

2011 Bill 4

Fourth Session, 27th Legislature, 60 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 4

SECURITIES AMENDMENT ACT, 2011

DR. BROWN

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 4
Dr. Brown

BILL 4

2011

SECURITIES AMENDMENT ACT, 2011

(Assented to , 2011)

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 (f) and substituting the following:

- (f) “clearing agency” means a person or company that,
 - (i) with respect to trades in securities, acts as an intermediary in paying funds or delivering securities, or both,
 - (ii) provides centralized facilities through which trades in securities or exchange contracts are cleared, or
 - (iii) provides centralized facilities as a depository of securities;

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

- (kk) “offering memorandum” means
 - (i) an offering memorandum that is required to be delivered under Alberta securities laws, or

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,

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

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

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

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

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

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

(ccc) “reporting issuer” means an issuer

(ii) a document designated as an offering memorandum pursuant to an order made under section 10;

(c) in clause (ccc) by adding the following after subclause (v):

(vi) that is designated as a reporting issuer pursuant to an order made under section 10;

(d) by repealing clause (ggg)(xvi) and substituting the following:

(xvi) any item or thing that is a futures contract or an option,

- (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 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,*
- (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) *that has exchanged its securities with another issuer or with the holders of the securities of that other issuer in connection with an amalgamation, merger, reorganization, arrangement or similar transaction if one of the parties to the amalgamation, merger, reorganization, arrangement or similar transaction was a reporting issuer at the time of the amalgamation, merger, reorganization, arrangement or similar transaction;*
- (v) *that the Commission has declared to be a reporting issuer under section 145;*
- (ggg) *“security” includes*
 - (i) *any document, instrument or writing commonly known as a security;*
 - (ii) *any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company;*
 - (iii) *any document constituting evidence of an interest in an association of legatees or heirs;*
 - (iv) *any document constituting evidence of an option, subscription or other interest in or to a security;*

- (v) *any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than*
 - (A) *a contract of insurance issued by an insurance company, or*
 - (B) *an evidence of deposit issued by a financial institution;*
- (vi) *any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets other than a contract issued by an insurance company that provides for payment at maturity of an amount of not less than 3/4 of the premiums paid by the purchaser for a benefit payable at maturity;*
- (vii) *any agreement under which money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company;*
- (viii) *any certificate of share or interest in a trust, estate or association;*
- (ix) *any profit-sharing agreement or certificate;*
- (x) *any certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate;*
- (xi) *any oil or natural gas royalties or leases or fractional or other interest in them;*
- (xii) *any collateral trust certificate;*
- (xiii) *any income or annuity contract not issued by an insurance company;*
- (xiv) *any investment contract;*
- (xv) *any document constituting evidence of an interest in a scholarship or educational plan or trust,*
- (xvi) *any item or thing not referred to in subclauses (i) to (xv) that is a futures contract or option but is not an exchange contract,*

3 Section 10(1) is amended by adding the following after clause (a):

- (a.1) a document or class of documents to be, or not to be, an offering memorandum,

4 Section 38(1) is repealed and the following is substituted:

Appeal to Court of Appeal

38(1) A person or company directly affected by a decision of the Commission may appeal the decision to the Court of Appeal unless the decision of the Commission is an order

- (a) granting an exemption from prospectus or registration requirements pursuant to section 144 or 213 or a regulation,
- (b) deeming a trade, an intended trade, a type of trade or a class of trades or intended trades to be a distribution pursuant to section 144 or a regulation, or
- (c) declaring whether a distribution has been concluded or is still in progress pursuant to section 144.

whether or not any of them relate to an issuer or proposed issuer, but does not include an exchange contract;

3 Section 10(1) presently reads:

10(1) The Commission may, if the Commission considers that it would not be prejudicial to the public interest to do so, make an order designating

- (a) a good, article, service, right or interest, or a class of those, as a commodity,*
- (b) a futures contract, or a class of futures contracts, not to be a futures contract,*
- (c) a person or company as an insider,*
- (d) an issuer or a class of issuers to be, or not to be, a mutual fund,*
- (e) an issuer or a class of issuers to be, or not to be, a non-redeemable investment fund, and*
- (f) an issuer or a class of issuers to be, or not to be, a reporting issuer.*

4 Section 38(1) presently reads:

38(1) A person or company directly affected by a decision of the Commission, other than a ruling under section 144, may appeal the decision to the Court of Appeal.

