

Bill 14
Mr. Hlady

BILL 14

2003

SECURITIES AMENDMENT ACT, 2003

(Assented to , 2003)

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

Amends RSA 2000 cS-4

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

2 Section 1 is amended

(a) in clause (p)(v) by striking out “in sections 134 to 140 or”;

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

(kk) “offering memorandum” means an offering
memorandum that is required to be delivered under
Alberta securities laws;

(c) by repealing clause (pp).

3 Section 13 is amended by adding the following after subsection (2):

(3) If the office of the Chair is vacant or if the Chair is absent or unable to act for any reason, a Vice-chair shall serve as Chair.

4 Section 19(5) is repealed and the following is substituted:

(5) Notwithstanding subsections (1) and (2), money that is received by the Commission from administrative penalties under section 199 may be expended only for the purposes of educating investors and promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets.

5 Section 46 is repealed and the following is substituted:

Information

46(1) If the Executive Director considers that it would not be prejudicial to the public interest to do so, the Executive Director may, subject to subsections (2) and (3), provide information to and receive information from

- (a) other securities or financial regulatory authorities, exchanges, self-regulatory bodies or organizations, law enforcement agencies and other governmental or regulatory authorities in Canada and elsewhere, and
- (b) any person or company acting on behalf of or providing services to the Commission or the Executive Director.

(2) The Commission or the Executive Director, or either of them, may, with respect to any personal information referred to in, dealt with or governed under section 33(a), 34(1)(a)(ii) or 40(1)(e) of the *Freedom of Information and Protection of Privacy Act*, collect that information, whether directly from the individual or by some other method, and disclose that information for the purposes of carrying out any duties and exercising any powers of the Commission or the Executive Director under this or any other Act.

(3) The Commission or the Executive Director may enter into an arrangement or agreement for the purposes of subsection (2).

(4) Any information received by the Commission or the Executive Director under this section is confidential and shall not be disclosed except where authorized by the Executive Director.

Prevalence over FOIP

46.1(1) Subject to subsection (2), if anything in sections 44, 45, 46(4), 146 or 221(4), (5), (6) and (7) is inconsistent or in conflict with the *Freedom of Information and Protection of Privacy Act*, those provisions prevail notwithstanding the *Freedom of Information and Protection of Privacy Act*.

(2) Where information is collected or received pursuant to section 44, 45, 46(4), 146 or 221(4), (5), (6) or (7), subsection (1) ceases to apply in respect of that information after 50 years has elapsed from the end of the year in which the information was collected or received.

6 Section 75 is amended

(a) by repealing subsection (3);

(b) in subsection (5)(a) by striking out “notice in writing has been received by the Executive Director from” and substituting “the Executive Director has been notified by”;

7 Section 78 is amended by adding “but subject to the regulations” **after** “section 77”.

8 Section 80(a) is amended by striking out “in writing”.

9 Section 86(1) is amended

(a) by repealing clauses (c), (e) and (i);

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

- (j) a trade in a security by a person or company acting solely through an agent who is a registered dealer;
- (c) **by repealing clauses (u), (v), (w), (y), (z), (aa), (bb), (ff) and (gg).**

10 The following is added after section 86:

Transitional: exemption of trades

86.1(1) In this section,

- (a) “eligible party” means,
 - (i) with respect to a trade in a previously traded section 86(1)(y) security,
 - (A) in the case of a person or company disposing of a previously traded section 86(1)(y) security, the person or company that holds that security, and
 - (B) in the case of a person or company acquiring a previously traded section 86(1)(y) security, a person or company that already holds or has held a previously traded section 86(1)(y) security of the kind that is being acquired;
 - (ii) with respect to a trade in a previously traded section 86(1)(z) security,
 - (A) in the case of a person or company disposing of a previously traded section 86(1)(z) security, the person or company that holds that security, and
 - (B) in the case of a person or company acquiring a previously traded section 86(1)(z) security, a person or company that already holds or has held a previously traded section 86(1)(z) security of the kind that is being acquired;
- (b) “previously traded section 86(1)(y) security” means a security that was traded pursuant to the exemption contained in section 86(1)(y) prior to the repeal of that provision by section 9 of the *Securities Amendment Act, 2003*;

(c) “previously traded section 86(1)(z) security” means a security that was traded pursuant to the exemption contained in section 86(1)(z) prior to the repeal of that provision by section 9 of the *Securities Amendment Act, 2003*.

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

- (a) with respect to a previously traded section 86(1)(y) security, a trade in that security if all the parties to that trade are eligible parties;
- (b) with respect to a previously traded section 86(1)(z) security, a trade in that security if all the parties to that trade are eligible parties.

(3) Section 86(2) applies to subsection (2) of this section in the same manner as it applies to section 86(1).

11 Section 87 is amended by repealing clause (i).

12 Section 92 is amended

(a) **in subsection (3) by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following after clause (c):**

(d) engage in an unfair practice.

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

(5) For the purposes of this section, “unfair practice” means any one or more of the following:

- (a) putting unreasonable pressure on a person to purchase, hold or sell a security or an exchange contract;
- (b) taking advantage of a person’s inability or incapacity to reasonably protect his or her own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language

of any matter relating to a decision to purchase, hold or sell a security or an exchange contract;

- (c) imposing terms or conditions in respect of a transaction that are harsh, oppressive or excessively one-sided.

13 Section 131(1)(a), (d), (o), (p), (q), (r), (s), (t), (u), (v), (w) and (bb) are repealed.

14 The following is added after section 131:

Transitional: exemption from prospectus requirements

131.1(1) In this section,

- (a) “eligible party” means,
 - (i) with respect to a trade in a previously traded section 131(1)(q) security,
 - (A) in the case of a person or company disposing of a previously traded section 131(1)(q) security, the person or company that holds that security, and
 - (B) in the case of a person or company acquiring a previously traded section 131(1)(q) security, a person or company that already holds or has held a previously traded section 131(1)(q) security of the kind that is being acquired;
 - (ii) with respect to a trade in a previously traded section 131(1)(r) security,
 - (A) in the case of a person or company disposing of a previously traded section 131(1)(r) security, the person or company that holds that security, and
 - (B) in the case of a person or company acquiring a previously traded section 131(1)(r) security, a person or company that already holds or has held a previously traded section 131(1)(r) security of the kind that is being acquired;

- (b) “previously traded section 131(1)(q) security” means a security that was traded pursuant to the exemption contained in section 131(1)(q) prior to the repeal of that provision by section 13 of the *Securities Amendment Act, 2003*;
- (c) “previously traded section 131(1)(r) security” means a security that was traded pursuant to the exemption contained in section 131(1)(r) prior to the repeal of that provision by section 13 of the *Securities Amendment Act, 2003*.

