

2013 Bill 42

First Session, 28th Legislature, 62 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 42

SECURITIES AMENDMENT ACT, 2013

THE PRESIDENT OF TREASURY BOARD AND
MINISTER OF FINANCE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 42

2013

SECURITIES AMENDMENT ACT, 2013

(Assented to _____, 2013)

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) in connection with trades in securities,
 - (A) acts as an intermediary in paying funds or delivering securities, or both,
 - (B) provides centralized facilities through which trades in securities are cleared, or
 - (C) provides centralized facilities as a depository of securities,
 - or
 - (ii) in connection with trades in derivatives, provides centralized facilities for the clearing and settlement of trades in derivatives and that, with respect to a contract, instrument or transaction,

Explanatory Notes

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

- (A) enables each party to a derivatives trade to substitute, through novation or otherwise, the credit of the clearing agency for the credit of the parties,
- (B) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from a derivatives trade, or
- (C) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the clearing agency the credit risk arising from derivatives trades;

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

(n.01) “derivative” means

- (i) an option, swap, futures contract, forward contract or other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest, including a value, price, rate, variable, index, event, probability or thing, or
- (ii) a security or class of securities that is designated to be a derivative pursuant to an order made under section 10,

but does not include

- (iii) a security, or
- (iv) a derivative or a class of derivatives that is designated not to be a derivative pursuant to an order made under section 10;

(c) by repealing clause (s);

(d) by repealing clause (x);

(e) by adding the following after clause (yy):

(yy.1) “recognized trade repository” means a trade repository recognized by the Commission under section 67.3;

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

(bbb.1) “related derivative” means, with respect to a security, a derivative that is related to the security because the derivative’s market price, value, delivery obligations, payment obligations or settlement obligations are, in a material way, derived from, referenced to or based on the market price, value, delivery obligations, payment obligations or settlement obligations of the security;

(i) in clause (ggg)

(i) by repealing subclause (xvi) and substituting the following:

(xvi) a derivative or class of derivatives designated to be a security pursuant to an order made under section 10,

(ii) by striking out “but does not include an exchange contract” **and substituting** “but does not include anything designated not to be a security”;

(j) in clause (jjj) by repealing subclauses (ii) to (iv) and substituting the following:

(ii) entering into a derivative or making a material amendment to, terminating, assigning, selling or otherwise acquiring or disposing of a derivative;

(ii.1) a novation of a derivative, other than a novation with a clearing agency;

(iii) any participation as a trader in any transaction in a security or a derivative through the facilities of an exchange or a quotation and trade reporting system;

(iv) the receipt by a registrant of an order to buy or sell a security or an order to buy, sell, enter into, amend, terminate, assign or novate a derivative;

(k) by adding the following after clause (jjj):

- (jjj.1) “trade repository” means a person or company that collects and maintains reports of completed trades of derivatives by other persons and companies;

3 Section 9 is repealed and the following is substituted:

Special relationships

9 A person or company is in a special relationship with an issuer if

- (a) the person or company is an insider, affiliate or associate of
 - (i) the issuer,
 - (ii) a person or company that is considering or evaluating whether to make a take-over bid, as defined in Part 14, or a person or company that is proposing to make a take-over bid, as defined in Part 14, for the securities of the issuer, or
 - (iii) a person or company that is considering or evaluating whether, or a person or company that is proposing,
 - (A) to become a party to a reorganization, amalgamation, merger or arrangement or a similar business combination with the issuer, or
 - (B) to acquire a substantial portion of the property of the issuer;
- (b) the person or company has engaged, is engaging, is considering or evaluating whether to engage, or proposes to engage, in any business or professional activity with or on behalf of
 - (i) the issuer, or
 - (ii) a person or company described in clause (a)(ii) or (iii);
- (c) the person is a director, officer or employee of

