

2016 Bill 6

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Second Session, 29th Legislature, 65 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 6**

**SECURITIES AMENDMENT ACT, 2016**

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THE PRESIDENT OF TREASURY BOARD, MINISTER OF FINANCE

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 6

2016

### SECURITIES AMENDMENT ACT, 2016

(Assented to \_\_\_\_\_, 2016)

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 (n.01) and substituting the following:**

(n.01) “derivative” means

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

but does not include a derivative, or a class of derivatives, that is designated under section 10 not to be

## **Explanatory Notes**

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

**2** Definitions.

a derivative, or a derivative, or a class of derivatives,  
that is prescribed not to be a derivative;

**(b) by repealing clause (ccc)(iv), (v) and (vi) and substituting the following:**

- (iv) that has exchanged its securities with another issuer or with the holders of the securities of that other issuer in connection with an amalgamation, merger, reorganization, arrangement, take-over bid or similar transaction if one of the parties to the amalgamation, merger, reorganization, arrangement, take-over bid or similar transaction was a reporting issuer at the time of the amalgamation, merger, reorganization, arrangement, take-over bid or similar transaction;
- (v) that is declared, deemed or designated to be a reporting issuer pursuant to any other provision of Alberta securities laws;

**(c) in clause (ggg) by adding “or a security or class of securities prescribed not to be a security” after “order under section 10”.**

**3 Section 29(m) is repealed and the following is substituted:**

- (m) matters relating to compelling the attendance of witnesses, including the payment of fees, expenses and allowances, are to be determined in accordance with the regulations.

**3** Section 29 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:*

- (k) a person or company appearing at a hearing may be represented by legal counsel;*
- (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;*
- (m) the provisions of the Alberta Rules of Court compelling the attendance of witnesses, including provisions relating to the payment of fees, expenses and allowances, apply to matters heard under this Act.*

**4 Section 33.2(4) is repealed and the following is substituted:**

(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) for a specified period of time or until any proceeding initiated pursuant to this Act is finally determined or otherwise concluded.

**5 Section 42 is amended**

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

(1.1) Matters relating to compelling the attendance of witnesses, including the payment of fees, expenses and allowances, are to be determined in accordance with the regulations.

**(b) by repealing subsections (6) and (7) and substituting the following:**

(6) A justice who is satisfied that there are reasonable grounds to believe that the premises may contain anything that is related to the investigation may at any time by order authorize a person conducting an investigation under section 41

(a) to enter into and search premises, and

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

related to the investigation.

(7) An application for an order under subsection (6) may be made ex parte unless the justice otherwise directs.

(7.01) In subsections (6) and (7), “justice” means a justice of the peace or a judge of the Provincial Court.

**4** Section 33.2(4) presently reads:

*(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.*

**5** Section 42 presently reads in part:

*42(1) The person appointed to make an investigation under section 41 has the same power as is vested in the Court of Queen's Bench for the trial of civil actions*

*(a) to summon and enforce the attendance of witnesses,*

*(b) to compel witnesses to give evidence on oath or otherwise,  
and*

*(c) to compel witnesses to produce documents, records,  
securities, derivatives, contracts and things.*

*(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.*

**6 Sections 62 to 64 are repealed and the following is substituted:**

**Recognition of exchange**

**62(1)** No person or company shall carry on business as an exchange in Alberta unless the person or company is recognized by the Commission under this section.

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

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

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

- (a) suspend or cancel its recognition under this section, or
- (b) add to, remove, vary or replace any terms or conditions that were previously imposed on its recognition under this section.

**Operation of recognized exchanges**

**63(1)** A recognized exchange shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with the bylaws, rules, regulations, policies, procedures, interpretations and practices of the recognized exchange.

(2) The authority of a recognized exchange to regulate the operations and the standards of practice and business conduct of its members and their representatives under subsection (1) extends to

- (a) any former member,
- (b) any former representative of a member, and



**6** Sections 62 to 64 presently read:

*62(1) No person or company shall carry on business as an exchange in Alberta unless the person or company is recognized by the Commission as an exchange.*

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

*(3) The recognition of an exchange under this section is to be made in writing and is subject to any terms and conditions that the Commission may impose.*

*63(1) The Commission, after giving a recognized exchange an opportunity to be heard, may*

*(a) suspend or cancel its recognition as a recognized exchange, or*

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

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

*(2) A recognized exchange shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with the bylaws, rules, regulations, policies, procedures, interpretations and practices of the exchange.*

*(3) The authority of an exchange to regulate the operations and the standards of practice and business conduct of its members and their representatives under subsection (2) extends to*

*(a) any former member,*

*(b) any former representative of a member, and*

*(c) any former representative of a former member,*

*with respect to that person's operations and conduct while a member of the exchange or a representative of a member of the exchange.*

(c) any former representative of a former member,

with respect to that person's operations and conduct while a member of the recognized exchange or a representative of a member of the recognized exchange.