(2) Subject to the regulations, sections 110 and 121 do not apply to the following distributions:

- (a) with respect to a previously traded section 131(1)(q) security, a trade in that security if all the parties to that trade are eligible parties;
- (b) with respect to a previously traded section 131(1)(r) security, a trade in that security if all the parties to that trade are eligible parties.

(3) Section 131(2) applies to subsection (2) of this section in the same manner as it applies to section 131(1).

15 Section 132 is repealed and the following is substituted:

Filing report of the trade

132 If required to do so by the regulations, the issuer shall, within 10 days from the date of a trade, file a report prepared and executed in accordance with the regulations.

16 Sections 133 to 140 are repealed.

17 Section 141 is amended

- (a) **in subsection (1) by adding** “any issuer profile supplement or” **after** “default of filing”;

- (b) in subsection (2) by adding “any issuer profile supplement or” after “default of filing”.

18 Section 146 is repealed and the following is substituted:

Disclosure of material changes

146 When a material change occurs with respect to a reporting issuer, the reporting issuer shall make disclosure of the material change as provided under the regulations.

19 Section 148 is repealed.

20 Section 149 is repealed and the following is substituted:

Filing financial statements

149 A reporting issuer shall file financial statements

- (a) prepared, reviewed and approved as provided for under the regulations, and
- (b) accompanied with those reports, if any, that are required under the regulations.

21 Section 150 is repealed and the following is substituted:

Sending of financial statements

150 A reporting issuer must, in accordance with the regulations, send financial statements to those persons and companies that under the regulations are to be provided with the financial statements.

22 Section 152 is repealed and the following is substituted:

Other continuous disclosure

152 If the regulations require a reporting issuer to provide information that is in addition to the information referred to in sections 146 to 151, the reporting issuer must, with respect to

that additional information, do so in accordance with the regulations governing the preparation, form, content, review, audit, approval, certification, filing, delivery and use of information to or in respect of security holders under this Part.

23 Section 154 is amended

- (a) by repealing clause (a);**
- (b) in clause (b)(iv) by striking out “under section 155” and substituting “pursuant to the regulations”.**

24 Sections 155 and 156 are repealed.

25 The following is added after section 157:

Proxies and information circular

157.1(1) Where the regulations provide for the form, content, filing and sending of information circulars or form of proxy, any person or company that sends or is required to send an information circular or a form of proxy to security holders of a reporting issuer must do so in accordance with those regulations.

(2) A proxy that is executed by a security holder may confer authority, and is subject to any restrictions, as prescribed or otherwise provided for under the regulations.

26 Section 194(1)(g) is amended

- (a) by striking out “section 146(1) or (4)” and substituting “section 146”;**
- (b) by striking out “section 150;”, “section 155;”, “section 156(1);” and “section 157(2);” and substituting the following:**

section 149;
section 150;

section 152;
section 157(2);
section 157.1;

27 Section 203 is amended

(a) by adding the following after subsection (13):

(13.1) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

(b) by adding the following after subsection (14):

(15) If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, a prospectus, the misrepresentation is deemed to be contained in the prospectus.

28 Section 204 is repealed and the following is substituted:

Civil liability – offering memorandum

204(1) If an offering memorandum contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum is deemed to have relied on the representation, if it was a misrepresentation at the time of purchase, and has a right of action

- (a) for damages against
 - (i) the issuer,
 - (ii) every director of the issuer at the date of the offering memorandum, and
 - (iii) every person or company who signed the offering memorandum,

and

(b) for rescission against the issuer.

(2) Notwithstanding subsection (1)(b), if the purchaser elects to exercise a right of rescission against the issuer, the purchaser has no right of action for damages against a person or company referred to in subsection (1)(a).

(3) Where a misrepresentation is contained in an offering memorandum, no person or company is liable under subsection (1)

- (a) if the person or company proves that the purchaser had knowledge of the misrepresentation;
- (b) if the person or company proves that the offering memorandum was sent to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its being sent, the person or company promptly gave reasonable notice to the issuer that it was sent without the knowledge and consent of the person or company;
- (c) if the person or company proves that the person or company, on becoming aware of the misrepresentation in the offering memorandum, withdrew the person's or company's consent to the offering memorandum and gave reasonable notice to the issuer of the withdrawal and the reason for it;
- (d) if, with respect to any part of the offering memorandum 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, the person or company proves that the person or company did not have any reasonable grounds to believe and did not believe that
 - (i) there had been a misrepresentation, or
 - (ii) the relevant part of the offering memorandum
 - (A) did not fairly represent the report, opinion or statement of the expert, or
 - (B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert;

- (e) with respect to any part of the offering memorandum 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 the person or company
 - (i) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation, or
 - (ii) believed there had been a misrepresentation.

(4) The amount recoverable under this section shall not exceed the price at which the securities were offered under the offering memorandum.

(5) Subsection (3)(b) to (e) do not apply to the issuer.

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

(7) All or any one or more of the persons or companies specified in subsection (1) that are found to be liable or accept liability under this section are jointly and severally liable.

(8) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

(9) The right of action for rescission or damages conferred by this section is in addition to and does not derogate from any other right that the purchaser may have at law.

(10) If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, an offering memorandum, the misrepresentation is deemed to be contained in the offering memorandum.

29 Section 205 is amended

(a) by adding the following after subsection (10):

(10.1) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

(b) by adding the following after subsection (11):

(12) If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, a circular or a notice of change or variation, the misrepresentation is deemed to be contained in the circular or the notice of change or variation.

30 Section 206 is amended

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

(c) a purchaser of a security to whom an offering memorandum was required to be sent in compliance with Alberta securities laws but was not sent within the time prescribed for sending the offering memorandum,

(b) by striking out “dealer or offeror” and substituting “dealer, offeror or issuer”.

31 The following is added after section 209:

Rescission re offering memorandum

209.1 A purchaser of a security to whom an offering memorandum is required to be sent may rescind the contract to purchase the security by sending written notice to the issuer not later than midnight on the 2nd day, exclusive of Saturdays and holidays, after the purchaser signs the agreement to purchase the securities.

32 Section 211(b)(ii) is amended by striking out “one year” and substituting “3 years”.

33 Section 212 is repealed.

34 Section 215(2) is repealed and the following is substituted:

(2) Where a person gives testimony pursuant to an examination referred to in subsection (1), that testimony shall not be admitted in evidence against that person in a prosecution of an offence under section 194 or any other prosecution of an offence under an enactment of Alberta.

