

1999 BILL 29

Third Session, 24th Legislature, 48 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 29

SECURITIES AMENDMENT ACT, 1999

MR. HLADY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 29

1999

SECURITIES AMENDMENT ACT, 1999

(Assented to , 1999)

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 1 is amended

(a) by repealing clause (a.3) and substituting the following:

(a.3) “clearing agency” means a person or company that,

- (i) with respect to trades in securities, acts as an intermediary in paying funds or delivering securities, or both,
- (ii) provides centralized facilities through which trades in securities or exchange contracts are cleared, or
- (iii) provides centralized facilities as a depository of securities,

but does not include an exchange, a quotation and trade reporting system or a registered dealer;

(b) by adding the following after clause (b):

(b.01) “commodity” means

- (i) any good, article, service, right or interest of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit;

Explanatory Notes

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

2 Section 1(a.3), (f)(v), (g.1), (h.01), (t.1) and (x)(i.1) and (ii) presently read:

1 In this Act,

(a.3) “clearing agency” means a person or company that,

(i) with respect to trades in securities, acts as an intermediary in paying funds or delivering securities, or both,

(ii) provides centralized facilities through which trades in securities or exchange contracts are cleared, or

(iii) provides centralized facilities as a depository of securities;

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

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

(g.1) “Executive Director” means the Executive Director of the Commission and includes a Director of the Commission and any person appointed by the Commission to act in the place of the Executive Director or a Director;

(h.01) “futures contract” means a contract to make delivery or take delivery on a specified date or during a specified period

- (ii) the currency of any jurisdiction;
- (iii) any gem, gemstone or other precious stone;
- (iv) any other good, article, service, right or interest, or a class of any of these, designated as a commodity pursuant to an order made under section 9.1;

(c) in clause (f)(v) by adding “or under the regulations” after “or 112”;

(d) in clause (g.1) by striking out “and includes a Director of the Commission and any person appointed by the Commission to act in the place of the Executive Director or a Director”;

(e) by repealing clause (h.01) and substituting the following:

(h.01) “futures contract” means any obligation to make or take future delivery of

- (i) a commodity,
- (ii) a security, or
- (iii) cash if the amount of cash is derived from, or by reference to, a variable, including
 - (A) a price or quote for a commodity or security,
 - (B) an interest rate,
 - (C) a currency exchange rate, or
 - (D) an index or benchmark,

but does not include an obligation or a class of obligations that is designated not to be a futures contract pursuant to an order made under section 9.1;

(f) by adding the following after clause (r.1):

(r.02) “quotation and trade reporting system” means a person or company that operates facilities that permit the dissemination of price quotations for the purchase and sale of securities and reports of completed transactions in securities for the exclusive

- (i) *of a specified asset, or*
 - (ii) *of a specified cash equivalent of the subject-matter of the contract;*
- (t.1) *“reporting issuer” means an issuer*
- (i) *that has issued voting securities on or after October 1, 1967 in respect of which a prospectus was filed and a receipt for it obtained under a predecessor of this Act or in respect of which a securities exchange take-over bid circular was filed under a predecessor of this Act,*
 - (ii) *that has filed a prospectus and obtained a receipt for it under this Act or that has filed a securities exchange take-over bid circular under this Act,*
 - (iii) *any of whose securities have been at any time since the coming into force of this section listed and posted for trading on an exchange in Alberta recognized by the Commission regardless of when the listing and posting for trading commenced, or*
 - (iv) *that is the company whose existence continues following the exchange of securities of a company by or for the account of that company with another company or the holders of the securities of that other company in connection with*
 - (A) *a statutory amalgamation or arrangement, or*
 - (B) *a statutory procedure under which one company takes title to the assets of the other company that in turn loses its existence by operation of law or under which one company merges with one or more other companies,**if one of the amalgamating or merged companies or the continuing company has been a reporting issuer for at least 12 months immediately prior to the amalgamation, merger or continuation;*
- (x) *“trade” includes*
- (i.1) *any entering into an exchange contract;*
 - (ii) *any participation as a trader in any transaction in a security or an exchange contract on the floor of or through the facilities of an exchange;*

use of registered dealers, but does not include an exchange or a registered dealer;

(g) by adding the following after clause (r.3):

- (r.04) “recognized quotation and trade reporting system” means a quotation and trade reporting system recognized by the Commission under section 53.41(1);

(h) by repealing clause (t.1) and substituting the following:

- (t.1) “reporting issuer” means an issuer
- (i) that has issued voting securities on or after October 1, 1967 in respect of which a prospectus was filed and a receipt for it obtained under a predecessor of this Act or in respect of which a securities exchange take-over bid circular was filed under a predecessor of this Act,
 - (ii) that has
 - (A) filed a prospectus and obtained a receipt for it under this Act, or
 - (B) filed a securities exchange take-over bid circular under this Act on or before June 1, 1999,
 - (iii) any of whose securities have been at any time since the coming into force of this section listed and posted for trading on an exchange recognized by the Commission regardless of when the listing and posting for trading commenced,
 - (iv) whose existence continues following the exchange of securities of an issuer in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure where one of the issuers participating in the amalgamation, merger, reorganization, arrangement or other statutory procedure is a reporting issuer, or
 - (v) that the Commission has declared to be a reporting issuer under section 117;

(i) in clause (x) by repealing subclauses (i.1) and (ii) and substituting the following:

- (i.1) any entering into a futures contract or an exchange contract;
- (ii) any participation as a trader in any transaction in a security or an exchange contract through the facilities of an exchange or a quotation and trade reporting system;

3 The following is added after section 9:

Designating
products as
commodities

9.1(1) The Commission may, if the Commission considers that it would not be prejudicial to the public interest to do so, make an order designating any good, article, service, right or interest, or a class of those, as a commodity.