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

- (a) that the Commission considers is necessary to ensure that issuers whose securities are listed and posted for trading on a recognized exchange comply with Alberta securities laws;
- (b) respecting the manner in which a recognized exchange carries on business;
- (c) respecting any bylaw, rule, regulation, policy, procedure, interpretation or practice of a recognized exchange;
- (d) respecting trading on or through the facilities of a recognized exchange;
- (e) respecting any security that is listed and posted for trading on a recognized exchange;
- (f) respecting any derivative that is trading on a recognized exchange.

**(4)** Every recognized exchange shall

- (a) keep a record showing the time at which each transaction on the exchange took place, and
- (b) supply to any customer of any member of the exchange, on production of a written confirmation of any transaction with the member, particulars of the time at which the transaction took place and verification or otherwise of the matters set out in the confirmation.

**Recognition of self-regulatory organizations**

**64(1)** The Commission may, on the application of a person or company carrying on business as a self-regulatory organization, recognize the person or company under this section if the

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

- (a) that the Commission considers is necessary to ensure that issuers whose securities are listed and posted for trading on a recognized exchange comply with Alberta securities laws;*
- (b) respecting the manner in which a recognized exchange carries on business;*
- (c) respecting any bylaw, rule, regulation, policy, procedure, interpretation or practice of a recognized exchange;*
- (d) respecting trading on or through the facilities of a recognized exchange;*
- (e) respecting any security that is listed and posted for trading on a recognized exchange;*
- (f) respecting any derivative that is trading on a recognized exchange.*

*(5) Every recognized exchange shall*

- (a) keep a record showing the time at which each transaction on the exchange took place, and*
- (b) supply to any customer of any member of the exchange, on production of a written confirmation of any transaction with the member, particulars of the time at which the transaction took place and verification or otherwise of the matters set out in the confirmation.*

*64(1) The Commission may, on the application of a self-regulatory organization, recognize the self-regulatory organization if the Commission considers that it would not be prejudicial to the public interest to do so.*

*(2) The recognition of a self-regulatory organization under this section shall be made in writing and is subject to any terms and conditions that the Commission may impose.*

*(3) The Commission, after giving a recognized self-regulatory organization an opportunity to be heard, may*

Commission considers that it would not be prejudicial to the public interest to do so.

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

**(3)** The Commission, after giving a recognized self-regulatory organization an opportunity to be heard, may, if the Commission considers that it is in the public interest to do so,

- (a) suspend or cancel its recognition under this section, or
- (b) add to, remove, vary or replace any terms or conditions that were previously imposed on its recognition under this section.

**(4)** A recognized self-regulatory organization shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with the bylaws, rules, regulations, policies, procedures, interpretations and practices of the recognized self-regulatory organization.

**(5)** The authority of a recognized self-regulatory organization to regulate the operations and the standards of practice and business conduct of its members and their representatives under subsection (4) extends to

- (a) any former member,
- (b) any former representative of a member, and
- (c) any former representative of a former member,

with respect to that person's operations and conduct while a member of the recognized self-regulatory organization or a representative of a member of the recognized self-regulatory 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 any bylaw, rule, regulation, policy, procedure, interpretation or practice of a recognized self-regulatory organization.

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

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

*(4) A recognized self-regulatory organization shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with the bylaws, rules, regulations, policies, procedures, interpretations and practices of the self-regulatory organization.*

*(5) The authority of a self-regulatory organization to regulate the operations and the standards of practice and business conduct of its members and their representatives under subsection (4) extends to*

- (a) any former member,*
- (b) any former representative of a member, and*
- (c) any former representative of a former member,*

*with respect to that person's operations and conduct while a member of the self-regulatory organization or a representative of a member of the self-regulatory 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 any bylaw, rule, regulation, policy, procedure, interpretation or practice of a recognized self-regulatory organization.*

**7 Section 64.1 is amended**

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

**Recognition of auditor oversight organization**

**64.1(1)** The Commission may, on the application of a person or company carrying on business as an auditor oversight organization, recognize the person or company under this section for the purposes of this Part if the Commission considers that it would not be prejudicial to the public interest to do so.

- (b) by repealing subsection (2) and substituting the following:**

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

- (c) by repealing subsection (5) and substituting the following:**

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

- (a) suspend or cancel its recognition under this section, or
- (b) add to, remove, vary or replace any terms or conditions that were previously imposed on its recognition under this section.

