

*Bill 25*  
*Mr. Knight*

## **BILL 25**

2006

### **SECURITIES AMENDMENT ACT, 2006**

*(Assented to , 2006)*

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 “by reference” after “incorporated”;**
- (b) by repealing clause (d);**
- (c) by repealing clause (l) and substituting the following:**
  - (l) “control person” means
    - (i) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a person or company holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or

- (ii) each person or company, or combination of persons or companies acting in concert by virtue of an agreement, arrangement, commitment or

understanding, who holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a combination of persons or companies holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons or companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

- (d) in clause (n) by adding** “or under a delegation or other transfer of an extra-provincial authority under section 211.2” **after** “regulations”;

- (e) by repealing clause (o) and substituting the following:**

- (o) “director” means a director of a company or an individual performing a similar function or occupying a similar position for a company or for any other person;

- (f) by adding the following after clause (w):**

- (w.1) “forward-looking information” means disclosure regarding possible events, conditions or results of operations that is based on assumptions about future economic conditions and courses of action, and includes future-oriented financial information with respect to prospective results of operations, financial position or cash flows that is presented either as a forecast or a projection;

- (g) by repealing clause (aa) and substituting the following:**

- (aa) “insider” means
  - (i) a director or officer of an issuer,
  - (ii) a director or officer of a person or company that is itself an insider or subsidiary of an issuer,

- (iii) a person or company that has
  - (A) beneficial ownership of, or control or direction over, directly or indirectly, or
  - (B) a combination of beneficial ownership of and control or direction over, directly or indirectly, securities of an issuer carrying more than 10% of the voting rights attached to all the issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person or company as underwriter in the course of a distribution,
- (iv) an issuer that has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security,
- (v) a person designated as an insider in an order made under section 10, or
- (vi) a person that is in a prescribed class of persons;

**(h) by repealing clause (ff) and substituting the following:**

- (ff) "material change" means,
  - (i) if 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 a security of the issuer, or
    - (B) a decision to implement a change referred to in paragraph (A) made by the directors of the issuer, or by senior management of the issuer who believe that confirmation of the decision by the directors is probable,

and

- (ii) if 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 a security of the issuer, or
- (B) a decision to implement a change referred to in paragraph (A) made
  - (I) by the directors of the issuer or the directors of the investment fund manager of the issuer,
  - (II) by senior management of the issuer who believe that confirmation of the decision by the directors is probable, or
  - (III) by senior management of the investment fund manager of the issuer who believe that confirmation of the decision by the directors of the investment fund manager of the issuer is probable;

**(i) by repealing clause (II) and substituting the following:**

- (II) “officer”, with respect to an issuer or registrant, means
  - (i) a chair or vice-chair of the board of directors, a chief executive officer, chief operating officer, chief financial officer, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer and general manager,
  - (ii) an individual who is designated as an officer under a bylaw or similar authority of the issuer or registrant, and
  - (iii) an individual who performs functions for a person or company similar to those normally performed by an individual referred to in subclause (i) or (ii);

**(j) by repealing clause (qq);**

**(k) in clause (ccc)**

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

(ii) that has

(A) filed a prospectus for which the Executive Director has issued a receipt under this Act, or

(B) filed a securities exchange take-over bid circular under this Act on or before June 1, 1999,

**(ii) by repealing subclause (iv) and substituting the following:**

(iv) whose existence continues following the exchange of securities of an issuer in connection with an amalgamation, merger, reorganization, arrangement or a statutory procedure, in which one of the parties to the amalgamation, merger, reorganization, arrangement or statutory procedure was a reporting issuer at the time of the amalgamation, merger, reorganization, arrangement or statutory procedure;

**(l) by repealing clause (hhh) and substituting the following:**

(hhh) “self-regulatory organization” means a person or company that is organized for the purpose of regulating the operations and the standards of practice and business conduct of its members;

**(m) by repealing clause (iii);**

**(n) in clause (kkk)(vi) by adding “listed in Schedule I, II or III of the *Bank Act* (Canada)” after “bank”.**

**3 Section 7 is repealed.**

**4 Section 8 is repealed.**

**5 Section 22(3) is amended by striking out “151,”.**

**6 The following is added after section 33:**

**Late filing of periodic disclosure**

**33.1(1)** Notwithstanding section 198(3), if a person or company fails to file periodic disclosure under section 146, the Commission or the Executive Director may, without providing an opportunity to be heard, order one or more of the following:

- (a) that trading in or purchasing cease in respect of any security or exchange contract as specified in the order;
- (b) that a person or company cease trading in or purchasing securities, exchange contracts, specified securities or a class of securities or exchange contracts as specified in the order.

(2) The Commission or the Executive Director, as the case may be, shall send to any person or company directly affected by an order made under subsection (1) written notice of the order.

**7 Section 40(1)(d) is amended by striking out “a mutual fund” and substituting “an investment fund”.**

**8 Section 58(1)(i) is amended by striking out “a mutual fund” and substituting “an investment fund”.**

**9 Section 76 is repealed and the following is substituted:**

**Registration by Executive Director**

**76(1)** Unless it appears to the Executive Director that

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

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

(2) The Executive Director may restrict a registration by imposing terms and conditions on the registration and, without limiting the generality of these powers, may

- (a) restrict the duration of the registration, and
- (b) restrict the registration to trades in certain securities or exchange contracts or a certain class of securities or exchange contracts.

(3) The Executive Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions on it without giving the registrant or applicant an opportunity to be heard.

**10 Section 77 is repealed.**

**11 Section 78 is repealed and the following is substituted:**

**Surrender of registration**

**78(1)** If a registrant applies to surrender its registration, the Executive Director shall accept the surrender unless the Executive Director considers it prejudicial to the public interest to do so.

(2) On receiving an application under subsection (1), the Executive Director may, without providing an opportunity to be heard, suspend the registration or impose conditions or restrictions on the registration.

**12 Section 79 is repealed.**

**13 Section 80 is repealed.**

**14 Section 81 is repealed.**

**15 Section 83 is repealed.**

**16 Section 100 is repealed and the following is substituted:**

**Representation or holding out of registration**

**100(1)** A person or company shall not represent that the person or company is registered under this Act unless

- (a) the representation is true, and
- (b) in making the representation, the person or company specifies the person or company's category of registration under this Act and the regulations.

**(2)** A person or company shall not make a statement about something that a reasonable investor would consider important in deciding whether to enter into or maintain a trading or advising relationship with the person or company if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances in which it is made.

**17 Section 114 is repealed.**

**18 Section 115 is repealed.**

**19 Section 116 is repealed.**

**20 Section 117 is repealed.**

**21 Section 118 is repealed.**

**22 Section 120 is repealed and the following is substituted:**



**Receipt for prospectus**

**120(1)** Subject to subsection (2), the Executive Director shall issue a receipt for a prospectus filed under this Part unless the Executive Director considers that it is not in the public interest to do so.

**(2)** The Executive Director shall not issue a receipt for a prospectus under this Part if the Executive Director considers that

- (a) the prospectus or any document required to be filed with it
  - (i) does not comply in any substantial respect with any of the requirements of this Part or the regulations,
  - (ii) contains any statement, promise, estimate or forward-looking information that is misleading, false or deceptive, or
  - (iii) contains a misrepresentation,
- (b) an unconscionable consideration has been paid or given or is intended to be paid or given for any services or promotional purposes or for the acquisition of property,
- (c) the aggregate of
  - (i) the proceeds from the sale of the securities under the prospectus that are to be paid into the treasury of the issuer, and
  - (ii) the other resources of the issueris insufficient to accomplish the purpose of the issue stated in the prospectus,
- (d) the issuer cannot reasonably be expected to be financially responsible in the conduct of its business because of the financial condition of
  - (i) the issuer,
  - (ii) any of the issuer's officers, directors, promoters or control persons, or

- (iii) the investment fund manager of the issuer or any of the investment fund manager's officers, directors or control persons,
  - (e) the business of the issuer may not be conducted with integrity and in the best interests of the security holders of the issuer because of the past conduct of
    - (i) the issuer,
    - (ii) any of the issuer's officers, directors, promoters or control persons, or
    - (iii) the investment fund manager of the issuer or any of the investment fund manager's officers, directors or control persons,
  - (f) a person or company that has prepared or certified any part of the prospectus, or that is named as having prepared or certified a report or valuation used in connection with the prospectus, is not acceptable,
  - (g) an escrow or pooling agreement in the form that the Executive Director considers necessary or advisable with respect to the securities has not been entered into, or
  - (h) adequate arrangements have not been made for the holding in trust of the proceeds payable to the issuer from the sale of securities pending the distribution of the securities.
- (3) No person or company filing a prospectus shall be refused a receipt for that prospectus without being given an opportunity to be heard.

**23 Section 121 is repealed.**

**24 Section 124 is repealed.**

**25 Section 125 is repealed.**

**26 Section 126(2) is amended by striking out “under section 125” and substituting “in accordance with the regulations”.**

**27 Section 129 is repealed.**

**28 Section 130 is repealed and the following is substituted:**

**Revocation of purchase**

**130** A person or company that purchases a security under a distribution to which section 110(1) applies may cancel the purchase in accordance with the regulations.

**29 Section 141 is repealed and the following is substituted:**

**Reporting issuer - default**

**141** The Commission may publish a list of defaulting reporting issuers.

**30 Section 146 is repealed and the following is substituted:**

**Disclosure generally**

**146** A reporting issuer shall, in accordance with the regulations,

- (a) provide prescribed periodic disclosure about its business and affairs,
- (b) provide disclosure of a material change, and
- (c) provide other prescribed disclosure.

**31 Sections 149 to 152 are repealed.**

**32 Section 154 is repealed.**

**33 Sections 158 to 175 are repealed and the following is substituted:**

### **Interpretation**

**158** For the purposes of this Part,

- (a) “interested person” means
  - (i) an issuer whose securities are the subject of a take-over bid, issuer bid or other offer to acquire,
  - (ii) a security holder, director or officer of an issuer described in subclause (i),
  - (iii) an offeror,
  - (iv) the Executive Director, and
  - (v) any person or company not referred to in subclauses (i) to (iv) who, in the opinion of the Commission or the Court of Queen’s Bench, as the case may be, is a proper person to make an application under section 179 or 180;
- (b) “issuer bid” means a direct or indirect offer to acquire or redeem a security or a direct or indirect acquisition or redemption of a security that is
  - (i) made by the issuer of the security, and
  - (ii) within a prescribed class of offers, acquisitions or redemptions;
- (c) “take-over bid” means a direct or indirect offer to acquire a security that is
  - (i) made directly or indirectly by a person or company other than the issuer of the security, and
  - (ii) within a prescribed class of offers to acquire.

