

2014 Bill 5

Third Session, 28th Legislature, 63 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 5

SECURITIES AMENDMENT ACT, 2014

THE PRESIDENT OF THE TREASURY BOARD AND
MINISTER OF FINANCE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 5

2014

SECURITIES AMENDMENT ACT, 2014

(Assented to _____, 2014)

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 adding the following after clause (c):

(c.1) “auditor oversight organization” means a person or company that regulates the auditing or review of financial statements that are required to be filed under Alberta securities laws;

(b) by adding the following after clause (bb.2):

(bb.3) “investor relations activities” means any activities or oral or written communications, by or on behalf of an issuer or security holder of the issuer, that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer, but does not include

(i) the dissemination of information provided, or records prepared, in the ordinary course of the business of the issuer

(A) to promote the sale of products or services of the issuer, or

Explanatory Notes

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

2 Adds definitions.

- (B) to raise public awareness of the issuer,
that cannot reasonably be considered to promote the purchase or sale of securities of the issuer,
 - (ii) activities or communications necessary to comply with the requirements of
 - (A) Alberta securities laws, or
 - (B) the bylaws, rules or other regulatory instruments of a self-regulatory organization, exchange or quotation and trade reporting system,
 - (iii) communications by a publisher of, or writer for, a newspaper, news magazine or business or financial publication, that is of general and regular paid circulation, distributed only to subscribers to it for value or to purchasers of it, if
 - (A) the communication is only through the newspaper, magazine or publication, and
 - (B) the publisher or writer receives no commission or other consideration other than for acting in the capacity of publisher or writer,
- or
- (iv) any other activities or communications as prescribed by regulation;

(c) by adding the following after clause (oo):

- (oo.1) “professional corporation” means a corporation that acts as a dealer or adviser on behalf of another dealer or adviser through one or more RPC representatives;

(d) by adding the following after clause (uu):

- (uu.1) “recognized auditor oversight organization” means an auditor oversight organization recognized under section 64.1;

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

- (zz.1) “registered professional corporation” means a corporation that is registered as a professional corporation pursuant to section 75;
- (zz.2) “RPC representative” means a representative of a registered dealer or advisor acting as a dealer or adviser within a professional corporation;

3 Section 2 is repealed and the following is substituted:

Affiliation

2 A person or company is affiliated with another person or company if one of them is the subsidiary of the other or if each of them is controlled by the same person or company.

4 Section 4 is repealed and the following is substituted:

Subsidiary

4 A subsidiary is an issuer that is controlled by one or more other issuers.

5 Section 29(l) is repealed and the following is substituted:

- (l) a hearing is open to the public unless the Commission or the Executive Director, as the case may be, considers that it is in the public interest to order otherwise;

6 Section 33 is repealed and the following is substituted:

Interim orders

33(1) Notwithstanding anything in this Act, where

- (a) this Act
 - (i) permits the Commission or the Executive Director to make a decision after conducting a hearing or after

3 Section 2 presently reads:

2 An issuer is affiliated with another issuer if one of them is the subsidiary of the other or if each of them is controlled by the same person or company.

4 Section 4 presently reads:

4 A subsidiary is an issuer that is controlled by another issuer.

5 Section 29(1) presently reads in part:

29 For the purpose of a hearing before the Commission or the Executive Director, as the case may be, the following applies:

- (l) a hearing is open to the public unless the person presiding over the hearing considers that it is in the public interest to order otherwise;*

6 Section 33 presently reads:

33(1) Notwithstanding anything in this Act, where

- (a) this Act permits the Commission or the Executive Director to conduct a hearing or to make a decision after conducting a hearing or after giving a person or company an opportunity to have a hearing, and*

giving a person or company an opportunity to have a hearing, or

(ii) creates an offence,

and

(b) the Commission or the Executive Director considers that the length of time required to conduct a hearing, or a trial in respect of an offence, and to render a decision could be prejudicial to the public interest,

the Commission or the Executive Director may make an interim order at any time with or without conducting a hearing on notice to a person or company against whom the order is sought.

(2) If the Commission or the Executive Director makes an interim order under subsection (1) without conducting a hearing on notice to a person or company against whom the order is sought,

(a) unless the order otherwise provides, the order takes effect immediately on being made,

(b) the order expires 15 days from the day that it takes effect, and

(c) the Commission or the Executive Director, as the case may be, shall send to each person named in the interim order

(i) a copy of the interim order,

(ii) an accompanying notice of hearing in respect of the extension of the interim order pursuant to subsection (3), and

(iii) any evidence tendered in support of the interim order.

(3) If, after conducting a hearing prior to the expiry of any interim order pursuant to subsection (2), the Commission or the Executive Director considers that the length of time required to conduct a hearing, or a trial in respect of an offence, and to render a decision could be prejudicial to the public interest, the

- (b) the Commission or the Executive Director before whom the hearing is to be held considers that the length of time required to conduct a hearing and render a decision could be prejudicial to the public interest,*

the Commission or the Executive Director, as the case may be, may make an interim order at any time without conducting a hearing.

(2) An interim order,

- (a) unless the order otherwise provides, takes effect immediately on being made, and*

- (b) expires 15 days from the day that it is made.*

(3) The Commission or the Executive Director may extend the period of time that an interim order remains in effect

- (a) for such period as the Commission or the Executive Director considers necessary, or*

- (b) for such period until the hearing is concluded and a decision is rendered.*

(4) Where the Commission or the Executive Director makes an interim order, the Commission or the Executive Director, as the case may be, shall send

- (a) a copy of the interim order, and*

- (b) an accompanying notice of hearing,*

to any person or company that, in the opinion of the Commission or the Executive Director, is directly affected by the order.

Commission or the Executive Director may make an order extending the interim order for a specified period of time or until any proceeding initiated pursuant to this Act is finally determined or otherwise concluded.

(4) If the Commission or the Executive Director conducts a hearing in respect of an order under subsection (1) on notice to a person or company against whom the order is sought, the Commission or the Executive Director may make an interim order against that person or company that will remain in effect for a specified period of time or until any proceeding initiated pursuant to this Act is finally determined or otherwise concluded.

7 Section 33.1(3) is repealed and the following is substituted:

(3) The Commission or the Executive Director, as the case may be, shall send to each person and company named in the order under subsection (1)

- (a) written notice of the order, and
- (b) written notice of a revocation of the order, if any.

