

2015 Bill 15

Third Session, 28th Legislature, 64 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 15

SECURITIES AMENDMENT ACT, 2015

THE PRESIDENT OF TREASURY BOARD
AND MINISTER OF FINANCE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 15

2015

SECURITIES AMENDMENT ACT, 2015

(Assented to _____, 2015)

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 (c) and substituting the following:

- (c) “associate”, when used to indicate a relationship with a person or company, means
 - (i) an issuer of which the person or company beneficially owns or controls, directly or indirectly, voting securities entitling the person or company to more than 10% of the voting rights attached to outstanding securities of the issuer,
 - (ii) any partner of the person or company,
 - (iii) any trust or estate in which the person or company has a substantial beneficial interest or in respect of which a person or company serves as trustee or in a similar capacity, or
 - (iv) in the case of a person, a relative of that person, including

Explanatory Notes

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

2 Section 1 presently reads in part:

(c) *“associate”, when used to indicate a relationship with a person or company, means*

(i) *an issuer of which the person or company beneficially owns or controls, directly or indirectly, voting securities entitling the person or company to more than 10% of the voting rights attached to outstanding securities of the issuer,*

(ii) *any partner of the person or company,*

(iii) *any trust or estate in which the person or company has a substantial beneficial interest or in respect of which a person or company serves as trustee or in a similar capacity,*

(iv) *in the case of a person, a relative of that person, including*

(A) *the spouse or adult interdependent partner of that person, or*

- (A) the spouse or adult interdependent partner of that person,
- (B) a relative of the person's spouse or adult interdependent partner if the relative has the same home as that person, or
- (C) another person who has the same home as, and is in a conjugal relationship with, that person;

(b) in clause (II)

- (i) in subclause (i) by striking out "and" and substituting "or";**
- (ii) by striking out "and" at the end of subclause (ii) and substituting "or".**

3 Section 5 is repealed and the following is substituted:

Beneficial ownership

5 A person is deemed to beneficially own securities that are beneficially owned

- (a) by an issuer controlled by that person,
- (b) by an affiliate of an issuer described in subsection (a),
- (c) by an affiliate of that person, or
- (d) through a trustee, legal representative, agent or other intermediary of that person.

4 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

(B) a relative of the person's spouse or adult interdependent partner

if the relative has the same home as that person;

(ll) "officer", with respect to an issuer or registrant, means

(i) a chair or vice-chair of the board of directors, a chief executive officer, chief operating officer, chief financial officer, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer and general manager,

(ii) an individual who is designated as an officer under a bylaw or similar authority of the issuer or registrant, and

(iii) an individual who performs functions for a person or company similar to those normally performed by an individual referred to in subclause (i) or (ii);

3 Section 5 presently reads:

5 A person is deemed to beneficially own securities that are beneficially owned

(a) by an issuer controlled by that person or by an affiliate of that issuer,

(b) by an affiliate of that person, or

(c) through a trustee, legal representative, agent or other intermediary of that person.

4 Section 33 presently reads:

33(1) Notwithstanding anything in this Act, where

(a) this Act

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 or company named in the interim order
 - (i) a copy of the interim order,
 - (ii) any evidence admitted in support of the interim order, and
 - (iii) an accompanying notice of hearing in respect of the extension of the interim order pursuant to subsection (4), if applicable.

(3) If the Commission or the Executive Director makes an interim order under subsection (1) after conducting a hearing on notice to a person or company against whom the order is made, the order takes effect immediately and remains in effect

(i) *permits the Commission or the Executive Director to make a decision after conducting a hearing or after 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 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.*

- (a) for the period of time specified in the order, or
- (b) until any proceeding initiated pursuant to this Act, including a trial in respect of an offence, is finally determined or otherwise concluded.

(4) Before the expiry of an interim order, the Commission or the Executive Director, as the case may be, may extend an interim order for a specified period of time, or until any proceeding initiated pursuant to this Act, including a trial in respect of an offence, is finally determined or otherwise concluded, if

- (a) the Commission or the Executive Director provides the person or company named in that order with an opportunity to be heard, 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.