(3) With respect to testimony given pursuant to an examination referred to in subsection (1), subsection (2) is not to be construed so as to prohibit or restrict the use of that testimony against any person in a prosecution for perjury or the giving of contradictory evidence.

35 Section 223 is amended

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

(iii.1) respecting the voluntary surrender of registration;

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

(j.1) prescribing the conditions and circumstances under which a company may undertake the duties, responsibilities and activities that a person who is a registrant and a shareholder of the company is authorized to undertake by virtue of being a registrant, including the establishment of a scheme for the registration of the company and the category of that registration;

(j.2) imposing liability on a registrant who is a dealer or adviser for the acts or omissions prescribed under clause (j.6) of a company that is a registrant pursuant to a scheme established pursuant to the authority in clause

(j.1) where the dealer or adviser has a prescribed contractual relationship with the company;

(j.3) imposing liability on a person who is a registrant and a shareholder of a company for acts or omissions of the company where the company that performs the acts or fails to perform the acts is a registrant pursuant to a scheme established pursuant to the authority in clause (j.1);

(j.4) prescribing the terms and conditions under which a person who is in a contractual relationship with a dealer is deemed to be an employee of the dealer for the purpose of the Alberta securities laws and deemed to be qualified for registration as a salesperson of the dealer;

(j.5) imposing liability on a registrant who is a dealer for the acts and omissions prescribed under clause (j.7) of a person deemed to be an employee of the dealer under a regulation made pursuant to clause (j.4);

(j.6) prescribing the acts or omissions of a company for which a registrant who is a dealer or adviser is liable;

(j.7) prescribing the acts or omissions of a person deemed to be an employee of a dealer for which a registrant who is a dealer is liable;

(c) by adding the following after clause (q):

(q.1) governing the preparation and the filing of reports of trades;

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

(r) governing disclosure obligations under Parts 12 and 13, including the form, content, preparation, review, audit, approval, certification, filing, delivery and use of disclosure documents;

(e) in clause (s) by repealing subclause (ii) and substituting the following:

(ii) prescribing disclosure requirements, including the form, content, preparation, review, audit, approval,

certification, filing, delivery and use of disclosure documents;

(f) by adding the following after clause (hh):

- (hh.1) governing minimum requirements respecting corporate governance including, without limiting the generality of the foregoing,
- (i) requiring directors and officers, or persons or companies performing similar functions in relation to reporting issuers, to act honestly and in good faith with a view to the best interests of the reporting issuer;
 - (ii) requiring directors and officers, or persons or companies performing similar functions in relation to reporting issuers, to exercise the skill and judgment that a reasonably prudent person would exercise in comparable circumstances;
 - (iii) respecting the composition of the board of a reporting issuer and any committees of the board and the qualifications and requirements concerning directors, officers and committee members, and persons or companies performing similar functions, including any matters respecting independence, required courses and expertise;
 - (iv) requiring reporting issuers to appoint audit committees and other committees of the board and prescribing minimum standards for those committees;
 - (v) requiring reporting issuers to devise and maintain a system of internal controls and disclosure controls and respecting minimum standards for and certification of those internal controls and disclosure controls;
 - (vi) requiring reporting issuers to adopt codes of business conduct and ethics and corporate governance guidelines for directors, officers, employees and

persons or companies performing similar functions or that are in a special relationship with the reporting issuer;

- (vii) respecting procedures to regulate conflicts of interest between the interests of a reporting issuer and those of a director or officer or a person or company performing similar functions on behalf of a reporting issuer;
- (viii) respecting the independence of auditors in relation to management and controlling security holders;

36 Section 224(2) is repealed and the following is substituted:

(2) Notwithstanding subsection (1), the Commission shall not do the following:

- (a) make rules in respect of matters referred to in section 223(ee);
- (b) make rules in respect of matters referred to in section 223(hh.1) except with the approval of the Minister;
- (c) make rules in respect of matters referred to in section 223(ii).

37 The following is added after section 224:

Changes to unpublished rules

224.1(1) In this section, “unpublished rule” means a rule made by the Commission under section 224 but not yet published in The Alberta Gazette under section 225.

(2) The Commission may make rules setting out criteria or guidelines as to what constitutes non-substantive or non-controversial changes to unpublished rules.

(3) The Chair may designate 2 or more members of the Commission to sit as a panel of the Commission for the purposes of considering and, subject to subsection (5), making changes to unpublished rules.

(4) Subject to this section, section 23(2) to (7) apply to a panel established under subsection (3).

(5) A panel established under this section may make non-substantive and non-controversial changes to unpublished rules.

(6) Where a change is made to an unpublished rule under this section, that rule as changed is deemed to have been made by the Commission under section 224.

38(1) In this section,

- (a) “amended section 86” means section 86 of the *Securities Act* as amended by section 9 of this Act;
- (b) “amended section 87” means section 87 of the *Securities Act* as amended by section 11 of this Act;
- (c) “amended section 131” means section 131 of the *Securities Act* as amended by section 13 of this Act;
- (d) “previous section 86” means section 86(1)(c), (e), (i), (j), (u), (v), (w), (y), (z), (aa), (bb), (ff) and (gg) of the *Securities Act* as those provisions read immediately before the coming into force of section 9 of this Act;
- (e) “previous section 87(i)” means section 87(i) of the *Securities Act* as that provision read immediately before the coming into force of section 11 of this Act;
- (f) “previous section 131” means section 131(1)(a), (d), (o), (p), (q), (r), (s), (t), (u), (v), (w) and (bb) of the *Securities Act* as those provisions read immediately before the coming into force of section 13 of this Act.

(2) Subject to subsection (3), where

- (a) a trade referred to in the previous section 86 was commenced but was not completed before the amended section 86 came into force, that trade may be completed under the previous section 86 as if the amended section 86 had not come into force,

- (b) a trade referred to in the previous section 87(i) was commenced but was not completed before the amended section 87 came into force, that trade may be completed under the previous section 87(i) as if the amended section 87 had not come into force, or
- (c) a distribution referred to in the previous section 131 was commenced but was not completed before the amended section 131 came into force, that distribution may be completed under the previous section 131 as if the amended section 131 had not come into force.

(3) This section applies only to

- (a) a trade referred to in the previous section 86 that is concluded within 30 days from the day of the coming into force of section 9 of this Act,
- (b) a trade referred to in the previous section 87(i) that is concluded within 30 days from the day of the coming into force of section 11 of this Act, and
- (c) a distribution referred to in the previous section 131 that is concluded within 30 days from the day of the coming into force of section 13 of this Act.