8 The following is added after section 33.1:

Halt trade

33.2(1) If

- (a) the Commission or the Executive Director
 - (i) considers that there are unexplained and unusual fluctuations in the volume of trading in, or market price of, a security or derivative,
 - (ii) becomes aware of information, other than information filed under Alberta securities laws, that when disclosed to the public may cause or is likely to cause unusual fluctuations in the volume of trading in, or market price of, a security or derivative,
 - (iii) considers that there may have been a material change in respect of an issuer that, when disclosed, could

7 Section 33.1(3) presently reads:

(3) The Commission or the Executive Director, as the case may be, shall send to any person or company directly affected by an order under subsection (1)

(a) written notice of the order, and

(b) written notice of a revocation of the order, if any.

8 Halt trade.

significantly affect the market price of a security issued by that issuer, or

- (iv) considers that circumstances exist or are about to occur that could result in other than an orderly trading of a security or derivative,

and

- (b) the Commission or the Executive Director considers it to be in the public interest,

the Commission or Executive Director may, without providing an opportunity to be heard, order that all trading in that security or derivative be halted for a specified period not longer than 15 business days.

(2) Notice of every order made under subsection (1) must be sent immediately to the issuer whose securities are affected by it.

(3) If

- (a) a security affected by an order made under subsection (1) is listed and posted for trading on an exchange in Alberta, or
- (b) a derivative affected by an order made under subsection (1) is traded on an exchange in Alberta,

the Commission or Executive Director, as the case may be, must immediately send written notice of the order to the exchange, and the order becomes effective, for all purposes and in respect of all persons, as soon as the exchange receives the notice.

(4) If the Commission or the Executive Director considers it necessary and in the public interest, the Commission or Executive Director may, after providing the issuer whose securities are affected by it with an opportunity to be heard, make an order extending the order made under subsection (1) until a hearing is held and a decision is rendered.

9 Section 36(1) is repealed and the following is substituted:

Appeals to the Commission

36(1) To commence an appeal to the Commission, the appellant shall, within 30 days from the day on which the written notice of the decision is served on the appellant, serve a written notice of appeal on the Commission.

10 Section 38(3) and (4) are repealed and the following is substituted:

(3) A copy of the notice of appeal and supporting documents shall be served on the Commission within the 30-day period referred to in subsection (2).

(4) The Secretary shall certify to the registrar of the Court of Appeal a list of the contents of the record of proceedings before the Commission, including

- (a) the decision that has been made by the Commission,
- (b) the order of the Commission, together with any statement of reasons for it,
- (c) the transcripts of, and the exhibits tendered into evidence during, the proceedings before the Commission, and
- (d) all written submissions to the Commission and other material, if any, that is relevant to the appeal.

11 Section 40(1) is repealed and the following is substituted:

Production of records

40(1) In this section, “party” means

- (a) a registrant, or a person or company, or a class of persons or companies, exempted from the requirement to be registered under this Act,
- (b) a reporting issuer, or a person or company who has filed a preliminary prospectus,
- (c) a director, officer or promoter of an issuer,

9 Section 36(1) presently reads:

36(1) To commence an appeal to the Commission, the appellant shall, within 30 days from the day on which the written notice of the decision is served on the appellant, serve a written notice of appeal on the Secretary either personally or by registered mail.

10 Section 38 presently reads in part:

(3) A copy of the notice of appeal and supporting documents shall be served on the Secretary within the 30-day period referred to in subsection (2).

(4) The Secretary shall certify to the registrar of the Court of Appeal

- (a) the decision that has been reviewed by the Commission,*
- (b) the order of the Commission, together with any statement of reasons for it,*
- (c) the record of the proceedings before the Commission, and*
- (d) all written submissions to the Commission and other material, if any, that is relevant to the appeal.*

11 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;*

- (d) a transfer agent or registrar of securities of an 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 recognized credit rating organization,
- (k) a recognized trade repository,
- (l) a recognized auditor oversight organization,
- (m) a person or company purporting to distribute securities in reliance on an exemption under Alberta securities laws,
- (n) a person or company that engages in investor relations activities,
- (o) a trustee or general partner of any person or company referred to in subsections (a) to (k),
- (p) a control person of an issuer described in subsection (b),
- (q) an investment fund manager,
- (r) the Canadian Investor Protection Fund, and
- (s) any other person or company as determined by regulation.

12 Section 46(1)(a) is amended by striking out “self-regulatory bodies or organizations” and substituting “self-regulatory organizations, auditor oversight organizations”.

- (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;*
- (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.*

12 Section 46(1)(a) 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

13 Section 46.1 is amended in subsections (1) and (2) by striking out “60.3,”.

14 Section 58 is repealed and with the following is substituted:

Review and examination

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 business, conduct, 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 or acting contrary to the public interest:

- (a) a registrant, or a person or company, or a class of persons or companies, exempted from the requirement to be registered under this Act;
- (b) a reporting issuer, or a person or company that has filed a preliminary prospectus;
- (c) a director, officer or promoter of an issuer;
- (d) a transfer agent or registrar of securities of an issuer;
- (e) a recognized exchange;

- (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*

13 Section 46.1 presently reads:

46.1(1) Subject to subsection (2), if anything in sections 44, 45, 46(4), 60.3, 146 or 221(4), (5), (6) and (7) is inconsistent or in conflict with the Freedom of Information and Protection of Privacy Act, those provisions prevail notwithstanding the Freedom of Information and Protection of Privacy Act.

(2) Where information is collected or received pursuant to section 44, 45, 46(4), 60.3, 146 or 221(4), (5), (6) or (7), subsection (1) ceases to apply in respect of that information after 50 years has elapsed from the end of the year in which the information was collected or received.

14 Section 58 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;*

- (f) a recognized self-regulatory organization;
 - (g) a recognized clearing agency;
 - (h) a recognized quotation and trade reporting system;
 - (i) a recognized trade repository;
 - (j) a manager or a custodian of assets, shares or units of an investment fund;
 - (k) a recognized credit rating agency;
 - (l) a recognized auditor oversight organization;
 - (m) a person or company purporting to distribute securities in reliance on an exemption under Alberta securities laws;
 - (n) a person or company that engages in investor relations activities;
 - (o) a trustee or general partner of any person or company referred to in subsections (a) to (k);
 - (p) a control person of an issuer described in clause (b) or (m);
 - (q) an investment fund manager;
 - (r) any other person or company as determined by regulation.
- (2)** Where a person carries out an examination under subsection (1), that person shall prepare those financial or other statements and reports as may be required by the Executive Director.
- (3)** A person carrying out an examination under this section may
- (a) enter into business premises during business hours,
 - (b) inquire into and examine anything on those premises including all records, securities, derivatives, cash, documents, bank accounts, vouchers and correspondence

- (i) a manager or a custodian of assets, shares or units of an investment fund;*
- (j) a credit rating organization.*

of the person or company whose financial affairs are being examined,

- (c) use or cause to be used any computer system on the premises in order to examine data contained in, or available to, the system,
- (d) use, or cause to be used, any equipment on the premises to make copies or produce a record of any item referred to in clause (b) or (c),
- (e) use, or cause to be used, any equipment on the premises for the purpose of communicating with a person or company, and
- (f) remove anything from the premises for the purpose of conducting an examination or making copies.

