

*Bill 19*  
*Mr. Knight*

## **BILL 19**

2005

### **SECURITIES AMENDMENT ACT, 2005**

*(Assented to , 2005)*

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 (b) by adding** “and any extra-provincial securities laws adopted or incorporated under section 211.4” **after** “Director”;

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

(bb.1) “investment fund” means a mutual fund or a non-redeemable investment fund;

(bb.2) “investment fund manager” means a person or company who has the power to direct and exercises the responsibility of directing the affairs of an investment fund;

**(c) by repealing clauses (ff) and (gg) and substituting the following:**

(ff) “material change” means,

(i) when used in relation to an issuer other than an investment fund,

- (A) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer, or
- (B) a decision to implement a change referred to in paragraph (A) made by the board of directors of the issuer or other persons acting in a similar capacity, or by senior management of the issuer who believe that confirmation of the decision by the board of directors or other persons acting in a similar capacity is probable,

and

- (ii) when used in relation to an issuer that is an investment fund,
  - (A) a change in the business, operations or affairs of the issuer that would be considered important by a reasonable investor in determining whether to purchase or to continue to hold securities of the issuer, or
  - (B) a decision to implement a change referred to in paragraph (A) made
    - (I) by the board of directors of the issuer or the board of directors of the investment fund manager of the issuer or other persons acting in a similar capacity,
    - (II) by senior management of the issuer who believe that confirmation of the decision by the board of directors or other persons acting in a similar capacity is probable, or
    - (III) by senior management of the investment fund manager of the issuer who believe that confirmation of the decision by the board of directors of the investment fund manager of the issuer or other persons acting in a similar capacity is probable;

- (gg) “material fact”, when used in relation to securities issued or proposed to be issued, means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities;

**(d) by repealing clause (jj) and substituting the following:**

(jj) “mutual fund” means

- (i) an issuer whose primary purpose is to invest money provided by its security holders and whose securities entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets, including a separate fund or trust account, of the issuer, or
- (ii) an issuer that is designated as a mutual fund under section 10 or in accordance with the regulations,

but does not include an issuer, or class of issuers, that is designated under section 10 not to be a mutual fund;

(jj.1) “non-redeemable investment fund” means

- (i) an issuer
  - (A) whose primary purpose is to invest money provided by its security holders,
  - (B) that does not invest
    - (I) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is a mutual fund or a non-redeemable investment fund, or
    - (II) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is a mutual fund or a non-redeemable investment fund,

and

(C) that is not a mutual fund,

or

(ii) an issuer that is designated as a non-redeemable investment fund under section 10 or in accordance with the regulations,

but does not include an issuer, or class of issuers, that is designated under section 10 not to be a non-redeemable investment fund;

**(e) in clause (ddd) by adding “or under section 211.6(2)” after “224”;**

**(f) in clause (kkk)(vi) by striking out “section 87(a)(iii)” and substituting “the regulations”.**

**3 Section 5(a) is amended by striking out “a company” and substituting “an issuer” and by striking out “that company” and substituting “that issuer”.**

**4 Section 6 is amended by striking out “A company” and substituting “An issuer”.**

**5 Section 10 is repealed and the following is substituted:**

**Designation orders**

**10(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

- (a) a good, article, service, right or interest, or a class of those, as a commodity,
- (b) a futures contract, or a class of futures contracts, not to be a futures contract,
- (c) a person or company as an insider,

- (d) an issuer or a class of issuers to be, or not to be, a mutual fund,
- (e) an issuer or a class of issuers to be, or not to be, a non-redeemable investment fund, and
- (f) an issuer or a class of issuers to be, or not to be, a reporting issuer.

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

**6 Section 13 is amended**

**(a) in subsection (1) by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding the following after clause (b):**

- (c) may designate one of the members of the Commission as the lead independent member, with the powers, duties and functions prescribed by the Lieutenant Governor in Council.

**(b) by adding the following after subsection (1):**

**(1.1)** The lead independent member may not be the Chair or a Vice-chair of the Commission.

**7 Section 14 is amended by adding “, subject to the approval of the Minister” after “by the Commission”.**

**8 The following is added after section 14:**

**Continuation in office**

**14.1(1)** If a member of the Commission resigns or a member’s appointment expires, the Chair may authorize that individual to continue to exercise powers as a member of the Commission in any proceeding over which that member had jurisdiction immediately before the end of that member’s term.

(2) An authorization under subsection (1) continues until a final decision in that proceeding is made.

(3) Section 14 applies to a person who performs duties under subsection (1).

**9 Section 40(1)(f)(i) is repealed and the following is substituted:**

- (i) for which the regulations provide that a prospectus is not required, or

**10 The heading to Part 3 is repealed and the following is substituted:**

**Part 3  
Record Keeping and  
Compliance Review**

**11 Section 58(1) is repealed and the following is substituted:**

**Review and examination**

**58(1)** Notwithstanding anything in section 59 or 60, the Executive Director may in writing appoint a person to examine the financial affairs, books, records and other documents of the following for the purpose of determining if that person or company is complying with Alberta securities laws:

- (a) a registrant;
- (b) a reporting issuer;
- (c) a director, officer or promoter of a reporting issuer;
- (d) a transfer agent of a reporting issuer;
- (e) a recognized exchange;
- (f) a recognized self-regulatory organization;
- (g) a recognized clearing agency;

- (h) a recognized quotation and trade reporting system;
- (i) a manager or a custodian of assets, shares or units of a mutual fund.

**12 The following is added after section 60:**

**Record-keeping**

**60.1(1)** This section applies to every recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized quotation and trade reporting system and reporting issuer, and every officer, director, promoter and transfer agent of a reporting issuer.

**(2)** Every person or company to which this section applies 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 the Alberta securities laws,

and

(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.

**Continuous disclosure reviews**

**60.2(1)** The Executive Director may conduct a review of the disclosures that have been made or ought to have been made by a reporting issuer or investment fund.

**(2)** A reporting issuer or investment fund that is subject to a review under this section shall, as required by the Executive Director, deliver to the Executive Director any information and documents reasonably relevant to the review.

**(3)** A reporting issuer or investment fund, or any person or company acting on behalf of a reporting issuer or investment fund, shall not make any representation that the Commission

has in any way expressed an opinion or passed judgment on the merits of the disclosure record of the reporting issuer or investment fund.