(2) The Commission may, if the Commission considers that it would not be prejudicial to the public interest to do so, make an order designating a futures contract, or any class of futures contracts, not to be a futures contract.

(3) An order made under subsection (1) or (2) may be made by the Commission on its own motion or on the application of an interested person or company.

4 Section 11(1)(b) is repealed and the following is substituted:

- (b) may designate one or more members of the Commission as a Vice-chair of the Commission.

5 Section 13.3 is amended

- (a) in subsection (1) by adding** “administrative penalties under section 165.1,” **after** “costs,”;

- (b) by adding the following after subsection (4):**

(5) Notwithstanding subsections (1) and (2), money received by the Commission from administrative penalties under section 165.1 shall not be used for normal operating

3 Deeming of products as commodities.

4 Section 11 presently reads:

11(1) The Lieutenant Governor in Council

(a) shall designate one of the members of the Commission as the Chair of the Commission, and

(b) may designate one of the members of the Commission to be the Vice-chair of the Commission.

(2) The Chair is the chief executive officer of the Commission.

5 Section 13.3(1) and (2) presently read:

13.3(1) All fees, costs, settlement money and other revenue arising with respect to the administration of this Act, the regulations or any other enactments administered by the Commission are the revenues of the Commission.

(2) All money from any source that is received by and all money that is payable to the Commission belongs to the Commission.

expenditures of the Commission and must only be used for endeavours or activities that in the opinion of the Commission enhance or may enhance the capital market in Alberta.

6 Section 14 is amended

- (a) in subsection (3) by striking out** “50 and 103 of the *Companies Act*, the Chair” **and substituting** “3.3, 150(2) and 165(3) of the *Business Corporations Act*, the Chair, a Vice-chair or any member of the Commission”;
- (b) in subsection (4) by adding** “or any other individual employed by the Commission” **after** “Executive Director”.

7 The following is added after section 19.1:

Jurisdiction

19.2 The Commission has the jurisdiction to determine all questions of fact or law that arise in any matter before it.

8 Section 21 is amended by repealing subsections (2), (3) and (4) and substituting the following:

- (2)** An interim order,
 - (a) unless the order otherwise provides, takes effect immediately on being made, and
 - (b) expires 15 days from the day that it is made.
- (3)** The Commission or the Executive Director may extend the period of time that an interim order remains in effect
 - (a) for such period as the Commission or the Executive Director considers necessary, or
 - (b) for such period until the hearing is concluded and a decision is rendered.
- (4)** Where the Commission or the Executive Director makes an interim order, the Commission or the Executive Director, as the case may be, shall send
 - (a) a copy of the interim order, and
 - (b) an accompanying notice of hearing,

6 Section 14(3) and (4) presently read:

(3) For the purposes of sections 116, 117, 123, 125 and 184(2) of this Act and sections 50 and 103 of the Companies Act, the Chair may, unless otherwise requested by the applicant, act alone in exercising and performing the powers and duties of the Commission.

(4) The Commission may authorize in writing the Executive Director to do any act or thing required or permitted to be done by the Commission under this Act, the regulations or any other Act.

7 Jurisdiction of Commission to determine matters before it.

8 Section 21 presently reads:

21(1) Notwithstanding anything in this Act, where

(a) this Act permits the Commission or the Executive Director to conduct a hearing or to make a decision after conducting a hearing or after giving a person or company an opportunity to have a hearing, and

(b) the Commission or the Executive Director before whom the hearing is to be held considers that the length of time required to conduct a hearing and render a decision could be prejudicial to the public interest,

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

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

(3) Notwithstanding subsection (2), if

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

(b) the Commission or the Executive Director considers that it would not be prejudicial to the public interest to do so,

the Commission or the Executive Director may, without conducting a hearing, extend the interim order until a hearing is conducted and a decision is rendered.

to any person or company that, in the opinion of the Commission or the Executive Director, is directly affected by the order.

9 Section 24 is amended by adding the following after subsection (1):

(1.1) Notwithstanding subsection (1), the Commission may, on its own motion, within 30 days from the day that the Executive Director made a decision, review that decision.

10 The following is added after section 25:

Notice of
review

25.1 Prior to conducting a review referred to in section 24(1.1), the Commission shall notify

(a) the Executive Director, and

(b) any person or company that, in the opinion of the Commission, is directly affected by the decision of the Executive Director,

of the Commission's intention to conduct the review.

11 Section 27.1(1) is amended by adding the following after clause (j):

(k) a clearing agency.

(4) Where the Commission or the Executive Director makes an interim order, the Commission or the Executive Director, as the case may be, shall send

(a) a copy of the interim order, and

(b) an accompanying notice of hearing,

to any person or company that, in the opinion of the Commission or the Executive Director, is substantially affected by the order.

9 Section 24 presently reads:

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

(2) Notwithstanding section 25(4), the Executive Director may be present and make representations at an appeal of his decision.