3 Section 9 presently reads:

9 A person or company is in a special relationship with a reporting issuer if

- (a) the person or company is an insider, affiliate or associate of
 - (i) the reporting issuer,*
 - (ii) a person or company that is proposing to make a take-over bid, as defined in Part 14, for the securities of the reporting issuer, or*
 - (iii) a person or company that is proposing
 - (A) to become a party to a reorganization, amalgamation, merger or arrangement or a similar business combination with the reporting issuer, or*
 - (B) to acquire a substantial portion of the property of the reporting issuer;***
- (b) the person or company has engaged, is engaging or proposes to engage in any business or professional activity with or on behalf of
 - (i) the reporting issuer, or*
 - (ii) a person or company described in clause (a)(ii) or (iii);**
- (c) the person is a director, officer or employee of
 - (i) the reporting issuer, or*
 - (ii) a person or company described in clause (a)(ii) or (iii) or (b);**
- (d) the person or company learned of a material fact or material change with respect to the reporting issuer while the person or company was a person or company described in clause (a), (b) or (c);*

- (i) the issuer,
 - (ii) a subsidiary of the issuer,
 - (iii) a person or company that controls the issuer, directly or indirectly, or
 - (iv) a person or company described in clause (a)(ii) or (iii) or (b);
- (d) the person or company learned of a material fact or material change with respect to the issuer while the person or company was a person or company described in clause (a), (b) or (c);
- (e) the person or company
- (i) learns of a material fact or material change with respect to the issuer from any other person or company described in this section, including a person or company described in this clause, and
 - (ii) knows or ought reasonably to know that the other person or company is a person or company in a special relationship with the issuer.

4 Section 10(1) is amended

(a) by repealing clause (b);

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

- (g) a security, or a class of securities, to be a derivative;
- (h) a derivative, or class of derivatives, not to be a derivative;
- (i) a derivative, or class of derivatives, to be a security;
- (j) a security, or class of securities, not to be a security.

- (e) *the person or company*
 - (i) *learns of a material fact or material change with respect to the reporting issuer from any other person or company described in this section, including a person or company described in this clause, and*
 - (ii) *knows or ought reasonably to know that the other person or company is a person or company in a special relationship with the reporting issuer.*

4 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,*
- (a.1) *a document or class of documents to be, or not to be, an offering memorandum,*
- (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,*

5 Section 40(1) is amended by adding the following after clause (k):

(k.1) a recognized trade repository;

- (d.1) a rating or a class of ratings to be, or not to be, a credit rating,*
- (d.2) a person or company or a class of persons or companies to be, or not to be, a credit rating organization,*
- (d.3) the minimum designated rating or ratings required from a credit rating organization,*
- (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.*

5 Section 40(1) presently reads:

40(1) In this section, “party” means

- (a) a registrant;*
- (b) a person or company that is exempted by an order made under section 144 from the requirement to be registered under section 75;*
- (c) a reporting issuer;*
- (d) a manager or custodian of assets, shares or units of an investment fund;*
- (e) a general partner of a person or company referred to in clause (a), (b), (c), (f) or (i);*
- (f) a person or company purporting to distribute securities in reliance on an exemption*
 - (i) for which the regulations provide that a prospectus is not required, or*
 - (ii) in an order issued under section 144;*
- (g) a transfer agent or registrar for securities of a reporting issuer;*
- (h) a director or officer of a reporting issuer;*

6 Section 41 is amended

(a) in subsection (1)

- (i) in clause (b) by striking out “exchange contract laws” and substituting “derivatives laws”;**
- (ii) in clauses (c) and (d) by striking out “exchange contracts” and substituting “derivatives”;**

(b) in subsection (4)(e)(v) by striking out “exchange contracts” and substituting “derivatives”.

7 Section 46(1) is repealed and the following is substituted:

Information

46(1) If the Executive Director considers that it would not be prejudicial to the public interest to do so, the Executive Director

- (i) a promoter or control person of a reporting issuer;
- (j) the Canadian Investor Protection Fund;
- (k) a clearing agency;
- (l) a credit rating organization.

6 Section 41 presently reads in part:

41(1) The Executive Director may, by order, appoint a person to make any investigation that the Executive Director considers necessary

- (a) for the administration of Alberta securities laws,
- (b) to assist in the administration of the securities or exchange contract laws of another jurisdiction,
- (c) in respect of matters relating to trading in securities or exchange contracts in Alberta, or
- (d) in respect of matters in Alberta relating to trading in securities or exchange contracts in another jurisdiction.

