

2008 Bill 38

First Session, 27th Legislature, 57 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 38

SECURITIES AMENDMENT ACT, 2008

MR. FAWCETT

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 38
Mr. Fawcett

BILL 38

2008

SECURITIES AMENDMENT ACT, 2008

(Assented to , 2008)

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) by repealing clause (nn);

(b) by repealing clause (ss).

3 Section 22(1) is amended by striking out “Vice-chair” and substituting “a Vice-chair”.

4 Section 61(b) is amended by striking out “carrying on business as an investment dealer”.

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,

(nn) “portfolio manager” means an advisor registered for the purpose of managing the investment portfolio of the advisor’s clients through discretionary authority granted by the clients;

(ss) “prospectus” includes amendments made to a prospectus;

3 Section 22(1) presently reads:

22(1) The Commission may authorize in writing any member of the Commission, including the Chair or Vice-chair, to do any act or thing required or permitted to be done by the Commission under this Act, the regulations or any other Act.

4 Section 61(b) presently reads:

61 Any reference in this Part

5 Section 90 is repealed.

6 Section 92 is amended

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

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

(i) that the security will be listed on any exchange or quoted on any quotation and trade reporting system, unless the exchange or quotation and trade reporting system has granted approval to the listing or quoting of the security, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation, or

(b) to a member of a self-regulatory organization includes any person or company carrying on business as an investment dealer that agrees to be regulated by that self-regulatory organization;

5 Section 90 presently reads:

90(1) Every registered dealer who has acted as principal or agent in connection with any trade in a security or an exchange contract shall promptly send to the customer a written confirmation of the transaction prepared in accordance with the regulations.

(2) Every dealer who has acted as agent in connection with a trade in a security or an exchange contract shall, at the request of the Executive Director, promptly

(a) make a reasonable inquiry in order to provide to the Executive Director particulars that are sufficient to identify, and

(b) provide to the Executive Director the name of and those particulars arising from the inquiry that are sufficient to identify,

the person or company from, to or through whom the security or exchange contract was bought or sold.

6 Section 92 presently reads in part:

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

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

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

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

(A) unless

- (ii) that application has been made to list the security on any exchange or to quote the security on any quotation and trade reporting system, unless
 - (A) application has been made to list or quote the security on such exchange or quotation and trade reporting system and securities of the same issuer are currently listed on that exchange or quoted on that quotation and trade reporting system, as the case may be, or
 - (B) the exchange or quotation and trade reporting system has granted approval to the listing or quoting of the security, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation,

or

- (iii) that application will be made to list the security on any exchange or to quote the security on any quotation and trade reporting system.

(b) in subsection (5)(c) by striking out “or conditions” and substituting “, conditions, restrictions or requirements”.

7 Section 101 is amended by striking out “or” at the end of clause (a), adding “or” at the end of clause (b) and adding the following after clause (b):

- (c) an issuer’s disclosure.

8 Section 192 is repealed.

(I) the securities being traded, and

(II) securities of the same issuer,

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

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

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

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

7 Section 101 presently reads:

101 No person or company shall make any representation that the Commission, a member of the Commission, the Executive Director, the Secretary or any person employed by the Commission has in any manner expressed an opinion or passed judgment on

(a) the financial standing, fitness or conduct of a registrant, or

(b) the merits of a security, exchange contract or issuer.

8 Section 192 presently reads:

192(1) In this section, “responsible person” means a portfolio manager and includes

9 Section 193 is amended by striking out “a portfolio manager” wherever it appears and substituting “an adviser”.

- (a) every individual who is a partner, director or officer of a portfolio manager,
- (b) every affiliate of a portfolio manager, and
- (c) every individual who is
 - (i) a director, officer or employee of an affiliate of a portfolio manager, or
 - (ii) is an employee of the portfolio manager,

if the affiliate or the individual participates in the formulation of, or has access prior to the implementation of, investment decisions made on behalf of or the advice given to the client of the portfolio manager.