5 Section 47(2) is amended by adding the following after clause (b):

- (b.1) directing a person or company referred to in subsection (1)(a) to (e) to maintain its funds, securities, exchange contracts or other property, and to refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value of those funds, securities, exchange contracts or other property;

6 Section 67 is repealed and the following is substituted:

Recognized clearing agency

67(1) No person or company shall carry on business as a clearing agency in Alberta unless the person or company is recognized by the Commission as a clearing agency.

(2) Subsection (1) does not apply to an exchange, a quotation and trade reporting system or a dealer that is recognized, registered or exempt from recognition or registration in Alberta where the exchange, the quotation and trade reporting system or the dealer acts as an intermediary in paying funds or delivering securities, or provides centralized facilities as a depository of securities, only as an incidental component of its principal business.

5 Section 47(2) presently reads:

(2) If subsection (1) applies, the Executive Director may make an order doing one or more of the following:

- (a) directing a person or company having on deposit, under control or for safekeeping any funds, securities, exchange contracts or other property of the person or company referred to in subsection (1)(a) to (e) to hold the funds, securities, exchange contracts or other property;*
- (b) directing a person or company referred to in subsection (1)(a) to (e) to refrain from withdrawing its funds, securities, exchange contracts or other property from any other person or company having any of them on deposit, under control or for safekeeping;*
- (c) directing a person or company referred to in subsection (1)(a) to (e) to hold all funds, securities, exchange contracts or other property of clients or others in the person's or company's possession or control in trust for any interim receiver, custodian, trustee, receiver, receiver and manager or liquidator appointed under the Bankruptcy and Insolvency Act (Canada), the Judicature Act, the Companies Act, the Business Corporations Act, the Cooperatives Act, the Winding-up and Restructuring Act (Canada) or section 48 of this Act.*

6 Section 67 presently reads:

67(1) The Commission may, on the application of a clearing agency, recognize the clearing agency if the Commission considers that it would not be prejudicial to the public interest to do so.

(2) The recognition of a clearing agency under this section is to be made in writing and is subject to any terms and conditions that the Commission may impose.

(3) The Commission, after giving a recognized clearing agency an opportunity to be heard, may

- (a) suspend or cancel its recognition as a recognized clearing agency, or*

(3) The Commission may, on the application of a person or company proposing to carry on business as a clearing agency, recognize the person or company as a clearing agency if the Commission considers that it would not be prejudicial to the public interest to do so.

(4) The recognition of a clearing agency under this section must be in writing and is subject to any terms and conditions that the Commission imposes.

(5) The Commission, after giving a recognized clearing agency an opportunity to be heard, may, if the Commission considers that it is in the public interest to do so,

- (a) suspend or cancel its recognition as a recognized clearing agency, or
- (b) add to, remove, vary or replace any term or condition that was previously imposed on its recognition as a recognized clearing agency.

(6) The Commission may, if the Commission considers that it is in the public interest to do so, make any decision with respect to

- (a) any bylaw, rule, regulation, policy, procedure, interpretation or practice of a recognized clearing agency, or
- (b) the manner in which a recognized clearing agency carries on its business.

7 Section 73 is amended by adding the following after subsection (2):

(2.1) A person or company not required to be served with written notice of a direction, decision, order or ruling but entitled to appeal under subsection (1) may, notwithstanding section 36(1), commence an appeal by serving a written notice of appeal on the Secretary either personally or by registered mail within 30 days from the day on which, in the opinion of the Commission, the person or company knew or reasonably ought to have known of the direction, decision, order or ruling.

(b) remove, vary or replace any terms or conditions that were previously imposed on its recognition as a recognized clearing agency,

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

(4) The Commission may, if the Commission considers that it is in the public interest to do so, make any decision with respect to any bylaw, rule, regulation, policy, procedure, interpretation or practice of a recognized clearing agency.

7 Section 73(2) presently reads:

(2) Section 36 applies to an appeal made under this section.