(4) A person or company that is under examination under this section, and its employees and agents, must provide any information or thing requested by a person carrying out an examination under this section that reasonably relates to the examination.

(5) A person or company that is the subject of an examination under this section shall pay those fees as may be prescribed by regulation.

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

Record keeping

60.1(1) This section applies to every recognized exchange, recognized self-regulatory organization, recognized auditor oversight 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.

15 Section 60.1(1) presently reads:

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.

16 Section 60.2 is repealed and the following is substituted:

Disclosure reviews

60.2(1) The Executive Director may conduct a review of the disclosures required under Alberta securities laws that have been made or ought to have been made by an issuer, investment fund or credit rating organization.

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

(3) An issuer or investment fund, or any person or company acting on behalf of an issuer or investment fund, shall not make any representation, written or oral, that the Commission has in any way expressed an opinion or passed judgment on the merits of the disclosure record of the issuer or investment fund.

(4) A credit rating organization, or any person or company acting on behalf of a credit rating organization, shall not make any representation, written or oral, that the Commission has in any way expressed an opinion or passed judgment on the merits of the credit rating organization, any credit rating issued by it or its disclosure record.

17 Section 60.3 is repealed.

16 Section 60.2 presently reads:

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

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

(3) A reporting issuer or investment fund, or any person or company acting on behalf of a reporting issuer or investment fund, shall not make any representation, written or oral, that the Commission has in any way expressed an opinion or passed judgment on the merits of the disclosure record of the reporting issuer or investment fund.

(4) A credit rating organization, or any person or company acting on behalf of a credit rating organization, shall not make any representation, written or oral, that the Commission has in any way passed judgment on the merits of the credit rating organization, any credit rating issued by it or its disclosure record.

17 Section 60.3 presently reads:

60.3(1) The Executive Director may hold in confidence any materials delivered or obtained under section 58, 60, 60.1 or 60.2 if the Executive Director considers that it would not be prejudicial to the public interest to do so.

(2) On the application of an interested person or company or the Executive Director and on giving the interested person and the Executive Director an opportunity to be heard, the Commission may make an order directing that any materials or class of materials delivered or obtained under section 58, 60, 60.1 or 60.2 be held in confidence if the Commission considers that it would not be prejudicial to the public interest to grant the order.

(3) Where the Executive Director decides to hold materials in confidence or not to hold materials in confidence, an interested person or company may appeal the decision to the Commission.

18 Section 61 is amended by adding the following after clause (d):

- (e) to a participant of an auditor oversight organization includes any person or company that agrees to be regulated by that auditor oversight organization.

19 The following is added after section 64:

Recognition

64.1(1) The Commission may, on the application of an auditor oversight organization, recognize the auditor oversight organization for the purposes of this Part if the Commission considers that it would not be prejudicial to the public interest to do so.

(2) The recognition of an auditor oversight organization must be made in writing and is subject to any terms and conditions that the Commission may impose.

(3) A recognized auditor oversight organization shall regulate the operations, standards of practice and business conduct of its participants to the extent that the operations, standards of practice and business conduct relate to the auditing or review of financial statements that are required to be filed pursuant to Alberta securities laws.

(4) For the purposes of performing its duties under subsection (3), a recognized auditor oversight organization may adopt a rule, standard or policy for regulating its participants on the

(4) An order of the Commission made pursuant to subsection (2) or (3) is final and there is no appeal from that order.

18 Section 61 presently reads in part:

61 Any reference in this Part

(d) to a representative of a member of a self-regulatory organization includes

(i) any person or company approved by the self-regulatory organization as a partner, officer, director, branch manager, assistant branch manager or co-branch manager of the member, and

(ii) any employee of the member not otherwise referred to in subclause (i).

19 Recognition, recognized auditor oversight body may require disclosure and compulsion protection.

basis that a government, a government authority or another regulatory body applies the same rule, standard or policy.

(5) The Commission, after giving a recognized auditor oversight organization an opportunity to be heard, may

- (a) suspend or cancel its recognition as a recognized auditor oversight organization, or
- (b) remove, vary or replace any terms or conditions that were previously imposed on its recognition as a recognized auditor oversight organization.

(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 rule or decision of a recognized auditor oversight organization, or
- (b) any bylaw, a policy, procedure or practice of a recognized auditor oversight organization.

Recognized auditor oversight organization may require disclosure

64.2(1) On the written request by a recognized auditor oversight organization, a participant must provide the auditor oversight organization with information or records that

- (a) relate to the audit or review of financial statements that must be filed pursuant to Alberta securities laws, and
- (b) are specified, or that are within the class of information or records described, in the request, including information or records relating to, or prepared by, an issuer, whether or not the issuer is named in the request.

(2) A recognized auditor oversight organization may, in the request under subsection (1), specify a reasonable time or interval when the information or records are to be provided to the recognized auditor oversight organization.

(3) For greater certainty, if a participant is in possession of information or records that are the subject of solicitor-client privilege, the participant must not provide the information or

records to the recognized auditor oversight organization unless the person in respect of which the solicitor-client privilege exists consents to its disclosure.

(4) If a person consents to the disclosure to a recognized auditor oversight organization of information or records that are the subject of solicitor-client privilege, the consent does not negate or constitute a waiver of any privilege and the privilege continues for all other purposes.

Compulsion protection

64.3 A recognized auditor oversight organization or a director, officer, employee or agent of a recognized auditor oversight organization are not required and must not be compelled to testify or give evidence in any proceeding other than a criminal proceeding, to which the recognized auditor oversight organization is not a party about records or information obtained in the discharge of the recognized auditor oversight organization's duties.

20 Section 72 is amended by striking out “or a recognized quotation and trade reporting system” **and substituting** “a recognized quotation and trade reporting system or a recognized auditor oversight organization”.