**13 Section 74 is repealed.**

**14 Section 84, the heading preceding section 85 and sections 85 to 89 are repealed.**

**15 Section 92 is amended**

**(a) in subsection (3) by adding “or” at the end of clause (b) and by repealing clause (c);**

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

**(4.1) No person or company shall make a statement that the person or company knows or reasonably ought to know**

**(a) in any material respect and at the time and in the light of the circumstances in which it is made,**

**(i) is misleading or untrue, or**

**(ii) does not state a fact that is required to be stated or that is necessary to make the statement not misleading,**

**and**

**(b) would reasonably be expected to have a significant effect on the market price or value of a security or an exchange contract.**

**16 Section 93 is repealed and the following is substituted:**



**Prohibited transaction**

**93** No person or company shall, directly or indirectly, engage or participate in any act, practice or course of conduct relating to a security or exchange contract that the person or company knows or reasonably ought to know will

- (a) result in or contribute to
  - (i) a false or misleading appearance of trading activity in a security or an exchange contract, or
  - (ii) an artificial price for a security or an exchange contract,

or

- (b) perpetrate a fraud on any person or company.

**17 The following is added after section 93:****Duty to comply with Commission decisions**

**93.1** A person or company shall comply with decisions of the Commission or the Executive Director made under Alberta securities laws.

**Duty to comply with undertaking**

**93.2** A person or company that gives a written undertaking to the Commission or the Executive Director shall comply with the undertaking.

**Front running**

**93.3(1)** In this section, “material order information” means information that relates to

- (a) the intention of a person or company responsible for making decisions about an investment portfolio to trade a security on behalf of the investment portfolio,
- (b) the intention of a registrant trading on behalf of an investment portfolio to trade a security on behalf of the investment portfolio, or

- (c) an unexecuted order, or the intention of any person or company to place an order, to trade a security,

and that, if disclosed, would reasonably be expected to affect the market price of the security.

(2) A person or company that knows of material order information shall not, and shall not recommend or encourage another person to,

- (a) purchase or sell the securities to which the material order information relates,
- (b) acquire, dispose of, or exercise a put or call option or other right or obligation to purchase or sell the securities,
- (c) enter into a related financial instrument or acquire or dispose of rights or obligations under a related financial instrument, or
- (d) change that person's
  - (i) direct or indirect beneficial ownership of, or control or direction over,
    - (A) the securities, or
    - (B) a put or call option or other right or obligation to purchase or sell the securities,
  - or
  - (ii) interest in, or rights or obligations associated with, a related financial instrument.

(3) A person or company that knows of material order information shall not inform another person or company of the material order information unless it is necessary in the course of the person's or company's business.

**Obstruction of justice**

**93.4(1)** A person or company shall not, and shall not attempt to, destroy, conceal or withhold any information, property or thing reasonably required for a hearing, review or investigation under this Act.

(2) A person or company contravenes subsection (1) if the person or company knows or ought reasonably to know that a hearing, review or investigation is to be conducted and takes any action referred to in subsection (1) before the hearing, review or investigation.

**18 Section 94(4) is repealed and the following is substituted:**

(4) This section does not apply to trades in respect of which the regulations provide that registration is not required.

**19 Sections 131 to 132 are repealed.**

**20 Sections 142 and 143 are repealed.**

**21 Section 147 is amended**

**(a) by adding the following after subsection (3):**

(3.1) No reporting issuer or person or company in a special relationship with a reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed shall recommend or encourage another person or company to

- (a) purchase or sell a security of the reporting issuer, or
- (b) enter into a transaction involving a security the value of which is derived from or varies materially with the market price or value of a security of the reporting issuer.

**(b) in subsection (6) by adding “, (3.1)” after “(3)”.**

**22 Section 194 is repealed and the following is substituted:**

**General offences and penalties**

**194(1)** A person or company that contravenes Alberta securities laws is guilty of an offence and is liable to a fine of

not more than \$5 000 000 or to imprisonment for a term of not more than 5 years less a day, or to both.

(2) No person or company is guilty of an offence under section 92(4.1) if the person or company, as the case may be, did not know, and in the exercise of reasonable diligence would not have known, that the statement referred to in that subsection was misleading or untrue or that it omitted to state a fact that was required to be stated or that was necessary to make the statement not misleading in light of the circumstances in which it was made.

(3) Every director or officer of a person or company or a person other than an individual who authorizes, permits or acquiesces in the commission of an offence under subsection (1) by the person or company, whether or not a charge has been laid or a finding of guilt has been made against the person or company in respect of the offence under subsection (1), is also guilty of an offence and is liable to a fine of not more than

\$5 000 000 or to imprisonment for a term of not more than 5 years less one day or to both.

(4) Despite the fine under subsection (1), a person or company that contravenes section 147 is guilty of an offence and is liable to a fine of

(a) an amount not less than the profit made by the person or company because of the contravention, and

(b) an amount not more than the greater of

(i) \$5 000 000, and

(ii) an amount equal to triple the amount of the profit made or the loss avoided by the person or company because of the contravention.

(5) If it is not possible to determine the profit made or the loss avoided by a person or company by reason of the contravention, subsection (4) does not apply and subsection (1) applies.

(6) If a person or company is guilty of an offence under this section, the court

- (a) may make an order requiring the person or company to compensate or make restitution to an aggrieved person or company, and
- (b) may make any other order that the court considers appropriate in the circumstances.

**23 Section 195(2) is repealed and the following is substituted:**

- (2) For the purposes of section 194(4) and (5),
  - (a) “loss avoided” means the amount by which the amount received for the security sold in contravention of section 147(2) exceeds the average trading price of the security in the 20 trading days following the general disclosure of the material fact or the material change;
  - (b) “profit made” means
    - (i) the amount by which the average trading price of the security in the 20 days following general disclosure of the material fact or the material change exceeds the amount paid for the security purchased in contravention of section 147(2),
    - (ii) in respect of a short sale, the amount by which the amount received for the security sold in contravention of section 147(2) exceeds the average trading price of the security in the 20 trading days following general disclosure of the material fact or the material change, or
    - (iii) the value of any consideration received for informing another person or company of a material fact or material change with respect to the reporting issuer in contravention of section 147(3) or (4).

**24 Section 197(4)(g) is repealed and the following is substituted:**

- (g) an order directing a person or company to submit to a review by the Commission of the person’s or company’s

practices and procedures and to institute changes as directed by the Commission;

**25 Section 198 is amended**

**(a) in subsection (1)**

- (i) in clause (a) by adding “in or purchasing” after “trading”;**
- (ii) in clause (b) by adding “or purchasing” after “trading in”;**
- (iii) by adding the following after clause (h):**
  - (i) if a person or company has not complied with the Alberta securities laws, that the person or company pay to the Commission any amounts obtained or payments or losses avoided as a result of the non-compliance.

**(b) by adding the following after subsection (1):**

**(1.1)** The Commission may, after providing an opportunity to be heard, make an order under subsection (1)(a) to (e) against a person or company if the person or company

- (a) has been convicted of a criminal offence arising from a transaction, business or course of action related to securities or exchange contracts,
- (b) has been found by a court inside or outside Alberta to have contravened the Alberta securities laws or the securities laws of another jurisdiction, or
- (c) has been found by a securities commission or other person or body empowered by statute to regulate trading in securities or exchange contracts or to administer, regulate or enforce securities laws of another province or

territory of Canada to have contravened the securities laws of that province or territory.