(4) For the purposes of an investigation ordered under this section, the person appointed to make the investigation may with respect to the person or company that is the subject of the investigation, investigate, inquire into and examine

- (e) the relationship that may at any time exist or have existed between that person or company and any other person or company by reason of
- (v) the transfer, negotiation or holding of securities or exchange contracts,

7 Section 46(1) presently reads:

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

may, subject to subsections (2) and (3), provide information to and receive information from

- (a) other securities or financial regulatory authorities, trade repositories, clearing agencies, alternative trading systems, credit rating agencies, exchanges, self-regulatory bodies or organizations, law enforcement agencies and other governmental or regulatory authorities in Canada and elsewhere, and any other agency or entity as determined by regulation, and
- (b) any person or company acting on behalf of or providing services to the Commission or the Executive Director.

8 Section 58(1) is amended by adding the following after clause (i):

- (i.1) a recognized trade repository;

9 Section 60.1(1) is repealed and the following is substituted:

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

8 Section 58(1) presently reads:

58(1) Notwithstanding anything in section 59, 60, 60.1 or 60.2, the Executive Director may in writing appoint a person to examine the financial affairs, books, records and other documents of the following for the purpose of determining if that person or company is complying with Alberta securities laws:

- (a) *a registrant;*
- (b) *a reporting issuer;*
- (c) *a director, officer or promoter of a reporting issuer;*
- (d) *a transfer agent of a reporting issuer;*
- (e) *a recognized exchange;*
- (f) *a recognized self-regulatory organization;*
- (g) *a recognized clearing agency;*
- (h) *a recognized quotation and trade reporting system;*
- (i) *a manager or a custodian of assets, shares or units of an investment fund;*
- (j) *a credit rating organization.*

9 Section 60.1 presently reads:

Record-keeping

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

10 The heading to Part 4 is repealed and the following is substituted:

**Part 4
Exchanges, Self-regulatory
Organizations,
Credit Rating
Organizations, Trade
Repositories and Clearing
Agencies**

11 The following is added after section 67.2:

Recognized trade repository

67.3(1) No person or company shall carry on business as a trade repository in Alberta unless the person or company is recognized by the Commission as a trade repository.

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

(2) Every person or company to which this section applies shall

(a) maintain

(i) the books and records that are necessary to record properly its business transactions and financial affairs and the transactions that it executes on behalf of others, and

(ii) any other books and records that may be required under Alberta securities laws,

and

(b) deliver to the Commission or the Executive Director any books and records or other information that the Commission or the Executive Director may require.

10 The Part 4 heading presently reads:

*Part 4
Exchanges, Self-regulatory Organizations, Credit Rating
Organizations and Clearing Agencies*

11 Recognized trade repository.

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

(3) The recognition under this section must be in writing and is subject to any terms and conditions that the Commission imposes.

(4) The Commission, after giving a recognized trade repository an opportunity to be heard, may

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

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

(5) 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 trade repository.

12 Section 68.1(2)(c) is amended by adding “or derivatives” after “securities”.

12 Section 68.1(2) presently reads:

(2) A recognized exchange or recognized self-regulatory organization may, without the consent of an individual,

(a) collect personal information about that individual, whether directly from the individual or from or through a registrant or by any other method, and

(b) use and disclose that information

for the purposes of an investigation or the suppression or prevention of fraud, market manipulation or unfair trading practices or for breaches of rules, regulations, policies or bylaws of the recognized exchange or of the recognized self-regulatory organization or of any decisions of the Commission or the Executive Director relating to either or both of the following:

13 Section 73(1) is amended by adding “, recognized trade repository” after “recognized clearing agency”.

14 The heading to Part 7 is repealed and the following is substituted:

**Part 7
Trading in Securities
and
Derivatives Generally**

15 Section 90 is amended

- (a) in subsection (1) by striking out “an exchange contract” and substituting “a derivative”;**
- (b) in subsection (2)**

- (c) *the integrity of securities trading on exchanges, quotation and trade reporting systems or alternative trading systems;*
- (d) *the business conduct and activities of the members of the recognized exchange or of the recognized self-regulatory organization and their representatives.*

13 Section 73 presently reads in part:

73(1) A person or company directly affected by, or by the administration of, a direction, decision, order or ruling made under a bylaw, rule, regulation, policy, procedure, interpretation or practice of a recognized exchange, recognized self-regulatory organization, recognized clearing agency or recognized quotation and trade reporting system may appeal that direction, decision, order or ruling to the Commission.