21 Section 73 is amended

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

Review

73(1) The Executive Director, or a person or company directly affected by 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 trade

20 Section 72 presently reads:

72 On application by a recognized exchange, a recognized self-regulatory organization, a recognized clearing agency or a recognized quotation and trade reporting system, the Commission may accept, subject to any terms and conditions that the Commission may impose, the voluntary surrender of the recognition of the exchange, self-regulatory organization, clearing agency or quotation and trade reporting system if the Commission considers that it would not be prejudicial to the public interest to accept the surrender of the recognition.

21 Section 73 presently reads:

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.

depository, recognized clearing agency, recognized quotation and trade reporting system or recognized auditor oversight organization may appeal that direction, decision, order or ruling to the Commission.

(b) in subsection (2.1) by striking out “Secretary either personally or by registered mail” **and substituting** “Commission”;

(c) by repealing subsection (3) and substituting the following:

(3) Notwithstanding section 36(4), where there is an appeal to the Commission of a direction, decision, order or ruling made by a recognized exchange, recognized self-regulatory organization, recognized quotation and trade reporting system or a recognized auditor oversight organization, that exchange, self-regulatory organization, quotation and trade reporting system or auditor oversight organization may be present and make representations at the appeal.

22 Section 75 is amended by adding the following after subsection (2):

(2.1) Notwithstanding subsection (2), a professional corporation that is registered in accordance with Alberta securities laws may act as a dealer or adviser through an RPC representative on behalf of a person or company required to be registered under subsection (1).

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

(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.

(3) Notwithstanding section 36(4), where there is an appeal to the Commission of a direction, decision, order or ruling made by a recognized exchange, recognized self-regulatory organization or recognized quotation and trade reporting system, that exchange, self-regulatory organization or quotation and trade reporting system may be present and make representations at the appeal.

22 Section 75 presently reads:

75(1) Unless registered in accordance with Alberta securities laws, a person or company shall not act as

- (a) a dealer,*
- (b) an adviser, or*
- (c) an investment fund manager.*

(2) Unless registered in accordance with Alberta securities laws, an individual shall not, directly or indirectly,

- (a) act as a dealer on behalf of a person or company that is required to be registered under subsection (1),*
- (b) act as an adviser on behalf of a person or company that is required to be registered under subsection (1), or*
- (c) perform a prescribed function or duty for a person or company that is required to be registered under subsection (1).*

23 Section 76(1) is amended by striking out “Unless” and substituting “Subject to section 76.01, unless”.

24 The following is added after section 76:

Registration of professional corporation

76.01 The Executive Director shall not register a professional corporation unless

- (a) the name of the professional corporation
 - (i) includes the words “Professional Corporation” or the abbreviation “Prof. Corp.”, and
 - (ii) indicates that the professional corporation acts as a dealer or adviser,

and

- (b) the articles of incorporation of the professional corporation
 - (i) restrict its business to acting as a dealer or adviser,
 - (ii) include a restriction that the voting shares of the professional corporation can be owned only by one or more RPC representatives,

(3) A registrant shall comply with any terms, conditions, restrictions or requirements imposed on the registrant's registration.

23 Section 76(1) presently reads:

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

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

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

24 Registration of professional corporation, Vesting of shares, Legal relationships, legal authority and liability.

- (iii) subject to subclause (ii), include a restriction that the non-voting shares of the professional corporation can be owned only by
 - (A) an RPC representative,
 - (B) a spouse, adult interdependent partner, child or parent of an RPC representative,
 - (C) a corporation, all of the shares of which are owned by individuals mentioned in paragraphs (A) or (B), or
 - (D) a trust all of the beneficiaries of which are individuals mentioned in paragraphs (A) or (B),
- (iv) include a restriction that each director of the professional corporation must be an RPC representative, and
- (v) include a restriction that no owner of voting shares of a professional corporation shall pledge or enter into a voting trust agreement or proxy or any other type of agreement that vests in a person who is not an individual registrant the authority to exercise the voting rights attached to any or all of the owner's shares.

Vesting of shares

76.02 The voting and non-voting shares of a professional corporation may be vested in

- (a) an executor or administrator of the estate of a shareholder for the limited purpose of permitting the executor or administrator to discharge his or her duties in relation to the administration of the estate, or
- (b) a trustee in bankruptcy for the limited purpose of permitting the trustee in bankruptcy to discharge his or her duties as trustee in bankruptcy of the estate of a shareholder or the professional corporation.

Legal relationships, legal authority and liability

76.03(1) Alberta securities laws apply to an RPC representative notwithstanding that the RPC representative acts as a dealer or adviser through a professional corporation.

(2) The legal relationship between an RPC representative and the dealer or adviser on whose behalf the RPC representative acts is not affected by the fact that the RPC representative acts as a dealer or adviser through a professional corporation.

(3) A dealer or adviser has the same legal authority over a professional corporation as the dealer or adviser has over the RPC representative who acts as a dealer or adviser through the professional corporation.

(4) The legal relationship between an RPC representative and a self-regulatory organization that regulates the RPC representative is not affected by the fact that the RPC representative acts as a dealer or adviser.

(5) A self-regulatory organization has the same legal authority over a professional corporation as it does over the RPC representative who acts as a dealer or adviser through the professional corporation.

(6) The liability of an RPC representative to a client is not affected by the fact the RPC representative acts as a dealer or adviser through a professional corporation.

(7) The liability of a registered dealer or registered adviser to a client of an RPC representative is not affected by the fact that the RPC representative acts as a dealer or adviser through a professional corporation.

(8) The law applicable to the confidential, ethical or fiduciary relationships between an RPC representative and a client is not affected by the fact that the RPC representative acts as a dealer or adviser through a professional corporation.

(9) All rights and obligations with respect to communications made to or information received by an RPC representative apply to the shareholders, directors, officers and employees of the professional corporation through which the RPC representative acts as a dealer or adviser.

25 Section 90(1) is repealed.

26 Section 92(3) is amended by striking out “with the intention of effecting” **and substituting** “in relation to”.

27 Section 93.4 is repealed and the following is substituted:

Obstruction of justice

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

(2) A person or company contravenes subsection (1) only if the person or company knows or ought reasonably to know that a hearing, review, examination or investigation is being, or is likely to be, conducted.

28 Section 101 is amended by striking “or” at the end of clause (b.1), by adding “or” at the end of clause (c) and by adding the following after clause (c):

(d) a credit rating organization or a credit rating issued by one.