**26 Section 199(1) is amended by striking out “\$100 000 in the case of an individual or not more than \$500 000 in the case of any other person or company” and substituting “\$1 000 000”.**

**27 Section 203(12) is repealed.**

**28 The following is added after section 211:**

## **Part 17.1 Interjurisdictional Compliance**

### **Definitions**

**211.1(1)** In this Part,

- (a) “Alberta authority” means any power, function or duty of the Commission or of the Executive Director that is, or is intended to be, performed or exercised by the Commission or the Executive Director under the Alberta securities laws;
- (b) “extra-provincial authority” means any power, function or duty of an extra-provincial securities commission that is, or is intended to be, performed or exercised by that commission under the extra-provincial securities laws under which that commission operates;
- (c) “extra-provincial securities commission” means a securities commission established under the laws of another province or territory of Canada and includes any other securities authority, administrator or regulator operated by or that forms a part of the government of another province or territory of Canada;

- (d) “extra-provincial securities laws” means the laws of another province or territory of Canada that, with respect to that province or territory, deals with the regulation of securities markets and the trading in securities and exchange contracts in that province or territory;
- (e) “foreign securities laws” means the laws of a non-Canadian jurisdiction that, with respect to that jurisdiction, deals with the regulation of securities markets and the trading in securities and exchange contracts in that jurisdiction.

(2) A reference to an extra-provincial securities commission includes, unless otherwise provided,

- (a) its delegate, and
- (b) any person who in respect of that extra-provincial securities commission performs functions that are substantially similar to the functions carried out by the Executive Director under this Act.

#### **Delegation and acceptance of authority**

**211.2(1)** In accordance with section 211.6 and subject to subsection (2), the Commission, for the purposes of this Part,

- (a) may delegate any Alberta authority to an extra-provincial securities commission, and
- (b) may accept a delegation of any extra-provincial authority from an extra-provincial securities commission.

(2) The Commission must not delegate any power, function or duty of the Commission or of the Executive Director that is, or is intended to be, performed or exercised by the Commission or the Executive Director under section 10, Part 1, section 66, this Part or section 224 or 224.1.

#### **Subdelegation**

**211.3(1)** Subject to any restrictions or conditions imposed by an extra-provincial securities commission with respect to a delegation of extra-provincial authority to the Commission, the Commission may subdelegate that extra-provincial authority in the manner and to the extent that the Commission or the



Executive Director, as the case may be, may give an authorization under section 17, 22 or 66 or otherwise delegate any Alberta authority under the Alberta securities laws.

(2) Subject to any restrictions or conditions imposed by the Commission with respect to a delegation of Alberta authority to an extra-provincial securities commission, nothing in this Part is to be construed as prohibiting the extra-provincial securities commission from subdelegating that Alberta authority in the manner and to the extent that the extra-provincial securities commission may delegate its authority under the extra-provincial securities laws under which it operates.

#### **Adoption or incorporation of extra-provincial securities laws**

**211.4(1)** In accordance with section 211.6, the Commission may adopt or incorporate as Alberta securities laws all or any provisions of any extra-provincial securities laws to be applied to

- (a) persons or companies whose primary jurisdiction is that extra-provincial jurisdiction, or
- (b) securities or trades both in Alberta and that extra-provincial jurisdiction.

(2) Where the Commission adopts or incorporates an extra-provincial securities law under subsection (1), it may adopt or incorporate it, as amended from time to time, whether before or after the adoption or incorporation, and with the necessary changes.

#### **Compliance with extra-provincial securities laws**

**211.41** In accordance with section 211.6, the Commission may by order exempt a person, company, security or trade or a class of persons, companies, securities or trades from compliance with all or any requirements of Alberta securities laws if the person, company, security or trade or class of persons, companies, securities or trades, as the case may be, is in compliance with the applicable extra-provincial securities laws designated by the Commission.

#### **Compliance with foreign securities laws**

**211.42** In accordance with section 211.6, the Commission may by order exempt a person, company, security or trade or a class of persons, companies, securities or trades from

compliance with all or any requirements of Alberta securities laws if the person, company, security or trade or class of persons, companies, securities or trades, as the case may be, is in compliance with all or any provision of any foreign securities laws designated by the Commission.

**Adoption of decisions of extra-provincial securities commissions**

**211.5(1)** In accordance with section 211.6, the Commission may, without providing an opportunity to be heard, by order adopt a decision or class of decisions of an extra-provincial securities commission.

**(2)** A decision adopted under subsection (1) is enforceable in Alberta in the same manner and to the same extent as a decision of the Commission.

**Regulations**

**211.6(1)** The Lieutenant Governor in Council may make regulations respecting

- (a) the delegation of any Alberta authority to an extra-provincial securities commission;
- (b) the acceptance by the Commission of any delegation of an extra-provincial authority from an extra-provincial securities commission;
- (c) any amendments to, or the revocation of, any delegation or acceptance of a delegation referred to in clause (a) or (b);
- (d) the adoption or incorporation of extra-provincial securities laws under section 211.4, including the administration of those laws once adopted or incorporated;
- (e) the administration of exemptions from Alberta securities laws under sections 211.41 and 211.42;
- (f) the adoption of decisions of extra-provincial securities commissions under section 211.5, including the administration of those decisions once adopted;

(g) the administration of extra-provincial securities laws arising from or as a result of any matters described in clauses (a) to (f).

(2) The Commission may, subject to this section and the regulations referred to in section 223(ii), make rules in respect of any of the matters in respect of which the Lieutenant Governor in Council may make regulations under subsection (1).

(3) Rules made by the Commission under subsection (2) must be approved by the Minister.

(4) Notwithstanding that the Commission may make rules,

(a) where the provisions of a regulation made under subsection (1) and a rule made under subsection (2) conflict, the regulation prevails, and

(b) the Lieutenant Governor in Council may amend or repeal any rules made by the Commission under subsection (2).

(5) A rule made by the Commission under subsection (2) has the same force and effect as a regulation made by the Lieutenant Governor in Council under subsection (1).

(6) The *Regulations Act* does not apply to a rule made by the Commission under subsection (2).

#### **Immunity re Alberta authority**

**211.7(1)** In this section,

(a) “Commission” includes the Executive Director and any member, officer, employee, appointee or agent of the Commission;

(b) “securities regulatory authority” means

(i) an extra-provincial securities commission referred to in subsection (2) and includes any member, officer, employee, appointee or agent of that commission;

(ii) any person referred to in subsection (2)(b);

- (iii) any exchange, quotation and trade reporting system or self-regulatory organization referred to in subsection (2)(c).