10 Notice of review.

11 Section 27.1(1) presently reads:

27.1(1) In this section, "party" means

(a) a registrant;

(b) a person or company that is exempted by an order made under section 116 from the requirement to be registered under section 54;

(c) a reporting issuer;

(d) a manager or custodian of assets, shares or units of a mutual fund;

(e) a general partner of a person or company referred to in clause (a), (b), (c), (f) or (i);

(f) a person or company purporting to distribute securities in reliance on an exemption

(i) described in section 107(1), or

12 Sections 34 and 35 are repealed and the following is substituted:

Investigation
to be
confidential

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

- (a) by a person or company to the person's or company's counsel,
- (b) where authorized by the Executive Director, or
- (c) as otherwise permitted by this Act or the regulations.

Release of
information

35(1) If the Executive Director considers that it would not be prejudicial to the public interest to do so, the Executive Director may provide information to and receive information from other securities or financial regulatory authorities, exchanges, self-regulatory bodies or organizations, law enforcement agencies and other governmental or regulatory authorities, both in Canada and elsewhere.

(2) Any information received by the Commission under subsection (1) is confidential and shall not be divulged except where authorized by the Executive Director.

13 The following is added after section 53.4:

Recognized
quotation and
trade reporting
systems

53.41(1) The Commission may, on the application of a quotation and trade reporting system, recognize the quotation and trade reporting system if the Commission considers that it would not be prejudicial to the public interest to do so.

(2) The recognition of a quotation and trade reporting system under this section shall be made in writing and is subject to any terms and conditions that the Commission may impose.

(3) The Commission, after giving a quotation and trade reporting system the opportunity to be heard, may

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- (ii) *in an order issued under section 116;*
- (g) *a transfer agent or registrar for securities of a reporting issuer;*
- (h) *a director or officer of a reporting issuer;*
- (i) *a promoter or control person of a reporting issuer;*
- (j) *the Canadian Investor Protection Fund.*

12 Sections 34 and 35 presently read:

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

- (a) in the case of an order made under section 27.1, with the consent of the Executive Director,*
- (b) in the case of an investigation under section 28, with the consent of the Executive Director, or*
- (c) as otherwise permitted by this Act or the regulations.*

35 Where the Executive Director considers that it is in the public interest to do so, the Executive Director may by order at any time authorize, on any terms or conditions that the Executive Director considers appropriate in the circumstances, the release of information, testimony, records, documents or things obtained under this Act, or copies thereof, to

- (a) any person or company, or*
- (b) any government, government agency or regulatory organization that is empowered by the laws of a jurisdiction to administer or regulate trading in securities or exchange contracts.*

13 Provides for the recognition of quotation and trade reporting systems.

- (a) suspend or cancel its recognition as a recognized quotation and trade reporting system, or
- (b) remove, vary or replace any terms or conditions that were previously imposed on its recognition as a recognized quotation and trade reporting system,

where the Commission considers that it is in the public interest to do so.

14 Section 53.5 is amended

- (a) by striking out “or a recognized clearing agency” and substituting “, a recognized clearing agency or a recognized quotation and trade reporting system”;**
- (b) by striking out “or clearing agency” and substituting “, clearing agency or quotation and trade reporting system”.**

15 Section 53.6(1) is amended by striking out “or recognized clearing agency” and substituting “, recognized clearing agency or recognized quotation and trade reporting system”.

16 Section 53.7 is amended by striking out “and recognized clearing agency” and substituting “, recognized clearing agency and recognized quotation and trade reporting system”.

14 Section 53.5 presently reads:

53.5 On application by a recognized exchange, a recognized self-regulatory organization or a recognized clearing agency, the Commission may accept, subject to any terms and conditions that the Commission may impose, the voluntary surrender of the recognition of the exchange, self-regulatory organization or clearing agency if the Commission considers that it would not be prejudicial to the public interest to accept the surrender of the recognition.

15 Section 53.6 presently reads:

53.6(1) A person or company directly affected by, or by the administration of, a direction, decision, order or ruling made under a by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized exchange, recognized self-regulatory organization or recognized clearing agency may appeal that direction, decision, order or ruling to the Commission.

(2) Section 25 applies to an appeal made under this section.

16 Section 53.7 presently reads:

53.7 Every recognized exchange, recognized self-regulatory organization and recognized clearing agency shall

(a) maintain

(i) the books and records that are necessary to record properly its business transactions and financial affairs and the transactions that it executes on behalf of others, and

(ii) any other books and records that may be required under this Act and the regulations,

and

17 Section 54 is amended

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

Registration

54(1) No person or company shall

(a) trade in a security or an exchange contract or act as an underwriter unless the person or company is registered with the Executive Director as

(i) a dealer,

(ii) a salesman, or

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

or

(b) act as an adviser unless the person or company is registered with the Executive Director as

(i) an adviser, or

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

(b) by repealing subsection (3) and substituting the following:

(3) The termination of the employment of a salesman with a registered dealer or the employment of an advising employee with a registered adviser shall operate as a suspension of the registration of the salesman or advising employee until

(a) notice in writing has been received by the Executive Director from another registered dealer or another registered adviser of the employment of the salesman or advising employee by that other registered dealer or registered adviser, and

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

18 Section 55(1) is repealed and the following is substituted:

- (b) deliver to the Commission or the Executive Director any books and records or other information that the Commission or the Executive Director may require.*