25 Section 90(1) 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.

26 Section 92(3) 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

27 Section 93.4 presently reads:

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

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

28 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,*
- (b) the merits of a security or issuer,*
- (b.1) the merits of a security, exchange contract or issuer, or*
- (c) an issuer's disclosure.*

29 The following is added after section 103:

Disclosure of activities in relation to a trade

103.1(1) An issuer or a holder of an issuer's security that knows that a person or company is engaged in investor relations activities on behalf of the issuer or security holder must disclose those facts to any person or company who inquires.

(2) A person or company engaged in investor relations activities and the issuer or holder of an issuer's security on whose behalf that person or company is so engaged, must ensure that every record disseminated, and every public oral statement made, by that person or company in the course of those activities clearly and conspicuously discloses that the record is issued, or the statement is made, by or on behalf of the issuer or the holder of the issuer's security.

(3) Every person or company engaged in investor relations activities shall

- (a) maintain the books and records that are necessary to record properly those activities and other related business transactions and financial affairs, and
- (b) deliver to the Commission or the Executive Director any books and records or other information related to those activities that the Commission or the Executive Director may require.

30 Section 194 is amended by adding the following after subsection (2):

(2.1) No person is guilty of an offence under section 198.1(10) if that person did not know, and in the exercise of reasonable diligence would not have known, that the act or course of conduct which that person engaged in caused that person to fail to comply with section 198.1(10).

29 Disclosure of activities in relation to a trade.

30 Section 194 presently reads in part:

194(1) A person or company that contravenes Alberta securities laws is guilty of an offence and is liable to a fine of not more than \$5 000 000 or to imprisonment for a term of not more than 5 years less a day, or to both.

(2) No person or company is guilty of an offence under section 92(4.1) or 221.1 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.

31 Section 195(1) is repealed.

32 Section 197(2) is repealed and the following is substituted:

(2) Before an application is made under subsection (1), neither the Executive Director nor the Commission is required to hold a hearing to determine whether the person or company has not complied with or is not complying with any provision of Alberta securities laws.

33 Section 198 is amended

(a) by adding the following after subsection (1)(c):

(c.1) that a person or company is prohibited from engaging in investor relations activities;

(b) by repealing subsection (1)(d) and (e) and substituting the following:

31 Section 195(1) presently reads:

195(1) In this section,

- (a) “highest price received” means the highest price at which the seller sold any one security of the securities sold after the seller had knowledge of the material fact or material change;*
- (b) “lowest price paid” means the lowest price paid by the purchaser for any one security of the securities that the purchaser purchased after the purchaser had knowledge of the material fact or material change;*
- (c) “market price” means the weighted average market price of the securities as determined with respect to the first 20 trading days for that security following the general disclosure of the material fact or material change;*
- (d) “purchaser” means a person or company that purchased securities in contravention of section 147(3);*
- (e) “securities” means securities purchased or sold in contravention of section 147(3);*
- (f) “seller” means a person or company that sold securities in contravention of section 147(3).*

32 Section 197(2) presently reads:

(2) Neither the Executive Director nor the Commission is required, before making an application under subsection (1), to hold a hearing to determine whether the person or company has not complied with or is not complying with any provision of Alberta securities laws.

33 Section 198 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.2) that a person or company be reprimanded;*

- (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, or other person or company that is authorized to issue securities, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system;
- (c) by repealing subsections (1.1) and (1.11);**
- (d) in subsection (2) by striking out “, (1.1)”.**

- (c) *that any or all of the exemptions contained in 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, 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;*

(1.1) The Commission may, after providing an opportunity to be heard, make an order under subsection (1)(a) to (h) in respect of a person or company if the person or company

- (a) *has been convicted in Canada or elsewhere of an offence*
 - (i) *arising from a transaction, business or course of conduct related to securities or exchange contracts, or*
 - (ii) *under laws respecting trading in securities or exchange contracts,*
- (b) *has been found by a court in Canada or elsewhere to have contravened laws respecting trading in securities or exchange contracts,*
- (c) *is subject to an order made by a securities regulatory authority imposing sanctions, conditions, restrictions or requirements on the person or company, or*
- (d) *has agreed with a securities regulatory authority to be subject to sanctions, conditions, restrictions or requirements.*

(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.

(2) An order under subsection (1), (1.1) or (1.2) is subject to any terms and conditions that the Commission may impose.

34 The following is added after section 198:

Extra-provincial orders

198.1(1) In this section,

- (a) “securities regulatory authority in Canada” means a securities commission, or another person or body, empowered by law to regulate trading in securities or derivatives in, or to administer or enforce the securities laws of, any province or territory of Canada, or any other person or body prescribed by regulation, but does not include a self-regulatory organization, exchange, clearing agency, quotation and trade reporting system, auditor oversight organization or credit rating organization;
- (b) “securities regulatory authority outside Canada” means a securities commission, a self-regulatory organization, an exchange or another person or body, empowered by law to regulate trading in securities or derivatives in, or to administer or enforce the securities laws of, any jurisdiction outside of Canada.

(2) Notwithstanding section 198(3), the Commission may, with or without providing an opportunity to be heard, make an order under section 198(1)(a) to (h) in respect of a person or company if the person or company

- (a) has been convicted in Canada or elsewhere of an offence
 - (i) arising from a transaction, business or course of conduct related to securities or derivatives, or
 - (ii) under laws respecting trading in securities or derivatives,
- (b) has been found by a court in Canada or elsewhere to have contravened laws respecting trading in securities or derivatives,
- (c) is subject to an order made by
 - (i) a securities regulatory authority outside Canada,

34 Extra-provincial orders.

- (ii) a recognized self-regulatory organization in Canada,
or
- (iii) an exchange in Canada,

imposing sanctions, conditions, restrictions or
requirements on the person or company, or
- (d) has agreed with
 - (i) a securities regulatory authority outside Canada,
 - (ii) a recognized self-regulatory organization in Canada,
or
 - (iii) an exchange in Canada,

to be subject to sanctions, conditions, restrictions or
requirements.

(3) An order made by a securities regulatory authority in Canada imposing sanctions, conditions, restrictions or requirements on a person or company takes effect in Alberta, without notice to that person or company and without a hearing, as if it were made by the Commission, with such modifications as the circumstances require.

(4) Where a person or company is subject to sanctions, conditions, restrictions or requirements pursuant to an agreement with a securities regulatory authority in Canada those sanctions, conditions, restrictions or requirements apply to that person or company, without notice to that person or company and without a hearing, as if the agreement had been made with the Commission, with such modifications as the circumstances require.