### **Making a bid**

**159** A person or company shall not make a take-over bid or issuer bid, whether alone or acting jointly or in concert with one or more persons, except in accordance with the regulations.

**Directors' or director's or officer's recommendation**

**160(1)** When a take-over bid has been made, the directors of the issuer whose securities are the subject of the bid shall

- (a) determine whether to recommend acceptance or rejection of the bid or determine not to make a recommendation, and
- (b) make the recommendation, or a statement that they are not making a recommendation, in accordance with the regulations.

(2) An individual director or officer of the issuer described in subsection (1) may recommend acceptance or rejection of the take-over bid if the recommendation is made in accordance with the regulations.

**34 Sections 176 to 178 are repealed.**

**35 Section 179 is repealed and the following is substituted:**

**Applications to the Commission**

**179(1)** On application by an interested person, if the Commission considers that a person has not complied or is not complying with this Part or the regulations, the Commission may make an order

- (a) restraining the distribution of any document, record or materials used or issued in connection with a take-over bid or issuer bid,
- (b) requiring an amendment to or variation of any document, record or materials used or issued in connection with a take-over bid or issuer bid and requiring the distribution of amended, varied or corrected information,
- (c) directing any person or company to comply with this Part or the regulations,
- (d) restraining any person or company from contravening this Part or the regulations, or

- (e) directing the directors and officers of any person or company to cause the person or company to comply with or to cease contravening this Part or the regulations.

(2) On application by an interested person, the Commission may order that a person or company is exempt from any requirement under this Part or the regulations if the Commission considers it would not be prejudicial to the public interest to do so.

**36 Section 180 is repealed and the following is substituted:**

**Applications to the court**

**180(1)** On application by an interested person, if the Court of Queen's Bench is satisfied that a person or company has not complied with this Part or the regulations, the Court of Queen's Bench may make an interim or final order as the court sees fit, including, without limitation, an order

- (a) compensating any interested person who is a party to the application for damages suffered as a result of a contravention of this Part or the regulations,
- (b) rescinding a transaction with any interested person, including the issue of a security or a purchase and sale of a security,
- (c) requiring any person or company to dispose of any securities acquired pursuant to or in connection with a take-over bid or issuer bid,
- (d) prohibiting any person or company from exercising any or all of the voting rights attached to any securities, and
- (e) requiring the trial of an issue.

(2) If the Executive Director is not the applicant under subsection (1), the Executive Director

- (a) must be given notice of the application, and
- (b) is entitled to appear at the hearing and make representations to the Court of Queen's Bench.

**37 Section 181 is repealed.**

**38 Section 182 is repealed and the following is substituted:**

**Reports of insider**

**182** An insider of a reporting issuer shall file reports and make disclosure in accordance with the regulations.

**39 The following is added after section 182:**

**Early warning**

**182.1** If a person or company acquires beneficial ownership, directly or indirectly of, or direct or indirect control or direction over, securities of a prescribed type or class of a reporting issuer representing a prescribed percentage of the outstanding securities of that type or class, the person or company and any person or company acting jointly or in concert with the person or company shall make and file disclosure in accordance with the regulations and comply with any prohibitions in the regulations on transactions in securities of the reporting issuer.

**40 Section 183 is repealed.**

**41 Section 187 is repealed.**

**42 Section 190 is repealed and the following is substituted:**

**Standard of care for management  
of investment fund**

**190** Every investment fund manager shall

- (a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the investment fund, and
- (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

**43 The following is added after section 193:**

**Authorized exceptions to prohibitions**

**193.1** If the regulations so provide, a body established under section 193.2(1) by an investment fund may approve a transaction that is prohibited under this Part, in which case the prohibition does not apply to the transaction.

**Oversight, etc., of investment funds**

**193.2(1)** If required to do so by the regulations, an investment fund shall establish and maintain a body for the purposes of overseeing activities of the investment fund and the investment fund manager, reviewing or approving prescribed matters affecting the investment fund, including transactions referred to in section 193.1, and disclosing information to security holders of the fund, to the investment fund manager and to the Commission.

(2) The body has such powers and duties as may be prescribed by the regulations.

**44 Section 198 is amended**

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

- (b.1) that the registration or recognition of a person or company under Alberta securities laws be suspended or restricted for such period as is specified in the order or be terminated, or that terms and conditions be imposed on the registration or recognition;
- (b.2) that a registrant be reprimanded;

**(b) by adding the following after subsection (1.1):**

**(1.2)** The Commission may, after providing an opportunity to be heard, make an order under subsection (1)(a) to (e) against a director or officer of a company or of a person other than an individual who authorizes, permits or acquiesces in the contravention of Alberta securities laws or conduct contrary to the public interest.



- (c) in subsection (2) by striking out “subsection (1)” and substituting “subsection (1), (1.1) or (1.2)”.**

**45 Section 199(1) is repealed and the following is substituted:**

**Administrative penalty**

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

- (a) determines that
  - (i) a person or company has contravened or failed to comply with any provision of Alberta securities laws, or
  - (ii) a director or officer of a person or company or a person other than an individual authorized, permitted or acquiesced in a contravention or failure to comply with any provision of Alberta securities laws by the person or company,

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 \$1 000 000 for each contravention or failure to comply.

**46 Section 203 is amended**

- (a) in subsections (1)(b) and (2)(b) by striking out “who is required to sign the certificate referred to in section 117” and substituting “that is in a contractual relationship with the issuer or selling security holder on whose behalf the distribution is made”;**
- (b) in subsection (1)(d) by striking out “whose consent has been filed pursuant to a requirement of the regulations” and substituting “whose consent to disclosure of information in the prospectus has been filed”.**

**47 Section 205 is amended**

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

- (i) by striking out “that is sent” and substituting “is sent”;**
- (ii) by striking out “by Part 14” and substituting “under the regulations and that document”;**

**(b) in subsection (2)**

- (i) by striking out “sent to” and substituting “is sent to”;**
- (ii) by striking out “by Part 14” and substituting “under the regulations and that document”;**

**(c) by repealing subsection (10).**

**48 The following is added after section 205:**

**Defence to liability for misrepresentation**

**205.1** A person or company is not liable in an action under section 203, 204 or 205 for a misrepresentation in forward-looking information if the person or company proves all of the following:

- (a) the document containing the forward-looking information contained, proximate to that information,
  - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
  - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information;
- (b) the person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

**49 Section 206 is amended**

- (a) **in clause (a) by striking out** “in compliance with section 129” **and substituting** “under the regulations”;
- (b) **in clause (b) by striking out** “in compliance with Part 14” **and substituting** “under the regulations”.

**50 Section 208 is amended**

- (a) **in subsections (3), (4), (9) and (10) by striking out** “mutual fund” **wherever it occurs and substituting** “investment fund”;
- (b) **in subsection (5)**
  - (i) **by striking out** “a board of directors” **and substituting** “the directors”;
  - (ii) **by striking out** “the board of directors” **and substituting** “the directors”.

**51 Section 210 is repealed.**

**52 The following is added after Part 17:**

**Part 17.01  
Civil Liability for Secondary  
Market Disclosure**

**Definitions**

**211.01** In this Part,

- (a) “compensation” means compensation received during the 12-month period immediately preceding the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred, together with the fair market value of all deferred compensation including, without limitation, options, pension benefits and stock appreciation rights, granted during the same period, valued as of the date that such compensation is awarded;
- (b) “core document” means,

(i) where used in relation to

- (A) a director of a responsible issuer who is not also an officer of the responsible issuer,
- (B) an influential person, other than an officer of the responsible issuer or an investment fund manager where the responsible issuer is an investment fund, or
- (C) a director or officer of an influential person who is not also an officer of the responsible issuer, other than an officer of an investment fund manager,

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements and interim financial statements of the responsible issuer;

(ii) where used in relation to

- (A) a responsible issuer or an officer of the responsible issuer,
- (B) an investment fund manager where the responsible issuer is an investment fund, or
- (C) an officer of an investment fund manager where the responsible issuer is an investment fund,

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, interim financial statements and a material change report required under section 146 of the responsible issuer, and

(iii) such other documents as may be prescribed by regulation for the purposes of this definition;

- (c) “document” means any written communication, including a communication prepared and transmitted only in electronic form,
  - (i) that is required to be filed with the Commission, or
  - (ii) that is not required to be filed with the Commission and
    - (A) that is filed with the Commission,
    - (B) that is filed or required to be filed with a government or an agency of a government under applicable securities or corporate law or with any exchange or quotation and trade reporting system under its bylaws, rules or regulations, or
    - (C) that is any other communication the content of which would reasonably be expected to affect the market price or value of a security of the responsible issuer;
- (d) “expert” means a person or company whose profession gives authority to a statement made in a professional capacity by the person or company, including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer but not including an entity that is an approved rating organization;
- (e) “failure to make timely disclosure” means a failure to disclose a material change in the manner and at the time required under this Act;
- (f) “influential person” means, in respect of a responsible issuer,
  - (i) a control person,
  - (ii) a promoter,
  - (iii) an insider who is not a director or officer of the responsible issuer, or

- (iv) an investment fund manager, if the responsible issuer is an investment fund;
- (g) “issuer’s security” means a security of a responsible issuer and includes a security
  - (i) the market price or value of which, or payment obligations under which, are derived from or based on a security of the responsible issuer, and
  - (ii) that is created by a person or company on behalf of the responsible issuer or is guaranteed by the responsible issuer;
- (h) “liability limit” means,
  - (i) in the case of a responsible issuer, the greater of
    - (A) 5% of its market capitalization as defined in the regulations, and
    - (B) \$1 000 000,
  - (ii) in the case of a director or officer of a responsible issuer, the greater of
    - (A) \$25 000, and
    - (B) 50% of the aggregate of the director’s or officer’s compensation from the responsible issuer and its affiliates,
  - (iii) in the case of an influential person who is not an individual, the greater of
    - (A) 5% of its market capitalization as defined in the regulations, and
    - (B) \$1 000 000,
  - (iv) in the case of an influential person who is an individual, the greater of
    - (A) \$25 000, and

- (B) 50% of the aggregate of the influential person's compensation from the responsible issuer and its affiliates,
  - (v) in the case of a director or officer of an influential person, the greater of
    - (A) \$25 000, and
    - (B) 50% of the aggregate of the director's or officer's compensation from the influential person and its affiliates,
  - (vi) in the case of an expert, the greater of
    - (A) \$1 000 000, and
    - (B) the revenue that the expert and the affiliates of the expert have earned from the responsible issuer and its affiliates during the 12 months preceding the misrepresentation,
- and
- (vii) in the case of each person who made a public oral statement, other than an individual referred to in subclause (iv), (v) or (vi), the greater of
    - (A) \$25 000, and
    - (B) 50% of the aggregate of the person's compensation from the responsible issuer and its affiliates;
  - (i) "management's discussion and analysis" means the section of an annual information form, annual report or other document that contains management's discussion and analysis of the financial condition and results of operations of a responsible issuer as required under Alberta securities laws;
  - (j) "public oral statement" means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed;

- (k) “release” means, with respect to information or a document, to file with the Commission or any other securities regulatory authority in Canada or an exchange or to otherwise make available to the public;
- (l) “responsible issuer” means
  - (i) a reporting issuer, or
  - (ii) any other issuer with a real and substantial connection to Alberta, any of whose securities are publicly traded;
- (m) “trading day” means a day during which the principal market as defined in the regulations for the security is open for trading.