39 This Act comes into force on Proclamation.

Explanatory Notes

1 Amends chapter S-4 of the Revised Statutes of Alberta 2000.

2 Section 1(p)(v), (kk) and (pp) presently read:

1 In this Act,

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

(v) *a distribution referred to in sections 134 to 140 or under the regulations,*

(kk) *“offering memorandum” means*

(i) *an offering memorandum in the form prescribed by the regulations, and*

(ii) *any other document, not referred to in subclause (i), that describes the business and affairs of an issuer and that has been prepared for delivery to and review by prospective purchasers in order to assist them in making an investment decision in respect of securities being sold in a distribution to which section 110 or 121 would apply but for the availability of an exemption contained in section 131(1)(c), (d), (q), (r), (s), (t) or (bb),*

but does not include

(iii) *an annual report or interim report, or*

(iv) *an information circular, take-over bid circular, issuer bid circular or prospectus, or any other document, other than an offering document within the meaning of subclause (i), the content of which is prescribed by a statute or regulation;*

(pp) *“private issuer” means a person or company that*

(i) *is not a reporting issuer or a mutual fund, and*

(ii) *is an issuer where the issued and outstanding securities of the issuer*

(A) *have not been distributed to the public,*

(B) *are subject to restrictions on transfer that are contained in the constating documents of the issuer or one or more*

agreements between the issuer and the holders of its securities, and

(C) are, counting any 2 or more joint registered owners of a security as one beneficial owner, beneficially owned, directly or indirectly, by not more than 50 persons or companies exclusive of

(I) persons that are employed by the issuer or an affiliate of the issuer, or

(II) persons that beneficially owned, directly or indirectly, securities of the issuer while employed by the issuer or an affiliate of the issuer and, at all times since ceasing to be so employed, have continued to beneficially own at least one security of the issuer;

3 Section 13 presently reads:

13(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 or more members of the Commission as a Vice-chair of the Commission.

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

4 Section 19(5) presently reads:

(5) Notwithstanding subsections (1) and (2), money received by the Commission from administrative penalties under section 199 shall not be used for normal operating 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.

5 Section 46 presently reads:

46(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.

6 Section 75(3) and (5) presently read:

(3) A registration of a person or company under this section does not take effect until

- (a) application for registration has been made in writing accompanied with the fee prescribed by the regulations,*
- (b) the registration has been made in accordance with the Alberta securities laws, and*
- (c) the person or company has received written notice of the registration from the Executive Director.*

(5) The termination of the employment of a salesperson with a registered dealer or the employment of an advising employee with a registered advisor shall operate as a suspension of the registration of the salesperson or advising employee until

- (a) *notice in writing has been received by the Executive Director from another registered dealer or another registered advisor of the employment of the salesperson or advising employee by that other registered dealer or registered advisor, and*
- (b) *the reinstatement of the registration has been approved by the Executive Director.*

7 Section 78 presently reads:

78 Notwithstanding section 77, the Executive Director may, on application by a registrant, accept, subject to those terms or

conditions that the Executive Director may impose, the voluntary surrender of the registration of the registrant if the Executive Director

- (a) *is satisfied that the financial obligations of the registrant to its clients have been discharged, and*
- (b) *considers that it would not be prejudicial to the public interest to accept the surrender of the registration.*

8 Section 80 presently reads:

80 An application for renewal or reinstatement of registration or for an amendment to registration shall

- (a) *be made in writing in the form required by the regulations, and*
- (b) *be accompanied with the fee prescribed by the regulations.*

9 Section 86(1)(c), (e), (i), (j), (u), (v), (w), (y), (z), (aa), (bb), (ff) and (gg) presently read:

86(1) Subject to the regulations, registration is not required in respect of the following trades in securities:

- (c) a trade if the party purchasing as principal and not as an underwriter is
 - (i) a financial institution,*
 - (ii) the Business Development Bank of Canada continued under the Business Development Bank of Canada Act (Canada),*
 - (iii) an insurance company,*
 - (iv) a subsidiary of any of the parties referred to in subclause (i), (ii) or (iii) if the financial institution, the Business Development Bank of Canada or the insurance company, as the case may be, beneficially owns all of the voting securities of that subsidiary,*
 - (v) the Government of Alberta, the Government of Canada or the government of any other province or territory, or*
 - (vi) a municipal corporation or public board or commission in Canada;**
- (e) a trade if
 - (i) the purchaser purchases as principal, and*
 - (ii) it is in a security that has an aggregate acquisition cost to the purchaser of not less than an amount prescribed by regulation;**
- (i) a trade between a person or company and an underwriter acting as purchaser or between or among underwriters;*
- (j) a trade in a security by a person or company*

- (i) *acting solely through an agent who is a registered dealer, or*
 - (ii) *with a registered dealer who is acting as principal;*
- (u) *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 or plan administrator 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;
- (v) *a trade made in the security of an issuer where each of the parties to the trade is a control person of that issuer;*
- (w) *a trade by an issuer in securities of its own issue if*
 - (i) *the trade is reasonably necessary to facilitate the incorporation or organization of the issuer, and*
 - (ii) *the securities are traded*
 - (A) *for a nominal consideration to not more than 15 incorporators or organizers, or*
 - (B) *for a greater consideration or to a larger number of incorporators or organizers than prescribed under paragraph (A), if the statute under which the issuer is incorporated or organized requires the trade to be for that greater consideration or to that*

*larger number of incorporators or
organizers;*

- (y) *a trade made by an issuer with a view to the sale of securities of its own issue if*
 - (i) *the sales made in all jurisdictions including Alberta are made to not more than the number of purchasers prescribed by regulation,*
 - (ii) *all of the purchases are completed within a period of 6 months after the first purchase, but subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that 6-month period,*
 - (iii) *before an agreement of purchase and sale is entered into, each purchaser receives an offering memorandum that complies with the requirements of the regulations,*
 - (iv) *the issuer obtains from each purchaser a written acknowledgment to the effect that the purchaser*
 - (A) *purchases as principal, and*
 - (B) *is a sophisticated purchaser as defined in the regulations,*
 - (v) *the offer and sale of the securities are not accompanied with an advertisement,*
 - (vi) *no selling or promotional expenses have been paid or incurred in connection with the offer or sale of the securities, except for professional services or for services performed by a registered dealer,*
 - (vii) *no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer where*

(A) *that other issuer is trading or has traded in securities of its own issue pursuant to this exemption or a similar exemption in another jurisdiction within the previous 12 months, and*