(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.

14 The Part 7 heading presently reads:

*Part 7
Trading in Securities and
Exchange Contracts Generally*

15 Section 90 presently reads:

90(1) Subject to the regulations, 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.

- (i) **by striking out** “an exchange contract” **and substituting** “a derivative”;
- (ii) **by striking out** “or exchange contract” **and substituting** “or derivative”.

16 Section 92 is amended

- (a) **by repealing subsection (1) and substituting the following:**

Prohibited transaction

92(1) Unless otherwise permitted by the Executive Director, no person or company shall represent that the person or company or any other person or company will

- (a) resell or repurchase a security,
- (b) refund any purchase price of a security,
- (c) refund any amount paid in respect of a derivative, or
- (d) assume all or part of an obligation under a derivative.

- (b) **by adding the following after subsection (2):**

(2.1) Subsection (1) does not apply to a derivative if the terms of the derivative

- (a) provide for a refund or provide a right to a party to require a refund, or
- (b) provide a right to a party to assume all or part of an obligation set out in the derivative.

(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.

16 Section 92 presently reads in part:

92(1) Unless otherwise permitted by the Executive Director, no person or company shall represent that the person or company or any other person or company will

- (a) resell or repurchase a security,*
- (b) refund any purchase price of a security,*
- (c) refund all or any margin or premium paid in respect of an exchange contract, or*
- (d) assume all or part of an obligation under an exchange contract.*

(2) Subsection (1) does not apply to a security that carries or is accompanied with

- (a) an obligation of the issuer to redeem or repurchase the security, or*
- (b) a right of the owner of the security to require the issuer to redeem or repurchase the security.*

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

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

- (c) **by repealing subsection (4.1)(b) and substituting the following:**
 - (b) would reasonably be expected to have a significant effect on the market price or value of a security, a derivative or an underlying interest of a derivative.
- (d) **in subsection (5) by striking out “an exchange contract” wherever it occurs and substituting “a derivative”.**

17 Section 93 is repealed and the following is substituted:

Prohibited transaction

93 No person or company shall, directly or indirectly, engage or participate or attempt to engage or participate in any act, practice or course of conduct relating to a security, a derivative or an underlying interest of a derivative that the person or company knows or reasonably ought to know may

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

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

and

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

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

- (a) *putting unreasonable pressure on a person to purchase, hold or sell a security or an exchange contract;*
- (b) *taking advantage of a person’s inability or incapacity to reasonably protect his or her own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language of any matter relating to a decision to purchase, hold or sell a security or an exchange contract;*
- (c) *imposing terms, conditions, restrictions or requirements in respect of a transaction that are harsh, oppressive or excessively one-sided.*

17 Section 93 presently reads:

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

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

or

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

or

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

18 Section 94 is amended by adding “or derivative” after “security” wherever it occurs.

19 Section 101(b) is repealed and the following is substituted:

- (b) the merits of a security or issuer,
- (b.1) the merits of a derivative or an underlying interest of a derivative, or

18 Section 94 presently reads:

94(1) If a registered dealer, with the intention of effecting a trade in a security with any person or company other than another registered dealer,

- (a) proposes to act in the trade as a principal, and*
- (b) makes any statement in writing to the person or company in respect of the security,*

the registered dealer shall disclose in the statement that the registered dealer acts as a principal.

(2) A statement made under subsection (1) shall be made by the registered dealer before the registered dealer

- (a) enters into a contract for the sale or purchase of the security, or*
- (b) accepts payment or receives any security or other consideration under or in anticipation of the contract,*

whichever occurs first.

(3) A statement made in compliance with this section or the regulations that a registered dealer proposes to act or has acted as principal in connection with a trade in a security does not prevent that dealer from acting as agent in connection with a trade of the security.