(5) An order referred to in subsection (3), or an agreement referred to in subsection (4), as the case may be, must have arisen as a result of findings or admissions of a contravention of laws respecting the trading in securities or derivatives, or conduct contrary to the public interest, in order to satisfy the requirements of subsection (3) or (4), as the case may be.

(6) If an order referred to in subsection (3), or an agreement referred to in subsection (4), as the case may be, does not meet

the requirements of subsection (5), notwithstanding section 198(3), the Commission may, with or without providing an opportunity to be heard, make an order under section 198(1)(a) to (h) in respect of the person or company that is the subject of the order or agreement, as the case may be.

(7) If an order is made by the Commission pursuant to subsection (2) or subsection (6), the Commission must send a copy of the order to the person or company against whom the order was made.

(8) Notwithstanding anything in subsections (3) and (4),

- (a) no person or company shall be required to pay the Commission or any other person or company any administrative penalty, costs or other funds as a result of the operation of this section,
- (b) no order issued by a securities regulatory authority in Canada solely based on
 - (i) an order issued by another securities regulatory authority in Canada imposing sanctions, conditions, restrictions or requirements, or
 - (ii) an agreement with another securities regulatory authority in Canada to be subject to sanctions, conditions, restrictions or requirements

will satisfy the requirements of subsection (3), and

- (c) where an order issued by a securities regulatory authority in Canada is overturned, vacated or otherwise held to be of no force and effect pursuant to applicable laws, that order ceases to satisfy the requirements of subsection (3).

(9) On the application of

- (a) the Executive Director in respect of a person or company who is subject to sanctions, conditions, restrictions or requirements imposed by, or agreed to with, a securities regulatory authority in Canada, or

- (b) a person or company who is subject to sanctions, conditions, restrictions or requirements imposed by, or agreed to with, a securities regulatory authority in Canada,

the Commission may, after providing the Executive Director and that person or company an opportunity to be heard, make a declaration clarifying the application of subsection (3) or (4), as the case may be, to that person or company, and that declaration is binding on that person or company and the Commission.

(10) A person or company shall comply with an order that is deemed to have been made pursuant to subsection (3) or an agreement that is deemed to have been made with the Commission pursuant to subsection (4), including any declaration made by the Commission pursuant to subsection (9).

35 Section 199(1)(a)(ii) is repealed and the following is substituted:

- (ii) a person or company authorized, permitted or acquiesced in a contravention or failure to comply with any provision of Alberta securities laws by another person or company,

35 Section 199(1) presently reads:

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.

36 Section 200 is amended by adding the following after subsection (2):

(3) Where a decision filed under subsection (1) includes an order to pay an amount pursuant to section 198(1)(i), the amount specified in the decision may be collected as a judgment of the Court of Queen’s Bench for the recovery of debt.

37 Section 201 is repealed and the following is substituted:

Limitation period

201 No proceedings under this Part shall be commenced in a court or before the Commission more than 6 years from the day of the occurrence of the last event on which the proceeding is based.

38 Section 203 is amended by adding the following before subsection (1):

203(0.1) In this Part, “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 a designated rating organization.

36 Section 200(2) presently reads:

(2) Where a decision filed under subsection (1) includes an administrative penalty levied pursuant to section 199, the administrative penalty in the amount specified in the decision may be collected as a judgment of the Court of Queen's Bench for the recovery of debt.

37 Section 201 presently reads:

201 No proceedings under this Part shall be commenced in a court or before the Commission more than 6 years from the day of the occurrence of the event that gave rise to the proceedings.

38 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 has, without regard to whether the purchaser relied on the misrepresentation, 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 that is in a contractual relationship with the issuer or selling security holder on whose behalf the distribution is made,*
- (c) every director of the issuer at the time the prospectus was filed,*
- (d) every person or company whose consent to disclosure of information in the prospectus has been filed 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.*

39 Section 208 is amended

- (a) **by striking out** “the reporting issuer” **wherever it appears and substituting** “the issuer”;
- (b) **by striking out** “a reporting issuer” **wherever it appears and substituting** “an issuer”.

40 The following is added after section 210:

Class proceedings

210.1(1) In a class proceeding to enforce a right or obligation created by this Part, a copy of the application to certify the class and any material filed with the Court must be sent to the Executive Director when filed.

(2) The representative plaintiff must provide the Executive Director with written notice of the day on which the application is scheduled to be heard at the same time that notice of the day is given to each defendant.

(3) If a party appeals the court’s decision on whether the class is certified,

- (a) each party to the appeal must provide a copy of any materials filed with the Court hearing the appeal to the Executive Director at the same time that they are filed with the Court, and
- (b) the appellant must provide the Executive Director with written notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

(4) If the class is certified, the representative plaintiff must provide the Executive Director with written notice of the day on which the trial of the action is scheduled to proceed at the same time that notice of the day is given to each defendant.

(5) If a party appeals the Court’s decision at the trial of the action,

- (a) each party to the appeal must provide a copy of any materials filed with the Court hearing the appeal to the

39 Change in terminology.

40 Class proceedings.

Executive Director at the same time that they are filed with the Court, and

- (b) the appellant must provide the Executive Director with written notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

Executive Director may intervene

210.2 The Executive Director may intervene in a class proceeding to enforce a right or obligation created by this Part, in an application to certify the class and in any appeal from the Court's decision at the trial of the action or from a decision on whether the class is certified.

41 Section 211.01 is amended by repealing clause (b) and substituting the following:

- (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 notice of change or variation in respect of any of those circulars, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements and an interim financial report of the responsible issuer,
 - (ii) where used in relation to

41 Section 211.01 presently reads in part:

211.01 In this Part,

(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 an interim financial report 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 notice of change or variation in respect of any of those circulars, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, an interim financial report 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 purpose of this definition;

42 Section 211.03 is amended

- (a) in subsection (6)(b) by striking out** "of a material change or material changes";
- (b) by repealing subsection (7) and substituting the following:**

(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 responsible issuer, no other person is liable with respect to any of the issuer's securities that were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation.

- (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, an interim financial report 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;*

42 Section 211.03 presently reads in part:

- (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.

43 Section 211.08 is amended by adding the following after subsection (5):

- (6) The plaintiff must provide the Commission with written notice of the day on which the application for leave is scheduled to be heard at the same time that notice of the day is given to each defendant.
- (7) If a party appeals the court's decision with respect to whether leave to commence an action is granted,
 - (a) each party to the appeal must provide a copy of any materials filed with the court hearing the appeal to the Commission at the same time that they are filed with that court, and
 - (b) the appellant must provide the Commission with written notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

44 Section 211.09 is repealed and the following is substituted:

Notice

211.09(1) 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,
- (c) send a copy of the statement of claim or other originating document to the Commission when filed, and
- (d) provide the Commission with written notice of the day on which the trial of the action is scheduled to be heard at the same time that notice of the day is given to each defendant.