(B) *the proceeds obtained by the issuer in this trade are used or intended to be used in respect of the same property, project or program as are the proceeds obtained by that other issuer in the trade referred to in paragraph (A),*

and

(viii) *the distribution is the first distribution by the issuer under this exemption;*

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

(i) *the sales made in all jurisdictions including Alberta are made to not more than the number of purchasers prescribed by regulation,*

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

(iii) *before an agreement of purchase and sale is entered into, each purchaser receives an offering memorandum that complies with the requirements of the regulations,*

(iv) *the issuer obtains from each purchaser a written acknowledgment to the effect that the purchaser*

(A) *purchases as principal, and*

(B) *is a sophisticated purchaser as defined in the regulations,*

- (v) *the offer and sale of the securities are not accompanied with an advertisement,*
 - (vi) *no selling or promotional expenses have been paid or incurred in connection with the offer or sale of the securities, except for professional services or for services performed by a registered dealer,*
 - (vii) *no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer where*
 - (A) *that other issuer is trading or has traded in securities of its own issue pursuant to this exemption or a similar exemption in another jurisdiction within the previous 12 months, and*
 - (B) *the proceeds obtained by the issuer in this trade are used or intended to be used in respect of the same property, project or program as are the proceeds obtained by that other issuer in the trade referred to in paragraph (A),*
- and*
- (viii) *a period of 12 months has elapsed since the completion of its distribution under the exemption contained in clause (y) or under this exemption;*
 - (aa) *a trade in securities of an issuer previously disposed of pursuant to the exemption contained in clause (y) if each of the parties to the trade is one of the purchasers referred to in clause (y);*
 - (bb) *a trade in securities of an issuer previously disposed of pursuant to an exemption contained in clause (z) if each of the parties to the trade is one of the purchasers referred to in clause (z);*
 - (ff) *a trade by an issuer with*

- (i) *a senior officer or director of the issuer,*
- (ii) *a senior officer or director of an affiliate of the issuer,*
- (iii) *a spouse, parent, brother, sister or child of any person referred to in subclause (i) or (ii),*
- (iv) *a company all of whose voting securities are beneficially owned by one or more of the persons referred to in subclause (i), (ii) or (iii), or*
- (v) *close friends or business associates of a promoter of the issuer, or a company all of whose voting securities are beneficially owned by a single close friend or a single business associate of a promoter of the issuer where*
 - (A) *the trade is made with not more than the number of purchasers prescribed by regulation,*
 - (B) *there is not an invitation to the public to subscribe for the securities, and*
 - (C) *no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer if*
 - (I) *that other issuer has traded in securities of its own issue pursuant to this exemption within the previous 12 months, and*
 - (II) *the proceeds obtained by the issuer in this trade are used or intended to be used in respect of the same property, project or program as are the proceeds obtained by that other issuer in the trade referred to in subparagraph (I);*

- (gg) *a trade made through the facilities of an exchange recognized by the Commission for the purposes of this section if*
- (i) *the trade is made in whole or in part by means of telephone or other telecommunications equipment linking the facilities of that exchange with the facilities of another exchange recognized by the Commission for the purposes of this section,*
 - (ii) *the trade is made in a security of a class or type designated by the Commission as exempt for the purposes of this section, and*
 - (iii) *each of the parties to the trade is registered as a dealer or in a similar capacity under the laws of a province or territory governing securities or exchange contracts;*

10 Transitional provision with respect to the repeal of section 86(1)(y) and (z).

11 Section 87(i) presently reads:

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

- (i) *securities of a private issuer if they are not offered for sale to the public;*

12 Section 92(3) presently reads:

(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,*
 - (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,
- or*
- (c) *make a statement that the person or company knows or ought reasonably to know is a misrepresentation.*

13 Section 131(1)(a), (d), (o), (p), (q), (r), (s), (t), (u), (v), (w) and (bb) presently read:

131(1) Subject to the regulations, sections 110 and 121 do not apply to a distribution where

- (a) *the purchaser is*
- (i) *a financial institution,*
 - (ii) *the Business Development Bank of Canada continued under the Business Development Bank of Canada Act (Canada),*
 - (iii) *an insurance company,*
 - (iv) *a subsidiary of any of the parties referred to in subclause (i), (ii) or (iii) if the financial institution, the Federal Business Development Bank or the insurance company, as the case may be, beneficially owns all of the voting securities of that subsidiary,*
 - (v) *the Government of Canada, the Government of Alberta or the government of any other province or territory, or*
 - (vi) *any municipal corporation or public board or commission in Canada,*
- who purchases as principal;*
- (d) *the purchaser purchases as principal and the trade is in a security that has an aggregate acquisition cost to the purchaser of not less than an amount prescribed by regulation;*
- (o) *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 or plan administrator 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;*

(p) *the trade is made by an issuer in securities of its own issue where*

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

(ii) *the securities are traded for*

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

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

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

(i) *the sales made in all the jurisdictions including Alberta are made to not more than the number of purchasers prescribed by regulation,*

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

(iii) *before an agreement of purchase and sale is entered into, each purchaser receives an offering memorandum that complies with the requirements of the regulations,*

(iv) *the issuer obtains from each purchaser a written acknowledgment to the effect that the purchaser*

(A) *purchases as principal, and*

- (B) is a sophisticated purchaser as defined in the regulations,*
- (v) the offer and sale of the securities are not accompanied with an advertisement,*
- (vi) no selling or promotional expenses have been paid or incurred in connection with the offer or sale of the securities, except for professional services or for services performed by a registered dealer,*
- (vii) no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer where*
 - (A) that other issuer is trading or has traded in securities of its own issue pursuant to this exemption or a similar exemption in another jurisdiction within the previous 12 months, and*
 - (B) the proceeds obtained by the issuer in this trade are used or intended to be used in respect of the same property, project or program as are the proceeds obtained by that other issuer in the trade referred to in paragraph (A),*

and

- (viii) the distribution is the first distribution by the issuer under this exemption;*
- (r) the trade is made by an issuer with a view to the sale of securities of its own issue if*
 - (i) the sales made in all the jurisdictions including Alberta are made to not more than the number of purchasers prescribed by regulation,*
 - (ii) all of the purchases are completed within a period of 6 months after the first purchase, but subsequent sales to the same purchasers may be carried out if made in*

compliance with written agreements entered into during that 6-month period,

(iii) before an agreement of purchase and sale is entered into, each purchaser receives an offering memorandum that complies with the requirements of the regulations,

(iv) the issuer obtains from each purchaser a written acknowledgment to the effect that the purchaser