17 Section 54(1) and (3) presently read:

54(1) No person or company shall

- (a) trade in a security or an exchange contract unless the person or company is registered with the Executive Director as
 - (i) a dealer,*
 - (ii) a salesman, or*
 - (iii) a partner or officer of a registered dealer that acts on behalf of the dealer,**
 - (b) act as an underwriter unless the person or company is registered with the Executive Director as an underwriter, or*
 - (c) act as an adviser unless the person or company is registered with the Executive Director as
 - (i) an adviser, or*
 - (ii) a partner or officer of a registered adviser that acts on behalf of the adviser.**
- (3) The termination of the employment of a salesman with a registered dealer shall operate as a suspension of the registration of the salesman until*
- (a) notice in writing has been received by the Executive Director from another registered dealer of the employment of the salesman by that other registered dealer, and*
 - (b) the reinstatement of the registration has been approved by the Executive Director.*

18 Section 55(1) presently reads:

Registration
by Executive
Director

55(1) Unless it appears to the Executive Director that

- (a) an applicant is not suitable for registration, renewal of registration, reinstatement of registration or amendment of registration, or
- (b) the proposed registration, renewal of registration, reinstatement of registration or amendment of registration is objectionable,

the Executive Director shall grant to the applicant the registration, renewal of registration, reinstatement of registration or amendment of registration being applied for.

19 Section 65(1) is amended

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

- (p) a trade made in a security of an issuer in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure;

(b) in clause (w)(ii) by striking out “dividends or interest” and substituting “dividends, interest or other distributions”.

55(1) The Executive Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant if in the opinion of the Executive Director the applicant is suitable for registration.

19 Section 65(1)(p) and (w) presently read:

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

(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;

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

(i) made available by that issuer to every holder

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

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

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

20 Section 66 is amended

(a) in clause (a)

(i) in subclause (iv) by striking out “*Bretton Woods Agreements Act* (Canada)” and substituting “*Bretton Woods and Related Agreements Act* (Canada)”;

(ii) by striking out “or” at the end of subclause (iv), by adding “or” at the end of subclause (v) and by adding the following after subclause (v):

(vi) of or guaranteed by the International Finance Corporation established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act* (Canada), if

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

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

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

(g) securities issued by an issuer organized exclusively for educational,* benevolent, fraternal, charitable,

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

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

and

(iii) that may permit the holder to make optional cash payments to purchase additional securities of the issuer in addition to the securities that may be purchased by that holder under subclause (ii) where, in any financial year of the issuer, the aggregate number of securities issued pursuant to the optional cash payment under the plan does not exceed 2% of the issued and outstanding securities of the class to which the plan relates as at the commencement of the financial year;

20 Section 66(a)(iv) and (v) and (g) presently read:

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

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

(iv) of or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development approved by the Bretton Woods Agreements Act (Canada), if the bonds, debentures or evidences of indebtedness are payable in the currency of Canada or the United States of America, or

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

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

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

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

religious or recreational purposes and not for profit
if

- (i) no part of the net earnings of that issuer enure to the benefit of any security holder, and
- (ii) no commission or other remuneration is paid in connection with the sale of the securities;

21 Section 70 is amended by repealing subsection (3) and substituting the following:

(3) Subject to the regulations, no person or company, with the intention of effecting a trade in a security or exchange contract, shall

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

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

- (i) that the security will be listed on any exchange or quoted on any quotation and trade reporting system, or

- (ii) that application has been or will be made to list the security on any exchange or quote the security on any quotation and trade reporting system,

- (A) unless

- (I) the securities being traded, and

- (II) securities of the same issuer,

are currently listed on an exchange or quoted on a quotation and trade reporting system, or

- (B) unless the exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation.

21 Section 70(3) presently reads:

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

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

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

(i) that the security will be listed on any exchange, or

(ii) that application has been or will be made to list the security on any exchange.

22 Section 70.1 is repealed and the following is substituted:

Prohibited
transaction

70.1 No person or company shall, directly or indirectly, trade in or purchase a security or an exchange contract if the person or company knows or ought reasonably to know that the trade or purchase does one or more of the following:

- (a) creates or may result in a false or misleading appearance of trading activity in a security or an exchange contract;
- (b) creates or may result in an artificial price for a security or an exchange contract;
- (c) perpetrates or may perpetrate a fraud.

23 Section 90 is amended

(a) in subsection (1)(c) by adding “or guarantor” after “promoter”;

(b) in subsection (3)(c) by adding “or guarantor” after “promoter”;

(c) by repealing subsection (6) and substituting the following:

(6) Where a certificate is to be signed under this section, the Executive Director may require a person or company to sign that certificate if the person or company

- (a) was a promoter of the issuer within the 2 preceding years, or
- (b) is a guarantor of the securities being distributed.

(d) in subsection (7)(a) and (b) by adding “or the guarantor” after “promoter” wherever it occurs.

24 Section 97(2.1) is repealed and the following is substituted:

22 Section 70.1 presently reads:

70.1 No person or company shall, directly or indirectly, trade in or purchase a security or an exchange contract if the person or company knows or ought reasonably to know that the trade or purchase

- (a) creates or may result in a false or misleading appearance of trading activity in a security or an exchange contract, or*
- (b) creates or may result in an artificial price for a security or an exchange contract.*

23 Section 90(1)(c), (3)(c), (6) and (7) presently read:

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

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

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

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

(6) Where a certificate is to be signed under this section, the Executive Director may require any person or company that was a promoter of the issuer within the 2 preceding years to sign that certificate.

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

- (a) exempt a promoter from the signing requirements of this section, or*
- (b) authorize an agent of the promoter duly appointed in writing by the promoter for the purpose to sign the certificate on behalf of the promoter.*

24 Section 97(2.1) presently reads:

(2.1) For the purposes of subsection (2), the lapse date of a prospectus is the first anniversary of the date of the prospectus.