8 Section 90(1) is amended by striking out “Every” and substituting “Subject to the regulations, every”.

9 Section 194(4)(a) is repealed and the following is substituted:

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

10 Section 198(1.11) is repealed and the following is substituted:

(1.11) In subsection (1.1), “securities regulatory authority” means a securities commission, a self-regulatory organization, an exchange or another person or body, empowered by law to regulate trading in securities or exchange contracts in, or to administer or enforce the securities laws of, any province or territory of Canada, or elsewhere.

11 Section 211.01(d) is amended by striking out “an approved rating organization” and substituting “a designated rating organization”.

8 Section 90(1) 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.

9 Section 194(4) presently reads in part:

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

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

10 Section 198(1.11) presently reads:

(1.11) In subsection (1.1), “securities regulatory authority” means

(a) a securities commission or other person or body empowered by law to regulate trading in securities or exchange contracts, or to administer or enforce securities laws of any province or territory in Canada or elsewhere,

(b) a self-regulatory organization, and

(c) an exchange.

11 Section 211.01 presently reads in part:

211.01 In this Part,

(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;

12 Section 211.6(1) is amended by adding the following after clause (e):

- (f) the adoption of decisions of extra-provincial securities commissions under section 211.5, including the administration of those decisions once adopted;

13 Section 223 is amended by adding the following after clause (k.1):

- (k.2) regulating or prohibiting the use of a class of disclosure documents during a distribution;

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

- (b) make rules in respect of matters referred to in section 223(hh.1)
 - (i) except with the approval of the Minister, or
 - (ii) unless no change is being made to the minimum requirements under existing rules made in respect of section 223(hh.1);

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

13 New regulation-making authority.

14 Section 224(2) presently reads:

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

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

15 The Securities Amendment Act, 2006 is amended

(a) by repealing section 27 and substituting the following:

27 Section 129 is repealed and the following is substituted:

Obligation to deliver prospectus

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) applies, unless the dealer has previously done so, shall, subject to the regulations, send to a purchaser of the security the latest prospectus and any amendment 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.

(b) by repealing section 28 and substituting the following:

28 Section 130(1) is repealed and the following is substituted:

Revocation of purchase

130(1) An agreement to purchase securities offered in a subscription to which section 110(1) 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, any amendment to the prospectus, another prescribed document, or any amendment to the prescribed document, notice in writing that the purchaser does not intend to be bound by the agreement to purchase.

(c) by repealing section 49(a) and substituting the following:

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

15 Amends chapter 30 of the Statutes of Alberta, 2006.

- (a) a purchaser of a security to whom a prospectus, any amendment to the prospectus, another prescribed document, or any amendment to the prescribed document was required to be sent under section 129 or the regulations, but was not so sent,

16 The Securities Amendment Act, 2007 is amended by repealing section 10.

17 The Securities Amendment Act, 2008 is amended by repealing sections 5 and 14.

18 The Securities Amendment Act, 2010 is amended

(a) by repealing section 2(a) and substituting the following:

(a) by adding the following after clause (l):

(1.1) “credit rating” means

- (i) an assessment, disclosed publicly or distributed by subscription, of the credit-worthiness of an issuer as an entity or with respect to specific securities or a specific portfolio of securities or assets, or
- (ii) a rating designated as a credit rating pursuant to an order made under section 10;

(1.2) “credit rating organization” means

- (i) a person or company that issues credit ratings, or
- (ii) a person or company designated as a credit rating organization pursuant to an order made under section 10;

(b) in section 3 by adding the following after the new clause (d.2):

- (d.3) the minimum designated rating or ratings required from a credit rating organization,

16 Repeals section 10 of chapter 10 of the Statutes of Alberta, 2007.

17 Repeals sections 5 and 14 of chapter 26 of the Statutes of Alberta, 2008.

18 Adds new definitions and amends sections 3, 16 and 21(b) of chapter 10 of the Statutes of Alberta, 2010.

- (c) in section 16 in the new section 67.1(3)(b) by adding “add to,” before “remove”;
- (d) in section 21(b) in the new clause (w.1)(vi) by striking out “code of conduct” and substituting “codes of conduct”.

19 Sections 2(a), 6, 11 and 13 come into force on Proclamation.

19 Coming into force.