#### **Application**

**211.02** This Part does not apply to

- (a) the purchase of a security offered by a prospectus during the period of distribution,
- (b) the acquisition of an issuer’s security pursuant to a distribution that is exempt from section 110, except as may be prescribed by regulation,
- (c) the acquisition or disposition of an issuer’s security in connection with or pursuant to a take-over bid or issuer bid, except as may be prescribed by regulation, or
- (d) such other transactions or class of transactions as may be prescribed by regulation.

#### **Liability for secondary market disclosure**

**211.03(1)** Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of the issuer’s security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person or company



relied on the misrepresentation, a right of action for damages against

- (a) the responsible issuer,
- (b) each director of the responsible issuer at the time the document was released,
- (c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document,
- (d) each influential person, and each director and officer of an influential person, who knowingly influenced
  - (i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or
  - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document,

and

- (e) each expert where
  - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
  - (ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and
  - (iii) if the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.

(2) Where a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the business or affairs of the responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected has, without regard to whether the person or

company relied on the misrepresentation, a right of action for damages against

- (a) the responsible issuer,
- (b) the person who made the public oral statement,
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement,
- (d) each influential person, and each director and officer of the influential person, who knowingly influenced
  - (i) the person who made the public oral statement to make the public oral statement, or
  - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement,

and

- (e) each expert where
  - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
  - (ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
  - (iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.

**(3)** Where an influential person or a person or company with actual, implied or apparent authority to act or speak on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the document was released or the public oral statement was made and the time when the misrepresentation contained in the document or public oral

statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against

- (a) the responsible issuer, if a director or officer of the responsible issuer, or where the responsible issuer is an investment fund, the investment fund manager, authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,
- (b) the person who made the public oral statement,
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,
- (d) the influential person,
- (e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement, and
- (f) each expert where
  - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
  - (ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
  - (iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.

**(4)** Where a responsible issuer fails to make a timely disclosure, a person or company who acquires or disposes of the issuer's security between the time when the material change was required to be disclosed in the manner required under this Act and the subsequent disclosure of the material change has, without regard to whether the person or company relied on the

responsible issuer having complied with its disclosure requirements, a right of action for damages against

- (a) the responsible issuer,
- (b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure, and
- (c) each influential person, and each director and officer of an influential person, who knowingly influenced
  - (i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or
  - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

(5) In an action under this section, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer.

(6) In an action under this section,

- (a) multiple misrepresentations having common subject-matter or content may, in the discretion of the court, be treated as a single misrepresentation, and
- (b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject-matter may, in the discretion of the court, be treated as a single failure to make timely disclosure.

(7) In an action under subsection (2) or (3), if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the issuer, no other person is liable with respect to any of the responsible issuer's securities that were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation.

## **Burden of Proof and Defences**

### **Non-core documents and public oral statements**

**211.04(1)** In an action under section 211.03 in relation to a misrepresentation in a document that is not a core document or a misrepresentation in a public oral statement, a person or company is not liable, subject to subsection (2), unless the plaintiff proves that the person or company

- (a) knew, at the time that the document was released or the public oral statement was made, that the document or public oral statement contained the misrepresentation,
- (b) at or before the time that the document was released or the public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation, or
- (c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

**(2)** A plaintiff is not required to prove any of the matters set out in subsection (1) in an action under section 211.03 in relation to an expert.

**(3)** In an action under section 211.03 in relation to a failure to make timely disclosure, a person or company is not liable, subject to subsection (4), unless the plaintiff proves that the person or company

- (a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change,
- (b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change, or
- (c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure.

(4) A plaintiff is not required to prove any of the matters set out in subsection (3) in an action under section 211.03 in relation to

- (a) a responsible issuer,
- (b) an officer of a responsible issuer,
- (c) an investment fund manager, or
- (d) an officer of an investment fund manager.

(5) A person or company is not liable in an action under section 211.03 in relation to a misrepresentation or a failure to make timely disclosure if that person or company proves that the plaintiff acquired or disposed of the issuer's security

- (a) with knowledge that the document or public oral statement contained a misrepresentation, or
- (b) with knowledge of the material change.

(6) A person or company is not liable in an action under section 211.03 in relation to

- (a) a misrepresentation if that person or company proves that,
  - (i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person or company conducted or caused to be conducted a reasonable investigation, and
  - (ii) at the time of the release of the document or the making of the public oral statement, the person or company had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation,

or

- (b) a failure to make timely disclosure if that person or company proves that

- (i) before the failure to make timely disclosure first occurred, the person or company conducted or caused to be conducted a reasonable investigation, and
- (ii) the person or company had no reasonable grounds to believe that the failure to make timely disclosure would occur.

(7) In determining whether an investigation was reasonable under subsection (6), or whether any person or company is guilty of gross misconduct under subsection (1) or (3), the court shall consider all relevant circumstances, including

- (a) the nature of the responsible issuer,
- (b) the knowledge, experience and function of the person or company,
- (c) the office held, if the person was an officer,
- (d) the presence or absence of another relationship with the responsible issuer, if the person was a director,
- (e) the existence, if any, and the nature of any system designed to ensure that the responsible issuer meets its continuous disclosure obligations,
- (f) the reasonableness of reliance by the person or company on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts,
- (g) the period within which disclosure was required to be made under the applicable law,
- (h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert,
- (i) the extent to which the person or company knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement,

- (j) in the case of a misrepresentation, the role and responsibility of the person or company in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement, and
- (k) in the case of a failure to make timely disclosure, the role and responsibility of the person or company involved in a decision not to disclose the material change.

**(8)** A person or company is not liable in an action under section 211.03 in respect of a failure to make timely disclosure if

- (a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under section 146,
- (b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis,
- (c) where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist,
- (d) the person or company or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation, and
- (e) where the material change became publicly known in a manner other than the manner required under this Act, the responsible issuer promptly disclosed the material change in the manner required under this Act.

**(9)** A person or company is not liable in an action under section 211.03 for a misrepresentation in forward-looking information if the person or company proves all of the following:



- (a) the document or public oral statement containing the forward-looking information contained, proximate to that information,
  - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
  - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information;
- (b) the person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

**(10)** A person or company is deemed to have satisfied the requirements of subsection (9)(a) with respect to a public oral statement containing forward-looking information if the person who made the public oral statement

- (a) made a cautionary statement that the oral statement contains forward-looking information,
  - (b) stated that
    - (i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and
    - (ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,
- and
- (c) stated that additional information about
    - (i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and

- (ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,

is contained in a readily available document or in a portion of such a document and has identified that document or that portion of the document.

**(11)** For the purposes of subsection (10)(c), a document filed with the Commission or otherwise generally disclosed is deemed to be readily available.

**(12)** Subsection (9) does not relieve a person or company of liability respecting forward-looking information in a financial statement required to be filed under this Act or forward-looking information in a document released in connection with an initial public offering.

**(13)** A person or company, other than an expert, is not liable in an action under section 211.03 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, if the person or company proves that

- (a) the person or company did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert, and
- (b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert.

**(14)** An expert is not liable in an action under section 211.03 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert if the expert proves that the written consent previously provided was withdrawn in writing before

the document was released or the public oral statement was made.

**(15)** A person or company is not liable in an action under section 211.03 in respect of a misrepresentation in a document, other than a document required to be filed with the Commission, if the person or company proves that, at the time of release of the document, the person or company did not know and had no reasonable grounds to believe that the document would be released.

**(16)** A person or company is not liable in an action under section 211.03 for a misrepresentation in a document or a public oral statement if the person or company proves that

- (a) the misrepresentation was also contained in a document filed by or on behalf of another person or company, other than the responsible issuer, with the Commission or any other securities regulatory authority in Canada or an exchange and was not corrected in another document filed by or on behalf of that other person or company with the Commission or that other securities regulatory authority in Canada or exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer,
- (b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation, and
- (c) when the document was released or the public oral statement was made, the person or company did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

**(17)** A person or company, other than the responsible issuer, is not liable in an action under section 211.03 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person or company and if, after the person or company became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act,

- (a) the person or company promptly notified the directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure, and
- (b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act was made by the responsible issuer within 2 business days after the notification under clause (a), the person or company, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the Commission of the misrepresentation or failure to make timely disclosure.

## **Damages**

### **Assessment of damages**

**211.05(1)** Damages shall be assessed in favour of a person or company that acquired an issuer's securities after the release of a document or the making of a public oral statement containing a misrepresentation or after a failure to make timely disclosure as follows:

- (a) in respect of any of the securities of the responsible issuer that the person or company subsequently disposed of on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price paid for those securities, including any commissions paid in respect of them, and the price received on the disposition of those securities, without deducting any commissions paid in respect of the disposition, calculated taking into account the result of hedging or other risk limitation transactions;
- (b) in respect of any of the securities of the responsible issuer that the person or company subsequently disposed of after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of

- (i) an amount equal to the difference between the average price paid for those securities, including any commissions paid in respect of them, and the price received on the disposition of those securities, without deducting any commissions paid in respect of the disposition, calculated taking into account the result of hedging or other risk limitation transactions, and
- (ii) an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security paid for those securities, including any commissions paid in respect of that disposition determined on a per security basis, and
  - (A) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
  - (B) if there is no published market, the amount that the court considers just;
- (c) in respect of any of the securities of the responsible issuer that the person or company has not disposed of, assessed damages shall equal the number of securities acquired, multiplied by the difference between the average price per security paid for those securities, including any commissions paid in respect thereof determined on a per security basis, and
  - (i) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market as defined in the regulations for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
  - (ii) if there is no published market, the amount that the court considers just.