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

19 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

20 The following is added before the heading to Part 8:

Derivatives transaction not void for non-compliance

105.1 Unless the terms of the derivative provide otherwise, a derivative transaction is not void, voidable or unenforceable, and no counterparty to the transaction is entitled to rescind the transaction, solely by reason that the transaction failed to comply with Alberta securities laws.

21 Part 8 is repealed.

- (a) *the financial standing, fitness or conduct of a registrant,*
- (b) *the merits of a security, exchange contract or issuer, or*
- (c) *an issuer's disclosure.*

20 Derivatives transaction not void for non-compliance.

21 Part 8 presently reads:

Part 8

Trading in Exchange Contracts

106 No person or company shall trade in an exchange contract on an exchange in Alberta unless

- (a) *the exchange is recognized by the Commission under section 62, and*
- (b) *the form of the exchange contract has been accepted by the Commission.*

107(1) For the purposes of section 106(b), the Commission, on application by an exchange, may by order accept the form of an exchange contract.

(2) The Commission shall not refuse to accept the form of an exchange contract without giving the applicant an opportunity to have a hearing before the Commission.

108 A registrant shall not trade in an exchange contract on behalf of another person or company on an exchange located outside Alberta unless the exchange is recognized by the Commission.

22 Section 147 is repealed and the following is substituted:

Disclosure of material fact or change

147(1) In this section, “issuer” means

- (a) a reporting issuer, or
- (b) any other issuer whose securities are publicly traded.

(2) For the purposes of subsection (3), a security of an issuer includes

- (a) a put, call, option or other right or obligation to purchase or sell securities of the issuer,
- (b) a security, the market price of which varies materially with the market price of the securities of the issuer, or
- (c) a related derivative.

(3) No person or company in a special relationship with an issuer shall purchase or sell securities of the issuer with the knowledge of a material fact or material change with respect to the issuer that has not been generally disclosed.

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

(5) No issuer and no person or company in a special relationship with an issuer, with knowledge of a material fact or material change with respect to the issuer that has not been

109(1) For the purposes of section 108, the Commission, on application by an exchange or on the Commission's own motion, may by order recognize an exchange located outside Alberta.

(2) The Commission shall not refuse to recognize an exchange under subsection (1) without giving the applicant an opportunity to have a hearing before the Commission.

22 Section 147 presently reads:

147(1) For the purposes of subsection (2), a security of a reporting issuer includes

- (a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer, or*
- (b) a security the market price of which varies materially with the market price of the securities of the reporting issuer.*

(2) No person or company in a special relationship with a reporting issuer shall purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed.

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

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

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

(4) No person or company that proposes

generally disclosed, shall recommend or encourage another person or company

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

(6) No person or company that is considering or evaluating whether, or that proposes,

- (a) to make a take-over bid, as defined in Part 14, for the securities of an issuer,
- (b) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with an issuer, or
- (c) to acquire a substantial portion of the property of an issuer,

shall, other than when it is necessary in the course of business for the carrying out of the take-over bid, business combination or acquisition, inform another person or company of a material fact or material change with respect to the issuer before the material fact or material change has been generally disclosed.

(7) No person or company contravenes subsection (3) if that person or company does one or more of the following:

- (a) proves that
 - (i) the person or company had knowledge of the material fact or material change by reason only that the material fact or material change was known to one or more of that person's or company's directors, officers, partners, employees or agents,
 - (ii) in the case where that person is an individual, that person did not have any actual knowledge of the material fact or material change,
 - (iii) the decision to purchase or sell the securities was made by that person's or company's director, officer,

- (a) *to make a take-over bid, as defined in Part 14, for the securities of a reporting issuer,*
- (b) *to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer, or*
- (c) *to acquire a substantial portion of the property of a reporting issuer,*

shall, other than when it is necessary in the course of business for the carrying out of the take-over bid, business combination or acquisition, inform another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed.