(A) purchases as principal, and

(B) is a sophisticated purchaser as defined in the regulations,

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

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

(vii) no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer where

(A) that other issuer is trading or has traded in securities of its own issue pursuant to this exemption or a similar exemption in another jurisdiction within the previous 12 months, and

(B) the proceeds obtained by the issuer in this trade are used or intended to be used in respect of the same property, project or program as are the proceeds obtained by that other issuer in the trade referred to in paragraph (A),

and

- (viii) a period of 12 months has elapsed since the completion of its distribution under the exemption contained in clause (q) or under this exemption;*
- (s) the trade is made in securities of an issuer previously disposed of pursuant to the exemption contained in clause (q) where each of the parties to the trade is one of the purchasers referred to in clause (q);*
- (t) the trade is made in securities of an issuer previously disposed of pursuant to an exemption contained in clause (r) where each of the parties to the trade is one of the purchasers referred to in clause (r);*
- (u) the trade is made from one registered dealer to another registered dealer when the registered dealer making the purchase is acting as principal;*
- (v) the trade is made between a person or company and an underwriter acting as purchaser or between or among underwriters;*
- (w) the trade is made in the security of an issuer where each of the parties to the trade is a control person of that issuer;*
- (bb) the trade is made by an issuer with*
 - (i) a senior officer or director of the issuer,*
 - (ii) a senior officer or director of an affiliate of the issuer,*
 - (iii) a spouse, parent, brother, sister or child of any person referred to in subclause (i) or (ii),*
 - (iv) a company all of whose voting securities are beneficially owned by one or more of the persons referred to in subclause (i), (ii) or (iii), or*

- (v) *close friends or business associates of a promoter of the issuer, or a company all of whose voting securities are beneficially owned by a single close friend or single business associate of a promoter of the issuer, if*
 - (A) *the trade is with not more than the number of purchasers prescribed by regulation,*
 - (B) *there is not an invitation to the public to subscribe for the securities, and*
 - (C) *no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer where*
 - (I) *that other issuer has traded in securities of its own issue pursuant to this exemption within the previous 12 months, and*
 - (II) *the proceeds obtained by the issuer in this trade are used or intended to be used in respect of the same property, project or program as are the proceeds obtained by that other issuer in the trade referred to in subparagraph (I);*

14 Transitional provision with respect to the repeal of section 131(1)(q) and (r).

15 Section 132 presently reads:

132(1) Subject to the regulations, when a trade has been made under section 131(1)(a), (b), (c), (d), (l), (m), (q), (r), (s), (t), (u) or (bb), the vendor shall within 10 days from the date the trade is made file a report of the trade prepared and executed in accordance with the regulations.

(2) Notwithstanding subsection (1), a report is not required if, by a trade under section 131(1)(a), a financial institution acquires from a customer an evidence of indebtedness.

16 Section 133 provides for the filing of offering memorandums. Sections 134, 136 and 139 provide that certain first trades are distributions. Section 135 provides that certain transactions are deemed distributions. Sections 137 and 138 provide for exceptions

from deemed distributions. Section 140 provides for exemptions from prospectus requirements.

17 Section 141 presently reads:

141(1) Subject to subsection (3), for the purpose of determining whether an issuer is a reporting issuer and, if so, whether the reporting issuer is not in default of filing financial statements required by this Act or the regulations or paying the prescribed fees and charges, a person or company is entitled

(a) to apply to the Executive Director for a certificate issued for this purpose in accordance with section 218, and

(b) subject to subsection (3), to rely on the certificate so issued.

(2) Subject to subsection (3), for the purpose of determining whether a reporting issuer is not in default of filing financial statements required by this Act or the regulations or paying the prescribed fees and charges, a person or company is entitled to rely on a list of defaulting reporting issuers that is

(a) maintained by the Commission for public inspection, and

(b) open to inspection at the office of the Commission during its normal business hours.

(3) No person or company that knows or ought reasonably to know that a reporting issuer is in default may rely on the certificate referred to in subsection (1) or on the list referred to in subsection (2).

18 Section 146 presently reads:

146(1) Subject to subsection (2), where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall, subject to the regulations,

(a) promptly issue and file with the Executive Director a news release authorized by a senior officer disclosing the nature and substance of the material change, and

(b) prepare and file with the Executive Director a report of the material change within 10 days from the day on which the change occurs.

(2) A reporting issuer may, instead of complying with subsection (1), promptly file on a confidential basis with the Executive Director

the report of the material change required under subsection (1) together with written reasons for the non-disclosure if

(a) in the opinion of the reporting issuer, the disclosure required under subsection (1) would be unduly detrimental to the reporting issuer's affairs, or

(b) the material change consists of a decision to implement a change made by the senior management of the reporting issuer and the senior management

- (i) *believes that confirmation of that decision by the board of directors of the reporting issuer is probable, and*
- (ii) *has no reason to believe that any person with knowledge of the material change has made use of that knowledge in purchasing or selling securities of the reporting issuer.*

(3) Where a report has been filed with the Executive Director under subsection (2), the reporting issuer shall advise the Executive Director in writing, within 10 days from the day of filing the initial report and within every 10-day period afterwards, that the reporting issuer believes that the report should continue to remain confidential until

- (a) *the material change is generally disclosed in the manner referred to in subsection (1), or*
- (b) *if the material change consists of a decision of the type referred to in subsection (2)(b), the decision has been rejected by the board of directors of the reporting issuer.*

(4) Notwithstanding subsections (2) and (3), the reporting issuer shall, not later than 180 days from the day that the material change became known to the reporting issuer or within any shorter period of time that may be determined by the Executive Director,

- (a) *issue and file with the Executive Director a news release authorized by a senior officer disclosing the nature and substance of the material change, and*
- (b) *prepare and file with the Executive Director a report of the material change.*

19 Section 148 presently reads:

148(1) Every reporting issuer that is not a mutual fund shall file with the Executive Director an interim

financial statement within 60 days from the day to which it is made up,

- (a) if the reporting issuer has not completed its first financial year, for periods commencing with the beginning of that year and ending 9, 6 and 3 months respectively before the day on which that year ends, but no interim financial statement is*

required to be filed for any period that is less than 3 months in length, or

- (b) if the reporting issuer has completed a financial year, to the end of each of the 3-month, 6-month and 9-month periods of the current financial year that commenced immediately following the last financial year, including a comparative statement to the end of each of the corresponding periods in the last financial year.*

(2) Every reporting issuer that is a mutual fund shall file with the Executive Director an interim financial statement within 60 days from the day to which it is made up,

- (a) if the mutual fund has not completed its first financial year, for the period commencing with the beginning of that year and ending 6 months before the day on which that year ends but, if the first financial year is less than 6 months in length, no interim financial statement is required to be filed, or*

- (b) if the mutual fund has completed a financial year, for the 6-month period of the current financial year that commenced immediately following the last financial year, including a comparative statement for the corresponding period in the last financial year.*

(3) A financial statement filed under this section shall be made up as required by the regulations.