**7** Section 64.1 presently reads:

*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 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.*

**8 Section 65(3) is repealed and the following is substituted:**

**(3)** Where a recognized exchange or recognized self-regulatory organization establishes a council, committee or other ancillary body to administer regulatory or self-regulatory powers or responsibilities, that council, committee or ancillary body

- (a) is included in the recognition under section 62 or 64, as the case may be,
- (b) is subject to the same terms or conditions, if any, that are imposed by the Commission on the recognized exchange or recognized self-regulatory organization, as the case may be, and
- (c) unless otherwise directed by the Commission, is subject to an order that suspends, restricts or cancels the recognition of the exchange or the self-regulatory organization, as the case may be.

**9 Sections 67 and 67.1 are repealed and the following is substituted:**

**Recognized clearing agency**

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

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

**(3)** The Commission may, on the application of a person or company proposing to carry on business as a clearing agency, recognize the person or company under this section if the



**8** Section 65(3) presently reads:

*(3) Where an exchange or self-regulatory organization establishes a council, committee or other ancillary body to administer regulatory or self-regulatory powers or responsibilities,*

*(a) that council, committee or ancillary body*

*(i) is included in the recognition of the recognized exchange or recognized self-regulatory organization, and*

*(ii) is subject to the same terms or conditions, if any, that are imposed by the Commission on the recognized exchange or recognized self-regulatory organization,*

*and*

*(b) the recognition of that council, committee or ancillary body is, unless otherwise directed by the Commission, suspended, restricted or cancelled, as the case may be, when the recognition of the recognized exchange or recognized self-regulatory organization is suspended, restricted or cancelled.*

**9** Sections 67 and 67.1 presently read:

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

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

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

Commission considers that it would not be prejudicial to the public interest to do so.

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

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

- (a) suspend or cancel its recognition under this section, or
- (b) add to, remove, vary or replace any terms or conditions that were previously imposed on its recognition under this section.

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

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

#### **Designation of credit rating organizations**

**67.1(1)** The Commission may, on the application of a person or company carrying on business as a credit rating organization or on its own motion, designate the person or company under this section if the Commission considers that it would not be prejudicial to the public interest to do so.

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

(3) The Commission, after giving a designated rating organization an opportunity to be heard, may, if the Commission considers that it is in the public interest to do so,

- (a) suspend or cancel its designation under this section, or

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

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

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

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

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

*(a) any bylaw, rule, regulation, policy, procedure, interpretation or practice of a recognized clearing agency, or*

*(b) the manner in which a recognized clearing agency carries on its business.*

*67.1(1) The Commission may, on the application of a credit rating organization or on its own motion, designate the credit rating organization as a designated rating organization if the Commission considers that it would not be prejudicial to the public interest to do so.*

*(2) The designation of a credit rating organization under this section must be in writing and is subject to any terms and conditions that the Commission may impose.*

*(3) The Commission, after giving a designated rating organization an opportunity to be heard, may*

*(a) suspend or cancel its designation as a designated rating organization, or*

*(b) add to, remove, vary or replace any terms or conditions that were previously imposed on its designation as a designated rating organization,*

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

(b) add to, remove, vary or replace any terms or conditions that were previously imposed on its designation under this section.

(4) A designated rating organization shall comply with the regulations.

**10 Section 67.3 is repealed and the following is substituted:**

**Recognized trade repository**

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

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

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

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

(a) suspend or cancel its recognition under this section, or

(b) add to, remove, vary or replace any term or condition that was previously imposed on its recognition under this section.

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

*(4) A designated rating organization shall comply with the regulations.*

**10** Section 67.3 presently reads:

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

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

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

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

*(a) suspend or cancel its recognition, or*

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

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

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

**11 Section 68 is repealed and the following is substituted:**

**Recognition of quotation and trade reporting systems**

**68(1)** The Commission may, on the application of a person or company carrying on business as a quotation and trade reporting system, recognize the person or company under this section if the Commission considers that it would not be prejudicial to the public interest to do so.

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

**(3)** The Commission, after giving a recognized quotation and trade reporting system the opportunity to be heard, may, if the Commission considers that it is in the public interest to do so,

(a) suspend or cancel its recognition under this section, or

(b) add to, remove, vary or replace any terms or conditions that were previously imposed on its recognition under this section.

**(4)** No person or company shall carry on business as a quotation and trade reporting system or facilitate transactions of securities or derivatives by means of an operation similar in nature to a quotation and trade reporting system unless the person or company is recognized under this section.

**12 Section 203 is amended**

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

(e) every person or company who signed the prospectus.