**(2)** This section applies only with respect to an Alberta authority

- (a) that has been delegated by the Commission to an extra-provincial securities commission,
- (b) that is being, or is intended to be, exercised by a person where that Alberta authority has been subdelegated to that person by an extra-provincial securities commission, including a subdelegate of that person but not including an exchange, a quotation and trade reporting system or a self-regulatory organization recognized or authorized by that extra-provincial securities commission, or
- (c) that is being, or is intended to be, exercised by an exchange, a quotation and trade reporting system or a self-regulatory organization recognized or authorized by an extra-provincial securities commission to carry on business where that Alberta authority has been subdelegated to it by the extra-provincial securities commission.

**(3)** No action or other proceeding for damages may be instituted against the Commission or a securities regulatory authority

- (a) for any act done in good faith in the performance or exercise, or the intended performance or exercise,
  - (i) of any Alberta authority, or
  - (ii) of a delegation, or the acceptance of a delegation, of any Alberta authority,

or

- (b) for any neglect or default in the performance or exercise in good faith
  - (i) of any Alberta authority, or

- (ii) of a delegation, or the acceptance of a delegation, of any Alberta authority.

**Immunity re extra-provincial authority**

**211.8(1)** In this section,

- (a) “Commission” includes the Executive Director and any member, officer, employee, appointee or agent of the Commission;
- (b) “securities regulatory authority” means
  - (i) any person referred to in subsection (2)(b);
  - (ii) any exchange, quotation and trade reporting system or self-regulatory organization referred to in subsection (2)(c).

**(2)** This section applies only with respect to an extra-provincial authority

- (a) that has been delegated by an extra-provincial securities commission to the Commission,
- (b) that is being, or is intended to be, exercised by a person where that extra-provincial authority has been subdelegated to that person by the Commission, including a subdelegate of that person but not including a recognized exchange, a recognized quotation and trade reporting system or a recognized self-regulatory organization, or
- (c) that is being, or is intended to be, exercised by a recognized exchange, a recognized quotation and trade reporting system or a recognized self-regulatory organization where that extra-provincial authority has been subdelegated to it by the Commission.

**(3)** No action or other proceeding for damages may be instituted against the Commission or a securities regulatory authority

- (a) for any act done in good faith in the performance or exercise, or the intended performance or exercise,

- (i) of any extra-provincial authority, or
  - (ii) of a delegation, or the acceptance of a delegation, of any extra-provincial authority,
- or
- (b) for any neglect or default in the performance or exercise in good faith
    - (i) of any extra-provincial authority, or
    - (ii) of a delegation, or acceptance of a delegation, of any extra-provincial authority.

**Appeal re extra-provincial decision**

**211.9(1)** In this section, “extra-provincial decision” means a decision of an extra-provincial securities commission made under an Alberta authority delegated to that extra-provincial securities commission by the Commission.

- (2) A person or company that is directly affected by an extra-provincial decision may appeal that extra-provincial decision to the Court of Appeal.
- (3) An appeal under this section shall be commenced by a notice of appeal filed with the Court of Appeal within 30 days from the day that the extra-provincial securities commission serves the notice of its decision on the person or company appealing the decision.
- (4) The practice and procedure in the Court of Appeal in respect of an appeal under this section shall, with any necessary modification that the Court of Appeal considers appropriate, be the same as on an appeal from a judgment of the Court of Queen’s Bench in an action.
- (5) The Court of Appeal may, with respect to an appeal under this section,
  - (a) make any order or direction that it considers appropriate with respect to the commencement or conduct of or any matter relating to the appeal;
  - (b) confirm, vary or reject the extra-provincial decision;

(c) make any decision that the extra-provincial securities commission could have made and substitute the Court's decision for that of the extra-provincial securities commission.

(6) The extra-provincial securities commission is the respondent to an appeal under this section.

(7) A copy of the notice of appeal and supporting documents shall within the 30-day period referred to in subsection (3) be served on

(a) the respondent, and

(b) the Secretary to the Commission.

(8) Notwithstanding that the Commission is not a respondent to an appeal under this section, the Commission is entitled to be represented at the appeal and to make representations in respect of any matter before the Court that is related to the appeal.

(9) Notwithstanding that an appeal is commenced under this section, the extra-provincial decision being appealed takes effect immediately unless the extra-provincial securities commission, the Commission or the Court of Appeal grants a stay pending disposition of the appeal.

(10) In this section, a reference to an extra-provincial securities commission is a reference to the extra-provincial securities commission that made the extra-provincial decision that is being appealed under this section.

#### **Appeal re decision of the Commission**

**211.91(1)** In this section, "delegated authority" means any extra-provincial authority that is delegated to and accepted by the Commission under section 211.2.

(2) A person or company that is directly affected by

(a) a decision of the Commission made pursuant to a delegated authority, or

(b) a decision of an extra-provincial securities commission that is adopted by the Commission under section 211.5,

may appeal that decision to the Court of Appeal.

**(3)** Section 38(2) to (7) apply to an appeal made under this section.

**(4)** A person or company that has a right to appeal a decision under this section may, subject to any direction of the Court of Appeal, exercise that right of appeal whether or not that person or company may have a right to appeal that decision to a court in another jurisdiction.

**(5)** Notwithstanding subsection (4), if a decision referred to in subsection (2) is being appealed to a court in another jurisdiction, the Court of Appeal may stay an appeal under this section pending the determination of the appeal in the other jurisdiction.

**29 Section 223 is amended**

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

(e.1) designating issuers or a class of issuers as a reporting issuer;

**(b) in clause (p)**

**(i) by striking out** “governing mutual funds and non-redeemable investment funds” **and substituting** “governing mutual funds, non-redeemable investment funds and private investment funds”;

**(ii) by striking out subclause (i) and substituting the following:**

(i) designating issuers or a class or classes of issuers as mutual funds;

(i.1) designating issuers or a class or classes of issuers as non-redeemable investment funds;

(i.2) designating funds or a class or classes of funds as private investment funds;

**(c) by adding the following after clause (hh.1):**



- (hh.2) requiring evaluations of reporting issuers' internal control over financial reporting and requiring reporting issuers to obtain audits of their internal control over financial reporting, including their management's evaluation;
- (hh.3) exempting a class of persons, companies, trades or securities from one or more of the provisions of Alberta securities laws;
- (hh.4) prescribing circumstances or conditions for the purpose of an exemption under clause (hh.3), and without limiting the generality of the foregoing,
  - (i) conditions relating to compliance with the securities laws of another jurisdiction, or compliance with the bylaws, rules, regulations, policies, procedures,

interpretations and practices of a recognized exchange, a recognized self-regulatory organization, a recognized clearing agency or a recognized quotation and trade reporting system;

(ii) conditions that refer to

- (A) a person or company or a class of persons or companies,
- (B) a law or bylaw, rule, regulation, policy, procedure, interpretation or practice of a recognized exchange, or
- (C) a jurisdiction of another securities regulatory authority;