(2.1) For the purposes of subsection (2), the lapse date of a prospectus is the date provided for in the regulations.

25 Section 107(1) is amended

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

- (i) the trade is made in a security of an issuer in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure;

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

- (m) the trade is made by an issuer in a security of its own issue as consideration for mining claims or oil and gas rights where
 - (i) the vendor enters into an escrow or pooling agreement that the Executive Director considers necessary, or
 - (ii) the security proposed to be issued, or the security underlying that security, is listed and posted for trading on an exchange recognized for the purpose of this clause by the Commission and the issuer has received, if required by the by-laws, rules or policies of that exchange, the consent of that exchange to the issuance of the security;

(c) in clause (x)(ii) by striking out “dividends or interest” and substituting “dividends, interest or other distributions”.

25 Section 107(1)(i), (m) and (x)(ii) presently read:

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

(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 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;

(m) the trade is made by an issuer in a security of its own issue in consideration of mining claims or oil and gas rights where the vendor enters into an escrow or pooling agreement that the Executive Director considers necessary;

(x) the trade is made by an issuer of equity securities pursuant to a plan

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

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

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

and

26 Section 110.2(a) is amended by adding “or securities exchange issuer bid circular” after “bid circular”.

27 Section 116 is amended

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

(1.1) The Commission may, if the Commission considers that it would not be prejudicial to the public interest to do so, make an order that a trade, an intended trade or a class of trades or intended trades is deemed to be a distribution.

(b) in subsection (3) by striking out “subsection (1) or (2)” and substituting “this section”.

28 Section 117(2) is repealed and the following is substituted:

(2) An order under subsection (1) shall not be made without giving the person or company in respect of which the order is made an opportunity to have a hearing before the Commission.

26 Section 110.2 presently reads:

110.2 Notwithstanding section 110, the first trade in securities previously acquired under a distribution exempted by section 107(1)(j) or (k) is not a distribution if,

- (a) at the time that exemption was relied on, a securities exchange take-over bid circular made in compliance with the regulations in respect of the securities was filed by the offeror, and*
- (b) in a case where a vendor of the securities in respect of the trade is in a special relationship with the reporting issuer, the vendor has no reasonable grounds to believe that the reporting issuer is in default of any requirement of this Act or the regulations.*

27 Section 116(3) presently reads:

(3) An order under subsection (1) or (2) may be made by the Commission on its own motion or on an application of a person or company directly affected by the trade in respect of which the application is being made.

28 Section 117 presently reads:

117(1) On

- (a) the application of an issuer, or*
- (b) the motion of the Executive Director,*

the Commission may, if the Commission considers that it would not be prejudicial to the public interest to do so, make an order declaring that a person or company is a reporting issuer for the purposes of this Act and the regulations.

(2) An order under subsection (1)

- (a) shall not be made without giving the person or company in respect of which the order is made an opportunity to have a hearing before the Commission, and*
- (b) may, at the direction of the Commission, come into force on a date prior to the day on which the order is made.*

29 Section 123 is amended by adding “or other interested person or company” **after** “On the application of a reporting issuer”.

30 Section 125 is repealed and the following is substituted:

Deemed not to
be a reporting
issuer

125 On the application of a reporting issuer, the Commission may, if the Commission considers that it would not be prejudicial to the public interest to do so, make an order that the reporting issuer is deemed to have ceased to be a reporting issuer.

31 Section 130 is repealed.

29 Section 123 presently reads:

123 On the application of a reporting issuer or on the motion of the Executive Director, the Commission may, where the Commission considers that it would not be prejudicial to the public interest to do so, make an order exempting, in whole or in part, any reporting issuer or class of reporting issuers from a requirement of this Part or the regulations relating to a requirement of this Part if

- (a) the requirement conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer or class of reporting issuers is incorporated, organized or continued,*
- (b) the reporting issuer or class of reporting issuers ordinarily distributes financial information to holders of its securities in a different form or at different times from those required by this Part, or*
- (c) the Commission is otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing.*

30 Section 125 presently reads:

125 On the application of

- (a) a reporting issuer that has fewer than 15 security holders whose latest addresses as shown on the books of the reporting issuer are in Alberta, or*
- (b) an issuer that is a reporting issuer by virtue of having filed a prospectus and having obtained a receipt for it under this Act, but that has not made a distribution of any of the securities offered by that prospectus as of the lapse date of that prospectus as defined in section 97(1),*

the Commission may by order declare that the reporting issuer is no longer a reporting issuer if the Commission considers that it would not be prejudicial to the public interest to do so.

31 Section 130 presently reads:

130 A reporting issuer, other than a corporation or a mutual fund, shall hold an annual meeting of its security holders not later than 15 months from the day that the issuer becomes a reporting issuer and thereafter within 15 months after its last annual meeting.

32 Section 145 is amended by renumbering it as section 145(1) and by adding the following after subsection (1):

(2) The applicant shall give the Executive Director notice of an application being made under subsection (1).

(3) The Executive Director is entitled to appear at an application made under this section and to make representations.

33 Section 147 is amended

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

Reports of
insider

147(1) Subject to the regulations, a person or company that becomes an insider of a reporting issuer, other than a mutual fund, shall file a report with the Executive Director disclosing any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer.