(2) Damages shall be assessed in favour of a person or company that disposed of securities after a document was released or a public oral statement made containing a misrepresentation or after a failure to make timely disclosure as follows:

- (a) in respect of any of the securities of the responsible issuer that the person or company subsequently acquired on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price received on the disposition of those securities, deducting any commissions paid in respect of the disposition and the price paid for those securities, without including any commissions paid in respect of them, calculated taking into account the result of hedging or other risk limitation transactions;
- (b) in respect of any of the securities of the responsible issuer that the person or company subsequently acquired after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of
  - (i) an amount equal to the difference between the average price received on the disposition of those securities, deducting any commissions paid in respect of the disposition and the price paid for those securities, without including any commissions paid in respect of them, calculated taking into account the result of hedging or other risk limitation transactions, and
  - (ii) an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security received on the disposition of those securities, deducting any commissions paid in respect of the disposition determined on a per security basis, and
- (A) if the issuer's securities trade on a published market, the trading price of the issuer's securities

on the principal market as defined in the regulations for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

- (B) if there is no published market, the amount that the court considers just;
- (c) in respect of any of the securities of the responsible issuer that the person or company has not acquired, assessed damages shall equal the number of securities that the person or company disposed of, multiplied by the difference between the average price per security received on the disposition of those securities, deducting any commissions paid in respect of the disposition determined on a per security basis, and
  - (i) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market as defined in the regulations for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
  - (ii) if there is no published market, the amount that the court considers just.

(3) Notwithstanding subsections (1) and (2), assessed damages shall not include any amount that the defendant proves is attributable to a change in the market price of securities that is unrelated to the misrepresentation or the failure to make timely disclosure.

**Proportionate liability**

**211.06(1)** In an action under section 211.03, the court shall determine, in respect of each defendant found liable in the action, the defendant's responsibility for the damages assessed in favour of all plaintiffs in the action, and each such defendant is liable, subject to the limits set out in section 211.07(1), to the plaintiffs for only that portion of the aggregate amount of damages assessed in favour of the plaintiffs that corresponds to that defendant's responsibility for the damages.

(2) Notwithstanding subsection (1), where, in an action under section 211.03 in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure, the whole amount of the damages assessed in the action may be recovered from that defendant.

(3) Each defendant in respect of whom the court has made a determination under subsection (2) is jointly and severally liable with each other defendant in respect of whom the court has made a determination under subsection (2).

(4) Any defendant against whom recovery is obtained under subsection (2) is entitled to claim contribution from any other defendant who is found liable in the action.

#### **Limits on damages**

**211.07(1)** Notwithstanding section 211.05, the damages payable by a person or company in an action under section 211.03 is the lesser of

- (a) the aggregate damages assessed against the person or company in the action, and
- (b) the liability limit for the person or company less the aggregate of all damages assessed after appeals, if any, against the person or company in all other actions brought under section 211.03, and under comparable legislation in other provinces or territories in Canada in respect of that misrepresentation or failure to make timely disclosure, and less any amount paid in settlement of any such actions.

(2) Subsection (1) does not apply to a person or company, other than the responsible issuer, if the plaintiff proves that the person or company authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while



knowing that it was a misrepresentation or a failure to make timely disclosure.

### **Procedural Matters**

#### **Leave to proceed**

**211.08(1)** No action may be commenced under section 211.03 without leave of the court granted on motion with notice to each defendant.

(2) The court shall grant leave only where it is satisfied that

- (a) the action is being brought in good faith, and
- (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

(3) On an application under this section, the plaintiff and each defendant shall serve and file one or more affidavits setting forth the material facts on which each intends to rely.

(4) The maker of such an affidavit may be examined on it in accordance with the *Alberta Rules of Court*.

(5) A copy of the application for leave to proceed and any affidavits filed with the court shall be sent to the Commission when filed.

#### **Notice**

**211.09** A person or company that has been granted leave to commence an action under section 211.03 shall

- (a) promptly issue a news release disclosing that leave has been granted to commence an action under section 211.03,
- (b) send a written notice to the Commission within 7 days of leave being granted, together with a copy of the news release, and
- (c) send a copy of the statement of claim or other originating document to the Commission when filed.

**Restriction on discontinuation, etc. of action**

**211.091** An action under section 211.03 shall not be discontinued, abandoned or settled without the approval of the court given on such terms as the court thinks fit including, without limitation, terms as to costs, and in determining whether to approve the settlement of the action, the court shall consider, among other things, whether there are any other actions outstanding under section 211.03 or under comparable legislation in other provinces or territories in Canada in respect of the same misrepresentation or failure to make timely disclosure.

**Costs**

**211.092** Notwithstanding the *Court of Queen's Bench Act* and the *Class Proceedings Act*, the prevailing party in an action under section 211.03 is entitled to costs determined by a court in accordance with the Alberta Rules of Court.

**Power of the Commission**

**211.093** The Commission may intervene in an action under section 211.03 and in an application for leave under section 211.08.

**No derogation from other rights**

**211.094** The right of action for damages and the defences to an action under section 211.03 are in addition to and without derogation from any other rights or defences the plaintiff or defendant may have in an action brought otherwise than under this Part.

**Limitation period**

**211.095** No action shall be commenced under section 211.03,

- (a) in the case of misrepresentation in a document, later than the earlier of
  - (i) 3 years after the date on which the document containing the misrepresentation was first released, and
  - (ii) 6 months after the issuance of a news release disclosing that leave has been granted to commence an action under section 211.03 or under comparable

legislation in the other provinces or territories in Canada in respect of the same misrepresentation;

- (b) in the case of a misrepresentation in a public oral statement, later than the earlier of
  - (i) 3 years after the date on which the public oral statement containing the misrepresentation was made, and
  - (ii) 6 months after the issuance of a news release disclosing that leave has been granted to commence an action under section 211.03 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation,

and

- (c) in the case of a failure to make timely disclosure, later than the earlier of
  - (i) 3 years after the date on which the requisite disclosure was required to be made, and
  - (ii) 6 months after the issuance of a news release disclosing that leave has been granted to commence an action under section 211.03 or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure.

**53 The heading to Part 17.1 is repealed and the following is substituted:**

### **Interjurisdictional Co-operation**

**54 Section 211.1 is amended**

- (a) **by repealing subsection (1)(c) and substituting the following:**
  - (c) “extra-provincial securities commission” means a body empowered by the laws of a province or territory other than Alberta to regulate trading in securities or exchange

contracts or to administer or enforce laws respecting trading in securities or exchange contracts;

**(b) by repealing subsection (1)(e);**

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

- (b) any person or company who in respect of that extra-provincial securities commission exercises a power or performs a duty or function that is substantially similar to a power, duty or function exercised or performed by the Executive Director under this Act.

**55 Section 211.2 is repealed and the following is substituted:**

**Delegation and acceptance of authority**

**211.2(1)** Subject to any regulations made under section 211.6, the Commission may by order, for the purposes of this Part,

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

**(2)** The Commission shall 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 Part 1, this Part or section 224 or 224.1.

**56 Section 211.4 is repealed and the following is substituted:**

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

**211.4(1)** Subject to any regulations made under section 211.6, the Commission may by order adopt or incorporate by reference as Alberta securities laws all or any provisions of any extra-provincial securities laws of a jurisdiction to be applied to

- (a) a person or company or class of persons or companies whose primary jurisdiction is that extra-provincial jurisdiction, or
- (b) trades or other activities involving a person or company or a class of persons or companies referred to in clause (a).

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

**57 Sections 211.41 and 211.42 are repealed and the following is substituted:**

**Exemptions**

**211.41** Subject to any regulations made under section 211.6, the Commission may by order exempt a person, company, security, exchange contract or trade or a class of persons, companies, securities, exchange contracts or trades from all or any requirements of Alberta securities laws if the person, company, security, exchange contract or trade or class of persons, companies, securities, exchange contracts or trades, as the case may be, satisfies the conditions set out in the order.

**58 Section 211.5 is repealed and the following is substituted:**

**Exercise of discretion, interprovincial reliance**

**211.5(1)** Subject to any regulations made under section 211.6, if the Commission or Executive Director is empowered to make a decision regarding a person, company, trade, security or exchange contract, the Commission or the Executive Director may make a decision on the basis that the Commission or the Executive Director, as the case may be, considers that an extra-provincial securities commission has made a substantially similar decision regarding the person, company, trade, security or exchange contract.

(2) Subject to any regulations made under section 211.6, notwithstanding any provision of this Act, the Commission or

Executive Director may make a decision referred to in subsection (1) without giving the person affected by the decision an opportunity to be heard.

**59 Section 211.6(1) is amended**

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

- (b) the acceptance by the Commission of any delegation or other authority of an extra-provincial authority from an extra-provincial securities commission;

**(b) by repealing clauses (d), (e) and (f) and substituting the following:**

- (d) the adoption or incorporation by reference of extra-provincial securities laws under section 211.4, including the administration of those laws once adopted or incorporated by reference;
- (e) the administration of exemptions from Alberta securities laws under section 211.41;

**60 Section 217(4) is amended by striking out “3 successive” and substituting “2 successive”.**

**61 Section 223 is amended**

**(a) by repealing clause (f);**

**(b) in clause (j) by adding the following after subclause (xiv):**

- (xv) circumstances in which
  - (A) a person or company or a class of persons or companies is not required to be registered under section 75, or
  - (B) a person or company or a class of persons or companies is deemed to be registered for the purposes of this Act or the regulations,

including the circumstance in which a person or company or a class of persons or companies is registered under the laws of another jurisdiction respecting trading in securities or exchange contracts;

**(c) in clause (k)**

**(i) by repealing subclause (iii) and substituting the following:**

- (iii) the issuance of receipts for preliminary prospectuses and prospectuses, including the issuance of receipts after an expedited or selective review, and respecting when receipts are not required or will not be issued, and the circumstances under which a receipt may be refused;

**(ii) by repealing subclause (xi) and substituting the following:**

- (xi) the form of certificates relating to a preliminary prospectus, prospectus and amendments to a prospectus and the persons required to sign the certificates;

**(iii) by repealing subclause (xiv) and substituting the following:**

- (xiv) the lapse date for a prospectus, restricting the period of time to the lapse date, the terms and conditions for continuing to distribute securities after the lapse date, and the circumstances under which the purchaser may cancel a trade that occurs after the lapse date;