5 Section 42 is amended

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

(2) A person appointed to make an investigation under section 41 may

- (a) make copies or cause copies to be made of any documents, records, securities, derivatives, contracts or things produced pursuant to subsection (1), and
- (b) record by any means, electronic or otherwise, any statement or evidence provided by a person, whether provided voluntarily or compelled under subsection (1), and may engage the services of a court reporter to make any such recording.

(b) by adding the following after subsection (7):

(7.1) A person or company

(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.

5 Section 42 presently reads in part:

(2) A person appointed to make an investigation under section 41 may make copies or cause copies to be made of any documents, records, securities, derivatives, contracts or things produced pursuant to subsection (1).

(6) If authorized to do so by an order of the Court of Queen's Bench, a person conducting an investigation under section 41 may

(a) enter into and search premises, and

(b) seize and take possession of any documents, records, securities, derivatives, contracts or things,

of the person or company whose affairs are being investigated.

(7) An application for an order under subsection (6) may be made ex parte unless the Court of Queen's Bench otherwise directs.

- (a) who is subject to an investigation under section 41, and its employees and agents, and
- (b) who is in charge of premises that are entered pursuant to an order under subsection (6), and every person who is in those premises,

must give all assistance that is reasonably required by the person conducting the investigation under section 41, or authorized to enter, search and seize pursuant to an order under subsection (6).

(7.2) A person authorized by an order under subsection (6) and any person acting under the direction of that person may enter on land and into buildings, except a private dwelling, for the purpose of entering premises referred to in the order.

6 Section 48 is amended

- (a) in subsection (3) by adding** “and in the absence of the public” **after** “ex parte”;
- (b) in subsection (4) by adding** “, which may be extended on application to the Court” **after** “15 days”;
- (c) by adding the following after subsection (6):**
 - (7)** An order made under this section may be varied or revoked by the Court on application.

7 Section 50 is amended by adding the following after subsection (2):

(3) On an order being made under section 48 appointing a receiver, trustee or liquidator of the property of a person or company, the directors of the person or company shall not exercise any powers in respect of the person or company that the appointed receiver, trustee or liquidator is authorized to exercise, except as directed by the receiver, trustee or liquidator.

6 Section 48 presently reads in part:

(3) An application under subsection (1) may be made ex parte if the Court considers it proper to do so in the circumstances.

(4) If an application under this section is made ex parte, the Court may make an order appointing a receiver, receiver and manager, trustee or liquidator for a period not exceeding 15 days.

7 Section 50 presently reads:

50(1) A receiver and manager of the property of a person or company appointed under section 48 may carry on the business and affairs of the person or company and

(a) is vested with all the powers

(i) in the case of a person, of that person with respect to the operation of that person's business and affairs, and

(ii) in the case of a company, of the shareholders and directors of the company,

8 Section 93.3 is amended

- (a) by adding “or derivative” after “security” wherever it occurs;**
- (b) by adding “or derivatives” after “securities” wherever it occurs.**

and

(b) has, in addition to those powers provided under clause (a), those powers prescribed in the order appointing the receiver and manager.

(2) On an order being made under section 48 appointing a receiver and manager of the property of a person or company,

(a) in the case of a person, the person shall not exercise any powers in respect of the operation of the person's business and affairs, and

(b) in the case of a company, the shareholders and the directors of the company shall not exercise any powers in respect of the company,

except as directed by the receiver and manager.

8 Section 93.3 presently reads:

93.3(1) In this section, "material order information" means information that relates to

(a) the intention of a person or company responsible for making decisions about an investment portfolio to trade a security on behalf of the investment portfolio,

(b) the intention of a registrant trading on behalf of an investment portfolio to trade a security on behalf of the investment portfolio, or

(c) an unexecuted order, or the intention of any person or company to place an order, to trade a security,

and that, if disclosed, would reasonably be expected to affect the market price of the security.

(2) A person or company that knows of material order information shall not, and shall not recommend or encourage another person to,

(a) purchase or sell the securities to which the material order information relates,

9 Section 130(1) is amended by adding “, or an agreement to purchase another prescribed security,” after “applies”.

- (b) *acquire, dispose of, or exercise a put or call option or other right or obligation to purchase or sell the securities,*
- (c) *enter into a related financial instrument or acquire or dispose of rights or obligations under a related financial instrument, or*
- (d) *change that person's*
 - (i) *direct or indirect beneficial ownership of, or control or direction over,*
 - (A) *the securities, or*
 - (B) *a put or call option or other right or obligation to purchase or sell the securities,*
 - or*
 - (ii) *interest in, or rights or obligations associated with, a related financial instrument.*

(3) A person or company that knows of material order information shall not inform another person or company of the material order information unless it is necessary in the course of the person's or company's business.