**(b) by repealing subsection (2) and substituting the following:**

**(2)** 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

**11** Section 68 presently reads:

*68(1) The Commission may, on the application of a quotation and trade reporting system, recognize the quotation and trade reporting system if the Commission considers that it would not be prejudicial to the public interest to do so.*

*(2) The recognition of a quotation and trade reporting system under this section shall be made in writing and is subject to any terms and conditions that the Commission may impose.*

*(3) The Commission, after giving a quotation and trade reporting system the opportunity to be heard, may*

*(a) suspend or cancel its recognition as a recognized quotation and trade reporting system, or*

*(b) remove, vary or replace any terms or conditions that were previously imposed on its recognition as a recognized quotation and trade reporting system,*

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

*(4) No person or company shall carry on business as a quotation and trade reporting system or facilitate transactions of securities or derivatives by means of an operation similar in nature to a quotation and trade reporting system unless the person or company is recognized under this section as a quotation and trade reporting system.*

**12** Section 203 presently reads in part:

*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.*

*(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*

relied on the misrepresentation, a right of action for rescission against

- (a) the issuer or a selling security holder on whose behalf the distribution is made, and
- (b) every underwriter of the securities.

**(c) in subsection (5)**

- (i) **in clause (a) by adding** “advised the Executive Director and” **after** “promptly”;
- (ii) **in clause (b) by adding** “advised the Executive Director and” **after** “consent to it and”;

**(d) by repealing subsections (6) and (7) and substituting the following:**

**(6)** No person or company, other than the issuer or selling security holder, is liable under subsection (1) or (2) with respect to any part of the prospectus purporting to be made on the person’s or company’s own authority as an expert or purporting to be a copy of or an extract from the person’s or company’s own report, opinion or statement as an expert if the person or company proves that, after conducting a reasonable investigation, the person or company had no reasonable grounds to believe, and did not believe, that there was a misrepresentation.

**(7)** No person or company, other than the issuer or selling security holder, is liable under subsection (1) or (2) with respect to any part of the prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert if the person or company proves that, after conducting a reasonable investigation, the person or company had no reasonable grounds to believe, and did not believe, that there was a misrepresentation.

**(e) by repealing subsection (10) and substituting the following:**

**(10)** Subject to subsections (8) and (13.1), all or any one or more of the persons or companies specified in subsection (1)



- (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.*

*(2) 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 rescission 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, and*
- (c) *any other underwriter of the securities.*

*(5) No person or company, other than the issuer or selling security holder, is liable under subsection (1) or (2) if the person or company proves*

- (a) *that the prospectus was filed without the person's or company's knowledge or consent and that, on becoming aware of its filing, the person or company promptly gave reasonable general notice that it was so filed;*
- (b) *that, after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus the person or company withdrew the person's or company's consent to it*

that are found to be liable or that accept liability under this section are jointly and severally liable.

**(f) by adding the following after subsection (14):**

**(14.1)** The defences provided under this section are in addition to and do not derogate from any other defences that the defendant may have at law.

*and gave reasonable general notice of the withdrawal and the reason for it;*

- (c) that, with respect to any part of the prospectus purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, the person or company had no reasonable grounds to believe and did not believe that*
  - (i) there had been a misrepresentation,*
  - (ii) the part of the prospectus did not fairly represent the report, opinion or statement of the expert, or*
  - (iii) the part of the prospectus was not a fair copy of or extract from the report, opinion or statement of the expert;*
- (d) that, with respect to any part of the prospectus purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert, but that contains a misrepresentation attributable to a failure to represent fairly the person's or company's report, opinion or statement as an expert,*
  - (i) the person or company had, after reasonable investigation, reasonable grounds to believe and did believe that the part of the prospectus fairly represented the person's or company's report, opinion or statement, or*
  - (ii) on becoming aware that the part of the prospectus did not fairly represent the person's or company's report, opinion or statement as an expert, the person or company promptly advised the Executive Director and gave reasonable general notice that misuse had been made of it and that the person or company would not be responsible for that part of the prospectus;*
- (e) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document,*
  - (i) it was a correct and fair representation of the statement or copy of or extract from the document, and*

**13 Section 204 is amended**

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

**Civil liability — offering memorandum or other prescribed offering documents**

**204(1)** If a person or company purchases securities offered by an offering memorandum or other prescribed offering document that contains a misrepresentation, the purchaser has, without regard to whether the purchaser relied on the misrepresentation, a right of action

(ii) *the person or company had reasonable grounds to believe and did believe that the statement was true.*

*(6) No person or company, other than the issuer or selling security holder, is liable under subsection (1) or (2) with respect to any part of the prospectus purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert unless the person or company*

*(a) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation, or*

*(b) believed there had been a misrepresentation.*

*(7) No person or company, other than the issuer or selling security holder, is liable under subsection (1) or (2) with respect to any part of the prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless the person or company*