(b) in subsection (2)

(i) by striking out “An insider” and substituting “Subject to the regulations, an insider”;

(ii) by striking out “Chief of Securities Administration, within 10 days from the day within which the change takes place” and substituting “Executive Director”;

(c) by repealing subsection (3) and substituting the following:

32 Section 145 presently reads:

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.*

33 Section 147 presently reads:

147(1) A person or company who becomes an insider of a reporting issuer, other than a mutual fund, shall, within 10 days from the day that he or it becomes an insider file with the Chief of Securities Administration a report as of the day on which the person or company became an insider, disclosing any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer as may be required by the regulations.

(2) An insider

- (a) who has filed or is required to file a report under this section or any predecessor of it, and*
- (b) whose direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer changes from that shown or required to be shown in the report or in the latest report filed by him under this section or any predecessor of it,*

shall file with the Chief of Securities Administration, within 10 days from the day within which the change takes place a report of the following:

(3) Subject to the regulations, a person or company that becomes an insider of a reporting issuer by reason of section 8 shall file with the Executive Director the reports required by subsections (1) and (2) of this section for the previous 6 months or such shorter period that the person or company was a director or senior officer of the reporting issuer.

34 Section 164 is repealed and the following is substituted:

Declaration of
non-
compliance

164(1) The Executive Director, in addition to any other rights that the Executive Director or Commission may have, may, where the Executive Director considers it to be in the public interest to do so, apply to the Court of Queen's Bench for a declaration that a person or company has not complied with or is not complying with any provision of this Act or the regulations or has failed to comply with a decision of the Commission or the Executive Director.

(2) Neither the Executive Director nor the Commission is required, before making an application under subsection (1), to hold a hearing to determine whether the person or company has not complied with or is not complying with any provision of this Act or the regulations or has failed to comply with a decision of the Commission or the Executive Director.

(3) If the Court makes a declaration under subsection (1), the Court may, notwithstanding

(a) the imposition of any penalty under section 161, or

(b) any order made under section 165 or 165.1,

make any order under this section that the Court considers appropriate with respect to the person or company.

(4) Without limiting the generality of subsection (3), an order made under subsection (3) may include one or more of the following:

(a) an order that the person or company comply with the provision or the decision;

- (c) *his direct or indirect beneficial ownership of or his control or direction over securities of the reporting issuer;*
 - (d) *the transfer, if any, of his securities of the reporting issuer into the name of an agent, nominee or custodian other than giving collateral for a bona fide debt;*
 - (e) *the change or changes in the report or latest report, as the case may be, setting forth those details of each transaction that are required by the regulations.*
- (3) *A person or company that becomes an insider of a reporting issuer by reason of section 8 shall file with the Chief of Securities Administration, within 10 days from the day that the issuer became a reporting issuer or an insider of a reporting issuer, the reports required by subsections (1) and (2) of this section for the previous 6 months or such shorter period that he was a director or senior officer of the reporting issuer.*

34 Section 164 presently reads:

164(1) If it appears to the Executive Director that a person or company has failed to comply with or is contravening

- (a) any written undertaking made by that person or company to the Commission or the Executive Director,*
- (b) any provision of this Act or the regulations, or*
- (c) any decision of the Commission or the Executive Director,*

the Executive Director may, whether or not that person or company has been prosecuted for that failure or contravention and in addition to any other rights that the Executive Director may have, apply to the Court of Queen's Bench for an order

- (d) directing that person or company to comply with the written undertaking,*
- (e) directing that person or company to comply with the provision or decision, or*
- (f) restraining that person or company from contravening that written undertaking, provision or decision,*

and the Court may make the order or any other order as it considers appropriate.

(2) An application under this section may be made ex parte, if the Court of Queen's Bench considers it proper to do so.

- (b) an order that the person or company purchase securities of a security holder;
 - (c) an order rescinding any transaction relating to trading in securities or exchange contracts;
 - (d) an order requiring the issuance, cancellation, purchase, exchange or disposition of a security or exchange contract;
 - (e) an order prohibiting the voting or exercise of any other right attaching to a security or exchange contract;
 - (f) an order appointing officers and directors in place of or in addition to all or any of the officers of the issuer that is the subject of the application;
 - (g) an order directing the person or company to purchase securities of a security holder;
 - (h) an order directing that the person or company repay to a security holder any part of the money paid by the security holder for a security or exchange contract;
 - (i) an order requiring the person or company to compensate or make restitution to an aggrieved person or company;
 - (j) an order requiring the person or company to pay general or punitive damages to any other person or company;
 - (k) an order requiring the person or company to pay to the Provincial Treasurer any amounts obtained as a result of the non-compliance with any provision of this Act or the regulations.
- (5) An application under this section may be made ex parte, unless the Court of Queen's Bench otherwise directs.

35 The following is added after section 165:

Administrative
penalty

165.1(1) If the Commission, after a hearing,

- (a) determines that a person or company has contravened or failed to comply with
 - (i) a provision of this Act or the regulations, or

35 Provides for the imposition of administrative penalties.

(ii) a decision, whether or not the decision has been filed under section 166.2,

and

(b) considers it to be in the public interest to make the order,

the Commission may order the person or company to pay an administrative penalty of not more than \$100 000 in the case of an individual or not more than \$500 000 in the case of any other person or company for each contravention or failure to comply.

(2) The Commission may make an order pursuant to this section notwithstanding the imposition of any other penalty or sanction on the person or company or the making of any other order by the Commission related to the same matter.