(5) No person or company shall be found to have contravened subsection (2) if that person or company does one or more of the following:

- (a) *proves that*
 - (i) *the person or company had knowledge of the material fact or material change by reason only that the material fact or material change was known to one or more of that person's or company's directors, officers, partners, employees or agents,*
 - (ii) *in the case where that person is an individual, that person did not have any actual knowledge of the material fact or material change,*
 - (iii) *the decision to purchase or sell the securities was made by that person's or company's director, officer, partner, employee or agent who did not have any actual knowledge of the material fact or material change, and*
 - (iv) *the person's or company's director, officer, partner, employee or agent who had actual knowledge of the material fact or material change did not, with respect to the purchase or sale of the securities, give any specific advice based on that knowledge to that person's or company's director, officer, partner, employee or agent who made the decision to purchase or sell the securities;*
- (b) *proves that the person or company*

partner, employee or agent who did not have any actual knowledge of the material fact or material change, and

(iv) the person's or company's directors, officers, partners, employees or agents who had actual knowledge of the material fact or material change did not, with respect to the purchase or sale of the securities, give any specific advice based on that knowledge to that person's or company's director, officer, partner, employee or agent who made the decision to purchase or sell the securities;

(b) proves that the person or company

(i) purchased or sold the securities as an agent for another person or company pursuant to

(A) an unsolicited order, or

(B) a solicited order given prior to the person or company that acted as agent having knowledge of the material fact or material change,

and

(ii) did not, with respect to the purchase or sale of the securities, give any specific advice to that other person or company based on the knowledge of that material fact or change;

(c) proves that the purchase or sale of the securities was made pursuant to the person's or company's participation in an automatic dividend reinvestment plan, an automatic security purchase plan or another similar automatic plan that the person or company had entered into prior to the person or company acquiring knowledge of the material fact or material change;

(d) proves that the purchase or sale of the securities was made pursuant to a legal obligation that the person or company had entered into prior to the person or company acquiring knowledge of the material fact or material change;

(i) purchased or sold the securities, as an agent for another person or company pursuant to

(A) an unsolicited order, or

(B) a solicited order given prior to the person or company that acted as agent having knowledge of the material fact or material change,

and

(ii) did not, with respect to the purchase or sale of the securities, give any specific advice to that other person or company based on the knowledge of that material fact or change;

(c) proves that the purchase or sale of the securities was made pursuant to the person's or company's participation in an automatic dividend reinvestment plan, an automatic security purchase plan or another similar automatic plan that the person or company had entered into prior to the person or company acquiring knowledge of the material fact or material change;

(d) proves that the purchase or sale of the securities was made pursuant to a legal obligation that the person or company had entered into prior to the person or company acquiring knowledge of the material fact or material change;

(e) proves that the person or company, as an agent for another person or company, purchased or sold the securities as a result of that other person's or company's

(i) participation in an automatic dividend reinvestment plan, an automatic security purchase plan or another similar automatic plan, or

(ii) legal obligation.

(6) No person or company shall be found to have contravened subsection (2), (3), (3.1) or (4) if that person or company does one or more of the following:

(a) proves that the person or company reasonably believed that the material fact or material change had been generally disclosed;

- (e) proves that the person or company, as an agent for another person or company, purchased or sold the securities as a result of that other person's or company's
 - (i) participation in an automatic dividend reinvestment plan, an automatic security purchase plan or another similar automatic plan, or
 - (ii) legal obligation.

(8) No person or company contravenes subsection (3), (4), (5) or (6) if that person or company does one or more of the following:

- (a) proves that the person or company reasonably believed that the material fact or material change had been generally disclosed;
- (b) proves that the person or company reasonably believed that
 - (i) the other party to the purchase or sale of the securities, or
 - (ii) the other person or company informed of the material fact or material change,

had prior knowledge of or ought reasonably to have known of the material fact or material change.

(9) Where a person or company with knowledge of a material fact or material change with respect to an issuer purchases or sells securities of that issuer for the account of another person or company while acting as agent with discretionary authority for that other person or company, the person or company for whose account the securities were purchased or sold is not to be found to have contravened subsection (3) if

- (a) the transaction was entered into without the knowledge of the person or company for whose account the securities were purchased or sold,
- (b) the material fact or material change was not communicated to the person or company for whose account the securities were purchased or sold, or

- (b) *proves that the person or company reasonably believed that*
- (i) *the other party to the purchase or sale of the securities, or*
 - (ii) *the other person or company informed of the material fact or material change,*

had prior knowledge of or ought reasonably to have known of the material fact or material change.