*(a) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation, or*

*(b) believed there had been a misrepresentation.*

*(10) All or any one or more of the persons or companies specified in subsection (1) that are found to be liable or accept liability under this section are jointly and severally liable.*

**13** Section 204 presently reads in part:

*204(1) If an offering memorandum contains a misrepresentation when a person or company purchases a security offered by the offering memorandum, the purchaser has, without regard to whether the purchaser relied on the misrepresentation, a right of action*

*(a) for damages against*

*(i) the issuer,*

- (a) for damages against
  - (i) the issuer or selling security holder on whose behalf the distribution is made,
  - (ii) every director of the issuer at the date of the document, and
  - (iii) every person or company who signed the document,and
- (b) for rescission against the issuer or selling security holder on whose behalf the distribution is made.

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

**(3)** Where a misrepresentation is contained in an offering memorandum or other prescribed offering document, no person or company is liable under subsection (1) if the person or company proves that

- (a) the purchaser had knowledge of the misrepresentation,
- (b) the document was sent to the purchaser without the person's or company's knowledge or consent and, on becoming aware of its being sent, the person or company promptly gave reasonable notice to the Executive Director and the issuer that it was sent without the knowledge and consent of the person or company,
- (c) the person or company, after the sending of the document and before the purchase of the securities, on becoming aware of the misrepresentation in the document, withdrew the person's or company's consent to the document and gave reasonable notice to the Executive Director and the issuer of the withdrawal and the reason for it,
- (d) with respect to any part of the document purporting to be made on the authority of an expert or purporting to be a fair copy of, or an extract from, a report, opinion or statement of an expert, the person or company did not

(ii) every director of the issuer at the date of the offering memorandum, and

(iii) every person or company who signed the offering memorandum,

and

(b) for rescission against the issuer.

(3) Where a misrepresentation is contained in an offering memorandum, no person or company is liable under subsection (1)

(a) if the person or company proves that the purchaser had knowledge of the misrepresentation;

(b) if the person or company proves that the offering memorandum was sent to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its being sent, the person or company promptly gave reasonable notice to the issuer that it was sent without the knowledge and consent of the person or company;

(c) if the person or company proves that the person or company, on becoming aware of the misrepresentation in the offering memorandum, withdrew the person's or company's consent to the offering memorandum and gave reasonable notice to the issuer of the withdrawal and the reason for it;

(d) if, with respect to any part of the offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, the person or company proves that the person or company did not have any reasonable grounds to believe and did not believe that

(i) there had been a misrepresentation, or

(ii) the relevant part of the offering memorandum

(A) did not fairly represent the report, opinion or statement of the expert, or

(B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert;

have any reasonable grounds to believe, and did not believe, that

- (i) there had been a misrepresentation, or
- (ii) the relevant part of the document
  - (A) did not fairly represent the report, opinion or statement of the expert, or
  - (B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert,

or

- (e) with respect to any part of the document not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, after conducting a reasonable investigation, the person or company had no reasonable grounds to believe, and did not believe, that there was a misrepresentation.

**(c) in subsection (4) by adding “or other prescribed offering document” after “memorandum”;**

**(d) by repealing subsection (7) and substituting the following:**

**(7)** Subject to subsection (8), all or any one or more of the persons or companies specified in subsection (1) that are found to be liable or that accept liability under this section are jointly and severally liable.

**(e) by adding the following after subsection (8):**

**(8.1)** Despite subsections (7) and (8), an issuer is not liable if it does not receive any proceeds from the distribution and the misrepresentation was not based on information provided by the issuer, unless the misrepresentation

- (a) was based on information that was previously generally disclosed by the issuer,



- (e) with respect to any part of the offering memorandum not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, unless the person or company
    - (i) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation, or*
    - (ii) believed there had been a misrepresentation.**
- (4) The amount recoverable under this section shall not exceed the price at which the securities were offered under the offering memorandum.*
- (7) All or any one or more of the persons or companies specified in subsection (1) that are found to be liable or accept liability under this section are jointly and severally liable.*
- (8) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.*
- (9) The right of action for rescission or damages conferred by this section is in addition to and does not derogate from any other right that the purchaser may have at law.*
- (10) If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, an offering memorandum, the misrepresentation is deemed to be contained in the offering memorandum.*

- (b) was a misrepresentation at the time of that disclosure, and
- (c) was not subsequently publicly corrected or superseded by the issuer before the completion of the distribution.

**(f) by adding the following after subsection (9):**

**(9.1)** The defences provided under this section are in addition to and do not derogate from any other defences that the defendant may have at law.

**(g) by repealing subsection (10) and substituting the following:**

**(10)** If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, an offering memorandum or other prescribed offering document, the misrepresentation is deemed to be contained in the offering memorandum or other prescribed offering document.

