principal office, on the day the bid is mailed or delivered under subsection (2), or as soon as practicable after that.

(4) A notice of change or variation in respect of a bid must be filed and, in the case of a take-over bid, delivered to the offeree issuer's principal office, on the day the notice of change or variation is mailed or delivered to holders of securities of the offeree issuer, or as soon as practicable after that.

(5) Every directors' circular and every individual director's circular or any notice of change in relation to it that is delivered to holders of securities of an offeree issuer must be filed and must be delivered to the offeror's principal office on the day the directors' circular or individual director's circular or the notice of change is delivered to the holders of securities of the offeree issuer, or as soon as practicable after that.

(6) A take-over bid or issuer bid, a take-over bid circular, an issuer bid circular, a directors' circular, an individual director's circular or officer's circular and every notice of change or variation in the bid must be

- (a) mailed by prepaid first class mail to the intended recipient, or
- (b) delivered to the intended recipient by personal delivery or in such other manner as the Executive Director may approve,

and any bid, circular or notice so mailed or delivered is deemed to have been delivered and, subject to subsections (8) and (9), is deemed to have been dated as of the date on which it was so mailed or delivered to all or substantially all of the persons entitled to receive it.

(7) An offeror may commence a take-over bid by publishing an advertisement containing a brief summary of the bid in at least one major daily newspaper of general and regular paid circulation in Alberta, or by disseminating the advertisement in a prescribed manner, if

- (a) concurrently with, or before, the earlier of the date of first publication and the date of first

(2) An issuer bid and any notice of change or variation to it shall be filed with the Executive Director 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 Executive Director 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.

dissemination of the advertisement, the offeror, or a person or company acting on its behalf, files and delivers the bid to the offeree issuer's principal office and files the advertisement,

- (b) concurrently with, or before, the earlier of the date of first publication and the date of first dissemination of the advertisement, the offeror, or a person or company acting on its behalf, requests from the offeree issuer a list of the holders of securities referred to in section 135, and
- (c) not later than the expiration of the prescribed period after the offeror's receipt of the list of holders of securities referred to in section 135, the bid is mailed or delivered to those holders of securities in accordance with subsection (6).

(8) If a take-over bid has been advertised in accordance with subsection (7), the bid is deemed for the purposes of this Part and the regulations to have been dated as of the earlier of the date of first publication and the date of first dissemination of the advertisement referred to in subsection (7).

(9) If a take-over bid has been advertised in accordance with subsection (7) and the offeror, or a person or company acting on its behalf, has complied with clauses (a) and (b) of that subsection, but has not yet mailed or delivered the bid under clause (c) of that subsection, a change or variation to it that is advertised in at least one major daily newspaper of general and regular paid circulation in Alberta, or disseminated in a manner prescribed under subsection (7), is deemed for the purposes of this Part and the regulations to have been dated as of the earlier of the date of publication and the date of first dissemination of the advertisement if

- (a) the advertisement contains a brief summary of the change or variation,
- (b) concurrently with, or before, the earlier of the date of first publication and the date of first dissemination of the advertisement, the offeror, or a person or company acting on its behalf, files or delivers the notice of change or variation to the offeree issuer's principal office and files the advertisement, and
- (c) the offeror, or a person or company acting on its behalf, subsequently mails or delivers the bid and mails or delivers the notice of change or variation in

accordance with subsection (6) and before the expiration of the period prescribed under subsection (7)(c).

(10) If an offeror, or a person or company acting on its behalf, satisfies the requirements of subsection (9), the notice of change or variation is not required to be filed and delivered under subsection (4).

8 Section 196 is amended by adding the following after clause (aa):

- (aa.1) where this Act provides for a period of time to be prescribed, established or otherwise provided for by regulation, prescribing, establishing or otherwise providing for that period of time;
- (aa.2) for the purposes of section 140 with respect to the commencement of a take-over bid, providing for or prescribing other manners in which an advertisement of the bid or of a notice of change or variation may be disseminated;

9 This Act comes into force on Proclamation.

8 Section 196(aa) presently reads:

196 The Lieutenant Governor in Council may make regulations

(aa) defining for the purposes of this Act terms used in this Act that are not defined in this Act;

9 Coming into force.