(7) Where a person or company with knowledge of a material fact or material change with respect to a reporting issuer purchases or sells securities of that reporting issuer for the account of another person or company while acting as agent with discretionary authority for that other person or company, the person or company for whose account the securities were purchased or sold is not to be found to have contravened subsection (2) if

- (a) *the transaction was entered into without the knowledge of the person or company for whose account the securities were purchased or sold,*
- (b) *the material fact or material change was not communicated to the person or company for whose account the securities were purchased or sold, or*
- (c) *the person or company for whose account the securities were purchased or sold had actual knowledge of the material fact or material change but did not exercise influence over or make recommendations to the person or company acting as the agent with the discretionary authority.*

(8) It is not a contravention of this section to provide information to the Commission.

- (c) the person or company for whose account the securities were purchased or sold had actual knowledge of the material fact or material change but did not exercise influence over or make recommendations to the person or company acting as the agent with the discretionary authority.

(10) It is not a contravention of this section to provide information to the Commission.

23 Section 195 is amended

- (a) by striking out “147(2)” wherever it occurs and substituting “147(3)”;**
- (b) in subsection (2)(b)(iii) by striking out “147(3) or (4)” and substituting “147(4) or (6)”.**

24 Section 198 is amended

- (a) by repealing subsection (1)(d) and (e) and substituting the following:**
 - (d) that a person resign one or more positions that the person holds as a director or officer of an issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system;
 - (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, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system;
- (b) by repealing subsection (1.01)(m) and (n) and substituting the following:**

23 Cross-references updated because of amendments to section 147.

24 Section 198(1)(d) and (e) and (1.01)(m) and (n) presently read:

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:

(d) that a person resign one or more positions that the person holds as a director or officer of an issuer, registrant or investment fund manager;

(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, registrant or investment fund manager;

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

(m) a person or company that the Commission has ordered is exempt from a provision of Alberta securities laws, or

(n) a credit rating organization.

- (m) a person or company that the Commission has ordered is exempt from a provision of Alberta securities laws,
- (n) a credit rating organization, or
- (o) a trade repository.

25 Section 207 is amended

(a) by adding the following before subsection (1):

(0.1) In this section, “reporting issuer” includes any other issuer whose securities are publicly traded.

(b) by repealing subsection (11) and substituting the following:

(11) For the purpose of subsections (1), (3) and (5), a security of the reporting issuer includes

- (a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer,
- (b) a security the market price of which varies materially with the market price of the securities of the reporting issuer, or
- (c) a related derivative.

26 Section 223 is amended

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

- (g) governing derivatives and, without limiting the generality of the foregoing,
 - (i) prescribing requirements in respect of the clearing and settlement of trades;
 - (ii) prescribing requirements in respect of the reporting of trades and quotations, including requirements in respect of the confidentiality and disclosure of those reports;

25 Section 207(1) and (11) presently read:

207(1) Every person or company in a special relationship with a reporting issuer that

- (a) purchases or sells securities of the reporting issuer, and*
- (b) has knowledge of a material fact or material change in respect of the reporting issuer that has not been generally disclosed,*

is liable to compensate the seller or purchaser of the securities, as the case may be, for damages as a result of the trade.

(11) For the purpose of subsections (1), (3) and (5), a security of the reporting issuer includes

- (a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer, or*
- (b) a security, the market price of which varies materially with the market price of the securities of the reporting issuer.*

26 Section 223 presently reads in part:

223 The Lieutenant Governor in Council may make regulations

- (g) governing derivatives and, without limiting the generality of the foregoing, providing exemptions and prescribing requirements in respect of derivatives;*
- (w) governing exchanges, self-regulatory organizations, clearing agencies and quotation and trade reporting systems and, without limiting the generality of the foregoing,*