**(d) in clause (ii) by adding “211.6(2) or” after “section”.**

**30 Section 224.1 is amended in subsections (1) and (6) by adding “211.6(2) or” after “section”.**

**31 Section 225(1) is amended by adding “211.6(2) or” after “section”.**

**32 Section 226 is amended by adding “211.6(2) or” after “section”.**

**33 This Act comes into force on Proclamation.**

**Explanatory Notes**

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

**2** Section 1 presently reads in part:

*1 In this Act,*

- (b) “Alberta securities laws” means this Act, the regulations and any decisions made by the Commission or the Executive Director;*
- (ff) “material change”, when used in relation to the affairs of an issuer, means a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer and includes a decision to implement the change made by the board of directors of the issuer or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable;*
- (gg) “material fact”, when used in relation to securities issued or proposed to be issued, means a fact that significantly affects or would reasonably be expected to have a significant effect on the market price or value of the securities;*
- (jj) “mutual fund” includes an issuer of securities that entitles the holder to receive on demand or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;*
- (ddd) “rules” means the rules made by the Commission under section 224;*

(kkk) “underwriter” means a person or company that,

(vi) a bank with respect to the securities described in section 87(a)(iii) and to those banking transactions designated by the regulations;

**3** Section 5 presently reads:

*5 A person is deemed to beneficially own securities that are beneficially owned*

(a) *by a company controlled by that person or by an affiliate of that company,*

(b) *by an affiliate of that person, or*

(c) *through a trustee, legal representative, agent or other intermediary of that person.*

**4** Section 6 presently reads:

*6 A company is deemed to beneficially own securities that are beneficially owned by its affiliates.*

**5** Section 10 presently reads:

*10(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.*

*(2.1) The Commission may, if the Commission considers that it would be in the public interest to do*

*so, make an order designating a person or company as an insider.*

*(3) An order made under subsection (1), (2) or (2.1) may be made by the Commission on its own motion or on the application of an interested person or company.*

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

*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.*

**7** Section 14 presently reads:

*14 The remuneration payable to the Chair, Vice-chair and members of the Commission shall be set by the Commission.*

**8** Continuation in office.

**9** Section 40(1)(f)(i) presently reads:

*40(1) In this section, "party" means*

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

*(i) described in section 131(1), or*

**10** The Part 3 heading presently reads:

*Part 3*  
*Audits*

**11** Section 58 presently reads in part:

*58(1) Notwithstanding anything in section 59 or 60, the Executive Director may in writing appoint a person to examine the financial affairs, books and records of the following:*

- (a) a registrant;*
- (b) a reporting issuer;*
- (c) a recognized exchange;*
- (d) a recognized self-regulatory organization;*
- (e) a recognized clearing agency;*
- (f) a custodian of assets, shares or units of a mutual fund.*

**12** Record-keeping; continuous disclosure reviews.

**13** Section 74 presently reads:

*74 Every recognized exchange, recognized self-regulatory organization, recognized clearing agency and recognized quotation and trade reporting system 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 the Alberta securities laws,*

*and*

(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.*

**14** Sections 84 to 89 presently read:

*84(1) Subject to the regulations, every registered dealer shall, within 5 business days of the event, notify the Executive Director of the following:*

- (a) *any change in the address for service in Alberta of the registered dealer;*
- (b) *any change in a business address of the registered dealer;*
- (c) *any change in the directors or officers of the registered dealer and, if required by the Executive Director, the reason for any resignation, dismissal, severance or termination of employment or office;*
- (d) *any change in the holders of the voting securities of the registered dealer;*
- (e) *the commencement and termination of employment of every registered salesperson and, if required by the Executive Director, the reason for the termination of employment;*
- (f) *the opening or closing of any branch office in Alberta and, in the case of the opening of any branch office in Alberta, the name and address of the person in charge of it;*
- (g) *any change in the name or address of the person in charge of any branch office in Alberta.*

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

- (a) any change in the address for service in Alberta of the registered advisor;*
- (b) any change in a business address of the registered advisor;*
- (c) any change in the directors or officers of the registered advisor and, if required by the Executive Director, the reason for any resignation, dismissal, severance or termination of employment or office;*
- (d) any change in the holders of the voting securities of the registered advisor.*

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

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



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

*(4) The Executive Director may, on an application by a registrant that is a reporting issuer, make an order exempting the registrant from the requirement of subsection (1)(d) or (2)(d) if the Executive Director considers that it would not be prejudicial to the public interest to do so.*

#### *Part 6*

##### *Exemptions from Registration*

*85 Registration as an advisor need not be obtained, unless otherwise ordered by the Commission,*

- (a) *by those persons or companies as designated by the regulations,*
- (b) *by the following persons or companies if the performance of the service as an advisor is solely incidental to their principal business or occupation:*
  - (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 lawyer, accountant, engineer or teacher;*
  - (v) *a registered dealer or any partner, officer or employee of a registered dealer,*

*or*

(c) *by a publisher of or a writer for a publication that is a bona fide newspaper, news magazine, business or financial journal or periodical that is*

(i) *of general and regular paid circulation, and*

(ii) *only available to persons or companies that are*

(A) *subscribers to it for value, or*

(B) *purchasers of it,*

*who acts as an advisor through the publication and has no interest either directly or indirectly in any of the securities or exchange contracts on which the advice is given.*

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

(a) *a trade*

(i) *by an executor, administrator, guardian or committee,*

(ii) *by an authorized trustee or assignee,*

(iii) *by an interim or official receiver or a custodian under the Bankruptcy and Insolvency Act (Canada),*

(iv) *by a receiver under the Judicature Act,*

(v) *by a liquidator under the Companies Act, the Business Corporations Act, the Cooperatives Act, the Canada Business Corporations Act (Canada) or the Winding-up and Restructuring Act (Canada),*

- (vi) at a judicial sale, or*
- (vii) by a civil enforcement agency under the Civil Enforcement Act;*
- (b) an isolated trade in a specific security by or on behalf of an owner or issuer, for the owner's or issuer's account, if the trade*
  - (i) is not made in the course of continued and successive transactions of a like nature, and*
  - (ii) is not made by a person or company whose usual business is trading in securities;*
- (d) a trade if the party purchasing as principal is recognized by the Commission as an exempt purchaser;*
- (f) a trade from the holdings of a control person for the purpose of giving collateral for a bona fide debt;*
- (g) a trade by or for the account of a pledgee, mortgagee or other encumbrancer for the purpose of liquidating a bona fide debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt;*
- (h) a trade in a security that may occasionally be transacted by employees of a registered dealer if the employees*
  - (i) do not usually sell securities, and*
  - (ii) have been designated by the Executive Director as "non-trading" employees, either individually or as a class;*
- (j) a trade in a security by a person or company acting solely through an agent who is a registered dealer;*