**14 Section 205 is amended**

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

- (b) for damages against
  - (i) every person who, at the time the circular or notice was signed, was a director of the offeror,
  - (ii) every person or company whose consent has been filed, but only with respect to reports, opinions or statements that have been made by them, and
  - (iii) each person who signed a certificate in the circular or notice.

**(b) by repealing subsection (2) and substituting the following:**

**(2)** If a directors' circular or an individual director's or officer's circular or any notice of change or variation to one of those circulars is sent to security holders of an offeree issuer as required under the regulations and that document

**14** Section 205 presently reads in part:

*205(1) If a take-over bid circular or a notice of change or variation is sent to the holders of securities of an offeree issuer or to the holders of securities convertible into securities of an offeree issuer as required under the regulations and that document contains a misrepresentation, each of those holders may, without regard to whether the holders relied on the misrepresentation, elect to exercise a right of action*

*(a) for rescission or damages against the offeror, or*

*(b) for damages against*

*(i) every person who, at the time the circular or notice was signed, was a director of the offeror,*

*(ii) every person or company whose consent has been filed pursuant to a requirement of the regulations, but only with respect to reports, opinions or statements that have been made by them, and*

contains a misrepresentation, each of the persons or companies to whom the circular or notice was sent, without regard to whether the holders relied on the misrepresentation,

- (a) in respect of a misrepresentation in a directors' circular or a notice of change or variation to it, has a right of action for damages against
  - (i) every director or officer who signed the circular or notice of change or variation, and
  - (ii) every person or company whose consent has been filed, but only with respect to reports, opinions or statements that have been made by them,

and

- (b) in respect of a misrepresentation in an individual director's or officer's circular or a notice of change or variation to it, has a right of action for damages against
  - (i) every director or officer who signed the circular or notice of change or variation, and
  - (ii) every person or company whose consent has been filed, but only with respect to reports, opinions or statements that have been made by them.

**(c) in subsection (5)**

- (i) **in clause (a) by adding** "advised the Executive Director and" **after** "promptly";
- (ii) **in clause (b) by adding** "promptly advised the Executive Director and" **after** "to it and";
- (iii) **in clause (d)(i) by striking out** "an investigation" **and substituting** "a reasonable investigation";

**(d) by repealing subsections (6), (7) and (8) and substituting the following:**

**(6)** No person or company, other than the offeror, is liable under subsection (1), (2) or (3) with respect to any part of the circular or the notice of change or variation in respect of it



purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert if the person or company proves that, after conducting a reasonable investigation, the person or company had no reasonable grounds to believe, and did not believe, that there was a misrepresentation.

**(7)** No person or company, other than the offeror, is liable under subsection (1), (2) or (3) with respect to any part of the circular or the notice of change or variation in respect of it not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert if the person or company proves that, after conducting a reasonable investigation, the person or company had no reasonable grounds to believe, and did not believe, that there was a misrepresentation.

**(8)** Subject to subsection (10.1), all or any one or more of the persons or companies specified in subsection (1), (2) or (3) that are found to be liable or that accept liability under this section are jointly and severally liable.

**(e) by adding the following after subsection (11):**

**(11.1)** The defences provided under this section are in addition to and do not derogate from any other defences that the defendant may have at law.

- (b) *after the sending of the circular or the notice of change or variation in respect of it, as the case may be, on becoming aware of any misrepresentation in the circular or the notice of change or variation in respect of it, the person or company withdrew the person's or company's consent to it and gave reasonable general notice of the withdrawal and the reason for it;*
- (c) *with respect to any part of the circular or the notice of change or variation in respect of it purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, the person or company had no reasonable grounds to believe and did not believe*
  - (i) *that there had been a misrepresentation,*
  - (ii) *that the part of the circular or the change or variation did not fairly represent the report, opinion or statement of the expert, or*
  - (iii) *that the part of the circular or the change or variation was not a fair copy of or extract from the report, opinion or statement of the expert;*
- (d) *with respect to any part of the circular or the notice of change or variation in respect of it purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert, but that contains a misrepresentation attributable to a failure to represent fairly the person's or company's report, opinion or statement as an expert,*
  - (i) *the person or company had, after conducting an investigation, reasonable grounds to believe and did believe that the part of the circular fairly represented the person's or company's report, opinion or statement as an expert, or*
  - (ii) *on becoming aware that the part of the circular did not fairly represent the person's or company's report, opinion or statement as an expert, the person or company promptly advised the Executive Director and gave reasonable general notice that misuse had been made of it*





*and that the person or company would not be responsible for that part of the circular;*

*(e) with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document,*

*(i) it was a correct and fair representation of the statement or copy of or extract from the document, and*