- (iii) prescribing derivatives or classes of derivatives in respect of which trades must be cleared or settled through a recognized clearing agency;
 - (iv) prescribing requirements that a derivative or a class of derivative be traded on a recognized exchange;
 - (v) prescribing requirements in respect of record-keeping, reporting and transparency in relation to derivatives;
 - (vi) prescribing requirements in respect of persons or companies trading derivatives, including requirements in respect of trade reporting, clearing and settlement, margin, capital and collateral;
 - (vii) prescribing requirements in respect of position limits for derivatives;
 - (viii) prescribing requirements in respect of disclosure documents for trades in derivatives;
 - (ix) prescribing requirements that a derivative or a class of derivative not be traded in Alberta;
- (g.1) providing exemptions in respect of derivatives;
 - (g.2) prescribing the principles for determining the market value, market price or closing price of a security or derivative or the net asset value of a security or quantifying a person's exposure resulting from a trade in a derivative, and authorizing the Commission to make that determination;
 - (g.3) designating one or more persons or companies to perform a function relating to market integration, market transparency, market data consolidation or the clearing and settlement of trades;
- (b) in clause (w)**
- (i) **by striking out** "self-regulatory organizations, clearing agencies" **wherever it occurs and substituting** "self-regulatory organizations, clearing agencies, trade repositories";

- (i) *respecting the recognition of exchanges, self-regulatory organizations, clearing agencies and quotation and trade reporting systems;*
- (ii) *prescribing requirements in respect of the review or approval by the Commission of any bylaw, rule, regulation, policy, procedure, interpretation or practice of recognized exchanges, recognized self-regulatory organizations, recognized clearing agencies and recognized quotation and trade reporting systems;*
- (iii) *providing for the collection and remission by recognized exchanges, recognized self-regulatory organizations, recognized clearing agencies and recognized quotation and trade reporting systems of fees payable to the Commission;*
- (iv) *prescribing requirements in respect of the books and records to be maintained by recognized exchanges, recognized self-regulatory organizations, recognized clearing agencies and recognized quotation and trade reporting systems;*
- (bb) *determining what constitutes a false or misleading appearance of trading activity in a security or an exchange contract or an artificial price for a security or an exchange contract;*
- (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 contract cease;*

- (ii) **by adding** “, recognized trade repositories” **after** “recognized clearing agencies” **wherever it occurs**;
- (c) **in clause (bb) by striking out** “or an exchange contract” **wherever it occurs and substituting** “, a derivative or an underlying interest of a derivative”;
- (d) **by repealing clause (dd.1) and substituting the following:**
 - (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 derivatives, or a particular security or derivative, including the circumstances in which a body empowered by the laws of another jurisdiction to regulate trading in securities or derivatives or to administer or enforce securities or derivatives laws in that jurisdiction, has ordered that
 - (i) a person is prohibited from trading or purchasing securities or derivatives, or a particular security or derivative, or
 - (ii) trades or purchases of a particular security or derivative cease;

27 The following provisions are amended by striking out “exchange contract” wherever it occurs and substituting “derivative”:

section 33.1(1)(a) and (2);
section 63(4)(f);
section 91(1);
section 92(3);
section 197(4)(d), (e) and (h);
section 198(1)(a);
section 211.41;
section 211.5(1).

28 The following provisions are amended by striking out “exchange contracts” wherever it occurs and substituting “derivatives”:

27 Terminology change.

28 Terminology change.

section 1(a), (a.1) and (m)(i);
section 20(1)(b);
section 29(c)(iii), (d) and (i);
section 33.1(1)(b);
section 42(1)(c), (2), (3), (6)(b), (8), (9), (10) and (11);
section 43(2)(a);
section 47(1)(c), (d)(ii) and (e)(ii), (2)(a), (b), (b.1) and (c),
(4)(b)(i), (5) and (6);
section 48(1)(c), (d) and (f)(ii);
section 57(2), (3) and (4);
section 58(3)(b);
section 68(4);
section 69(1)(a)(iii) and (b);
section 71(1);
section 91(1);
section 98;
section 197(4)(c);
section 198(1)(b) and (e.1), (1.1)(a) and (b) and (1.11);
section 211.1(1)(c) and (d);
section 211.41;
section 223(a)(ii) and (iii), (j)(xiii), (xiv) and (xv), (k)(xv),
(o)(i) and (hh.4)(i).

29 This Act comes into force on Proclamation.

29 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To