- (k) *the execution of an unsolicited order to purchase or sell through a registered dealer by a financial institution as agent for a person or company and the trade by the person or company in placing the unsolicited order with the financial institution;*
- (l) *a trade in a bond or debenture by way of an unsolicited order given to a financial institution if the financial institution is acting as principal and the bond or debenture is*

  - (i) *acquired by the financial institution from a registered dealer for the purpose of the trade, or*
  - (ii) *sold by the financial institution to a registered dealer following the trade;*
- (m) *a trade by an issuer,*

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

    - (A) *through the exercise of a right*

      - (I) *of the holder to purchase, convert or exchange or otherwise acquire, or*
      - (II) *of the issuer to require the holder to purchase, convert or exchange,*

*or*

*(B) pursuant to an automatic conversion,  
in accordance with the terms and  
conditions of a previously issued security  
of the issuer,*

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

*(n) a trade by an issuer in a security of a  
reporting issuer held by it that is distributed  
by it to holders of its securities as a dividend  
in specie;*

*(o) a trade by an issuer*

*(i) in a right, transferable or otherwise,  
granted by the issuer to holders of its  
securities to purchase additional securities  
of its own issue and the issue of securities  
pursuant to the exercise of the right, or*

*(ii) in securities of a reporting issuer held by it  
transferred or issued through the exercise  
of a right to purchase, convert or  
exchange previously granted by the issuer,*

*if the issuer has given the Executive Director  
written notice stating the date, amount,  
nature and conditions of the proposed trade,  
including the approximate net proceeds to be  
derived by the issuer on the basis of the  
additional securities being fully taken up and  
paid for, and either,*

*(iii) the Executive Director has not informed  
the issuer in writing within 10 days from  
the date of receipt by the Executive  
Director of the notice that the Executive  
Director objects to the proposed trade, or*

- (iv) *the issuer has delivered to the Executive Director information relating to the securities that is satisfactory to and accepted by the Executive Director;*
- (p) *a trade made in a security of an issuer in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure;*
- (q) *a trade in a security that is exchanged by or for the account of an offeror, as defined in Part 14, with the security holders of an offeree issuer pursuant to a take-over bid or an exempt take-over bid;*
- (r) *a trade in a security that is exchanged by or for the account of an offeror, as defined in Part 14, with the security holders of an offeree issuer pursuant to an issuer bid or an exempt issuer bid;*
- (s) *a trade by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, if the fair value of the assets so purchased is not less than an amount prescribed by regulation;*
- (t) *a trade in a security of an issuer consisting of the purchase, redemption or acquisition by the issuer of a security of the issuer;*
- (x) *a trade by an issuer in the securities of its own issue with a promoter of the issuer or by a promoter of an issuer in securities of the issuer with another promoter of the issuer;*
- (cc) *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, interest or other distributions 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*

*(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;*

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

*(ee) a trade in a security by security holders of an offeree issuer, as defined in Part 14, that is made in connection with a take-over bid, an issuer bid, an exempt take-over bid or an exempt issuer bid;*

*(hh) a trade by a trust corporation if*

*(i) the trade is made through its offices in securities of a mutual fund that is*

*promoted, managed and administered by  
the trust corporation, and*

*(ii) no sales or other acquisition charges are  
levied;*

*(ii) a trade in respect of which the regulations  
provide that registration is not required.*

*(2) For the purposes of subsection (1), the following  
are deemed to be acting as principal when trading  
for accounts fully managed by them:*

*(a) a trust corporation trading as a trustee or an  
agent;*

*(b) a portfolio manager trading as an agent;*

*(c) a person or company trading as an agent  
that, except for an exemption under the  
Alberta securities laws, is required to be  
registered as a portfolio manager.*

*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).*

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

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

- (i) *of or guaranteed by the Government of Canada, the Government of Alberta, a government of another province or territory of Canada or by any foreign country or any political division of them,*
- (ii) *of any municipal corporation in Canada, including debentures issued for public, separate or secondary school purposes or guaranteed by any municipal corporation in Canada or secured by or payable out of rates or taxes levied under the law of any province or territory of Canada on property in the province or territory and to be collected by or through the municipality in which the property is situated,*
- (iii) *of or guaranteed by a financial institution or an insurance company, other than bonds, debentures or other evidences of indebtedness that are subordinate in right of payment to deposits held by the issuer or guarantor of those 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 and Related Agreements Act (Canada), if the bonds, debentures or evidences of indebtedness are payable in the currency of Canada or the United States of America,*
- (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,*

*or*

*(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 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;*

*(b) certificates or receipts issued by a trust corporation for money received for investments that are guaranteed by the trust corporation;*

*(c) securities issued by a private mutual fund;*

*(d) negotiable promissory notes or commercial paper maturing not more than one year from the date of issue, if each note or commercial paper traded to an individual has a denomination or principal amount of not less than \$50 000;*

*(e) mortgages or other encumbrances on real or personal property, other than mortgages or other encumbrances contained in or secured by a bond, debenture or similar obligation or in a trust deed or similar indenture, if the*

*mortgages or other encumbrances are offered for sale by a person who holds the appropriate authorization issued under the Real Estate Act or is exempted from holding such an authorization;*

- (f) securities evidencing indebtedness due under any security agreement as defined in the Personal Property Security Act providing for the acquisition of personal property if the securities are not offered for sale to an individual;*
- (g) securities issued by an issuer organized exclusively for educational, benevolent, fraternal, charitable, 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;**
- (h) voting securities issued by corporations to which the Co-operative Associations Act or the Rural Utilities Act applies;*
- (h.1) membership shares, including member loans deemed to be membership shares as defined in the Cooperatives Act issued by a cooperative to which that Act applies, if
  - (i) the aggregate acquisition cost to the members in any one year, excluding the cost to the members of membership shares and member loans paid for by the application of patronage returns as defined under that Act, is not greater than the amount prescribed in the regulations, or**

- (ii) *the shares are paid for by the application of patronage returns as defined in that Act credited to the members or holders of investment shares;*
- (h.2) *investment shares as defined in the Cooperatives Act issued by a cooperative pursuant to that Act, other than a cooperative under Division 1 or 4 of Part 18 of that Act, if the investment shares are purchased only by members of the cooperative who have been members of the cooperative for at least 12 months before the share purchase and if other prescribed conditions are complied with;*
- (j) *securities issued and sold by a prospector for the purpose of financing a prospecting expedition;*
- (k) *securities issued by a natural resource company as consideration for mining claims or oil and gas rights if the vendor enters into an escrow or pooling agreement that the Executive Director considers necessary;*
- (l) *variable insurance contracts issued by an insurance company if the variable insurance contract is,*
  - (i) *a contract of group insurance,*
  - (ii) *a whole life insurance contract providing for the payment at maturity of an amount not less than 75% of the premium paid up to age 75 years for a benefit payable at maturity,*
  - (iii) *an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or*
  - (iv) *a variable life annuity;*

*(m) securities in respect of which the regulations provide that registration is not required.*