9 Section 130 presently reads:

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

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

(3) A purchaser referred to in subsection (1) who is not the beneficial owner of the securities shall advise the person or

10 Section 194(3) is repealed and the following is substituted:

(3) Every person or company who authorizes, permits or acquiesces in the commission of an offence under subsection (1) by another person or company, whether or not a charge has been laid or a finding of guilt has been made against the other person or company in respect of the offence under subsection (1), is also 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 one day or to both.

11 Section 206 is amended by striking out “statutory” and substituting “applicable”.

company that is the beneficial owner of the securities of the provisions of subsections (1) and (2).

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

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

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

(7) The onus of proving that the time for giving notice under subsection (1) has expired is on the dealer from whom the purchaser has agreed to purchase the security.

10 Section 194(3) presently reads:

(3) Every director or officer of a person or company or a person other than an individual who authorizes, permits or acquiesces in the commission of an offence under subsection (1) by the person or company, whether or not a charge has been laid or a finding of guilt has been made against the person or company in respect of the offence under subsection (1), is also 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 one day or to both.

11 Section 206 presently reads:

206 *A person who is*

- (a) a purchaser of a security to whom a prospectus, any amendment to the prospectus, another prescribed document, or any amendment to the prescribed document was required to be sent under section 129 or the regulations, but was not so sent,*
- (b) a security holder of an offeree issuer or another person or company that is not a security holder of an offeree issuer to which*
 - (i) a take-over bid and take-over bid circular,*

12 Section 213 is repealed and the following is substituted:

General exemption

213 The Commission may by order exempt

- (a) any person, company, trade, distribution, security or derivative, or
- (b) any class or classes of persons, companies, trades, distributions, securities or derivatives

from all or any provision of Alberta securities laws.

13 The *Securities Amendment Act, 2014* is amended in section 34 by repealing the new section 198.1(8) and substituting the following:

- (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, or agreement entered into with, a securities regulatory authority in Canada solely based on

- (ii) an issuer bid and issuer bid circular, or*
- (iii) a notice of change or variation to that bid or circular referred to in subclause (i) or (ii)*

was required to be sent under the regulations, but was not so sent, or

- (c) a purchaser of a security to whom an offering memorandum was required to be sent in compliance with Alberta securities laws but was not sent within the time prescribed for sending the offering memorandum,*

has a right of action for rescission or damages against the dealer, offeror or issuer, as the case may be, who did not comply with the statutory requirement.

12 Section 213 presently reads:

213 The Commission may by order exempt

- (a) any person, company, trade or distribution, or*
- (b) any class or classes of persons, companies, trades or distributions*

from all or any provision of Alberta securities laws.

13 Amends chapter 17 of the Statutes of Alberta, 2014. The new section 198.1(8) presently reads:

- (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

satisfies the requirements of subsection (3) or (4), as the case may be,

(c) where

- (i) an order issued by a securities regulatory authority in Canada imposing sanctions, conditions, restrictions or requirements is overturned, vacated, revoked or otherwise held to be of no force and effect pursuant to applicable laws, or
- (ii) an agreement with another securities regulatory authority in Canada to be subject to sanctions, conditions, restrictions or requirements is set aside, revoked or otherwise held to be of no force and effect either pursuant to applicable laws or on consent of the parties to the agreement,

that order or agreement, as the case may be, ceases to satisfy the requirements of subsection (3) or (4), as the case may be, and

(d) where

- (i) an order issued by a securities regulatory authority in Canada imposing sanctions, conditions, restrictions or requirements, other than an order excluded from this section pursuant to clause (b), is varied or amended pursuant to applicable laws, or
- (ii) an agreement with another securities regulatory authority in Canada to be subject to sanctions, conditions, restrictions or requirements, other than an agreement excluded from this section pursuant to clause (b), is varied or amended either pursuant to applicable laws or on consent of the parties to the agreement,

that order or agreement, as the case may be, applies in Alberta as varied or amended.

- (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).*

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