43 Section 211.08 presently reads:

211.08(1) No action may be commenced under section 211.03 without leave of the court granted on application 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 questioned 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.

44 Section 211.09 presently reads:

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.

(2) If a party appeals the court's decision at the trial of the action,

- (a) each party to the appeal must provide a copy of any materials filed with the court hearing the appeal to the Commission at the same time that they are filed with the court, and
- (b) the appellant must provide the Commission with written notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

45 Section 211.093 is repealed and the following is substituted:

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, and in any appeal from a decision in the action or from a decision on whether leave to commence such an action is granted.

46 The following is added after section 211.094:

Class proceedings

211.0941(1) In a class proceeding to enforce a right or obligation created by this Part, a copy of the application to certify the class and any material filed with the Court must be sent to the Executive Director when filed.

(2) The representative plaintiff must provide the Executive Director with written notice of the day on which the application is scheduled to be heard at the same time that notice of the day is given to each defendant.

(3) If a party appeals the court's decision on whether the class is certified,

- (a) each party to the appeal must provide a copy of any materials filed with the Court hearing the appeal to the

45 Section 211.093 presently reads:

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

46 Class proceedings.

Executive Director at the same time that they are filed with the Court, and

- (b) the appellant must provide the Executive Director with written notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

(4) If the class is certified, the representative plaintiff must provide the Executive Director with written notice of the day on which the trial of the action is scheduled to proceed at the same time that notice of the day is given to each defendant.

(5) If a party appeals the Court's decision at the trial of the action,

- (a) each party to the appeal must provide a copy of any materials filed with the Court hearing the appeal to the Executive Director at the same time that they are filed with the Court, and
- (b) the appellant must provide the Executive Director with written notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

Executive Director may intervene

211.0942 The Executive Director may intervene in a class proceeding to enforce a right or obligation created by this Part, in an application to certify the class and in any appeal from the Court's decision at the trial of the action or from a decision on whether the class is certified.

47 Section 211.095 is amended by renumbering it as section 211.095(1) and adding the following after subsection (1):

(2) A limitation period established by subsection (1) in respect of an action is suspended on the date an application for leave under section 211.08 is filed with the court and resumes running on the date,

- (a) the court grants leave or dismisses the motion and,
 - (i) all appeals have been exhausted, or

47 Section 211.095 presently reads:

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) the time for an appeal has expired without an appeal being filed,

or

(b) the motion is abandoned or discontinued.

48 Section 211.9(7)(b) is repealed and the following is substituted:

(b) the Commission.

- (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.*

48 Section 211.9(7) presently reads:

- (7) *A copy of the notice of appeal and supporting documents shall within the 30-day period referred to in subsection (3) be served on*
 - (a) *the respondent, and*
 - (b) *the Secretary to the Commission.*

49 Section 216 is amended by adding “, promoters” after “officers”.

50 Section 217 is amended by adding the following after subsection (1):

(1.1) Notwithstanding subsection (1), service of any document on the Commission may only be effected by

- (a) personally delivering, or
- (b) delivering by courier or registered mail,

the document to the offices of the Commission, marked to the attention of the Secretary.

51 Section 220 is repealed and the following is substituted:

Service on Commission

220 Service of any document on the Commission is only effected by serving the document on the Commission in accordance with section 217(1.1).

52 Section 221 is repealed and the following is substituted:

Filing and confidentiality

221(1) Where Alberta securities laws require that material be filed

- (a) with the Commission, the filing shall be effected by providing the material or causing it to be provided to the Secretary, unless the Commission advises or orders otherwise, or

49 Section 216 presently reads:

216 The Commission or the Executive Director may by order require that the directors, officers and control persons of an issuer or a class of issuers or any one or more of those persons, within the time the Commission or the Executive Director specifies, file a personal information form prepared and executed in accordance with the regulations.

50 Section 217 presently reads in part:

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

- (a) personally delivered to the person or company that is to receive it,*
- (b) sent by prepaid post to the person or company that is to receive it, or*
- (c) sent by electronic means to the person or company that is to receive it.*

51 Section 220 presently reads:

220 Service of any document on the Commission may be effected by serving the document on the Secretary.

52 Section 221 presently reads:

221(1) Where Alberta securities laws require that material be filed

- (a) with the Commission, the filing shall be effected by depositing the material or causing it to be deposited with the Secretary, or*
- (b) with the Executive Director, the filing shall be effected by depositing the material or causing it to be deposited with the Executive Director.*

- (b) with the Executive Director, the filing shall be effected by providing the material or causing it to be provided to the Executive Director.

(2) Where Alberta securities laws

- (a) require that material be filed, and
- (b) do not specify as to where or with whom the material is to be filed,

the filing shall be effected by depositing the material or causing it to be deposited with the Executive Director unless the Commission advises or orders otherwise.

(3) Subject to subsections (4) and (5), all material filed under subsection (1) or (2) shall be made available for public inspection at the Commission offices during the normal business hours of the Commission.

(4) With respect to any material provided to or obtained by

- (a) the Commission, the Commission may hold the material in confidence if the Commission considers that it would not be prejudicial to the public interest to do so, or
- (b) the Executive Director, the Executive Director may hold the material in confidence if the Executive Director considers that it would not be prejudicial to the public interest to do so,

and the Commission or the Executive Director, as the case may be, may do so whether or not that material was required to be filed, submitted or otherwise provided.

(5) The Commission may,

- (a) on the application of an interested person or company or the Executive Director, and
- (b) on giving the interested person or company and the Executive Director the opportunity to be heard,

make an order directing that any material or class of material provided to or obtained by the Commission or the Executive

(2) Where Alberta securities laws

- (a) require that material be filed, and*
- (b) do not specify as to where or with whom the material is to be filed,*

the filing shall be effected by depositing the material or causing it to be deposited with the Executive Director unless the Commission by order directs otherwise.

(3) Subject to subsections (4) and (5), all material filed under subsection (1) or (2) shall be made available for public inspection at the Commission offices during the normal business hours of the Commission.