20 Section 149 presently reads:

149(1) Every reporting issuer shall within 140 days from the end of its last financial year file annually with the Executive Director comparative financial statements relating separately to

(a) the period that commenced on the date of incorporation or organization and ended as of the close of the first financial year or, if the reporting issuer has completed a financial year, the last financial year, as the case may be, and

(b) the period covered by the financial year next preceding the last financial year, if any,

made up and certified as required by the regulations.

(2) Every financial statement referred to in subsection (1) shall be accompanied with a report of the auditor of the reporting issuer prepared in accordance with the regulations.

(3) In this section "auditor", when used in relation to a company, includes the auditor of the company or an independent accountant acceptable to the Executive Director.

21 Section 150 presently reads:

150 Every financial statement required to be filed pursuant to section 148 or 149 shall be concurrently sent by the reporting issuer to each holder of its securities, other than debt instruments, whose latest address as shown on the books of the reporting issuer is in Alberta.

22 Section 152 presently reads:

152(1) If the management of a reporting issuer sends an information circular under section 156(1)(a), the reporting issuer shall promptly file a copy of the

information circular certified in accordance with the regulations.

(2) If subsection (1) is not applicable, the reporting issuer shall file annually within 140 days from the end of its last financial year a report prepared and certified in accordance with the regulations.

23 Section 154 presently reads:

154 In this Part,

(a) “information circular” means an information circular prepared in accordance with the regulations;

(b) “solicit” and “solicitation” include

(i) any request for a proxy whether or not accompanied with or included in a form of proxy,

(ii) any request to execute or not to execute a form of proxy or to revoke a proxy,

(iii) the sending or delivery of a form of proxy or other communication to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, or

(iv) the sending or delivery of a form of proxy to a security holder under section 155,

but do not include

(v) the sending or delivery of a form of proxy to a security holder in response to an unsolicited request made by the security holder or on the security holder’s behalf, or

(vi) the performance by any person or company of administrative or professional

services on behalf of a person or company soliciting a proxy.

24 Sections 155 and 156 presently read:

155 If the management of a reporting issuer gives or intends to give to holders of its voting securities notice of a meeting, the management shall, concurrently with or prior to giving that notice to those security holders, send to those security holders

(a) whose latest addresses as shown on the books of the reporting issuer are in Alberta, and

(b) who are entitled to notice of the meeting,

a form of proxy that complies with the regulations for use at the meeting.

156(1) Subject to subsection (2), no person or company shall solicit proxies from a holder of voting securities of a reporting issuer where the holder's latest address as shown on the books of the reporting issuer is in Alberta unless,

(a) in the case of a solicitation by or on behalf of the management of a reporting issuer, an information circular either as an appendix to or as a separate document accompanying the notice of the meeting, is sent to each security holder of the reporting issuer whose proxy is solicited at the security holder's latest address as shown on the books of the reporting issuer, or

(b) in the case of a solicitation other than one referred to in clause (a), the person or company making the solicitation, concurrently with or prior to the solicitation sends an information circular to each security holder whose proxy is solicited.

(2) Subsection (1) does not apply to

(a) *any solicitation, otherwise than by or on behalf of the management of a reporting issuer, if the total number of security holders whose proxies are solicited is not more than 15 persons or companies,*

(b) *any solicitation by a person or company made under section 104, or*

(c) *any solicitation by a person or company in respect of securities of which the person or company is the beneficial owner.*

(3) *For the purposes of this section, 2 or more persons or companies who are joint registered owners of one or more securities shall be counted as being one security holder.*

25 Information, etc. respecting information circulars and forms of proxy.

26 Section 194(1)(g) presently reads in part:

194(1) Any person or company that does one or more of the following commits an offence:

(g) *contravenes the following provisions of this Act:*

section 150;

section 155;

section 156(1);

section 157(2);

27 Section 203 presently reads:

203(1) If a prospectus contains a misrepresentation, a purchaser who purchases a security offered by it during the period of distribution is deemed to have

relied on the misrepresentation and has a right of action for damages against

- (a) the issuer or a selling security holder on whose behalf the distribution is made,*
- (b) each underwriter of the securities who is required to sign the certificate referred to in section 117,*
- (c) every director of the issuer at the time the prospectus was filed,*
- (d) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them, and*
- (e) every person or company, other than the ones referred to in clauses (a) to (d), who signed the prospectus.*

(2) If a prospectus contains a misrepresentation, a purchaser who purchases a security offered by it during the period of distribution is deemed to have relied on the misrepresentation and has a right of action for rescission against

- (a) the issuer or a selling security holder on whose behalf the distribution is made,*
- (b) each underwriter of the securities who is required to sign the certificate referred to in section 117, and*
- (c) any other underwriter of the securities.*

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

(4) No person or company is liable under subsection (1) or (2) if the person or company proves that the

purchaser purchased the securities with knowledge of the misrepresentation.

(5) No person or company, other than the issuer or selling security holder, is liable under subsection (1) or (2) if the person or company proves

(a) that the prospectus was filed without the person's or company's knowledge or consent and that, on becoming aware of its filing, the person or company promptly gave reasonable general notice that it was so filed;

(b) that, after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus the person or company withdrew the person's or company's consent to it and gave reasonable general notice of the withdrawal and the reason for it;

(c) that, with respect to any part of the prospectus purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, the person or company had no reasonable grounds to believe and did not believe that

(i) there had been a misrepresentation,

(ii) the part of the prospectus did not fairly represent the report, opinion or statement of the expert, or

(iii) the part of the prospectus was not a fair copy of or extract from the report, opinion or statement of the expert;

(d) that, with respect to any part of the prospectus purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert, but

that contains a misrepresentation attributable to a failure to represent fairly the person's or company's report, opinion or statement as an expert,

(i) the person or company had, after reasonable investigation, reasonable grounds to believe and did believe that the part of the prospectus fairly represented the person's or company's report, opinion or statement, or

(ii) on becoming aware that the part of the prospectus did not fairly represent the person's or company's report, opinion or statement as an expert, the person or company promptly advised the Executive Director and gave reasonable general notice that misuse had been made of it and that the person or company would not be responsible for that part of the prospectus;

(e) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document,

(i) it was a correct and fair representation of the statement or copy of or extract from the document, and

(ii) the person or company had reasonable grounds to believe and did believe that the statement was true.