88 *Subject to the regulations, registration is not required for the following trades in exchange contracts:*

- (a) a trade in an exchange contract by a person or company acting solely through a registered dealer;*
- (b) a trade resulting from an unsolicited order placed with an individual who is not a resident of and does not carry on business in Alberta;*
- (c) a trade that may occasionally be transacted by employees of a registered dealer if the employees*
  - (i) do not usually trade in exchange contracts, and*
  - (ii) have been designated by the Executive Director as “non-trading” employees, either individually or as a class;*
- (d) a trade in respect of which the regulations provide that registration is not required.*

89 *Registration is not required to act as an underwriter in respect of*

- (a) a trade referred to in section 86, or*
- (b) a trade in a security referred to in section 87.*

**15** Section 92 presently reads in part:

*(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,*
- (c) *make a statement that the person or company knows or ought reasonably to know is a misrepresentation, or*
- (d) *engage in an unfair practice.*

**16** Section 93 presently reads:

*93 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.*

**17** Duty to comply with Commission decisions; duty to comply with undertaking; front running; obstruction of justice.

**18** Section 94(4) presently reads:

*(4) This section does not apply to trades referred to in section 86 or to securities referred to in section 87.*

**19** Sections 131, 131.1 and 132 presently read:

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

- (b) the trade*
  - (i) is an isolated trade in a specific security by or on behalf of an issuer, for the issuer's account,*
  - (ii) is not made in the course of continued and successive transactions of a like nature, and*
  - (iii) is not made by a person or company whose usual business is trading in securities;*



- (c) *the party purchasing as principal is recognized by the Commission as an exempt purchaser;*
- (e) *the trade is to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person for the purpose of giving collateral for a bona fide debt;*
- (f) *the trade is made by an issuer*
  - (i) *in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,*
  - (ii) *in a security whether of its own issue or not that is distributed by it to holders of its securities as incidental to a bona fide reorganization, dissolution or winding-up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws of the jurisdiction in which the issuer was incorporated, organized or continued, or*
  - (iii) *in a security of its own issue that is issued or transferred*
    - (A) *through the exercise of a right*
      - (I) *of the holder to purchase, convert or exchange or otherwise acquire, or*
      - (II) *of the issuer to require the holder to purchase, convert or exchange,*
    - or*
    - (B) *pursuant to an automatic conversion,*  
  
*in accordance with the terms and conditions of a previously issued security of the issuer,*

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

*(g) the trade is made by an issuer in a security of a reporting issuer held by the issuer that is distributed by it to holders of its securities as a dividend in specie;*

*(h) the trade is made by an issuer,*

*(i) in a right, transferable or otherwise, granted by the issuer to holders of its securities to purchase additional securities of its own issue and the issue of securities pursuant to the exercise of the right, or*

*(ii) in securities of a reporting issuer held by it transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,*

*where the issuer has given the Executive Director written notice stating the date, amount, nature and conditions of the proposed trade, including the approximate net proceeds to be derived by the issuer on the basis of the additional securities being fully taken up and either,*

*(iii) the Executive Director has not informed the issuer in writing within 10 days from the date of receipt by the Executive Director of the notice that the Executive Director objects to the proposed trade, or*

*(iv) the issuer has delivered to the Executive Director information relating to the securities that is satisfactory to and accepted by the Executive Director;*

*(i) the trade is made in a security of an issuer in connection with an amalgamation, merger,*

*reorganization, arrangement or other statutory procedure;*

- (j) the trade is made in a security that is exchanged by or for the account of an offeror, as defined in Part 14, with the security holders of an offeree issuer pursuant to a take-over bid or an exempt take-over bid;*
- (k) the trade is made in a security that is exchanged by or for the account of an offeror, as defined in Part 14, with the security holders of an offeree issuer pursuant to an issuer bid or an exempt issuer bid;*
- (l) the trade is made by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, where the fair value of the assets purchased is not less than an amount prescribed by regulation;*
- (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 bylaws, rules or policies of that exchange, the consent of that exchange to the issuance of the security;**
- (n) the trade is made in a security of an issuer and consists of the purchase, redemption or acquisition by the issuer of a security of the issuer;*

- (x) *the trade is made by an issuer in the securities of its own issue with a promoter of the issuer or by a promoter of an issuer in securities of the issuer with another promoter of the issuer;*
  - (y) *the trade is 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, interest or other distributions 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*
- (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) when 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;*

- (z) *the trade is made by a security holder in securities that are being disposed of to an issuer in respect of a transaction described in clause (i);*
- (aa) *the trade is made in a security by security holders of an offeree issuer, as defined in Part 14, in connection with a take-over bid, an issuer bid, an exempt take-over bid or an exempt issuer bid;*
- (cc) *the trade is in respect of a matter for which the regulations provide that a prospectus is not required.*

*(2) For the purposes of subsection (1), the following are deemed to be acting as principal when trading for accounts fully managed by them:*

- (a) *a trust corporation trading as a trustee or an agent;*
- (b) *a portfolio manager trading as an agent;*
- (c) *a person or company trading as an agent that, except for an exemption under the Alberta securities laws, is required to be registered as a portfolio manager.*

*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).*

*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.*

**20** Sections 142 and 143 presently read:

*142 For the purposes of sections 131 to 141, an issuer is deemed to have been a reporting issuer as of the date that it met the condition of the appropriate subclause of section 1(ccc) if,*

- (a) in each case it is currently in compliance with the requirements of this Act, and*
- (b) in the case of qualification under section 1(ccc)(iii), it is currently listed and posted for trading on an exchange in Alberta recognized by the Commission.*

*143 Sections 110 and 121 do not apply to a distribution of securities*

- (a) referred to in section 87, except for those referred to in clauses (k) and (m) of that section,*
- (b) that are options to sell or purchase securities known as puts and calls or any combination of them that provide that the holder of them may sell to or purchase from the writer of the option a specified amount of securities at a specific price on or prior to a specified date or the occurrence of a specified event, if*
  - (i) the option has been written by a member of an exchange recognized by the Commission for that purpose or the performance under the option is guaranteed by a member of an exchange*

*recognized by the Commission for that purpose,*

- (ii) the securities that are the subject of the option are listed and posted for trading on an exchange recognized by the Commission for that purpose, and*
- (iii) the option is in the form prescribed by the regulations,*

*or*

- (c) that are exempted by the regulations.*

**21** Section 147 presently reads in part:

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

*(6) No person or company shall be found to have contravened subsection (2), (3) or (4) if that person or company does one or more of the following:*

**22** Section 194 presently reads:

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

- (a) makes a misrepresentation in respect of any material submitted or given under the Alberta securities laws to the Commission, its representative, the Executive Director or any person appointed to make an investigation or audit under this Act;*