(4) With respect to material deposited

- (a) with the Secretary, the Commission may hold the material in confidence if the Commission considers that it would not be prejudicial to the public interest to do so, or*
- (b) with the Executive Director, the Executive Director may hold the material in confidence if the Executive Director considers that it would not be prejudicial to the public interest to do so.*

(5) The Commission may,

- (a) on the application of an interested person or company or the Executive Director, and*
- (b) on giving the interested person or company and the Executive Director the opportunity to have a hearing,*

make an order directing that any material or class of material deposited with the Secretary or the Executive Director be held in confidence if the Commission considers that it would not be prejudicial to the public interest to grant the order.

(6) Where the Executive Director decides to hold material in confidence or not to hold material in confidence, an interested person or company may appeal the decision to the Commission.

(7) An order of the Commission made pursuant to subsections (5) and (6) is final and there is no appeal from that order.

Director, be held in confidence if the Commission considers that it would not be prejudicial to the public interest to grant the order, and the Commission may do so whether or not that material was required to be filed, submitted or otherwise provided.

(6) Where the Executive Director decides to hold material in confidence or not to hold material in confidence, an interested person or company may appeal the decision to the Commission.

(7) Any decision of the Commission made pursuant to subsection (4) or (5), and any decision made by the Commission in an appeal of the Executive Director's decision pursuant to subsection (4), is final and there is no appeal from that decision.

53 Section 222 is repealed and the following is substituted:

Immunities

222(1) No action or other proceeding for damages may be instituted against the Commission, a member of the Commission, the Executive Director, the Secretary, a person employed by the Commission or a person appointed under this Act or the regulations to perform a function or duty of or for the Commission, the Executive Director or the Secretary, or against a recognized auditor oversight organization or a director, governor, member, officer, employee or agent of a recognized auditor oversight organization,

(a) for any act done in good faith

(i) in the performance or intended performance of any function or duty, or

(ii) in the exercise or intended exercise of any power,

or

(b) for any neglect, omission or default in the performance or exercise in good faith of any function, duty or power.

(2) No person or company has any rights or remedies and no proceedings lie or may be brought against any person or company for any act or omission of the last mentioned person

53 Section 222 presently reads:

222(1) No action or other proceeding for damages may be instituted against the Commission, a member of the Commission, the Executive Director, the Secretary, a person employed by the Commission or a person appointed under this Act or the regulations to perform a function or duty of or for the Commission, the Executive Director or the Secretary

(a) for any act done in good faith

(i) in the performance or intended performance of any function or duty, or

(ii) in the exercise or intended exercise of any power,

or

(b) for any neglect, omission or default in the performance or exercise in good faith of any function, duty or power.

(2) No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company for any act or omission of the last-mentioned person or company done or omitted in compliance with Alberta securities laws.

(3) Subsection (1) of this section does not, by reason of section 5(2) and (3) of the Proceedings Against the Crown Act, relieve the Crown of liability in respect of a tort committed by the Commission

or company done or omitted in compliance with Alberta securities laws.

(3) Subsection (1) does not, by reason of section 5(2) and (3) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by the Commission or any person referred to in subsection (1) to which the Crown would otherwise be subject, and the Crown is liable under that Act for the tort in a like manner as if subsection (1) had not been enacted.

54 The following is added after section 222:

Compellability and liability with respect to RPC representative

222.1 If an RPC representative is subject to a proceeding under this Act

- (a) the shareholders, directors, officers and employees of the professional corporation through which the RPC representative acts as a dealer or adviser are compellable to give evidence in the proceeding, and
- (b) the professional corporation through which the RPC representative acts as a dealer or adviser and its shareholders are jointly and severally liable for any administrative penalties and costs the RPC representative is ordered to pay.

55 Section 223 is amended

(a) by repealing clause (e.1) and substituting the following:

- (e.1) governing the designation of issuers or a class of issuers as reporting issuers and, without limiting the generality of the foregoing, circumstances in which
 - (i) an issuer or a class of issuers is deemed to be, or is deemed to cease to be, a reporting issuer, or
 - (ii) an issuer or a class of issuers is deemed to be, or is deemed to cease to be, a reporting issuer for the purposes of this Act or the regulations,

or any person referred to in subsection (1) of this section to which the Crown would otherwise be subject and the Crown is liable under that Act for the tort in a like manner as if subsection (1) of this section had not been enacted.

54 Section 222.1 presently reads:

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.

55 Section 223 presently reads in part:

223 The Lieutenant Governor in Council may make regulations

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

(j) governing registration and, without limiting the generality of the foregoing,

(vi) prescribing the conditions of registration or other requirements for registrants or any category or sub-category of registrants, including

including the circumstances in which an issuer or a class of issuers ceases to be a reporting issuer under the laws of another jurisdiction respecting trading in securities or derivatives;

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

- (vi) prescribe conditions of registration, including standards of practice and business conduct of registrants when dealing with customers, clients and other registrants;
- (vii) prescribe the disclosure or furnishing of information by registrants to customers, clients, the public, other registrants and the Commission;

56 Section 224(2)(a) is amended by adding “except with the approval of the Minister” after “223(ee)”.

Amends RSA 2000 cB-9

57 The *Business Corporations Act* is amended by repealing sections 132(3) and 193(8).

- (A) *standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients;*
- (B) *requirements governing ownership or control of the registrants;*
- (C) *requirements in respect of membership in a self-regulatory organization;*
- (vii) *governing the circumstances in which a person or company is required to disclose or furnish information to the public or the Commission;*

56 Section 224 presently reads in part:

224(1) The Commission may, subject to this section and the regulations referred to in section 223(ii), make rules in respect of any of the matters in respect of which the Lieutenant Governor in Council may make regulations under section 223.

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

- (a) make rules in respect of matters referred to in section 223(ee);*

57 Amends chapter B-9 of the Revised Statutes of Alberta 2000. Sections 132(3) and 193(8) presently read:

132(3) Notice of any application under subsection (2) by a distributing corporation shall be filed with the Executive Director.

193(8) If the application is in respect of a distributing corporation, the applicant shall give the Executive Director notice of the application and the Executive Director is entitled to appear and be heard in person or by counsel.

Amends SA 2001 cC-28.1

58 The *Cooperatives Act* is amended by repealing section 279(6).

59 Sections 1(c) and (e), 13, 17, 22, 23, 24, 30, 33(c) and (d), 34 and 55(b) come into force on Proclamation.

58 Amends chapter C-28.1 of the Statutes of Alberta, 2001.
Section 279(6) presently reads:

(6) If the application is in respect of a distributing cooperative, the applicant must give the Executive Director notice of the application, and the Executive Director is entitled to appear and be heard in person or by counsel.

59 Coming into force.