(xv) circumstances in which

- (A) section 110 does not apply to a person or company or a class of persons or companies, or
- (B) a receipt is deemed to have been issued for the purposes of this Act,

including the circumstance in which a receipt has been issued for a preliminary prospectus or

prospectus under the laws of another jurisdiction respecting trading in securities or exchange contracts;

- (xvi) requirements in respect of amendments to a preliminary prospectus or prospectus and prescribing circumstances under which an amendment to a preliminary prospectus or prospectus must be filed;
- (xvii) requirements for dealers for delivery of a preliminary prospectus between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for a prospectus, including any record-keeping requirements;

**(d) by adding the following after clause (k):**

- (k.1) prescribing circumstances in which a person or company that purchases a security under a distribution may cancel the purchase, including
  - (i) prescribing the period in which a purchaser may cancel the purchase;
  - (ii) prescribing the principles for determining the amount of the refund if the purchaser cancels the purchase;
  - (iii) specifying the person responsible for making and administering the payment of the refund and prescribing the period in which the refund must be paid;
  - (iv) prescribing different circumstances, periods, principles or persons or companies for different classes of securities, issuers or purchasers;

**(e) in clause (o) by adding the following after subclause (iv):**

- (v) designating a person or company or class or classes of persons or companies as an accredited investor;

**(f) in clause (p) by adding the following after subclause (vii):**

- (viii) requiring investment funds to establish and maintain a body for the purposes described in section 193.1,



prescribing its powers and duties and prescribing requirements relating to

- (A) the mandate and functioning of the body,
- (B) the composition of the body and qualifications for membership on the body, including matters respecting the independence of members and the process for selecting the members,
- (C) the standard of care that applies to members of the body when exercising their powers, performing their duties and carrying out their responsibilities,
- (D) the disclosure of information to security holders of the investment fund, to the investment fund manager and to the Commission, and
- (E) matters affecting the investment fund that require review by the body or approval of the body;

**(g) by repealing clause (r) and substituting the following:**

- (r) governing disclosure obligations under Parts 12 and 13 and the regulations and, without limiting the generality of the foregoing,
  - (i) requiring any person or company or class of persons or companies to comply with Parts 12 and 13 and the regulations;
  - (ii) prescribing disclosure requirements, including the form, content, preparation, review, audit, approval, certification, filing, delivery and use of disclosure documents;

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

- (t) governing insider trading, early warning and self-dealing and, without limiting the generality of the foregoing,
  - (i) requiring any issuer, class of issuer or other person or company to comply with any of the requirements of Part 15 or the regulations;

- (ii) prescribing how a security or class of security or a related financial instrument or class of related financial instruments must be reported in an insider report filed under section 182;
- (iii) prescribing disclosure, delivery, dissemination and filing requirements, including the use of particular forms or particular types of documents;
- (iv) respecting self-dealing and conflicts of interest;
- (v) prescribing exemptions from the requirements of Part 15 or the regulations;
- (vi) designating a person or company as an insider;

**(i) by repealing clause (u) and substituting the following:**

- (u) regulating take-over bids, take-overs and issuer bids and, without limiting the generality of the foregoing,
  - (i) prescribing requirements for different classes of bids or take-overs;
  - (ii) prescribing requirements relating to the conduct or management of the affairs of the issuer that is the subject of a take-over bid, and its directors and officers, during or in anticipation of the take-over bid;
  - (iii) prohibiting a person from purchasing or selling a security before, during or after the effective period of a take-over bid;
  - (iv) prescribing the disclosure, certification, delivery or dissemination of any circular, notice, report or other document required to be filed or delivered to a person or company;
  - (v) prescribing percentages and requirements respecting early warning;
  - (vi) prescribing exemptions from the requirements of Part 14 or the regulations;

**(j) by adding the following after clause (v):**

- (v.1) governing the solicitation of proxies and, without limiting the generality of the foregoing,
  - (i) prescribing requirements for the solicitation and voting of proxies;
  - (ii) prescribing requirements relating to communication with registered and beneficial owners of securities and relating to other persons or companies, including depositories and registrants, that hold securities on behalf of beneficial owners;

**(k) by adding the following after clause (dd):**

- (dd.1) prescribing circumstances in which a person or company or a class of persons or companies is prohibited from trading or purchasing securities or exchange contracts, or a particular security or exchange contract, including the circumstances in which a body empowered by the laws of another jurisdiction to regulate trading in securities or exchange contracts or to administer or enforce securities or exchange contract laws in that jurisdiction, has ordered that
  - (i) a person is prohibited from trading or purchasing securities or exchange contracts, or a particular security or exchange contract, or
  - (ii) trades or purchases of a particular security or exchange contracts;

**(l) by repealing clause (hh);**

**(m) by repealing clause (hh.4) and substituting the following:**

- (hh.4) prescribing circumstances and conditions for the purposes of an exemption under clause (hh.3), including
  - (i) conditions relating to the laws of another jurisdiction of Canada or relating to an exemption from those laws granted by a body empowered by the laws of that jurisdiction to regulate trading in securities or exchange contracts or to administer or enforce laws respecting trading in securities or exchange contracts in that jurisdiction, or

- (ii) conditions that refer to a person or company or to a class of persons or companies designated by the Commission;
- (hh.5) prescribing documents for the purpose of the definition of “core document” in section 211.01(b);
- (hh.6) providing for the application of Part 17.01 to the acquisition of an issuer’s security pursuant to a distribution that is exempt from section 110 and to the acquisition of an issuer’s security in connection with or pursuant to a take-over bid or issuer bid;
- (hh.7) prescribing transactions or classes of transactions for the purposes of section 211.02(d);

**62 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,*

*(d) “board of directors” includes*

- (i) the board of directors of a company,*
- (ii) the board of directors, if any, of each general partner of a limited partnership,*
- (iii) the board of directors of a promoter of an issuer that is not a company or a limited partnership, and*
- (iv) when used in relation to any other issuer not referred to in subclauses (ii) and (iii) that is not a company, persons acting in a*

*capacity similar to that of a board of directors of a company;*

- (l) *“control person” means any person or company that holds or is one of a combination of persons or companies that holds*
  - (i) *a sufficient number of any of the securities of an issuer so as to affect materially the control of that issuer, or*
  - (ii) *more than 20% of the outstanding voting securities of an issuer except where there is evidence showing that the holding of those securities does not affect materially the control of that issuer;*
- (n) *“decision”, when used in relation to the Commission or the Executive Director, means a direction, decision, order, ruling or other requirement made by the Commission or the Executive Director, as the case may be, under a power or right conferred by this Act or the regulations;*
- (o) *“director”, when used in relation to a person, includes a person acting in a capacity similar to that of a director of a company;*
- (w) *“form of proxy” means a written or printed form that, on completion and execution by or on behalf of a security holder, becomes a proxy;*
- (aa) *“insider” or “insider of a reporting issuer” means*
  - (i) *every director or senior officer of a reporting issuer,*
  - (ii) *every director or senior officer of an issuer that is itself an insider of a reporting issuer,*
  - (iii) *every subsidiary of a reporting issuer,*

- (iv) *any person or company that*
  - (A) *beneficially owns, directly or indirectly, voting securities of a reporting issuer,*
  - (B) *exercises control or direction over voting securities of a reporting issuer, or*
  - (C) *beneficially owns, directly or indirectly, certain voting securities of a reporting issuer and exercises control or direction over certain other voting securities of a reporting issuer,*  
  
*carrying more than 10% of the voting rights attached to all voting securities of the reporting issuer for the time being outstanding other than voting securities held by the person or company as underwriter in the course of a distribution,*
- (v) *a reporting issuer if it has purchased, redeemed or otherwise acquired any of its securities, for so long as it holds any of its securities, but a reporting issuer is not an insider of itself if the securities that it has purchased, redeemed or otherwise acquired have been cancelled and returned to its authorized but unissued capital, or*
- (vi) *a person or company that is designated under section 10 or under the regulations as an insider;*
- (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;*

(ll) *“officer” means a senior officer, assistant secretary, assistant comptroller or assistant treasurer of a company and includes any individual*

(i) *designated as an officer of a company by bylaw or similar authority, or*

(ii) *acting in a similar capacity to that of a senior officer, assistant secretary, assistant comptroller or assistant treasurer on behalf of an issuer or registrant;*

(qq) *“private mutual fund” means*

(i) *a mutual fund that is operated as an investment club,*

(A) *the shares or units of which are held by not more than 50 persons,*

(B) *the indebtedness of which has never been offered to the public,*

(C) *which does not pay or give any remuneration for investment advice or in respect of trades in securities or exchange contracts, except normal brokerage fees, and*

(D) *all of the members of which are required to make contributions in proportion to the shares or units each holds for the purpose of financing the club’s operations,*

*or*

(ii) *a mutual fund that consists of*



(A) *a pooled fund maintained solely to serve registered retirement savings plans, registered home ownership savings plans, retirement income funds, deferred profit sharing plans, pension plans, or other such plans registered under the Income Tax Act (Canada),*

(B) *a common trust fund as defined by section 1(1)(g) of the Loan and Trust Corporations Act, or*

(C) *a pooled fund maintained by a trust corporation in which money belonging to various estates and trusts in its care are commingled with the authority of the settlor, testator or trustee for the purpose of facilitating investment, if no general solicitations are made with a view to the sale of a right to participate in the pooled fund,*

*that is administered by a trust corporation and that, but for the applicability of an exemption under the Alberta securities laws, would be registered as a portfolio manager, or that is administered by a trust corporation and*

(D) *has no promoter other than a trust corporation or an affiliate of a trust corporation, and*

(E) *has no manager other than a trust corporation, an affiliate of a trust corporation or a person or company that is a portfolio manager;*

(ccc) *“reporting issuer” means an issuer*

(i) *that has issued voting securities on or after October 1, 1967 in respect of which a prospectus was filed and a receipt for it obtained under a predecessor of this Act or in respect of which a securities*

*exchange take-over bid circular was filed under a predecessor of this Act,*

*(ii) that has*

*(A) filed a prospectus and obtained a receipt for it under this Act, or*

*(B) filed a securities exchange take-over bid circular under this Act on or before June 1, 1999,*

*(iii) any of whose securities have been at any time since February 1, 1982 listed and posted for trading on an exchange recognized under section 62 by the Commission regardless of when the listing and posting for trading commenced,*