(6) No person or company, other than the issuer or selling security holder, is liable under subsection (1) or (2) with respect to any part of the prospectus purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert unless the person or company

(a) *did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation, or*

(b) *believed there had been a misrepresentation.*

(7) *No person or company, other than the issuer or selling security holder, is liable under subsection (1) or (2) with respect to any part of the prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a*

report, opinion or statement of an expert unless the person or company

(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) *No underwriter is liable for more than the total public offering price represented by the portion of the distribution underwritten by the underwriter.*

(9) *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.*

(10) *All or any one or more of the persons or companies specified in subsection (1) that are found to be liable or accept liability under this section are jointly and severally liable.*

(11) *If in a distribution of securities*

(a) *no receipt for a prospectus was issued,*

(b) *no exemption exists or was given exempting the filing of a prospectus, and*

(c) *a misrepresentation existed in respect of the distribution,*

each purchaser of the securities has a right of rescission and a right of action for damages as if a prospectus containing a misrepresentation had been filed in respect of the distribution.

(12) If a purchaser purchases securities pursuant to a statement of material facts that contains a misrepresentation, the purchaser has a right of rescission and a right of action for damages as if the statement of material facts were a filed prospectus containing a misrepresentation.

(13) The amount recoverable under this section shall not exceed the price at which the securities were offered to the public.

(14) The right of action for rescission or damages conferred by this section is in addition to and does not derogate from any other right that the purchaser may have at law.

28 Section 204 presently reads:

204(1) If an offering memorandum contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution is 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 a 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.

(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 110, and

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

29 Section 205 presently reads:

205(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 14 contains a misrepresentation, each of those holders

(a) is 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 14 contains a misrepresentation, each of the persons or companies to whom the circular or notice was sent is 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
 - (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.

(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 the person or company proves that the security holder had knowledge of the misrepresentation.

(5) No person or company, other than the offeror, is liable under subsection (1), (2) or (3) if the person or company proves that

- (a) the circular or the notice of change or variation in respect of it, as the case may be, was sent without the person's or company's knowledge or consent and that, on becoming aware of it, the person or company promptly gave reasonable general notice that it was so sent;

- (b) after the sending of the circular or the notice of change or variation in respect of it, as the case may be, on becoming aware of any misrepresentation in the circular or the notice of change or variation in respect of it, the person or company withdrew the person's or company's 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 the notice of change or variation in respect of 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, the person or company 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 the change or variation did not fairly represent the report, opinion or statement of the expert, or*
 - (iii) that the part of the circular or the change or variation 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 the notice of change or variation in respect of it purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert, but that contains a misrepresentation attributable to a failure to represent fairly the person's or company's report, opinion or statement as an expert,*
- (i) the person or company had, after conducting an investigation, reasonable grounds to believe and did believe that the part of the circular fairly represented the person's or company's report, opinion or statement as an expert, or*
 - (ii) on becoming aware that the part of the circular did not fairly represent the person's or company's report, opinion or statement as an expert, the person or company promptly advised the Executive Director and gave reasonable general notice that misuse had been made of it and that the person or company 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) *the person or company 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*

the notice of change or variation in respect of it purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert unless the person or company

(a) *did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation, or*

(b) *believed there had been a misrepresentation.*

(7) *No person or company, other than the offeror, is liable under subsection (1), (2) or (3) with respect to any part of the circular or the notice of change or variation in respect of 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 the person or company*

(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 in exchange for securities of the offeree issuer, 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.

(10) If the offeror,

- (a) in a take-over bid exempted from the provisions of Part 14 by section 161(1)(a), or*
- (b) in an issuer bid exempted from the provisions of Part 14 by section 162(e),*

is required by the bylaws, regulations or policies of the exchange through the facilities of which the take-over bid or issuer bid is made, to file with the 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 14.

(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.

30 Section 206 presently reads:

206 A person who is

- (a) a purchaser of a security to whom a prospectus was required to be sent in compliance with section 129, but was not so sent, or*

- (b) *a security holder of an offeree issuer or another person or company that 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 14, but was not so 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.

31 Rescission of contract to purchase securities.

32 Section 211 presently reads:

211 Unless otherwise provided in this Act, no action may be commenced to enforce a right created by this Part more than,

- (a) *in the case of an action for rescission, 180 days from the day of the transaction that gave rise to the cause of action, or*
- (b) *in the case of any action, other than an action for rescission, the earlier of*
 - (i) *180 days from the day that the plaintiff first had knowledge of the facts giving rise to the cause of action, or*
 - (ii) *one year from the day of the transaction that gave rise to the cause of action.*

33 Section 212 presently reads:

212(1) Unless otherwise provided by the Alberta securities laws, a person or company that has complied with the requirements of the laws of the jurisdiction in which

- (a) in the case of a person, the person carries on the substantial part of the person's business, or*
- (b) in the case of a company, it is incorporated, organized or continued,*

is deemed to have complied with the requirements of the Alberta securities laws if the requirements of that jurisdiction and the Alberta securities laws are substantially the same and the documents that are filed in that jurisdiction are also promptly filed with the Executive Director.

(2) The Commission may, if 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

- (a) a person or company or a class of them, or*
- (b) a transaction or a class of them,*

from the requirements of section 152, Part 13 or Part 15 of this Act or the requirements of the regulations.

34 Section 215 presently reads:

215(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.

35 Section 223 provides for the making of regulations by the Lieutenant Governor in Council. Section 223(r) and (s) presently read:

223 The Lieutenant Governor in Council may make regulations

- (r) *governing documents filed under Parts 12 and 13 and, without limiting the generality of the foregoing, providing for*
 - (i) *the use of and form and contents of those documents;*
 - (ii) *the preparation, audit, filing, delivery and dissemination of those documents;*
 - (iii) *exemptions from the requirements of Parts 12 and 13;*
- (s) *with respect to disclosures to be made, or that are otherwise provided for, under Parts 10, 12 and 13,*
 - (i) *prescribing procedures for the integration of disclosures required in relation to those Parts, including modifying or varying the application of the Alberta securities laws as may be necessary for the purpose of permitting integrated disclosure;*

*(ii) prescribing disclosure requirements,
including the use of particular forms or
particular types of documents;*

36 Section 224(2) presently reads:

*(2) Notwithstanding subsection (1), the Commission
shall not make rules in respect of matters referred to
in section 223(e) and (ii).*

37 Allows for changes to unpublished rules.

38 Transitional.

39 Coming into force.