(2) A portfolio manager shall not knowingly cause any investment in a portfolio managed by it to be made up of any of the following:

- (a) an investment in any issuer in which a responsible person or an associate of a responsible person is an officer or director unless
 - (i) that specific fact is disclosed to the client, and
 - (ii) the written consent of the client to the investment is obtained before the purchase;
- (b) a purchase or sale of the securities of any issuer from or to the account of a responsible person or any associate of a responsible person;
- (c) a loan made to a responsible person or an associate of a responsible person.

9 Section 193 presently reads:

193 No person or company that has access to

- (a) *information concerning the investment program of a mutual fund, or*
- (b) *the investment portfolio managed for a client by a portfolio manager,*

10 Section 194(2) is amended by adding “or 221.1” after “92(4.1)”.

11 Section 198(1) is amended

- (a) in clause (b.1) by striking out “terms and conditions” and substituting “terms, conditions, restrictions or requirements”;**
- (b) in clause (d) by adding “, registrant or investment fund manager” after “issuer”;**
- (c) in clause (e) by adding “, registrant or investment fund manager” after “issuer”;**
- (d) by adding the following after clause (e):**
 - (e.1) that a person or company is prohibited from advising in securities or exchange contracts;

shall purchase or sell securities of an issuer for the person's or company's account if

- (c) the portfolio securities of
 - (i) the mutual fund, or*
 - (ii) the investment portfolio managed for a client by a portfolio manager**
- include securities of that issuer, and*
- (d) the information is used by the person or company for the person's or company's direct benefit or advantage.*

10 Section 194(2) presently reads:

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

11 Section 198(1) presently reads in part:

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:

- (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;*
- (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;*

- (e.2) that a person or company is prohibited from becoming or acting as a registrant, investment fund manager or promoter;
- (e.3) that a person or company is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- (e.4) that a person or company referred to in subsection (1.01) submit to a review of its practices and procedures;
- (e.5) that a person or company referred to in subsection (1.01) make changes to its practices and procedures;

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

(1.01) An order under subsection (1)(e.4) or (e.5) may be made against

- (a) an exchange or a quotation and trade reporting system,
- (b) a self-regulatory organization,
- (c) a clearing agency,
- (d) a registrant,
- (e) a partner, director, officer, insider or control person of a registrant,
- (f) a person providing record-keeping services to a registrant,
- (g) a person that manages a compensation, contingency or similar fund formed to compensate clients of dealers or advisers,
- (h) an issuer,
- (i) an investment fund manager or custodian of assets or securities of an investment fund,
- (j) a transfer agent or registrar for securities of an issuer,
- (k) a director, officer, insider or control person of an issuer,

- (l) a general partner of a person or company referred to in this subsection, or
- (m) a person or company that the Commission has ordered is exempt from a provision of Alberta securities laws.

12 Section 205.1 is renumbered as section 205.1(1) and the following is added after subsection (1):

(2) Subsection (1) does not relieve a person or company of liability respecting forward-looking information in a financial statement or forward-looking information in a document released in connection with an initial public offering.

13 Section 207(7) is repealed and the following is substituted:

- (7) Any person or company that has access to information concerning
- (a) the investment program of a mutual fund, or
 - (b) the investment portfolio managed for a client by an adviser

and uses the information for the person's or company's direct benefit or advantage to purchase or sell securities of an issuer for the person's or company's accounts is accountable to the mutual fund or the client of the adviser for any benefit or

12 Section 205.1 presently reads:

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.*

13 Section 207(7) presently reads:

(7) Any person or company that has access to information concerning

- (a) the investment program of a mutual fund, or*
- (b) the investment portfolio managed for a client by*
 - (i) a portfolio manager, or*
 - (ii) a registered dealer acting as a portfolio manager,*

advantage received or receivable as a result of the purchase or sale, if the securities of that issuer are included in the portfolio securities of the mutual fund or the investment portfolio managed for the client by the adviser, as the case may be.