*(ii) the person or company had reasonable grounds to believe and did believe that the statement was true.*

*(6) No person or company, other than the offeror, is liable under subsection (1), (2) or (3) with respect to any part of the circular or the notice of change or variation in respect of it purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert unless the person or company*

*(a) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation, or*

*(b) believed there had been a misrepresentation.*

*(7) No person or company, other than the offeror, is liable under subsection (1), (2) or (3) with respect to any part of the circular or the notice of change or variation in respect of it not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless the person or company*

*(a) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation, or*

*(b) believed there had been a misrepresentation.*

*(8) All or any one or more of the persons or companies specified in subsection (1), (2) or (3) that are found to be liable or accept liability under this section are jointly and severally liable.*

**15 Section 206 is repealed and the following is substituted:**

**Liability of dealer, offeror or issuer**

**206** A person who is

- (a) a purchaser of a security to whom a prospectus or any amendment to a prospectus was required to be sent in compliance with section 129, 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,
  - (ii) an issuer bid and issuer bid circular, or
  - (iii) a notice of change or variation to a 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 or other prescribed offering document was required to be sent in compliance with Alberta securities laws but was not sent within the time prescribed for sending the document,

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 applicable requirement.

**16 Section 207(6) to (11) are repealed and the following is substituted:**

**(6)** Subsection (5) does not apply if the person or company in the special relationship proves that the person or company

*(11) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right that the security holders may have at law.*

**15** 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,*

*(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 applicable requirement.*

**16** Section 207(5) to (11) presently read:

*(5) Every person or company in a special relationship with a reporting issuer*

reasonably believed that the material fact or material change had been generally disclosed.

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

- (a) the investment program of a mutual fund, or
- (b) the investment portfolio managed for a client by an adviser

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

**(7.1)** Every person or company that is in a special relationship with a reporting issuer and that contravenes section 147(5) is liable to compensate the seller or purchaser of the securities, as the case may be, or the person or company that entered into a transaction as described in section 147(5) for damages as a result of the trade or transaction.

**(7.2)** Subsection (7.1) does not apply if the person or company in the special relationship proves that the person or company reasonably believed that

- (a) the material fact or material change had been generally disclosed, or
- (b) the other party to the purchase or sale of the securities or to a transaction as described in section 147(5), or the other person or company informed of the material fact or material change, had prior knowledge of or ought reasonably to have known of the material fact or material change.

**(7.3)** A person or company that contravenes section 93.3 is liable to compensate a person or company described in section 93.3(1)(a) or (c), as the case may be, in an amount equal to the benefit that the contravening person or company received as a result of the contravention.

(a) *who is an insider or an associate or an affiliate of the reporting issuer, and*

(b) *who*

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

(ii) *directly or indirectly communicates, other than when it is necessary in the course of business, knowledge of a material fact or material change in respect of the reporting issuer that has not been generally disclosed,*

*is accountable to the reporting issuer for any benefit or advantage received or receivable by the person or company as a result of the purchase, sale or communication, as the case may be.*

(6) *Subsection (5) does not apply if the person or company in the special relationship reasonably believed that the material fact or material change had been generally disclosed.*

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

(a) *the investment program of a mutual fund, or*

(b) *the investment portfolio managed for a client by an adviser*

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

(8) *All or any one or more of the persons or companies*

(a) *in a special relationship with a reporting issuer, and*

(b) *liable under subsection (1) or (3),*

**(8)** All or any one or more of the persons or companies

- (a) in a special relationship with a reporting issuer, and
- (b) liable under subsection (1), (3), (7.1) or (7.3),

as to the same transaction or series of transactions, are jointly and severally liable.

**(9)** In assessing damages under subsection (1), (3), (7.1) or (7.3), the court shall consider,

- (a) if the plaintiff is a purchaser, the price that the plaintiff paid for the security less the weighted average market price of the security as determined with respect to the first 20 trading days for that security following the general disclosure of the material fact or material change, or
- (b) if the plaintiff is a vendor, the weighted average market price of the security as determined with respect to the first 20 trading days for that security following the general disclosure of the material fact or material change less the price that the plaintiff received for the security.

**(10)** Notwithstanding subsection (9), the court may consider any other measure of damages that is relevant in the circumstances.