*(iv) whose existence continues following the exchange of securities of an issuer in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure where one of the issuers participating in the amalgamation, merger, reorganization, arrangement or other statutory procedure is a reporting issuer, or*

*(v) that the Commission has declared to be a reporting issuer under section 145;*

*(hhh) “self-regulatory organization” means a person or company that represents registrants and is organized for the purpose of regulating the operations and the standards of practice and business conduct of its members and their representatives;*

*(iii) “senior officer” means*

*(i) the chair or vice-chair of the board of directors, the president, vice-president, secretary, comptroller, treasurer or general manager of a company or any other individual who performs functions*

*for an issuer similar to those normally performed by an individual occupying that office, and*

*(ii) each of the 5 highest paid employees of an issuer, including any individual referred to in subclause (i);*

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

*(i) as principal, agrees to purchase securities with a view to distribution, or*

*(ii) as agent, offers for sale or sells securities in connection with a distribution,*

*and includes a person or company that has a direct or indirect participation in the distribution, but does not include,*

*(iii) a person or company whose interest in the transaction is limited to receiving the usual and customary distributor’s or seller’s commission payable by an underwriter or issuer,*

*(iv) a mutual fund that, under the laws of the jurisdiction to which it is subject, accepts its shares or units for surrender and resells them,*

*(v) a company that, under the laws of the jurisdiction to which it is subject, purchases its shares and resells them, or*

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

**3** Section 7 presently reads:

*7 The following are deemed to be an insider of a mutual fund:*

- (a) every management company of a mutual fund that is a reporting issuer;
- (b) every distribution company of a mutual fund that is a reporting issuer;
- (c) every insider of a management company or distribution company referred to in clauses (a) and (b).

**4** Section 8 presently reads:

*8(1) If an issuer becomes an insider of a reporting issuer, every director or senior officer of the issuer is deemed to have been an insider of the reporting issuer for the previous 6 months or for that shorter period during which the director or senior officer was a director or senior officer of the issuer.*

*(2) If a reporting issuer becomes an insider of any other reporting issuer, every director or senior officer of the second-mentioned reporting issuer is deemed to have been an insider of the first-mentioned reporting issuer for the previous 6 months or for that shorter period during which the director or senior officer was a director or senior officer of the second-mentioned reporting issuer.*

**5** Section 22(3) presently reads:

*(3) For the purposes of sections 144, 145, 151, 153 and 212(2) of this Act, sections 1(7), 229(2) and 244(2) of the Cooperatives Act and sections 3(3), 156(2) and 171(3) of the Business Corporations Act, the Chair, a Vice-chair or any member of the Commission may, unless otherwise requested by the applicant, act alone in exercising and performing the powers and duties of the Commission.*

**6** Late filing of periodic disclosure.

**7** Section 40(1) presently reads in part:

40(1) In this section, “party” means

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

**8** Section 58(1) 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, records and other documents of the following for the*

*purpose of determining if that person or company is complying with Alberta securities laws:*

- (i) a manager or a custodian of assets, shares or units of a mutual fund.

**9** Section 76 presently reads:

*76(1) Unless it appears to the Executive Director that*

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

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

*(2) The Executive Director, in granting registration, renewal of registration, reinstatement of registration or amendment to registration, may do one or more of the following:*

- (a) restrict a registration of an applicant by imposing terms and conditions on the registration;

(b) *restrict the duration of a registration of an applicant;*

(c) *restrict the registration of an applicant to trades in certain securities or exchange contracts or a certain class of securities or exchange contracts.*

(3) *The Executive Director shall not refuse to grant, renew, reinstate or amend registration for an applicant or impose terms and conditions on it without giving the applicant an opportunity to have a hearing before the Executive Director.*

(4) *The Executive Director may*

(a) *require any applicant or registrant to deliver to the Executive Director a bond within a specified time, or*

(b) *require a registrant who has previously delivered a bond to deliver a new bond to the Executive Director,*

*and the bond or new bond is to be in an amount and in a form that is satisfactory to the Executive Director.*

**10** Section 77 presently reads:

*77(1) If after a hearing before the Commission, the Commission is of the opinion that a registrant has failed to comply with the Alberta securities laws or has failed to act in the public interest, the Commission may by order*

(a) *suspend, cancel, restrict or impose terms or conditions, or both, on the registration of the registrant, or*

(b) *reprimand the registrant.*

(2) *Where the Commission is to conduct a hearing referred to in subsection (1) it shall give the Executive Director*

- (a) *prior notice of the hearing, and*
- (b) *a copy of any order arising out of the hearing.*

**11** Section 78 presently reads:

*78 Notwithstanding section 77 but subject to the regulations, 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.*

**12** Section 79 presently reads:

*79 If registration has been refused, a further application to the Executive Director for registration may be made*

- (a) *based on material not submitted to the Executive Director at the time of the previous application, or*
- (b) *if the material circumstances have changed.*

**13** Section 80 presently reads:

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

- (a) *be made in the form required by the regulations, and*

- (b) *be accompanied with the fee prescribed by the regulations.*

**14** Section 81 presently reads:

*81 An applicant shall state in the application for registration an address for service in Alberta.*

**15** Section 83 presently reads:

*83(1) The Executive Director may refuse registration to an individual if the Executive Director is satisfied, on the basis of the statements in the application or from any other source of information, that the applicant*

- (a) *has not been a resident of Canada for at least one year immediately prior to the date the application is made,*
- (b) *is not a resident of Alberta at the date the application is made, or*
- (c) *does not intend to make the applicant's permanent home in Alberta if the application is granted.*

*(2) Notwithstanding subsection (1), an individual may be registered if at the date the application is made that individual*

- (a) *is registered in a capacity corresponding to that of a dealer, advisor, underwriter or salesperson under the laws of a province or territory governing securities or exchange contracts, and*
- (b) *has been so registered for a period of not less than one year immediately preceding the date the application is made.*

*(3) The Executive Director may refuse registration to a company or person other than an individual if*



*the Executive Director is satisfied, on the basis of the statements in the application or from any other*

*source of information available to the Executive Director, that one or more of its officers or directors*

- (a) has not been a resident of Canada for at least one year immediately prior to the date the application is made,*
- (b) is not a resident of Alberta at the date the application is made, or*
- (c) does not intend to make the officer's or director's permanent home in Alberta if the application is granted.*

*(4) Notwithstanding subsection (3), a company or person other than an individual may be registered if at the date the application is made one or more of its officers or directors not resident in Alberta is registered in a capacity corresponding to that of a dealer, advisor, underwriter or salesperson under the laws of a jurisdiction where the dealer, advisor, underwriter or salesperson has been so registered for a period of not less than one year immediately preceding the date the application is made.*

*(5) For the purposes of this section, an individual is not deemed to have given up the individual's residence in Canada or Alberta, as the case may be, by reason only of the individual's absence*

- (a) while serving as a member of the Canadian Forces, or*
- (b) while attending a university, college, school, institute or other educational institution.*

**16** Section 100 presently reads:

*100 A person or company shall not, either directly or indirectly, hold out that the person or company is registered under this Act unless the person or company is registered under this Act.*

**17** Section 114 presently reads:

*114(1) If an adverse material change occurs after a receipt for a preliminary prospectus is issued but before a receipt for the prospectus is issued, an amendment to that preliminary prospectus shall be filed within 10 days from the day that the change occurs.*

*(2) An amendment to a preliminary prospectus shall, promptly after it has been filed, be forwarded to each recipient of the preliminary prospectus according to the record maintained under section 125.*

*(3) An amendment to a preliminary prospectus filed under subsection (1) shall, immediately on filing, form part of the preliminary prospectus.*

**18** Section 115 presently reads:

*115(1) If a material change occurs after a receipt for a prospectus is issued but prior to the completion of the distribution under that prospectus, an amendment to the prospectus shall be filed within 10 days from the day that the change occurs.*

*(2) The Executive Director may issue a receipt for an amendment filed under subsection (1) unless the Executive Director considers that it is not in the public interest to do so.*

*(3) The Executive Director shall not issue a receipt for an amendment filed under subsection (1) if it appears to the Executive Director that any of the circumstances set out in section 120(2) are present.*

*(4) An amendment to a prospectus filed under subsection (1) shall, immediately on a receipt being issued for the filing, form part of the prospectus.*

**19** Section 116 presently reads:

*116(1) A preliminary prospectus, a prospectus and an amendment to a prospectus filed with the Executive Director shall contain a certificate signed*

- (a) in the case of a company, by
  - (i) the chief executive officer,*
  - (ii) the chief financial officer, and*
  - (iii) any 2 directors, other than those persons referred to in subclauses (i) and (ii), who are duly authorized by the board of directors to sign on behalf of the board of directors,**
- (b) in the case of an issuer other than a company, by the persons who perform the functions for the issuer that are similar to the functions performed by the persons referred to in clause (a),*
- (c) by the person or company who is a promoter or guarantor of the issuer, if any, and*
- (d) by any other person as the Executive Director requires.*

*(2) A certificate referred to in subsection (1) that is contained in a preliminary prospectus or a prospectus shall state the following:*

*The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part 9 of the Securities Act and the regulations under it.*

*(3) A certificate referred to in subsection (1) that is contained in an amendment to a prospectus shall state the following:*

*The foregoing, together with the prospectus dated \_\_\_\_\_, constitutes full, true and plain disclosure of all material facts relating to the securities offered by the*

*prospectus as required by Part 9 of the Securities Act and the regulations under it.*

*(4) A prospectus filed under section 110(2) shall contain a certificate signed*

- (a) in the case of a company, by*
  - (i) the chief executive officer,*
  - (ii) the chief financial officer, and*
  - (iii) any 2 directors, other than those persons referred to in subclauses (i) and (ii), who are duly authorized by the board of directors to sign on behalf of the board of directors,*
- (b) in the case of an issuer other than a company, by the persons who perform the functions for the issuer that are similar to the functions performed by the persons referred to in clause (a),*
- (c) by the person or company that is a promoter or guarantor of the issuer, if any, and*
- (d) by any other person as the Executive Director requires.*

*(5) A certificate referred to in subsection (4) shall state the following:*

*The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities previously issued by the issuer as required by Part 9 of the Securities Act and the regulations under it.*

*(6) Notwithstanding subsection (1) or (4), if the Executive Director is satisfied that*

- (a) subsection (1) or (4) can not be complied with, and*

- (b) *the preliminary prospectus, prospectus or amendment to a prospectus, as the case may be, meets all other requirements for filing,*