14 Section 209 is repealed.

and uses the information for the person's or company's direct benefit or advantage to purchase or sell securities of an issuer for the person's or company's accounts is accountable to the mutual fund or the client of the portfolio manager or registered dealer, as the case may be, for any benefit or advantage received or receivable as a result of the purchase or sale, if the securities of that issuer are included, as the case may be, in the investment portfolio managed for the client by the portfolio manager or registered dealer, or the portfolio securities of the mutual fund.

14 Section 209 presently reads:

209(1) If section 94(1) applies to a contract and the section is not complied with, a person or company that has entered into the contract may rescind the contract only if the person or company is the owner of the securities at the time notice for rescission is given.

(2) A person or company may rescind a contract under subsection (1) by sending written notice of rescission to the registered dealer within 60 days from the day of the delivery of the security to or by the person, as the case may be.

(3) If section 90(1) applies to a contract and a registered dealer has failed to comply with the regulations by not disclosing that the registered dealer acted as principal, a person or company that has entered into the contract may rescind the contract.

(4) A person or company may rescind a contract under subsection (3) by sending written notice of rescission to the registered dealer within 7 days from the day of the delivery of the written confirmation of the contract.

(5) In an action respecting a rescission to which this section applies, the onus of proving compliance with section 90 or 94 is on the registered dealer.

(6) No action respecting a rescission under this section shall be commenced after the expiration of a period of 90 days from the day of the sending of the notice under subsection (2) or (4).

15 Section 217(1)(c) is amended by striking out “that produces a printed copy”.

16 The following is added after section 221:

Misleading information

221.1(1) In this section, “Commission” includes the Executive Director and any member, officer, employee, appointee or agent of the Commission.

(2) No person or company shall make a statement, whether oral or written, in any document, material, information or evidence provided to the Commission, that, in a material respect and at the time and in light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading.

17 Section 223 is amended

(a) by repealing clause (j)(vii) and substituting the following:

(vii) governing the circumstances in which a person or company is required to disclose or furnish information to the public or the Commission;

(b) in clause (k) by striking out “prescribing” and substituting “governing”;

(c) in clause (hh.1)(v) by adding “and officers, or persons or companies performing similar functions in relation to reporting issuers,” after “reporting issuers”.

15 Section 217(1)(c) presently reads:

217(1) Unless otherwise provided by the Alberta securities laws, any document required to be sent, communicated, delivered or served under the Alberta securities laws may be

(c) sent by electronic means that produces a printed copy to the person or company that is to receive it.

16 Misleading information.

17 Additional regulation-making powers.

18 Section 229(b) is amended by striking out “conditions or restrictions” **and substituting** “terms, conditions, restrictions or requirements”.

19 The following provisions are amended by striking out “the Alberta securities laws” **wherever it occurs and substituting** “Alberta securities laws”:

section 11(1);
section 19(1);
section 40(2);
section 41(1)(a), (2);
section 45(c);
section 47(1)(e)(i);
section 48(1)(f)(i);
section 60.1(2)(a)(ii);
section 63(4)(a);
section 65(4);
section 111(1);
section 113(1)(b), (2);
section 126(1);
section 197(1), (2), (4)(k);
section 198(1)(c), (i);
section 202(1)(a), (2)(a), (3);
section 211.1(1)(a);
section 211.3(1);
section 213;
section 217(1);
section 221(1), (2);
section 222(2);
section 223(h), (j.4), (s)(i).

20 The Securities Amendment Act, 2007 is amended by **repealing section 2(e).**

18 Section 229 presently reads:

229 A regulation or rule may authorize the Commission or the Executive Director to grant an exemption to the regulation or rule

(a) in whole or in part, and

(b) subject to conditions or restrictions.

19 Changes references to Alberta securities laws.

20 Consequential amendment.

21 Sections 2(a), 5, 8, 9, 13, 14 and 20 come into force on Proclamation.

21 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To

Stage	Date	Member	From	To

Stage	Date	Member	From	To

Stage	Date	Member	From	To