**(11)** For the purpose of subsections (1), (3), (5), (7.1) and (7.3), a security of the reporting issuer includes

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

*as to the same transaction or series of transactions, are jointly and severally liable.*

*(9) In assessing damages under subsection (1) or (3) the court shall consider,*

- (a) if the plaintiff is a purchaser, the price that the plaintiff paid for the security less the weighted average market price of the security as determined with respect to the first 20 trading days for that security following the general disclosure of the material fact or material change, or*
- (b) if the plaintiff is a vendor, the weighted average market price of the security as determined with respect to the first 20 trading days for that security following the general disclosure of the material fact or material change less the price that the plaintiff received for the security.*

*(10) Notwithstanding subsection (9), the court may consider any other measure of damages as may be relevant in the circumstances.*

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

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

**17 Section 209.1 is repealed and the following is substituted:**

**Rescission re offering memorandum or other prescribed offering document**

**209.1** A purchaser of a security to whom an offering memorandum or other prescribed offering document is required to be sent may rescind the contract to purchase the security by sending written notice to the issuer not later than midnight on the 2nd day, exclusive of Saturdays and holidays, after the purchaser signs the agreement to purchase the securities.

**18 Section 211 is repealed and the following is substituted:**

**Limitation period**

**211** Unless otherwise provided in this Act, no action may be commenced to enforce a right created by this Part,

- (a) in the case of an action for rescission, more than 180 days from the day on which the transaction that gave rise to the cause of action was completed, or
- (b) in the case of any other action, later than the earlier of
  - (i) 180 days from the day that the plaintiff first had knowledge of the facts giving rise to the cause of action, and
  - (ii) 3 years from the day on which the transaction, contravention or alleged contravention, as the case may be, that gave rise to the cause of action was completed or committed, as the case may be.

**19 Section 223 is amended**

**(a) in clause (g)**

**(i) by repealing subclause (vi) and substituting the following:**

- (vi) prescribing requirements in respect of persons or companies trading derivatives, including



**17** Section 209.1 presently reads:

*209.1 A purchaser of a security to whom an offering memorandum is required to be sent may rescind the contract to purchase the security by sending written notice to the issuer not later than midnight on the 2nd day, exclusive of Saturdays and holidays, after the purchaser signs the agreement to purchase the securities.*

**18** Section 211 presently reads:

*211 Unless otherwise provided in this Act, no action may be commenced to enforce a right created by this Part more than,*

- (a) in the case of an action for rescission, 180 days from the day of the transaction that gave rise to the cause of action, or*
- (b) in the case of any action, other than an action for rescission, the earlier of*
  - (i) 180 days from the day that the plaintiff first had knowledge of the facts giving rise to the cause of action, or*
  - (ii) 3 years from the day of the transaction that gave rise to the cause of action.*

**19** Section 223 presently reads in part:

*223 The Lieutenant Governor in Council may make regulations*

- (g) governing derivatives and, without limiting the generality of the foregoing,*
  - (i) prescribing requirements in respect of the clearing and settlement of trades;*

requirements in respect of registration, trade reporting, clearing and settlement, margin, capital and collateral;

**(ii) by adding the following after subclause (ix):**

- (x) prescribing
  - (A) a derivative, or a class of derivatives, to be a security;
  - (B) a derivative, or a class of derivatives, not to be a derivative;
  - (C) a security, or a class of securities, to be a derivative;
  - (D) a security, or a class of securities, not to be a security;

**(b) by repealing clause (hh.3) and substituting the following:**

- (hh.3) exempting a class of persons, companies, trades, derivatives or securities from one or more of the provisions of Alberta securities laws;

**20 The *Securities Amendment Act, 2011* is amended by repealing section 2(a).**

- (ii) *prescribing requirements in respect of the reporting of trades and quotations, including requirements in respect of the confidentiality and disclosure of those reports;*
  - (iii) *prescribing derivatives or classes of derivatives in respect of which trades must be cleared or settled through a recognized clearing agency;*
  - (iv) *prescribing requirements that a derivative or a class of derivative be traded on a recognized exchange;*
  - (v) *prescribing requirements in respect of record-keeping, reporting and transparency in relation to derivatives;*
  - (vi) *prescribing requirements in respect of persons or companies trading derivatives, including requirements in respect of trade reporting, clearing and settlement, margin, capital and collateral;*
  - (vii) *prescribing requirements in respect of position limits for derivatives;*
  - (viii) *prescribing requirements in respect of disclosure documents for trades in derivatives;*
  - (ix) *prescribing requirements that a derivative or a class of derivative not be traded in Alberta;*
- (hh.3) *exempting a class of persons, companies, trades or securities from one or more of the provisions of Alberta securities laws;*

**20** Repeals section 2(a) of chapter 7 of the Statutes of Alberta, 2011. Section 2 presently reads:

2 *Section 1 is amended*

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

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

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

**21 Sections 3 and 5(a) come into force on Proclamation.**

- (ii) provides centralized facilities through which trades in securities or exchange contracts are cleared, or*
- (iii) provides centralized facilities as a depository of securities;*

**21** Coming into force.