*the Executive Director may waive the requirements of subsection (1) or (4), as the case may be, and prescribe specific signing requirements in respect of that preliminary prospectus, prospectus or amendment to a prospectus.*

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

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

*(8) Notwithstanding subsection (1) or (4), the Executive Director may*

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

**20** Section 117 presently reads:

*117(1) If there is an underwriter, a preliminary prospectus and a prospectus shall contain a certificate in the following form, signed by the underwriter who, with respect to the securities offered by the prospectus, is in a contractual relationship with the issuer or security holder whose securities are being offered by the prospectus:*

*To the best of our knowledge, information and belief, the foregoing constitutes full, true*

*and plain disclosure of all material facts relating to the securities offered by this*

*prospectus as required by Part 9 of the Securities Act and the regulations under it.*

*(2) If there is an underwriter, an amendment to a prospectus shall contain a certificate in the following form, signed by the underwriter who, with respect to the securities offered by the prospectus, is in a contractual relationship with the issuer or security holder whose securities are being offered by the prospectus:*

*To the best of our knowledge, information and belief, the foregoing, together with the prospectus dated \_\_\_\_\_, contains full, true and plain disclosure of all material facts relating to the securities offered by the prospectus as required by Part 9 of the Securities Act and the regulations under it.*

*(3) Notwithstanding subsections (1) and (2), the Executive Director may authorize an agent of an underwriter duly appointed in writing by the underwriter for the purpose to sign the certificate on behalf of the underwriter.*

**21** Section 118 presently reads:

*118(1) Every prospectus shall contain*

- (a) a statement of the rights given to a purchaser by sections 130 and 203, and*
- (b) a statement of the limits on the time within which an action to enforce a right under section 203 must be commenced.*

*(2) Every prospectus of a mutual fund shall contain, in addition to the statements required under subsection (1), a statement of the rights given to the purchaser by section 210.*

**22** Section 120 presently reads:

*120(1) The Executive Director may issue a receipt for a prospectus filed under this Part unless the Executive Director considers that it is not in the public interest to do so.*

*(2) The Executive Director shall not issue a receipt under subsection (1) if it appears to the Executive Director that*

- (a) the prospectus or any document required to be filed with it*
  - (i) fails to comply in any substantial respect with any of the requirements of this Part or the regulations,*
  - (ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive, or*
  - (iii) contains a misrepresentation,*
- (b) an unconscionable consideration has been paid or given or is intended to be paid or given for promotional purposes or for the acquisition of property,*
- (c) the proceeds from the sale of the securities to which the prospectus relates that are to be paid into the treasury of the issuer, together with other resources of the issuer, are insufficient to accomplish the purpose of the issue stated in the prospectus,*
- (d) having regard to the financial condition of the issuer or an officer, director, promoter or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer, the issuer cannot reasonably be expected to be financially responsible in the conduct of its business,*

- (e) *the past conduct of the issuer or an officer, director, promoter or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its security holders,*
  - (f) *an escrow or pooling agreement that the Executive Director considers necessary or advisable with respect to securities has not been entered into,*
  - (g) *an agreement that the Executive Director considers necessary or advisable to accomplish the objects indicated in the prospectus for the holding in trust of the proceeds payable to the issuer from the sale of the securities pending the distribution of the securities has not been entered into,*
  - (h) *in the case of a prospectus filed by a finance company*
    - (i) *the plan of distribution of the securities offered is not in the public interest,*
    - (ii) *the securities offered are not secured in a manner, on those terms and by those means as are required by the regulations,*  
*or*
    - (iii) *the finance company does not meet those financial and other requirements and conditions that are specified in the regulations,*
- or*
- (i) *a person or company that*
    - (i) *has prepared or certified any part of the prospectus, or*



- (ii) *is named as having prepared or certified a report or valuation used in or in connection with a prospectus*

*is not acceptable to the Executive Director.*

*(3) No person or company filing a prospectus shall be refused a receipt for that prospectus without an opportunity to have a hearing before the Executive Director.*

*(4) If in the opinion of the Executive Director a preliminary prospectus, pro forma prospectus or prospectus raises*

- (a) a material question involving the public interest, or*
- (b) a question of interpretation respecting a provision of subsection (2) not previously considered by the Commission,*

*that might result in the Executive Director refusing to direct the issue of a receipt, the Executive Director may refer the question to the Commission for determination.*

*(5) For the purpose of referring a question to the Commission, the Executive Director shall submit to the Commission*

- (a) a written statement setting out the question,*
- (b) a written statement of the facts on which the question is based, and*
- (c) any additional material*
  - (i) that the Executive Director considers necessary for the determination of the question, or*
  - (ii) that is requested by the Commission.*

*(6) On receipt by the Commission of the question, the statement of the facts and any additional*

*material submitted under subsection (5), the Commission shall promptly serve on those persons or companies that in the opinion of the Commission should be served,*

- (a) a copy of the question, and*
- (b) any other material that the Commission considers necessary.*

*(7) The Commission after hearing the matter shall decide the question.*

*(8) Subject to any order of the Court of Appeal made under section 38, the decision of the Commission on the question is binding on the Executive Director.*

**23** Section 121 presently reads:

*121(1) In this section, "lapse date" means*

- (a) in the case of a prospectus, the date on which a prospectus ceases to be valid for the distribution of securities for which the prospectus was filed, and*
- (b) in the case of a summary statement, the date on which a summary statement ceases to be valid for the distribution of securities for which the summary statement was filed.*

*(2) Subject to subsection (6), a distribution of a security to which section 110(1) applies shall not continue after the lapse date of the prospectus that relates to that security unless a new prospectus that complies with this Part is filed and the Executive Director has issued a receipt for it.*

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

*(4) Notwithstanding subsection (2), the Executive Director may by order restrict the period of time to*

*less than 12 months within which securities may be distributed pursuant to a prospectus.*

*(5) If the Executive Director has made an order under subsection (4), the Executive Director may extend the period of time stated in the order to a period of time that is not greater than that allowed under subsection (2).*

*(6) A distribution may be continued for a further 12 months beyond the lapse date of a prospectus if*

- (a) a pro forma prospectus prepared in accordance with the regulations is filed not less than 30 days prior to the lapse date of the prospectus,*
- (b) a new prospectus is filed within 10 days following the lapse date of the prospectus, and*
- (c) a receipt for the new prospectus referred to in clause (b) is issued by the Executive Director within the 20 days following the lapse date of the prospectus.*

*(7) Subject to any extension granted under subsection (9), all trades completed in reliance on subsection (6) after the lapse date may be cancelled at the option of the purchaser if any of the conditions to*

*the continuation of a distribution under subsection (6) are not complied with.*

*(8) A purchaser must exercise the purchaser's option under subsection (7) within 90 days from the day on which the purchaser became aware that a condition under subsection (6) was not complied with.*

*(9) The Commission may, on an application of a reporting issuer, extend the time limits prescribed under subsection (6) if the Commission considers that it would not be prejudicial to the public interest to do so.*

**24** Section 124 presently reads:

*124 Any dealer acting under section 123 shall, in addition to the requirements of section 123(c), send a copy of the preliminary prospectus to each prospective purchaser who, without solicitation,*

- (a) indicates an interest in purchasing the security, and*
- (b) requests a copy of the preliminary prospectus.*

**25** Section 125 presently reads:

*125 A dealer acting under section 123 shall maintain a record of the names and addresses of all persons and companies to whom the preliminary prospectus has been forwarded.*

**26** Section 126 presently reads in part:

*(2) An order made under subsection (1) remains in force until a revised preliminary prospectus satisfactory to the Executive Director is filed and forwarded to each recipient of the defective preliminary prospectus who was shown on the record maintained under section 125 to have received the defective preliminary prospectus.*

**27** Section 129 presently reads:

*129 A dealer, not acting as an agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which section 110(1) or 121 applies, unless the dealer has previously done so, shall send to a purchaser of the security the latest prospectus and any amendment to the prospectus filed either*

- (a) *before entering into an agreement of purchase resulting from the order or subscription, or*
- (b) *not later than midnight on the 2nd day, exclusive of Saturdays and holidays, after entering into the agreement.*

**28** Section 130 presently reads:

*130(1) An agreement to purchase securities offered in a subscription to which section 110(1) or 121 applies is not binding on the purchaser if the dealer receives, not later than midnight on the 2nd day exclusive of Saturdays and holidays, after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, notice in writing that the purchaser does not intend to be bound by the agreement of purchase.*

*(2) A beneficial owner who is not the purchaser under this section may exercise the same rights under subsection (1) as may be exercised by a purchaser.*

*(3) A purchaser referred to in subsection (1) who is not the beneficial owner of the securities shall advise the person or company that is the beneficial owner of the securities of the provisions of subsections (1) and (2).*

*(4) Subsection (3) only applies if the purchaser knows the name and address of the beneficial owner of the securities.*

*(5) Subsections (1) to (3) do not apply if the beneficial owner of the securities is a registrant.*

*(6) The receipt of the notice referred to in subsection (1) by a dealer is deemed to be receipt of the notice by the vendor of the security.*

*(7) The onus of proving that the time for giving notice under subsection (1) has expired is on the*

*dealer from whom the purchaser has agreed to purchase the security.*

**29** 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 any issuer profile supplement or 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 any issuer profile supplement or 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).*

**30** Section 146 presently reads:

*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.*

**31** Sections 149 to 152 presently read:

*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.*

*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.*

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

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

*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.*

**32** Section 154 presently reads:

*154 In this Part,*

*(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 pursuant to the regulations,*

*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.*



**33** Repeals sections dealing with take-over bids and issuer bids.

**34** Sections 176 to 178 presently read:

*176(1) Every offeror, other than an offeror under a formal bid, that acquires beneficial ownership of, or the power to exercise control or direction over,*

- (a) voting or equity securities of any class of a reporting issuer, or*
- (b) securities convertible into voting or equity securities of any class of a reporting issuer,*

*that, together with the offeror's securities of that class, would constitute 10% or more of the outstanding securities of that class, shall*

- (c) promptly issue and file with the Executive Director a news release containing the information prescribed by the regulations, and*
- (d) within 2 business days from the day of the acquisition file with the Executive Director a report containing the same information contained in the news release issued under clause (c).*

*(2) Where an offeror is required to file a report under subsection (1) and*

- (a) the offeror or any person or company acting jointly or in concert with the offeror acquires*
  - (i) beneficial ownership of,*
  - (ii) the power to exercise control or direction over, or*
  - (iii) securities convertible into,*

