

2017 Bill 13

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Third Session, 29th Legislature, 66 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 13**

**SECURITIES AMENDMENT ACT, 2017**

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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 13*

## **BILL 13**

2017

### **SECURITIES AMENDMENT ACT, 2017**

*(Assented to , 2017)*

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 42(7.1) is amended by striking out “and” at the end of clause (a) and substituting “or”.**

**3 Section 58(2) is amended by adding “and shall provide those financial and other statements and reports to the Executive Director” after “Executive Director,”.**

## Explanatory Notes

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

**2** Section 42(7.1) presently reads:

*(7.1) A person or company*

*(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).*

**3** Section 58(2) presently reads:

*(2) Where a person carries out an examination under subsection (1), that person shall prepare those financial or other statements and reports as may be required by the Executive Director.*

**4 The following is added after section 69:**

**Powers re investigations**

**69.1** Where a recognized exchange, a recognized self-regulatory organization or a recognized quotation and trade reporting system is empowered under the bylaws or rules of the exchange, self-regulatory organization or quotation and trade reporting system, as the case may be, to conduct investigations, the following applies for the purposes of such an investigation:

- (a) a person appointed to conduct an investigation has the same power as is vested in the Court of Queen's Bench for the trial of civil actions
  - (i) to summon and enforce the attendance of witnesses,
  - (ii) to compel witnesses to give evidence on oath or otherwise, and
  - (iii) to compel witnesses to produce documents, records, securities, derivatives, contracts and things;
- (b) the failure or refusal of a person summoned as a witness under clause (a) to attend at the required location and time, to answer questions or to produce documents, records, securities, derivatives, contracts and things that are in that person's custody or possession makes that person, on application to the Court of Queen's Bench by the person appointed to conduct the investigation, liable to be committed for contempt by the Court of Queen's Bench in the same manner as if that person were in breach of an order or judgment of that Court;
- (c) a person appointed to conduct an investigation may take evidence under oath;
- (d) a person appointed to conduct an investigation or a person authorized by a person conducting an investigation may administer oaths for the purpose of taking evidence;
- (e) notwithstanding the *Alberta Evidence Act*, a bank or any officer or employee of the bank is not exempt from the operation of this section;

#### **4 Powers of investigations.**

- (f) a person giving evidence at an investigation may be represented by legal counsel.

**5 Section 222(1) is repealed and the following is substituted:**

**Immunities**

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

- (a) for any act done in good faith
  - (i) in the performance or intended performance of any function or duty, or
  - (ii) in the exercise or intended exercise of any power,
- or
- (b) for any neglect, omission or default in the performance or exercise in good faith of any function, duty or power.

**(2)** No action or other proceeding for damages may be instituted against a recognized auditor oversight organization or its directors, governors, members, officers, employees or agents for

- (a) any act done in good faith
  - (i) in the performance or intended performance of any function or duty, or
  - (ii) in the exercise or intended exercise of any power,
- or
- (b) any neglect, omission or default in the performance or exercise in good faith of any function, duty or power,

in respect of a function, duty or power that has been assigned to the recognized auditor oversight organization pursuant to its recognition under section 64.1.

**5** Section 222 presently reads:

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

*(a) for any act done in good faith*

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

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

*or*

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

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

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

(3) No action or other proceeding for damages may be instituted against a recognized self-regulatory organization or its directors, officers, employees or agents for

- (a) any act done in good faith
  - (i) in the performance or intended performance of any function or duty, or
  - (ii) in the exercise or intended exercise of any power,
- or
- (b) any neglect, omission or default in the performance or exercise in good faith of any function, duty or power,

in respect of a function, duty or power that has been authorized under section 64 or 66.

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

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

## **6 Section 223 is amended**

- (a) **in clause (g)(vi) by adding** “or a class of persons or companies” **after** “companies”;
- (b) **in clause (g.2) by adding** “or a company’s” **after** “person’s”;
- (c) **in clause (g.3) by adding** “or a class of persons or companies” **after** “companies”;
- (d) **in clause (j)(vii) by adding** “or a class of persons or companies” **after** “company”;



**6** 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,*
- (vi) prescribing requirements in respect of persons or companies trading derivatives, including requirements in respect of registration, trade reporting, clearing and settlement, margin, capital and collateral;*

- (e) in clause (k)(xi) by adding “or a class of persons” after “persons”;**
- (f) in clause (k.1)**
  - (i) by adding “or class of persons or companies” after “or company”;**
  - (ii) by repealing subclause (iv) and substituting the following:**
    - (iv) prescribing different circumstances, periods, principles, persons or companies, or classes of persons or companies, for different classes of securities, issuers or purchasers;
- (g) in clause (o)(v) by striking out “class or classes” and substituting “a class”;**
- (h) in clause (p)(i), (i.1) and (i.2) by striking out “or classes”;**
- (i) by repealing clause (p)(vii) and substituting the following:**
  - (vii) prescribing requirements in respect of, or in relation to, promoters, advisers, persons or companies, or a class of persons or companies, that administer or participate in the administration of the affairs of mutual funds or non-redeemable investment funds;
- (j) by repealing clause (t)(i) and substituting the following:**
  - (i) requiring any issuer, person or company or a class of issuer, person or company to comply with any of the requirements of Part 15 or the regulations;
- (k) in clause (t)(vi) by adding “or a class of persons or companies” after “company”;**
- (l) by repealing clause (u) and substituting the following:**
  - (u) regulating take-over bids, take-overs, issuer bids, going-private transactions, business combinations and related party transactions and, without limiting the generality of the foregoing,