- (b) *makes a misrepresentation in any document required to be filed or furnished under the Alberta securities laws;*
- (c) *fails to comply with any decision of the Commission or the Executive Director made under this Act;*
- (d) *fails*
  - (i) *to file under the Alberta securities laws, or*
  - (ii) *to file under the Alberta securities laws within the time limits prescribed by the Alberta securities laws,*  
*any document, record or report required to be filed under the Alberta securities laws;*
- (e) *fails to comply with or is in contravention of a written undertaking made by that person or company to the Commission or the Executive Director;*
- (f) *contravenes those provisions of the regulations made under section 223 or the rules made under section 224 that are specified by regulation to be an offence if contravened;*
- (g) *contravenes the following provisions of this Act:*
  - section 45;*
  - section 58(4);*
  - section 62(1);*
  - section 63(5);*
  - section 71(3);*
  - section 74;*
  - section 75(1) or (2);*
  - section 84(1), (2) or (3);*
  - section 90;*
  - section 92;*
  - section 93;*
  - section 94(1) or (2);*
  - section 95(1) or (2);*
  - section 96;*

*section 97(1) or (2);*  
*section 98;*  
*section 99;*  
*section 100;*  
*section 101;*  
*section 103;*  
*section 104(1), (2), (5) or (6);*  
*section 106;*  
*section 108;*  
*section 110;*  
*section 111(1);*  
*section 113(1) or (2);*  
*section 114(2);*  
*section 121(2);*  
*section 124;*  
*section 125;*  
*section 127;*  
*section 129;*  
*section 130(3);*  
*section 146(1) or (4);*  
*section 147(2), (3) or (4);*  
*section 150;*  
*section 155;*  
*section 156(1);*  
*section 157(2);*  
*Part 14;*  
*section 182;*  
*section 185;*  
*section 186(1);*  
*section 189(1);*

*section 192(2);*  
*section 193.*

*(2) Where a person or company commits an offence,  
that person or company is liable,*

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

*(b) in the case of an individual, to*

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

(ii) *imprisonment for a term of not more than 5 years less one day,*

*or to both fine and imprisonment.*

(3) *No person or company is guilty of an offence under subsection (1)(a) or (b) if the person or company, as the case may be, did not know, and in the exercise of reasonable diligence could not have known, that a misrepresentation was made.*

(4) *If a company commits an offence under this section, whether or not in respect of that offence a charge has been laid, a finding of guilt has been made or a plea of guilty has been entered with respect to that company,*

(a) *every director and every senior officer of the company who authorized, permitted or acquiesced in the offence, and*

(b) *every person, other than a director or senior officer of the company, who authorized or permitted the offence,*

*also commits the offence and is liable to a fine of not more than \$1 000 000 or to imprisonment for a term of not more than 5 years less one day or to both fine and imprisonment.*

(5) *If a person other than an individual commits an offence under this section, whether or not in respect of that offence a charge has been laid, a finding of guilt has been made or a plea of guilty has been entered with respect to that person, every person who authorized, permitted or acquiesced in the offence also commits the offence and is liable to a fine of not more than \$1 000 000 or to imprisonment for a term of not more than 5 years less one day or to both fine and imprisonment.*

(6) *Notwithstanding subsection (2)(a) or (b)(i), if a person or company has contravened section 147(2), (3) or (4) and has made a profit by reason of the contravention, the fine to which the person or company is liable is to be*

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

(b) *not more than*

(i) *\$1 000 000, or*

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

*whichever is the greater amount.*

(7) *If a person or company is guilty of an offence under this section, the court*

(a) *may make an order requiring the person or company to compensate or make restitution to an aggrieved person or company, and*

(b) *may make any other order that the court considers appropriate in the circumstances.*

**23** Section 195 presently reads in part:

(2) *For the purposes of section 194(6)(a) and (b), “profit” means*

(a) *in the case of securities purchased in contravention of section 147(2), the amount that is determined by*

(i) *subtracting the lowest price paid by the purchaser for any one of those securities from the market price of the securities, and*

(ii) *multiplying the difference calculated under subclause (i) by the total number of securities purchased by the purchaser after the purchaser had knowledge of the material fact or material change;*

(b) *in the case of securities sold in contravention of section 147(2), the amount that is determined by*

- (i) *subtracting the market price of the securities from the highest price received by the seller for any one of those securities, and*
  - (ii) *multiplying the difference calculated under subclause (i) by the total number of securities sold by the seller after the seller had knowledge of the material fact or material change;*
- (c) *in the case where the person or company*
- (i) *informed another person or company of a material fact or material change in contravention of section 147(3) or (4), and*
  - (ii) *received any direct or indirect consideration for providing that information,*
- the value of the consideration received.*

**24** Section 197(4) presently reads in part:

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

- (g) *an order directing the person or company to purchase securities of a security holder;*

**25** Section 198 presently reads:

*198(1) Where the Commission considers that it is in the public interest to do so, the Commission may order one or more of the following:*

- (a) *that trading cease in respect of any security or exchange contract as specified in the order;*

- (b) *that a person or company cease trading in securities, exchange contracts, specified securities or a class of securities or exchange contracts as specified in the order;*
- (c) *that any or all of the exemptions contained in the Alberta securities laws do not apply to the person or company named in the order;*
- (d) *that a person resign one or more positions that the person holds as a director or officer of an issuer;*
- (e) *that a person is prohibited from becoming or acting as a director or officer or as both a director and an officer of any issuer;*
- (f) *that a person or company is prohibited from disseminating to the public, or authorizing the dissemination to the public of, any information, document, record or other material of any kind that is described in the order;*
- (g) *that a person or company disseminate to the public, by the method, if any, described in the order, the information, document, record or other material relating to the affairs of the registrant or issuer that the Commission considers must be disseminated;*
- (h) *that a person or company amend, in the manner specified in the order, any information or record of any kind disseminated to the public as described in the order.*

*(2) An order under subsection (1) is subject to any terms and conditions that the Commission may impose.*

*(3) The Commission shall not make an order under subsection (1) without conducting a hearing.*

**26** Section 199 presently reads in part:

*199(1) If the Commission, after a hearing,*

- (a) determines that a person or company has contravened or failed to comply with any provision of the Alberta securities laws, 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.*

**27** Section 203 presently reads in part:

*(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.*

**28** Compliance with securities laws of other jurisdictions.

**29** Additional regulation-making powers. Section 223 presently reads in part:

*223 The Lieutenant Governor in Council may make regulations*

- (p) 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) *governing the procedure to be followed by the Commission with respect to making or repealing rules under section 224;*

**30** Section 224.1 presently reads in part:

*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.*

*(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.*

**31** Section 225(1) presently reads:

*225(1) Where a rule is made under section 224, the Commission shall publish the rule in The Alberta Gazette.*

**32** Section 226 presently reads:

*226 For the purposes of the Alberta Evidence Act, a rule made under section 224 shall be treated in the same manner as if it were a regulation.*

**33** Coming into force.