*an additional 2% or more of the outstanding securities of the class, or*

- (b) there is a change in a material fact in that report,*

*the offeror that filed that report shall*

- (c) promptly issue and file with the Executive Director a news release containing the information prescribed by the regulations, and*

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

*(3) After the filing of a report under subsection (2) by an offeror, every time that*

- (a) the offeror or any person or company acting jointly or in concert with the offeror acquires*

- (i) beneficial ownership of,*

- (ii) the power to exercise control or direction over, or*

- (iii) securities convertible into,*

*an additional 2% or more of the outstanding securities of the class, or*

- (b) there is a change in a material fact in the latest report filed under this section,*

*that offeror shall*

- (c) promptly issue and file with the Executive Director a news release containing the information prescribed by the regulations, and*

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

*(4) During the period*

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

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

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

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

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

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

*(a) is the beneficial owner of, or*

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

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

*177(1) If, during the period*

*(a) after the commencement of a formal bid that is made for the voting or equity securities of*

*an offeree issuer that is a reporting issuer,  
and*

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

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

- (c) not later than the opening of trading on the next business day issue a news release containing the information prescribed by the regulations, and*
- (d) promptly file a copy of the news release with the Executive Director.*

*(2) Where*

- (a) an offeror that is required to file a news release under subsection (1), or*
- (b) any person or company acting jointly or in concert with the offeror,*

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

- (c) not later than the opening of trading on the next business day issue a further news release containing the information prescribed by the regulations, and*
- (d) promptly file a copy of the news release with the Executive Director.*

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

- (a) not later than the opening of trading on the next business day issue a further news release containing the information prescribed by the regulations, and*
- (b) promptly file a copy of the news release with the Executive Director.*

*178 Where the facts*

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

*under sections 176 and 177 are identical, a report or news release is required only under the provision requiring the earlier report or news release, as the case may be.*

**35** Section 179 presently reads:

*179(1) On application of an interested person, the Commission may, where it is of the opinion that a person or company has not complied or is not complying with this Part or the regulations made in respect of this Part, by order do one or more of the following:*

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

*(b) require*

- (i) an amendment or correction to or variation of any document or advertisement used or issued in connection with a bid, and*
- (ii) the distribution of any amended, corrected or varied document or advertisement referred to in subclause (i);*
- (c) direct any person or company to comply with this Part or the regulations made in respect of this Part;*
- (d) restrain any person or company from contravening this Part or the regulations made in respect of this Part;*
- (e) direct the directors and senior officers of the person or company to cause the person or company to comply with or to cease contravening this Part or the regulations made in respect of this Part.*

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

- (a) notwithstanding section 168(2), permit an agreement, commitment or understanding to be entered into or made with a selling security holder on determining that the agreement, commitment or understanding is being made for reasons other than to increase the value of the consideration to be paid to the selling security holder for that holder's securities;*
- (b) vary the time periods set out in this Part and the regulations made in respect of this Part;*
- (c) exempt any person or company from any requirement of this Part or the regulations made in respect of this Part if the*

*Commission considers that it would not be prejudicial to the public interest to do so.*

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

**36** Section 180 presently reads:

*180(1) On the application of an interested person, the Court of Queen's Bench, where it is satisfied that a person or company has not complied with this Part or the regulations made in respect of this Part, may make an interim or final order*

- (a) compensating any interested person who is a party to the application for damages suffered as a result of a contravention of this Part or the regulations made in respect of this Part;*
- (b) rescinding a transaction with any interested person, including the issue of a security or a purchase and sale of a security;*
- (c) requiring any person or company to dispose of any securities acquired pursuant to or in connection with a bid;*
- (d) prohibiting any person or company from exercising any or all of the voting rights attaching to any securities;*
- (e) requiring the trial of an issue;*
- (f) respecting any matter not referred to in clauses (a) to (e) that the Court considers proper.*

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

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

**37** Section 181 presently reads:

*181(1) In this Part,*

- (a) “mutual fund” means, except in section 185, a mutual fund that is a reporting issuer;*
- (b) “related mutual funds” includes more than one mutual fund under common management;*
- (c) “related person or company” means, in relation to a mutual fund, a person in whom or a company in which, the mutual fund, its management company and its distribution company are prohibited by this Part from making any investment.*

*(2) For the purposes of this Part,*

- (a) any issuer in which*
  - (i) a mutual fund holds in excess of 10% of the voting securities, or*
  - (ii) a mutual fund and related mutual funds hold in excess of 20% of the voting securities,*

*is deemed to be a related person or company of that mutual fund or of each of those mutual funds, as the case may be;*
- (b) the acquisition or disposition of a put, call or other option with respect to a security is deemed to be a change in the beneficial ownership of the security to which the put, call or other option relates;*
- (c) with respect to reporting under section 182, ownership is deemed to pass at the time*
  - (i) an offer to sell is accepted by the purchaser or the purchaser’s agent, or*



- (ii) *an offer to buy is accepted by the vendor or the vendor's agent.*

**38** Section 182 presently reads:

*182(1) Subject to the regulations, a person or company that becomes an insider of a reporting issuer, other than a mutual fund, shall file a report with the Executive Director disclosing any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer.*

*(2) Subject to the regulations, an insider*

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

*shall file with the Executive Director a report of the following:*

- (c) the insider's direct or indirect beneficial ownership of or the insider's control or direction over securities of the reporting issuer;*
- (d) the transfer, if any, of the insider's securities of the reporting issuer into the name of an agent, nominee or custodian other than giving collateral for a bona fide debt;*
- (e) the change or changes in the report or latest report, as the case may be, setting out those details of each transaction that are required by the regulations.*

*(3) Subject to the regulations, a person or company that becomes an insider of a reporting issuer by*

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

**39** Early warning.

**40** Section 183 presently reads:

*183 If voting securities are registered in the name of a person or company other than the beneficial owner and the person or company knows that*

*(a) the securities are beneficially owned by an insider, and*

*(b) the insider has failed to file a report of ownership as required by this Part,*

*the person or company shall file with the Executive Director a report in accordance with the regulations unless the transfer to the person or company was for the purpose of giving collateral for a bona fide debt.*

**41** Section 187 presently reads:

*187 The Commission may, if it is satisfied that a particular investment or class of investment is in fact in the best interests of a mutual fund, order that section 185 or 186 does not apply to that investment or class of investment.*

**42** Standard of care for management of investment fund.

**43** Authorized exceptions to prohibitions. Oversight, etc., of investment funds.

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

(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.*

*(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.*

*(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.*

**45** Section 199 presently reads:

*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 \$1 000 000 for each contravention or failure to comply.*

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

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

*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.*

**47** Section 205 presently reads in part:

*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.*

*(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.*

**48** Defence to liability for misrepresentation.

**49** Section 206 presently reads in part:

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,*
- (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*
  - (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, or*

**50** Section 208 presently reads in part:

- (3) *On application by the Executive Director or by any person or company that was at the time of a*



*transaction referred to in section 207(7), or is at the time of the application, a security holder of the mutual fund, the Court of Queen's Bench may make an order,*

- (a) requiring the Executive Director, or*
- (b) authorizing the person or company or the Executive Director,*

*to commence and prosecute or to continue an action in the name of and on behalf of the mutual fund to enforce the liability created by section 207(7).*

*(4) The Court shall not make an order under subsection (3) unless it is satisfied that*

- (a) the Executive Director or the person or company has reasonable grounds for believing that the mutual fund has a cause of action under section 207(7), and*
- (b) the mutual fund has either*
  - (i) refused or failed to commence an action under section 207(7) within 60 days from the day that it received a written request from the Executive Director or the person or company to do so, or*
  - (ii) failed to prosecute diligently an action commenced by it under section 207(7).*

*(5) If an action under section 207(5) or (7) is commenced, commenced and prosecuted or continued, by a board of directors of a reporting issuer, the Court of Queen's Bench may order that the costs properly incurred by the board of directors in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the reporting issuer, if the Court is satisfied that the action was, on its face, in the best interests of the reporting issuer and its security holders.*

*(9) Notice of every application under subsection (1) or (3) must be given to the Executive Director, the*

*reporting issuer, or the mutual fund, as the case may be, and each of them may appear and be heard.*

*(10) In every action commenced, commenced and prosecuted or continued by the Executive Director under this section, the reporting issuer or mutual fund, as the case may be, shall provide to the Executive Director all books, records, documents and other material or information*

*(a) that are*

*(i) known to the reporting issuer or mutual fund, or*

*(ii) reasonably ascertainable by the reporting issuer or mutual fund, and*

*(b) that are relevant to the action.*

**51** Section 210 presently reads:

*210(1) Every purchaser of a security of a mutual fund may, if the amount of the purchase does not exceed the sum of \$50 000, rescind the purchase.*

*(2) A purchaser may rescind a purchase under subsection (1) by sending written notice of the rescission to the registered dealer from whom the purchase was made within*

*(a) 48 hours from the time the purchaser received the confirmation for a lump sum purchase, or*

*(b) 60 days from the day the purchaser received the confirmation for the initial payment under a contractual plan.*

*(3) Subject to subsection (5), the amount the purchaser is entitled to recover on exercise of the right to rescind under this section shall not exceed the net asset value of the securities purchased at the time the right to rescind is exercised.*

*(4) The right to rescind a purchase made under a contractual plan may be exercised only with respect to payments scheduled to be made within the time specified in subsection (2) for rescinding a purchase made under a contractual plan.*

*(5) Every registered dealer from whom the purchase was made shall reimburse the purchaser who has exercised the purchaser's right of rescission in accordance with this section for the amount of sales charges and fees relevant to the investment of the purchaser in the mutual fund in respect of the shares or units of which the notice of rescission was given.*

**52** Addition of Part dealing with civil liability for secondary market disclosure.

**53** The heading to Part 17.1 presently reads:

*Interjurisdictional Compliance*

**54** Section 211.1 presently reads in part:

*211.1(1) In this Part,*

*(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;*

**55** Section 211.2 presently reads:

*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.*

**56** Section 211.4 presently reads:

*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.*

**57** Sections 211.41 and 211.42 presently read:

*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.*

*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.*

**58** Section 211.5 presently reads:

*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.*

**59** Section 211.6 presently reads in part:

*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).*

**60** Section 217(4) presently reads:

*(4) If a document referred to in subsection (1) is sent to a person or company by prepaid post and is returned on 3 successive occasions because the person or company cannot be found, then there is no further requirement to send any further documents to that person or company until the person or company provides to the sender notification in writing of the person's or company's new address.*

**61** Adds new regulation-making authority.

**62** Coming into force.