36 Section 166.2 is amended by renumbering it as section 166.2(1) and adding the following after subsection (1):

(2) Where a decision filed under subsection (1) includes an administrative penalty levied pursuant to section 165.1, the administrative penalty in the amount specified in the decision may be collected as a judgment of the Court of Queen's Bench for the recovery of debt.

37 The following is added after section 168:

Civil liability -
offering
memorandum

168.1(1) If an offering memorandum contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution shall be deemed to have relied on the representation, if it was a misrepresentation at the time of purchase, and has a right of action for damages against the issuer or selling security holder on whose behalf the distribution is made.

(2) Where the purchaser purchased the security from an issuer or selling security holder referred to in subsection (1), the purchaser may elect to exercise a right of rescission against the issuer or the selling security holder, in which case the purchaser does not have a right of action for damages against the issuer or the selling security holder.

(3) No person or company is liable under subsection (1) if the person or company proves that the purchaser purchased the securities with knowledge of the misrepresentation.

36 Section 166.2 presently reads:

166.2 Where the Commission has made a decision after conducting a hearing, the Commission may at any time file a certified copy of that decision with the clerk of the Court of Queen's Bench, and on being filed with the clerk of the Court of Queen's Bench that decision has the same force and effect as if it were a judgment of the Court of Queen's Bench.

37 Provides for a civil remedy arising out of a misrepresentation contained in an offering memorandum.

(4) In an action for damages pursuant to subsection (1), the defendant is not liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation relied on.

(5) In no case shall the amount recoverable under this section exceed the price at which the securities were offered.

(6) This section only applies

(a) to an offering memorandum that has been furnished to a prospective investor in connection with a distribution of a security under an exemption from section 81, and

(b) in the circumstances specified in the regulations for the purposes of this section.

38 Section 187 is repealed and the following is substituted:

Self-
incrimination

187(1) A person examined under this Act under oath, affirmation or by solemn declaration may be examined on all matters relevant to the matter for which the person is being examined and shall not be excused from answering any question on the ground that the answer might

(a) tend to incriminate that person,

(b) subject that person to punishment under this Act, or

(c) tend to establish that person's liability

(i) to a civil proceeding at the instance of the Crown or of any other person, or

(ii) to prosecution under any Act or regulations under any Act.

(2) If an answer given under an examination referred to in subsection (1) tends to incriminate the person being examined, it shall not be admitted in evidence against that person in any proceeding, except in a prosecution for perjury or for the giving of contradictory evidence.

39 Section 196 is amended

(a) in clause (j) by adding the following after subclause (vi):

38 Section 187 presently reads:

187 A person examined under this Act may be examined on oath on all matters relevant to the matter for which he is being examined and shall not be excused from answering any question on the ground that the answer might

- (a) tend to incriminate him,*
- (b) subject him to punishment under this Act, or*
- (c) tend to establish his liability*
 - (i) to a civil proceeding at the instance of the Crown or of any other person, or*
 - (ii) to prosecution under any Act or regulations under any Act,*

but if the answer so given tends to incriminate him, subject him to punishment or tends to establish his liability, it shall not be used or received against him in any civil proceeding or in any proceeding under any Act.

39 Section 196(j), (k), (m), (o) and (r) presently read:

196 The Lieutenant Governor in Council may make regulations

- (vi.1) providing for exemptions from or varying the requirements under this Act in respect of the disclosure or furnishing of information by registrants to the public or the Commission;

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

- (k) governing annual information forms, annual reports, preliminary prospectuses, prospectuses, pro forma prospectuses, short form prospectuses, pro forma short form prospectuses, exchange offering prospectuses, simplified prospectuses, risk disclosure statements, offering memoranda or any other disclosure documents and, without limiting the generality of the foregoing, prescribing procedures and requirements with respect to and providing for exemptions from
 - (i) the use, form and content of those documents;
 - (ii) the preparation, filing, delivery or dissemination of those documents;
 - (iii) the issuance of receipts;
 - (iv) the incorporation of other documents by reference;
 - (v) the distribution of securities by means of a prospectus incorporating other documents by reference;
 - (vi) the distribution of securities by means of a simplified or summary prospectus or other means of disclosure document;
 - (vii) the distribution of securities on a continuous or delayed basis;
 - (viii) the pricing of a distribution of securities after the issuance of a receipt for the prospectus filed in relation to the distribution;
 - (ix) the issuance of receipts for prospectuses after selective review;
 - (x) the incorporation by reference of certain documents in a prospectus and the effect, including from a liability and evidentiary

- (j) *governing registration and, without limiting the generality of the foregoing,*
 - (i) *prescribing requirements in respect of applications for registration and the renewal, amendment, expiration or surrender of registration;*
 - (ii) *respecting the suspension, cancellation and reinstatement of registration;*
 - (iii) *prescribing categories or sub-categories of registrants;*
 - (iv) *classifying registrants into categories or sub-categories;*
 - (v) *prescribing the conditions of registration or other requirements for registrants or any category or sub-category of registrants, including*
 - (A) *standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients;*
 - (B) *requirements governing ownership or control of the registrants;*
 - (C) *requirements in respect of membership in a self-regulatory organization;*
 - (vi) *prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by registrants;*
 - (vii) *prescribing requirements in respect of the books, records and other documents required to be kept by registrants;*
 - (viii) *respecting conflicts of interest;*
 - (ix) *respecting bonds and bonding;*
 - (x) *respecting compensation funds or contingency trust funds;*
- (k) *governing annual information forms, annual reports, preliminary prospectuses, prospectuses, pro forma prospectuses, short form prospectuses, pro forma short form prospectuses, exchange offering prospectuses, simplified prospectuses, risk disclosure statements, offering memorandums or any other disclosure documents and, without limiting the generality of the foregoing, prescribing procedures and requirements with respect to*
 - (i) *the use, form and contents of those documents;*

perspective, of modifying or superseding statements;