- (g.2) prescribing the principles for determining the market value, market price or closing price of a security or derivative or the net asset value of a security or quantifying a person's exposure resulting from a trade in a derivative, and authorizing the Commission to make that determination;*
- (g.3) designating one or more persons or companies to perform a function relating to market integration, market transparency, market data consolidation or the clearing and settlement of trades;*
- (j) governing registration and, without limiting the generality of the foregoing,*
- (vii) governing the circumstances in which a person or company is required to disclose or furnish information to the public or the Commission;*
- (k) governing annual information forms, annual reports, preliminary prospectuses, prospectuses, pro forma prospectuses, short form prospectuses, pro forma short form prospectuses, exchange offering prospectuses, simplified prospectuses, risk disclosure statements, offering memoranda or any other disclosure documents and, without limiting the generality of the foregoing, governing procedures and requirements with respect to and providing for exemptions from*
- (xi) the form of certificates relating to a preliminary prospectus, prospectus and amendments to a prospectus and the persons required to sign the certificates;*
- (k.1) prescribing circumstances in which a person or company that purchases a security under a distribution may cancel the purchase, including*
- (iv) prescribing different circumstances, periods, principles or persons or companies for different classes of securities, issuers or purchasers;*
- (o) providing for and governing exemptions from the registration or prospectus requirements and, without limiting the generality of the foregoing,*

- (i) prescribing requirements for different classes of bids, take-overs, going-private transactions, business combinations or related party transactions;
  - (ii) prescribing requirements relating to the conduct or management of the affairs of the issuer that is the subject of a take-over bid, going-private transaction, business combination or related party transaction, and of its directors and officers, during or in anticipation of the take-over bid, going-private transaction, business combination or related party transaction;
  - (iii) prohibiting a person or company or a class of persons or companies from purchasing or selling a security before, during or after the effective period of a take-over bid, or before, during or after a going-private transaction, business combination or related party transaction;
  - (iv) prescribing the disclosure, certification, delivery or dissemination of any circular, notice, report or other document required to be filed or delivered to a person or company;
  - (v) prescribing percentages and requirements respecting early warning;
  - (vi) prescribing exemptions from the requirements of Part 14 or the regulations;
- (m) in clause (v)(viii) by adding “or a class of persons or companies” after “companies”;**
  - (n) in clause (v.1)(ii) by adding “or a class of persons or companies” after “companies”;**
  - (o) in clause (y) by adding “or a class of persons or companies” after “company”;**
  - (p) in clause (z) by adding “or a class of persons or companies” after “company”.**

- (v) *designating a person or company or class or classes of persons or companies as an accredited investor;*
- (p) *governing mutual funds, non-redeemable investment funds and private investment funds and the advertising, distribution and trading of the securities of the funds and, without limiting the generality of the foregoing,*
  - (i) *designating issuers or a class or classes of issuers as mutual funds;*
  - (i.1) *designating issuers or a class or classes of issuers as non-redeemable investment funds;*
  - (i.2) *designating funds or a class or classes of funds as private investment funds;*
  - (vii) *prescribing requirements in respect of, or in relation to, promoters, advisers or persons and companies that administer or participate in the administration of the affairs of mutual funds or non-redeemable investment funds;*
- (t) *governing insider trading, early warning and self-dealing and, without limiting the generality of the foregoing,*
  - (i) *requiring any issuer, class of issuer or other person or company to comply with any of the requirements of Part 15 or the regulations;*
  - (vi) *designating a person or company as an insider;*
- (u) *regulating take-over bids, take-overs and issuer bids and, without limiting the generality of the foregoing,*
  - (i) *prescribing requirements for different classes of bids or take-overs;*
  - (ii) *prescribing requirements relating to the conduct or management of the affairs of the issuer that is the subject of a take-over bid, and its directors and officers, during or in anticipation of the take-over bid;*
  - (iii) *prohibiting a person from purchasing or selling a security before, during or after the effective period of a take-over bid;*



- (iv) *prescribing the disclosure, certification, delivery or dissemination of any circular, notice, report or other document required to be filed or delivered to a person or company;*
- (v) *prescribing percentages and requirements respecting early warning;*
- (vi) *prescribing exemptions from the requirements of Part 14 or the regulations;*
- (v) *governing the format, preparation, form, contents, execution, certification, dissemination and other use, filing, review and public inspection of all information, documents, records or other materials required under or governed by this Act and the regulations and, without limiting the generality of the foregoing,*
- (viii) *prescribing the circumstances in which persons or companies will be deemed to have signed or certified information, documents, records or materials on an electronic or computer-based system for any purposes of this Act;*
- (v.1) *governing the solicitation of proxies and, without limiting the generality of the foregoing,*
  - (ii) *prescribing requirements relating to communication with registered and beneficial owners of securities and relating to other persons or companies, including depositories and registrants, that hold securities on behalf of beneficial owners;*
- (y) *governing undertakings and agreements between the Commission or the Executive Director and any person or company;*
- (z) *providing for and governing the payment of money by a person or company pursuant to an undertaking or agreement with the Commission or the Executive Director;*

**RECORD OF DEBATE**

Stage	Date	Member	From	To
		<b>Questions and Comments</b>	<b>From</b>	<b>To</b>
Stage	Date	Member	From	To
		<b>Questions and Comments</b>	<b>From</b>	<b>To</b>
Stage	Date	Member	From	To
		<b>Questions and Comments</b>	<b>From</b>	<b>To</b>
Stage	Date	Member	From	To
		<b>Questions and Comments</b>	<b>From</b>	<b>To</b>