- (xi) the form of a prospectus certificate;
- (xii) eligibility, and the loss of eligibility, to obtain a receipt for, or to distribute, securities under a particular form of prospectus;
- (xiii) the variance of rights to withdraw from or not be bound by an agreement to purchase securities;
- (xiv) the lapse date of a prospectus;
- (xv) exemptions from or the modification or variation of requirements under Parts 7, 7.1 and 8;

(c) in clause (m) by adding the following after subclause (vi):

- (vii) prescribing requirements in respect of, or in relation to, promoters, advisers or persons and companies who administer or participate in the administration of the affairs of mutual funds or non-redeemable investment funds;

(d) by adding the following after clause (m):

- (m.1) regulating scholarship plans and the distribution and trading of the securities of scholarship plans;

(e) in clause (o)(iii) by striking out “modifying” and substituting “prescribing time periods under section 147 and modifying”;

(f) by repealing clause (r) and substituting the following:

- (r) governing exchanges, self-regulatory organizations, clearing agencies and quotation and trade reporting systems and, without limiting the generality of the foregoing,
 - (i) respecting the recognition of exchanges, self-regulatory organizations, clearing agencies and quotation and trade reporting systems;
 - (ii) prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure,

- (ii) *the preparation, filing, delivery or dissemination of those documents;*
- (iii) *the issuance of receipts;*
- (iv) *the incorporation of other documents by reference;*
- (m) *governing mutual funds and non-redeemable investment funds and the advertising, distribution and trading of the securities of the funds and, without limiting the generality of the foregoing,*
 - (i) *designating funds or a class or classes of them as private funds;*
 - (ii) *respecting sales charges imposed by a distribution company or contractual plan service company under a contractual plan on purchasers of shares or units of a fund;*
 - (iii) *prescribing a penalty for the early redemption of shares or units of a fund;*
 - (iv) *prescribing the form and contents of reports to be filed by the management company or distributors of a fund;*
 - (v) *respecting*
 - (A) *the custodianship of assets of any fund;*
 - (B) *the minimum initial capital requirements for any fund making a distribution and prohibiting or restricting the reimbursement of costs associated with the organization of a fund;*
 - (C) *any matters affecting any fund that require the approval of security holders of the fund, the Commission or the Executive Director;*
 - (D) *the contents and use of sales literature, sales communications and advertising relating to any fund or securities of any fund;*
 - (vi) *permitting or restricting investment policy and practices in connection with any fund;*
- (o) *governing insider trading and self-dealing and, without limiting the generality of the foregoing,*
 - (i) *prescribing the form, contents and filing requirements of the reports to be filed under Part 14;*
 - (ii) *respecting self-dealing and conflicts of interest;*
 - (iii) *modifying, varying or restricting any requirement under Part 14;*

interpretation or practice of recognized exchanges, recognized self-regulatory organizations, recognized clearing agencies and recognized quotation and trade reporting systems;

- (iii) providing for the collection and remission by recognized exchanges, recognized self-regulatory organizations, recognized clearing agencies and recognized quotation and trade reporting systems of fees payable to the Commission;
- (iv) prescribing requirements in respect of the books and records to be maintained by recognized exchanges, recognized self-regulatory organizations, recognized clearing agencies and recognized quotation and trade reporting systems;

40 The *Securities Amendment Act, 1995* is amended by repealing section 47.

- (iv) *exempting any person or company from any requirement under Part 14;*
- (r) *governing exchanges, self-regulatory organizations and clearing agencies and, without limiting the generality of the foregoing,*
 - (i) *respecting the recognition of exchanges, self-regulatory organizations and clearing agencies;*
 - (ii) *prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulations, policy, procedure, interpretation or practice of recognized exchanges, recognized self-regulatory organizations and recognized clearing agencies;*
 - (iii) *providing for the collection and remission by recognized exchanges, recognized self-regulatory organizations and recognized clearing agencies of fees payable to the Commission;*
 - (iv) *prescribing requirements in respect of the books and records to be maintained by recognized exchanges, recognized self-regulatory organizations and recognized clearing agencies;*

40 Repeals section 47 of the Securities Amendment Act, 1995, which reads as follows:

47 Section 147 is amended

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

147(1) Subject to the regulations, a person or company who becomes an insider of a reporting issuer shall file a report with the Executive Director disclosing any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer.

- (b) *in subsection (2)*

- (i) *by striking out "An insider" and substituting "Subject to the regulations, an insider";*
- (ii) *by striking out "Chief of Securities Administration, within 10 days from the day within which the change takes place" and substituting "Executive Director";*

- (c) *by repealing subsection (3) and substituting the following:*

(3) Subject to the regulations, a person or company that becomes an insider of a reporting issuer by reason of section 8 shall file with the Executive Director the reports required by subsections (1) and (2) of this section for the previous 6 months or such shorter period that the person

41 This Act comes into force on Proclamation.

or company was a director or senior officer of the reporting issuer.

41 Coming into force.